

Ochoco National Forest
Lookout Mtn. Ranger District
3160 NE Third St.
Prineville, OR 97754

May 15, 2020

Comments to:
Environmental Assessment
Ochoco Wild Horse Herd Management Plan

To Whom It May Concern:

The Central Oregon Wild Horse Coalition hereby submits our formal response to the proposed Ochoco Wild Horse Management Plan. It is with great disappointment in the Ochoco National Forest (ONF) that, after our review of this Environmental Assessment (EA), we must express our belief that the public trust has suffered a profound betrayal.

After these years of required public involvement: info-meetings; working subcommittee meetings (terminated by the ONF); by-invitation-only private meetings (from which proactive wild horse advocates were excluded until Federal Advisory Committee Act compliance was questioned); private "sounding board" meetings (which served no discernible purpose); and the initial "scoping" period ostensibly to seek genuine, informed input from invested public - the ONF is now cleared to implement the final solution which had been fomenting in the enclaves of Forest Service cubicles long before this process began.

PART A. RESPONSE TO ONF WILD HORSE SCOPING LETTER

As a part of the official record, we are also enclosing our response to the ONF's Wild Horse Scoping Letter dated June 19, 2017, as it will establish that the ONF never intended to uphold its solemn charge to "protect, manage, and control" the wild horses of the Big Summit Wild Horse Territory. The concerns we expressed in 2017 were not used as a basis for constructive development of alternatives. Our comments, instead, provided material which enabled the ONF to dismiss into oblivion any serious challenge to a predetermined outcome.

Following are brief replies to some of the assertions presented in this EA, which we had previously discussed in our Scoping response:

- Winter Range is absolutely not limited to 4942 acres. All the projections, calculations, and citations in this EA cannot occlude the obvious: 1) the current wild horse population survived some of the worst winters on record 2) the ONF has not proven and cannot prove that the entire censused wild horse population has ever resided within the 4942-acre designated winter range or that no horses ever wintered outside the designated winter range during winters of above-average snowfall 3) the ONF requested the Central Oregon Wild Horse Coalition identify areas where horses had been sighted during winter and received that documentation. We provided a map of personal and credible winter sightings, which was mentioned only in passing in this EA and in the context of being unuseful 4) the formula

used in calculating winter range was glaringly inaccurate, inconsistent with BLM Handbook procedures, and suspiciously skewed against wild horses.

- The ill-conceived AML proposed in the Preferred Alternative will result in certain and immediate extinction of the Big Summit Herd, as it does not allow for the herd size resiliency necessary to assure surviving members following any catastrophe.

- The ONF reference to the 2013 National Research Council Report Using Science to Improve the BLM Wild Horse and Burro Program; A Way Forward regarding the discussion of all America's wild horses comprising a "metapopulation" is a misrepresentation of the Report's full text. First, this is a BLM-commissioned report, and is therefore focused on BLM horses on BLM lands. Some Forest Service Territories are jointly managed with BLM and have components of sagebrush steppe or semi-arid desert ecosystems, but most are largely timbered environments which require adaptations to entirely different habitats. The passage in the Report is partially an indictment on past, current, and future practices which have reduced, and plan to further reduce, individual herds to below-genetically viable numbers, and thus a solution is offered. But further in Chapter 5 of the Report, under "Conclusions", there is less discussion and more recommendation, and this passage provides a shred of common sense:

*The committee recommends that BLM consider **some** groups of HMAs to constitute a single population and manage them by using natural or assisted migration (translocation) whenever necessary to maintain or supplement genetic diversity. Although there is no magic number above which a population can be considered forever viable, studies suggest that thousands of animals will be needed for long-term viability and maintenance of genetic diversity. Very few of the HMAs are large enough to be buffered against the effects of genetic drift, and herd sizes must be maintained at prescribed AMLs, so managing the HMAs as a metapopulation will reduce the rate of reduction of genetic diversity in the long term. (emphasis added)*

Obviously, isolated, unrelated HMAs should not necessarily be considered in this metapopulation, according to the NRC Report and the Strategic Research Plan, Wild Horse and Burro Management (2005). Under D. Genetic Conservation Strategies: "Similar or closely-related herds of horses should be identified for any genetic augmentation of wild horse herds." This same Report also admonishes under Goals 1: *Manage to minimize the need for augmentation, if possible.*

Additionally, Robert C. Lacy, Department of Conservation Biology, Daniel F. and Ada L. Rice Center, Brookfield Zoo, states in Importance of Genetic Variation to the Viability of Mammalian Populations:

"Exchange with other populations can restore variation, but only with the risk of losing genetic variants that had been unique to the local population."

The NRC Report (same chapter) also cautions against outbreeding depression. This can occur, and cause a loss of fitness, when the immigrant and home population genetics are too disparate. We can certainly claim this in the Big Summit herd, as can many of the Forest Service herds.

- The Big Summit wild horses are not merely the leftover dross of recently-escaped farm horses. When the ONF, Big Summit Ranger District, initiated a wild horse public awareness program and began to

consolidate wild horse information, we were asked to develop interpretive signs and brochures, and to speak as representatives of the Forest Service (1990s) about wild horses to organized groups. At that time, the origins of the Big Summit Herd were hazy, at best. Common belief was in the typical lore of local individuals losing or releasing horses to the wild, sometimes to be kept approachable by tying tires to the lead mares' legs, or by lacing her nostrils shut with barbed wire. Whether any or all of these accounts are factual, the origin story loses some credibility by factors of survival, acceptance of domestic horses, and the fact that farm/ranch horses were often the product of regional wild horse capture and training brokers. Too, as the Wild Free-Roaming Horses and Burros Act took shape, these same locals reclaimed the most desirable (domestic) horses from the Big Summit Herd. Mitochondrial DNA study since the 1990s fails to affirm predominant domestic breeds in the Big Summit lineage. These are ancient genetics, and these horses are uniquely-adapted to the Ochoco Mountain environment. The ONF needs to abandon the old origin story, however convenient.

- The ONF has vacillated on the rightful Big Summit Territory boundary since 1971. It is consistent with overtones of resentment toward the Big Summit horses throughout this EA that in the final "analysis" the Territory boundary was redrawn to exclude such logical use areas as the entire corridor to the northwest of the 22 Rd., the former Ochoco Ranger Station compound, and, of course, the sections mentioned in the 1975 Big Summit Wild Horse Management Plan which were included in their entirety during the public involvement process. We have been told emphatically and repeatedly that "adjusting the Territory boundary would require an act of Congress", yet the ONF has capriciously redrawn this same boundary numerous times, and has chosen to disregard historic documentation of the 1971 areas of use which should have been included; in 1975 and 2020.
- Horses migrate outside of an invisible line on the ground that corresponds to a random felt-tip marker track on an 8 1/2 x 11 Forest map. They will continue to do this regardless of population size, because wild horses migrate. It is part of their strategy to avoid overuse of resources and to maintain genetic health. The ONF admits in this EA that no studies exist to substantiate the correlation between population size and horse travel.
- The ONF remains obsessed with the wild horse-created mud hole, to the point that they present different views of the same spring throughout this EA. The ONF fails to mention that Douthit Spring, though heavily used by horses, is adjacent to a dispersed campsite which is anything but "natural" with meat hanging poles, a trashy fire ring, and two pieces of vintage columnar basalt furniture, all in area denuded of vegetation and rutted with tire tracks. Campers have traditionally run ATVs through Douthit Creek and left the stream primed for bank erosion, sedimentation, and temperature increase. Horses have been observed licking the top surface of one of the imported boulders, indicating the presence of human-placed salt blocks at some point, which is consistent with the excavated tree root system shown in one of the ONF's photos of "wild horse resource damage". This cavity is identical to evidence of salt blocks placed for livestock, which then dissolve into the soil and invite further digging by wildlife. If the ONF truly values biodiversity and sustainability, they will explore the broader meaning of this overlaid symbol of wild horse "riparian degradation".

- The ONF mischaracterizes the root cause of the current situation, the implications, and appropriate remedial approaches of the genetic diversity of the Big Summit Herd. This contortion of the facts seems only to serve as justification for alternatives which would reduce the population far below accepted levels for minimum diversity; the worst possible action for an at-risk population.
- Thriving Natural Ecological Balance cannot be achieved on a landscape which the ONF admits was subjected to heavy logging, road building, and 100 years of intensive livestock grazing. The Multiple Use-Sustained Yield Act meant to guide the intelligent use and preservation of Forest Service-managed natural resources is invoked to include more abuse of a finite environment than it can hope to sustain. Yet, wild horses are the only "use" of the ONF to be held to the Thriving Natural Ecological Balance standard.
- The Central Oregon Wild Horse Coalition served on a Working Group convened by the ONF during the early public input period of the planning process. Of several topics selected for focused discussion within the group, the facilitator proposed that, due to the onset of winter, we first address the matter of Emergency Response. The Central Oregon Wild Horse Coalition submitted the list of potential situations affecting wild horses, which is presented in our response to the Scoping Letter. The group was disbanded when the ONF could not agree to the prospect of emergency starvation relief when weather conditions were inordinately extreme and the horses would otherwise face certain death. The Emergency Response Plan in this EA consists only of provisions related to euthanasia.

Further discussion of the preceding issues and many others follows our response to the Forest Service Scoping Letter.

Our response is enclosed here:

Ochoco Wild and Free Roaming Herd (Horse) Management Plan Revision Project
c/o Marcy Anderson
Lookout Mountain Ranger District
3160 NE Third Street
Prineville, OR 97754

The Central Oregon Wild Horse Coalition has received the scoping letter dated June 19, 2017, regarding the proposed update of the 1975 Ochoco Wild Horse Herd Management Plan.

Although we strongly agree that the 1975 Plan is long overdue for revision, we had hoped the updated plan would initiate substantive improvements to the management of the Big Summit Wild Horse Herd. With meaningful dialog, beginning with this first stage of the decision process, that vision may be achievable. In the interim, we do find several areas of concern within this letter.

BACKGROUND

Some of the most troubling statements are not found under the heading of Proposed Action, but are embedded in the Background section; information on which the Proposed Actions are predicated and which should be foundational material of irrefutable truth.

First, the origins of the Big Summit horses, according to the 1975 Plan, were simply wrapped into the heading of former "ranch horses". It is unclear whether the Ochoco National Forest still chooses to subscribe to the "feral" paradigm in 2017, when we have a large amount of new knowledge and technology to replace the old convenient ambiguity, or if the writer is just unaware of DNA studies and area history. But what is concerning is the potential for prejudicing readers who are unfamiliar with discoveries regarding the Big Summit horses' history, as the underlying message here may be that these horses are merely recently-feral discards of European enterprise as opposed to the product of centuries or millennia sculpting these unique citizens of the Ochoco environment. We hope that the known origins of the Big Summit Wild Horses will be accurately expressed in the revised Plan.

The second supposition found in the Background section is that "Winter forage, however, is a limiting factor." Again it is unclear whether the narrative is meant to quote the 1975 Plan or whether this is the belief in 2017. The 1975 Plan stated that "...feed is not the limiting factor in this Territory." It did not differentiate between summer and winter forage. Accordingly, any update to the 1975 Plan must be based upon credible data which proves that winter forage availability is a viable justification for limiting AML. If that data exists, it should have been presented at the issuance of this scoping letter. If that data does not exist, then this statement should not have been made - as though assumption and fact are synonymous.

In the third Background paragraph, major misrepresentations of proven fact dominate what amounts to a fabricated scenario to justify a predetermined AML - the most egregious form of NEPA violation.

To appreciate the misinformation of the entire paragraph, it is important to acknowledge the recent history of wild horses on the Ochoco National Forest. Since this history is not accurately articulated by the Ochoco National Forest in this letter, the public is not seeing a true panorama of the key issues. Again, whether this is a conscious and purposeful effort to further set the stage for predetermined outcomes, or if true belief of this conjecture is the guiding principle, statements made here are unsubstantiated and prejudiced.

According to the numbers in the first sentence, which should have been expressed as a trend rather than an average, there is apparently enough winter forage to support the lowest number quoted; 122.

Note: As the organization which has coordinated the annual Big Summit Herd census for 16 years, accurate results are important to us. We compare census numbers to sightings throughout the year, compare totals to projected increases, and factor in known mortality. We continue to search areas and resolve questions until the post-census report is written and submitted to the Ochoco National Forest. The last two years are puzzling, however. As stated in our 2016 post-census report, we may have had a low number of volunteers but the number of 122 horses was consistent with year-long sightings. Projected population growth for 2017 would be roughly 146 at a 20% rate of increase. When all the photos are examined for 2017, we may be close to 146. This would be expected, were it not for the 2016 PZP trial. But we are less concerned about possibly under-counting in 2016 than we are about the survival rate following the winter of 2017.

If the final 2017 census number is found to be 135 - 145, following a winter which crushed the roofs of industrial buildings and the spirits of every Central Oregonian, the Ochoco National Forest claim that "The herd size is out of balance with the availability of winter range, resulting in effects to the health of

horses" is not based in reality. 135 - 145 horses emerged from one of the worst winters in recorded history.

Secondly, there is absolutely no documentation to support that the migration of horses to areas beyond the imaginary Territory boundary can be attributed to current herd size. Lifelong residents of this community have certified that wild horses resided in ALL parts of the Ochoco National Forest (some of these statements are enclosed). This was true in 1932 when the Ochoco National Forest's own internal newsletter boasted of gathering 2166 wild horses from Forest lands and beyond; to be sent to slaughter in favor of more forage for cattle and sheep. More recent accounts provided by local residents affirm that horses resided in Horse Heaven, Cold Springs, Coyle Creek, Indian Prairie, northeast of Big Summit Prairie, south of Big Summit Prairie, and on what was once designated as both Prineville and Paulina Ranger Districts, as well as surrounding private lands. Horses were everywhere, and in far greater numbers than contemporary Forest managers consider healthy for the horses' own *native* environment. In 1975, the Ochoco National Forest, giving them the benefit of the doubt, may not have known that the scope of drawing Wild Horse Territory boundaries should have been to include ALL areas where wild horses existed in 1971. By all accounts, that would have meant that the Ochoco National Forest in its entirety should now be considered the Big Summit Wild Horse Territory. Instead, then-Range staff looked at a core use area for a period of 2 months. The intensive study done at that time; by horseback, on foot, and by helicopter, had to be accomplished when the area was accessible. While this area-focused approach met the minimal Wild Free Roaming Horses and Burros Act standard of considering the horses "... in the area where presently found..." in the sense that horses were found there, it did NOT meet the full intent of the Act which was undeniably to include ALL areas where horses were found, and were "...an integral part of the natural system of the public lands." The approach failed to consider seasonal use areas or areas of historic residence, and these omissions simply do not coincide with real wild horses in real time.

Migration of wild horses is less a function of excessive numbers than it is of the very nature of wild horses; they travel. Unlike the behaviors described in 1975, it is now common for a given band to be observed in a certain area, either separately or with others, and to be miles away a day later. This has been observed when total horse numbers have been within "AML" as well as in recent times. The current numbers and wild horse territorialism which the Ochoco National Forest states are responsible for what is actually historic horse migration are not proven causes for horses leaving the artificial boundaries drawn in 1975.

Perhaps the most indefensible statement made by the Ochoco National Forest in this letter is the following: "Resource damage is occurring in some areas, particularly in riparian areas, because of horse use." As we stated previously, it would be a gross violation of NEPA regulations, as well as a betrayal of public trust, were the Ochoco National Forest to have predetermined outcomes of this planning process prior to full analysis of data and without the input of public in regard to that data. We find this statement to be nothing more than presumption, and we firmly oppose such unfounded conclusions asserted in this phase of the planning process.

As an example, the 1975 Plan lists "damage" done by the wild horses. Counted as damage were the innocuous "dust roll areas" which the narrative then states were a result of logging operations scraping off the organic soil layer. Thus, the systematic scalping of organic soils inherent to logging was not considered resource damage, yet horses taking advantage of horse-sized portions of this exposed mineral soil landscape were considered significant and helped make the case that AML should be 55 -

65 horses. We have no more faith in today's natural resource professionals to properly assign blame for resource damage. Wild Horse Ecology is not a subject taught at the college level, or at any level, as there are precious few experts in this field - anywhere. Instead, stream headcuts and associated non-native riparian vegetation are attributed to wild horses, even though headcuts and weeds characterize Western landscapes wherever domestic livestock graze or have grazed. Tarweed and other invasives and increasers have replaced native vegetation species in areas where horses frequent. Nevermind 2-4000 sheep using the same ground; passing through streams and trampling any vegetation they don't consume; churning the soils of roadcut and creek bank alike. Conversely, upland mudholes appear and surrounding vegetation is badly trampled, and wild horses are found guilty. *Rightly so.* Horses locate subsurface water and create water sources for all life, and are able to keep those sources open though flowing creeks may freeze. These sites offer minerals in solution and mud baths which provide pest control for horses and other animals, and also reduce stream use. This is not damage. And while horses find thermal cover and fly control in a specific pine stand, or compact trails (just like deer, elk, and cattle...), continual environmental impacts from other activities seem to escape the concern of the same Resource Managers. Among these, as stated, are destruction, erosion, and compaction of soils, scorched ground, chemical pollution, weed infestations, road building, carbon release, and general disturbance of logging activity and clean-up actions. Road density is still high, and would be even if the Travel Management Rule were to be observed and enforced, which continues to impact uplands, riparian areas, and wildlife. Firewood cutting remains a significant impact, inviting further soil compaction as well as removal of standing timber. Domestic livestock grazing is known to be one of the greatest causes of public land degradation since the 19th century, necessitating restoration efforts in the 21st century; yet both sheep and cattle remain on the Ochoco National Forest. A 137-mile off-road trail system has been approved, which will forever change the Ochoco National Forest in a profoundly-negative way. These are but a few examples of highly-significant non-wild horse impacts; yet the wild horses have already been convicted of resource damage though that damage is not identified or substantiated in this document.

We also find that the Ochoco National Forest's citing of the Wild Free Roaming Horses and Burros Act of 1971 is inconsistent with the Act itself. Reference in the Act to the term "thriving natural ecological balance" follows, and is stated in the context of, the definition of a wild horse "range", wherein the range is to be "devoted principally but not necessarily exclusively to their welfare." Amendments to the Act did not alter this definition nor the clear direction that areas where wild horses were found in 1971 were to be managed principally for wild horses, provided consultation with wildlife managers did not result in sound reasons why there could not be a "thriving natural ecological balance" between wild horses and other wildlife. There is absolutely no verbiage therein from which to infer that "other uses and the production capacity of their habitat" is a lawful interpretation of the Wild Free Roaming Horses and Burros Act, Sec. 3 (a). Nowhere in the Act, although both BLM and Forest Service have erroneously misconstrued the language to that end, is authorization given or implied to create Territories, HMAs, Horse Areas, or any other area or level of management except that which provides the full protection, management, and control afforded the horses through the Act. Sec. 3 (a) states that "...he (Secretary) MAY designate and maintain specific ranges on public lands as sanctuaries for the protection and preservation..." but read in the context of the section, this clearly grants *permission to implement the Act*; NOT the latitude to contrive different tiers of protection, management, and control of wild horses. To manage wild horses to a lesser level than is prescribed in the Act would be to not protect, manage, or control them at all.

Neither does the concept of Multiple-Use Sustained-Yield preclude the use of these lands (where wild horses were found in 1971) to be principally but not exclusively for the welfare of wild horses. To manage principally for wild horses is consistent with the letter and intent of the Multiple-Use Sustained-Yield Act, as it encourages intelligent pursuit of balance between unique aspects of a given landscape. Wild Horse residence on National Forest System lands is precisely the sort of unique value which can and should logically be weighed more heavily than other uses which are common to most other areas, especially considering the mandate of the Wild Free Roaming Horses and Burros to do exactly that. The Multiple-use Sustained-yield Act also states "...not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." To reiterate, the Wild Free Roaming Horses and Burros Act states that the Wild Horse Range must be managed according to the multiple-use concept; it does not state, nor is it appropriate to extrapolate this, that wild horses must compete with every and all conceivable uses of their habitat.

Further, areas of permitted livestock are NOT required to be maintained in a thriving natural ecological balance. Therefore, livestock grazing may not be a compatible use within Wild Horse Range boundaries, and this again begs the question of why wild horses are held to this ecological standard on the Ochoco National Forest while permitted sheep and cattle are not.

To have made the statement "Currently, the wild horses are not in a thriving natural ecological balance with other uses and the production capacity of their habitat as required by the 1971 Wild Free Roaming Horses and Burros Act as amended (WFRHBA)" is not only incongruous with the very law from which the statement is excerpted, it is yet another example of a foregone conclusion, prior to comprehensive and objective analysis. And/or, it could represent another failure to disclose data to the public engaged in this planning process.

The final two paragraphs in the Background section are also characterized by misinformation or incomplete information.

Two genetic studies did indicate low genetic diversity. Dr. DeEtta Mills, however, found that a significant event caused a genetic bottleneck effect; the winter of 1992-1993 which resulted in the substantial loss of deer, elk, and wild horses. We strongly agree that genetic health must be considered in the management of the Big Summit Herd going forward. But this harsh lesson must not be forgotten should managers lean toward a lower AML than is known to be genetically-viable. There is a demonstrated need for simple *numbers* resiliency, to prevent yet another bottleneck event, from which this herd may not recover.

We also agree that fertility control is generally the preferred method of regulating herd numbers SHOULD the number be proven to be threatening to a thriving natural ecological balance. In 2016, PZP was administered to 23 mares - before 2016 winter survival numbers were known - and further darting is reportedly planned for the fall of 2017. This action precedes analysis to support whether or not the Big Summit Wild Horse Herd is in a state of thriving natural ecological balance, and therefore may not be a lawful action. Further, the use of "sex ratio adjustments" would be a gross mockery of "minimal feasible" management.

PURPOSE AND NEED

Again, the casual use of the term "thriving natural ecological balance" is both improper and inconsistent with its context within the Wild Free Roaming Horses and Burros Act. The assumption of weight given to "other uses and productive capacity of their habitat" is also a misinterpretation of law.

PROPOSED ACTION

1. Once more, we feel the standard of "thriving natural ecological balance" is subjective and certainly nebulous, if not inappropriate given the myriad other uses imposed on the wild horses' range. "Minimal feasible" is equally arbitrary and subject to biased interpretation at the whim of managers. Moreover, we would appreciate the Ochoco National Forest focusing on the enhancement of winter forage more than the measuring of it. For example, the horses' winter range has been subjected to thinning and juniper eradication projects, which may eventually increase forage yield, but which have resulted in countless acres of untreated slash. This loss of forage available to deer, elk, and horses in limited winter range is significant. Additionally, flexibility of sheep grazing according to summer horse presence and forage growing conditions could produce appreciably more winter forage. Recreation planning and travel management enforcement could also improve forage and reduce harassment at critical times for big game and wild horses.

We would also hope that the Ochoco National Forest would come to understand the relationship between the amount of forage calculated and projected to be available, to the factors which make that forage unavailable; such as persistent deep snow. It is critical that the Ochoco National Forest recognize that in such situations, the number of horses becomes irrelevant, except where greater numbers going into winter mean more horses exiting winter successfully. A net loss of 10 horses would not threaten the genetic diversity of a herd numbering 150, but would have a dire impact on a herd of 60. This equation has nothing to do with the amount of forage buried beneath three feet of snow.

2. We are unclear about the Territory boundary adjustment described in this section. The enclosed map appears to exclude Ochoco National Forest land in addition to the private inholdings. To support this boundary adjustment we would need assurance that only the private land parcel would be excluded from the Territory, and we would appreciate information on whether permitted sheep would also be excluded from this private land.

On numerous occasions in the past, we have proposed a Territory Boundary adjustment based on the areas of wild horse use in or around 1971 as documented in the text of the Ochoco National Forest's own 1975 Wild Horse Plan. The 1975 Plan was unambiguous in its description of lands used by wild horses in 1971, though mysteriously restricted to the Round/Lookout Mountain area. These areas described in the 1975 Plan but which were NOT included in the Territory are: Cup Spring (it is irrelevant that the author stated that at the time of writing the horses had "branched off", because it is unknown what was meant by "branched off"; the total horse numbers appear to have been dependent on their inclusion in the total; and the horses were there in 1971) and Brush Creek. The Ochoco National Forest has long told us that it would "require an act of Congress" to change the current Territory boundary, and yet in this Proposed Action the Ochoco National Forest plans to change the Territory boundary, presumably without an act of Congress.

We have provided documentation on wild horse use across the Ochoco National Forest, throughout the decades. The Territory should have, at a minimum, been drawn to include the whole of the former Big Summit Ranger District. This truth may be well-shrouded in the fog of time and distractions of other

Forest issues, but it remains solid fact; that wild horses roamed the entire Ochoco National Forest and far beyond, and to have condensed the Territory into 27,300 acres was wrong, and unlawful. And now, instead of recognizing this, the Ochoco National Forest intends to remove a portion of the horses' land base. We find this disingenuous, at the very least.

3., 4. As stated previously, we favor a sustainable herd size which is genetically-viable and which can withstand the potential assaults of winter, disease, predation, and other unforeseen forces. We are strongly opposed to the artificial and questionable manipulation of Big Summit DNA through genetic augmentation.

The Strategic Research Plan - Wild Horse and Burro Management, prepared cooperatively between BLM, USGS Biological Resources Division, and USDA Animal and Plant Health Inspection Service, speaks to the issue of augmentation in BLM wild horse herds. However, the Big Summit Herd falls outside the umbrella of a "metapopulation" for the purpose of genetic augmentation. Although thousands of wild horses persisted in Central Oregon until extensive roundups in the 20th century, the Big Summit Herd is probably the only wild remnant of specific DNA identified by Dr. DeEtta Mills as being uniquely descended from only two founding ancient mares (study still under peer review?). The Strategic Research Plan indicates genetic augmentation when a true metapopulation of similar heritage exists. That is simply NOT the situation in the Big Summit Herd. Although we concurred with the introduction of two South Steens mares several years ago, it was in the context of a "rescue" situation, and is not a practice we would support as justification for a non-sustainably low AML. Since the introduction of the two outside mares, it has been our observation that the benefit is limited, as was expressed in this cited report, due in part to the social structure of wild horses. In other words, there is no reason to believe that outside genetics would ever influence enough offspring to correct problems known to currently exist. Further, the likelihood of future die-offs/bottleneck events is great enough that genetic augmentation should never be used to justify the establishment of low AML. The Big Summit Herd MUST be managed to at least the minimum viable number of 50 breeding adults, or 150 - 200 total animals depending on use of fertility control and other factors. Similarly, we oppose the skewing of sex ratios and age classes. None of these population management tools are consonant with Minimal Feasible management, and the suggestion of their use represents a failure to recognize research which suggests that the least disruption of band dynamics results in the lowest population growth rates.

5. We definitely support the development of an Emergency Action Framework, which is why we spent months developing one through the supposed public input phase of this planning effort. Our list of potential emergencies was more lengthy:

1. Fire (wildfire or escaped prescribed fire)
2. Disease outbreak (externally-introduced or naturally-occurring, such as West Nile Virus)
3. Winter starvation/exposure
4. Injury
5. Toxic plants or substances (naturally-occurring but beyond historic levels)
6. Poisoning (intentional or accidental)

7. Shooting, theft, or extreme harassment (immediate response, scene and evidence security)
8. Predation (crisis level, beyond historical)
9. Cattleguard entrapment
10. Wild horses on private land
11. Large-scale migration in/out of Territory
12. Trespass horses threatening health and safety of wild herd
13. Problem horses (typically young stallions)

We further identified prevention strategies, as well as a template for seamless, immediate response.

6. We have also been encouraging a comprehensive strategy for what is now being termed an "off-range" plan. For many years the Central Oregon Wild Horse Coalition has facilitated training and adoption of Big Summit horses, and has followed captured Big Summit horses in an informal post-adoption, welfare-compliance program. The only reasonable course for a meaningful off-range plan is to incorporate strong partnerships, as Forest Service personnel will come and will go with the years, budgets will wax and wane (mostly wane), and partner organizations may be fluid in their capacity to provide resources. With integration of responsibilities and knowledge-sharing, voids will be filled organically and the strength and resiliency of the program will be maintained. The off-range plan must be built upon a clear vision and a "framework" which is solidly embedded in policy to insure its future.

In conclusion, the Central Oregon Wild Horse Coalition has been a constructive partner with both the Forest Service and BLM for many years. No other organization is devoted primarily to the welfare of the Big Summit wild horses. We have grown immensely through experience; with both successes and failures. The litany of our joint accomplishments illustrates the possibilities and realities of collaboration, and we hope to extend this list of accomplishments exponentially. Our "limiting factor" is not our vision, but the trepidation of the Forest Service. We have opened the doors to veterinary research of bone structural defects in the Big Summit horses; a corrections-based horse training program for local wild horses; genetic research in pursuit of the original North American horse DNA; and demonstration of the model collaborative relationship between Government and the citizens it serves. We hope to achieve unprecedented positive and creative wild horse management through this Plan revision, and we hope to do this as a working partner with the Ochoco National Forest.

Respectfully,

Gayle Hunt, Central Oregon Wild Horse Coalition
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(end of Scoping response)

Comparing the contents of our Scoping response and this EA, it is apparent that the ONF has considered exactly none of our input. Indeed, there is a canned provision for that; arbitrary categories where input goes to die, by means of unilateral, dimensionless Forest Service decisions:

(this EA, page 9) Comments Considered but not Addressed in Alternatives or Analysis

1) the comment raises an issue that is outside the scope of the proposed action

The Proposed Action is to "develop a new herd management plan to replace the 1975 plan..." This equates to a very broad scope; a Wild Horse Territory Plan in 2020 should speak to the multi-faceted aspects of integrated, fluid, holistic resource management where the habitat needs and contributions of wild horses are considered intelligently and objectively. The ONF has limited the scope of this EA to the justification of a ridiculous AML and the means by which excess horses can be disposed of.

2) raises an issue that is already decided by law, regulation, Forest Plan, or other higher level decision

The merit of this category is predicated on adherence to the law. The Wild Free-Roaming Horses and Burros Act serves as the preeminent, not the incidental, guidance for the management of wild horses. Other Congressional Acts interface, but cannot conflict with, the Wild Free-Roaming Horse and Burros Act. Agency regulations must be consistent with the Act. Local Forest Plans implement the Act, but not to the extent that they effectively re-write or conflict with the Act. This EA cannot be assumed to be reflective of matters "decided by law" and there are several examples of this disparity in this EA.

3) raises an issue that is adequately addressed all alternatives

Given the unlikelihood that any salient issue has been adequately addressed in all alternatives, there may have been important comments submitted which were not "adequately addressed in alternatives or analysis".

4) raises an issue that is conjectural and not supported by scientific or factual evidence

The majority of analysis within this EA is conjectural and not supported by scientific or factual evidence.

PART B. KEY AREAS OF OBJECTION

1. WINTER RANGE

The premise on which the Preferred Alternative is founded, that the Big Summit Herd's winter range amounts to only 4942 acres, is utterly ridiculous. All the calculations, supposed studies of slope and habitat preference, random sightings, and inconclusive surveys do not add up to a scientific basis for reducing a viable herd to a number which assures certain and swift extinction.

Enclosed here are 1) letter from Lookout Mtn. Ranger District Ranger Slater Turner, dated August 1, 2018, requesting winter horse sightings be provided by the Central Oregon Wild Horse Coalition identifying horse presence across the Territory and 2) photo of the map which was submitted to the Lookout Mtn. Ranger District by the requested date, showing locations of horses during several

previous winters. Locations were validated as aerial sightings or definitely-horse tracks, or as sightings from credible members of the public as accessed by snowmobile or snowshoe. Each dot represents a single location, though not necessarily single animals.

Instead of accepting the sightings as evidence that these horses, long adapted to the Ochoco Mountains, know how and where to survive, the information was dismissed and excluded from the ONF's determination of the horses' true winter range. Given the gravity of probable outcomes should the ONF select and implement Alternative 2, the burden of proof of the suppositions regarding the horses' strict use of exactly 4942 acres during winter is placed squarely on the Forest Service. And yet, when their methodology was openly questioned at a "sounding board" meeting, the ONF had to admit they had neither verified that the entire population could be or had ever been located within the winter range, or that exactly 0 horses were located or were ever located outside the winter range during winters of above-average snowfall. The simple fact is, no easy way exists to verify 100% presence or 100% absence.

The only conclusion to be drawn from the infamous 2008 winter survey was that the limited information collected was not worth the extreme risk. The 2017 winter survey, whatever it consisted of, appeared to be neither definitive nor comprehensive; just random sightings. Our winter sighting map was not represented to be a complete winter count, but a sample of widely-distributed occupancy. It showed unequivocally that horses find, and follow historic patterns of, thermal pockets, leeward snow accumulations, microclimates, and perhaps specific available vegetation - all well beyond their appointed winter range.

Why our winter sighting information was disregarded is not known. We are aware that statements have been made by the ONF regarding the annual summer census, which the Central Oregon Wild Horse Coalition has coordinated for nearly 20 years, that we "must be fudging on the numbers". Perhaps that unmerited doubt of 80 volunteers' integrity extends to the winter months as well.



United States
Department of
Agriculture

Forest
Service

Ochoco National Forest
Lookout Mountain Ranger District

3160 NE 3rd Street
Prineville, OR 97754
541-416-6500

File Code: 2260
Date: August 1, 2018

Central Oregon Wild Horse Coalition
Gayle Hunt
5326 SE Bridge Ct
Prineville, OR 97754

Dear Ms. Hunt:

As you are aware, we have been working on updating our herd management plan for the Ochoco wild horses. This work has included collecting various kinds of data on the natural resources and wild horses and working with the public to better understand wild horse management concerns.

One of the key concerns or limiting factors for the Ochoco wild horses is winter range. We have been putting a lot of effort into collecting data during the winter time, especially location of wild horses. The better data we have about winter range, the better decisions can be made for this updated herd management plan. Our understanding based on the June 6, 2018 Sounding Board meeting is that you have looked for wild horses during the winter and may have some additional information for us. Your knowledge about the whereabouts of the wild horses during winter will help us with updating the herd management plan.

I am requesting any information that you have regarding wild horse locations in winter time. Information you provide may be used to inform the herd management plan. It would be most helpful for us if you could provide this information to us by September 7, 2018. If you do not have any information, a response back letting us know that as well would be very beneficial.

If you have any questions regarding my request, please contact Tory Kurtz, Team Leader for the Ochoco wild horse herd management plan update, at 541-233-3508.

Sincerely,

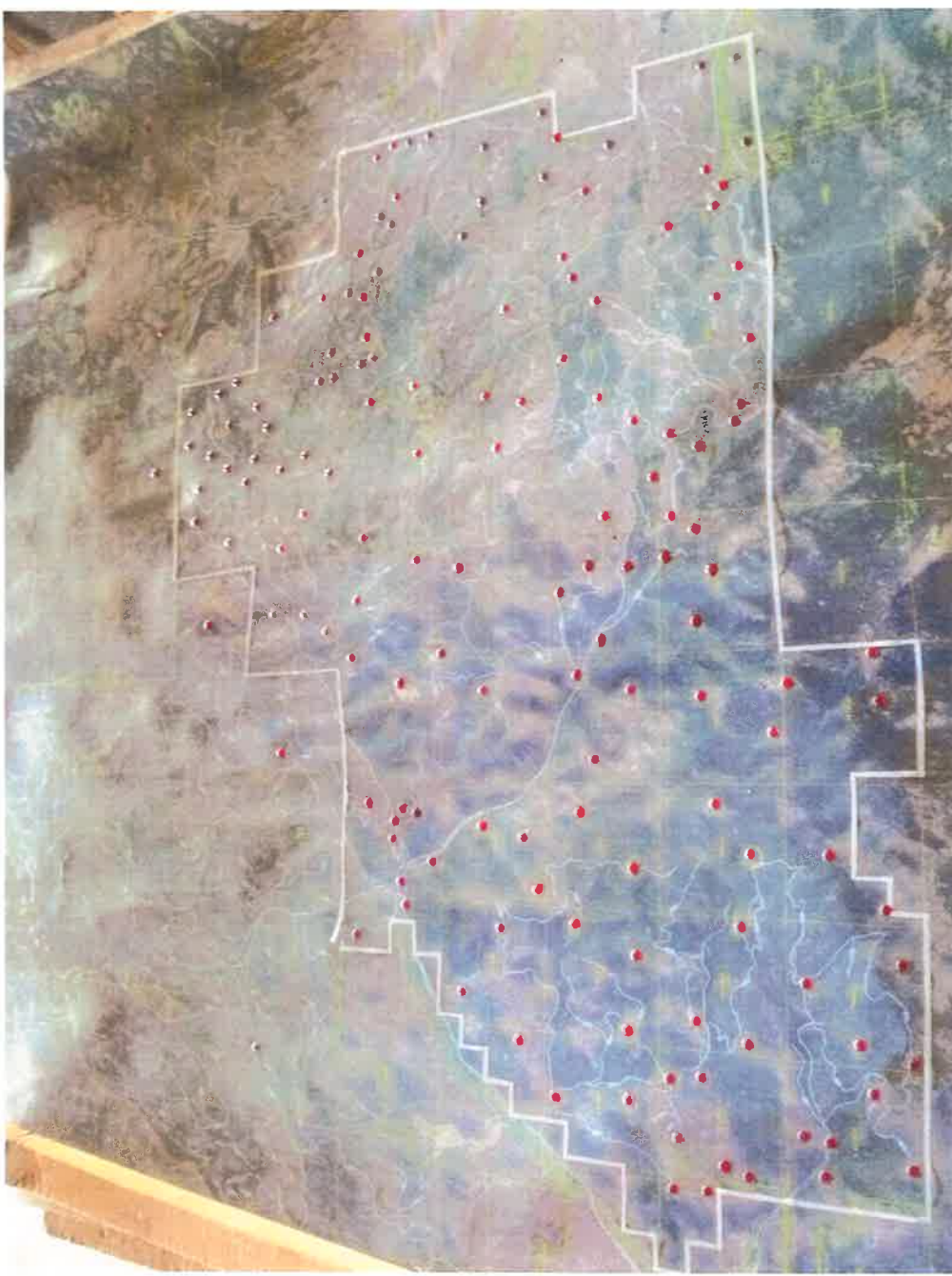
SLATER R. TURNER
District Ranger



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The 4942-acre winter range theory is also shattered every June when these volunteers ride in the annual Big Summit Wild Horse Territory census. In the early years, our strategy of a mixed grid/tracking system had a steep learning curve. In a few years, however, riders took ownership of their ride units and pride in their ability to accurately document the presence or absence of horses in their unit. The majority of volunteers have devoted their resources and now, their specialized expertise, for over a decade. Collectively, the volunteers produce a total number of horses annually which has resulted in dependable population trends. At no time since 2002 when we officially began coordinating the count, regardless of the toll of the winter before, did the horse count reflect a survival of only 57 horses; the maximum number which could be sustained by the precisely-calculated volume of forage produced within the 4942-acre winter range of Alternative 2. Once the routine captures conducted according to the flawed AML of the 1975 Plan began to taper off for a number of reasons, wild horse populations began to rise, and also to level out. The current population represents living proof that the horses' winter range is neither limited to 4942 acres nor to 372,160 lbs.

This EA states that ONF wild horse staff relied on the BLM's 2010 Wild Horse and Burro Management Handbook (BLM Handbook 4700-1) to guide the determination of AML which emerged as Alternative 2. Unfortunately, as is the current trend in Forest Service wild horse and burro management Agency-

wide, only selected tidbits of the BLM guidance were used. In the instance of the ONF's EA, the 3-5 years of actual utilization data required to establish forage sufficiency for the *current* number of horses is not evident. Instead, the ONF decided to estimate forage production capacity. Doing so allowed the ONF to skim over Tier I analysis, skip Tier 2 entirely, and land on Tier 3 wherein we are threatened with removal of the Area's designation as an HMA (Territory), despite the Big Summit Herd's success which precedes the existence of the ONF itself. Of course, there are pages of further analysis in the form of stocking and utilization charts, and various statements, none of which fit within the formulas prescribed in BLM Handbook 4700-1. The ONF fabricated its own AML Determination process, which amounted to repetition of science-challenged charts, graphs, and unsupported assertions throughout this EA. If any of this data has merit, it lacks transparency as to how metrics were described and applied and what other factors were considered. For example, it is unclear how an assignment of a 30% limit on summer forage utilization equates to Minimum Feasible Level Management.

Table 18, Alternative 2's forage availability chart, is also quite confusing. Of course we do not subscribe to the limitation on the horses' winter range of 4942 acres. Yet, if there were reason to concede this ludicrous, but pivotal, assertion, we would need to have faith in Table 18 to accept the calculations supporting AML:

- Sheep aren't present in winter. Later in the document this is explained; apparently the number represents the 19 days sheep are permitted to graze, in early June, within the designated winter range. Then, the forage evidently did not recover by the following winter. If this is the case, and observations of sheep trampling more forage than they consume abound, then the ONF should consider terminating the grazing permit. Even so, forage consumed in the month of June is not recorded for any other species in Figure 18.
- Elk, Deer, and Wild Horse dietary overlaps are not evident in Figure 18. The mention of elk consumption of 44% herbaceous forage during winter (page 209) does not constitute a scientific basis for the assumption that wild horses and elk must then have a "direct dietary overlap".
- According to the USDA NRCS National Range and Pasture Handbook, one elk = .60 AUM. This would mean their average forage needs per day would be 15.6 pounds per day, not 26 (page 209). Neither amount seems to fit the forage allocation shown in Table 18.
- Big Game Winter Range within the Territory is adjacent to, or very nearby, additional designated winter range totaling roughly twice the area of that overlapping with the assigned wild horse winter range. The "151" elk supposedly residing in the Territory could easily feed there, or anywhere else.
- Riparian areas are present on 215 acres of the 4942-acre designated wild horse winter range, yet all forage utilization is held to the 30% Forest Plan standard.

Further, although the ONF is terminally committed to the AML of 12-57, it admits (page 194) that *"winter weather conditions can have effects on horse population dynamics..."* and *"This situation, as found on the Big Summit Territory, creates a temporally density-dependent population where horses are limited to the food-limited carrying capacity in seasonally cold environments, with snow cover."* (attributed to the 2013 NRC Report) As the Central Oregon Wild Horse Coalition has maintained,

there may be degrees of irrelevancy between the wild horse population and the number of horses lost to winter. This is what the NRC Report actually states:

Density-INdependent mortality was documented by Berger (1983a) in the Granite Range of Nevada. Two horse groups perished as a result of severe winter snowstorms. High-altitude, snow-induced mortality may be common. He concluded that unpredictably heavy snow accumulation is a principal mortality agent in the Granite Range, as it may be elsewhere in the Great Basin. Berger (1983a) referred to the winter of 1977, when an estimated 300 horses (50 percent of the population) died in the Buffalo Hills near the Granite Range. Berger (1986) reported a pattern of low mortality in most years but markedly higher mortality in occasional years of bad weather. In Wyoming's Red Desert, abortions and stillbirths after a severe winter reduced natality by one-third (Boyd, 1979).

Reduction in Equilibrial Tendencies by Density Independence *In climatically variable environments, the importance of density-INdependence population dynamics increases. (emphasis added)*

To synopsize; it's not the number of horses; it's the number of snowflakes.

A certain number of horses will die as a result of extreme winter conditions. A number of horses will die as a result of average winter conditions, but this is factored into a fairly stable population which is censused at approximately 125-150 each summer. That includes a certain amount of winter kill, likely due to temperatures and predation as much as any other variable. It's the extreme winters that are destined to result in atypical mortality which is INdependent of available forage in the mystical winter range. And this is exactly why it is imperative that the ONF abandon its determined, unsupported preference for Alternative 2, or any alternative which does not provide for both genetic viability and fundamental numbers resiliency.

2. GENETIC VIABILITY AND PRESERVATION

This EA's characterization of the genetic situation of the Big Summit Herd is disingenuous and misleading. First, neither Dr. Gus Cothran or Dr. DeEtta Mills has said, to the best of our knowledge, that this herd is in a state of "genetic depression". The statement made by the ONF (page 65) "*However, since the wild horses in the Big Summit Territory are displaying genetic depression and associated levels of heterozygosity, having an MVP of 50 or more breeding individuals would not be expected to improve the observed heterozygosity to above the recommended level of 0.66.*" is inaccurate. The definition of genetic depression requires that a loss of "fitness" is apparent; provably attributable to a significant decline in genetic diversity. While the 2019 report (Desphande et al) cites "communication with USDA/FS personnel" to document the manifestation of the Big Summit Herd's genetic condition: "*Inbreeding seems to already be impacting these horses, as they appear more susceptible to diseases and have more physical deformities. Additionally, the herd suffers from high infant morbidity and mortality (USDA-FS)*" there has been no study of this correlation. This constitutes the highest levels of conjecture and misrepresentation; within a document where such affronts to real science are already prevalent to the point of redundancy. We had previously provided Dr. DeEtta Mills with a diary of physical issues affecting the Big Summit Herd. Included in that documentation were:

- Three foals unable to rise to nurse, though otherwise strong and lively. One of these was abandoned in the wild, while two others were born to captive mares. This occurred over a period of a few years but we are unaware of recent instances.
- "Eeyore", whose ears resembled those of the cartoon donkey, and had to be euthanized at the age of 11, after an illustrious public service career, due to arthritic complication from a bone fracture.
- One instance of a yearling filly who was found in a prone position, unable to return to her feet. She was able to stand and graze with assistance, but could not remain standing for more than a few minutes. Bodily functions and appetite stayed robust, but use of her legs declined rapidly and she was euthanized. Blood work and examinations by two veterinarians were inconclusive.
- Numerous cases of leg fractures, particularly of hind pastern joints, or hind leg crookedness. Studies conducted by the Central Oregon Wild Horse Coalition showed "honeycombing" of bone structure. Two other horses (recent) displayed deformities of the spinal column, which could be related. We asked the ONF to capture both these horses in order for the Central Oregon Wild Horse Coalition to observe progression, alleviate suffering, and to add their conditions to our study. This did not happen. Instead, one mare died, during winter, as did her foal, and the other colt and three healthy bandmates abruptly vanished.



Mare (Humpty) and foal, who perished shortly after this photo.

photo by Carol Statton

We do not know if these were the examples provided to Desphande. We certainly do not know what evidence was provided by the ONF to substantiate the comment that "*they appear more susceptible to disease*". That is simply false. Notably, it has been the Central Oregon Wild Horse Coalition which has ordered and paid for necropsies, soil testing, lab tests, and veterinary examinations. The ONF has resisted any type of forensics or even baseline studies on forage quality within the Territory. The anomalies described MAY be related to genetic decline; or they MAY represent genetic predisposition to environmental factors; or they MAY be entirely environmental; or they MAY be caused by something completely different. The absolute truth is, NO ONE KNOWS. If the ONF is indeed making such statements, it is grossly irresponsible and the false narrative is counterproductive to the health of these horses and possibly to the human community.

The second part of the ONF's statement is also questionable. Whether or not Dr. Cothran stated in 2009 that increasing population numbers won't increase genetic variation, it certainly won't hurt. Decreasing the herd size *certainly will hurt*. Compared to a total herd size of 57, or even 65, allowing the herd to remain roughly at the current population level would assure more random matings and an unknown rate of ongoing mutations commensurate with more horses. Further, we do not find any discussion in this EA of allelic variability; the other measure of genetic health. Although the studies cited may offer some mention of this, it is simply not factored into the conclusions drawn by the ONF in this EA. The following statement is provided by Ross MacPhee, PhD, Curator and Professor, Mammology and Vertebrate Zoology and Gilder Graduate School, American Museum of Natural History:

"I read the genetics section with interest. Most (is) devoted to evaluating whether the existing Ochoco herd is too small to avoid inbreeding effects, yet there are hardly any studies that would allow one to come to an informed decision about this. Because loss of alleles leads to a reduction in heterozygosity, evaluation of the robustness of predictions should always consider two measures, allelic richness and heterozygosity, because they give you different snapshots of genetic health. Yet allelic richness was not even assessed for the herd because adequate sample sizes could not be attained. Really? This is an important omission, because there is no way to assess how allelically diverse the population might actually be. Small populations that are more diverse are obviously in better shape than ones that are not. Heterozygosity in the Ochoco herd does appear low from a classic genetics standpoint, but populations of different species vary widely in this regard. Even populations at the low end of the heterozygosity scale do not necessarily show serious effects from inbreeding (cf. cheetahs). Going down to a few dozen animals (as envisaged in the favored alternative) would practically guarantee extinction of the herd just from the operation of stochastic processes. The fact that herd reduction could even be suggested, when it is acknowledged in the same study that heterozygosity was low, is breathtakingly cynical."

The ONF must also consider that the 2019 Report (Desphande et al) suggests that sampling may be more opportunistic than statistical; when horse bands are sampled there is obvious familial relatedness which could skew observed heterozygosity.

We also restate the importance of avoiding the situation in 1992/93 which was likely the cause of the "bottleneck effect" present in the Big Summit Herd today. The ONF must take responsibility for this event and strive to prevent similar occurrences in the future.

As previously stated on Page 2 of these comments, the prospect of wrapping the Big Summit horses into a general "metapopulation" is ill-conceived. The guidance for importing horses into new herds is weak, providing virtually nothing to date in regard to the ratio of imported horses to herd size being translocated to. Imported horses can be rejected, and can suffer for lack of adaptedness to the new environment. The success of these actions is not scientifically documented and especially, is not documented for the translocation of two South Steens mares to the Big Summit Territory. This points to the larger issue; the ONF does not have current data on the genetic condition of the Big Summit Herd, and therefore cannot propose future management actions which could cause further deterioration of the present situation. It is relevant here to point out that, contrary to what is stated in this EA regarding Dr. Mills' success in ultimately showing fecal sampling to be valuable in genetic study, she was indeed successful in doing so. Dr. Mills was able to isolate equine DNA from that of other organisms found in horse fecal matter due to their digestive processes. Though fecal sampling may not presently be useful in censusing populations, it has been proven to yield genetic material which potentially could provide the updated genetic diversity profile sought for the Big Summit Herd.

3. WILD HORSES' CONTRIBUTIONS TO THE ENVIRONMENT

On the Serengeti Foundation's Engler Canyon Ranch in southeast Colorado, 140 wild horses now reside as the caretakers of 20,000 acres of a former cattle ranch. The horses were brought from disparate HMAs, Territories, and long-term holding facilities for the purpose of restoring land health to this degraded parcel (at present only 10,000 acres are fenced). The first years were plagued with drought, and the former occupants left only scant remnants of the short grass prairie habitat. Yet, as the horses chose their associates and respective corners of the ranch, and began rewilding themselves, functioning "as an integral part of the natural system of...lands", the beavers came. They harvested invasive plants for dam construction, and water tables rose. Birds came. Deer and elk came. The restoration process began immediately, and spectacularly.

Equine-centric rewilding is now practiced throughout Europe and into Africa. From northern forests, to sea coasts, and Mediterranean regimes, successful restoration of degraded lands relies on the primitive horse as the keystone mammalian species. And yet, the ONF remains fixated on the wild horse-enhanced mudhole as the metric for excess horse numbers. As discussed the first section of our comments, the objective natural resource manager might try to view the horses' work in a different light. Regardless of the horse population size, the expanded water hole will be a habitat component. Literature on European equine-centric rewilding freely embraces this as a beneficial phenomenon, just as the soil-building, seed-planting, and biodiversity-creating of the wild horse are also celebrated. Many of these mudholes within the Territory were not riparian areas until the horses created them, only to be blamed for destroying them. One such mudhole was effectively obliterated by an entire fir tree which was felled and dragged to the hole. Without this type of uninformed interference, mudholes develop into habitat for invertebrates, amphibians, and specialized plants, as well as providing dissolved minerals for multiple species, insect protection, cool relief from the heat, and where spring sources flow directly from the earth, a free water source when most are frozen.

In essence, then, a horse-created mudhole fulfills much of the same purpose as an elk wallow. On page 92 of this EA, the horses are denigrated for creating wallows where an elk may want to create a wallow.

This EA, and its supporting Wild Horse Specialist Report, generously share images of these horse-created mudholes, though some appear to be different views of the same hole, and others are not labeled or site-documented. In some cases, it is not clear whether horses created them. There are no reference points as to whether the offending holes are part of a stream system, or what function they might perform without the presence of horses. There are no data showing how the mudholes may be dispersing animal use or reducing trips to fragile stream banks. There is no analysis of the micro-environments of the most enduring of these mudholes. There are no data regarding the benefit to other ungulates during all seasons.

As a measure of Thriving Natural Ecological Balance to inform the establishment of AML, the ONF should avoid making the arbitrary, convenient, direct link between "trashed spring" and "too many horses". First, the ONF considers the Douthit Spring condition, regardless of adjacent human-caused and actual resource damage, a heavy to severe impact. Had the ONF used the formula prescribed in the BLM Handbook (page 71), the actual acreage of the heavy or severe impact would only be one component in the equation which determines overall utilization, and this must be documented for at least three years. To merely point to specific areas of extreme use does not establish a basis for determining "there are too many horses". It is also incumbent on the ONF to ascertain the extent to which the mudhole may be contributing to downward trends in riparian condition. At the Douthit Spring site, water from the spring eventually flows into Douthit Creek, which deadends at a pond on private land less than a mile downstream. A tributary originating at Monument Spring, compromised by ONF vegetation treatments, not by wild horses, was dammed up by public at the intersection of the 2300-200 and 220 roads, and the dam was never deconstructed. There are no data evident in this EA which document the quality of outflow from Douthit Spring, whether current or historic, or actual impacts on Red Band Trout or Columbia Spotted Frog habitat.

The ONF struggles with reconciling text in the 1975 Wild Horse EA which describes "heavy use" of certain springs and creeks, when the horse number was said to be 60, with the need to attribute current "heavy use" of certain springs and creeks to the great number of horses at the present time (page 23 Wild Horse report):

In the 1975 Environmental Analysis for the original herd management plan, 14 springs were identified in the Territory with five showing heavy use, seven medium use, and one light use. In addition 18 creeks in the Territory were referred to in that analysis with 12 showing heavy use, five medium use and one light use. Although monitoring efforts in recent years did not mimic all of the data collection that occurred for the 1975 analysis, there are still springs and creeks in the Territory that range from heavy through light use, for example both Douthit spring (Photo 7) and Cram creek (Photo 8) currently display heavy use.

Competition for riparian forage between livestock, horses and wildlife is limiting the regeneration and growth of hardwoods within the project area.

Again, in a wordy admission that localized exceedance will occur at populations of 55-65, the ONF states that of course, more horses will equate to more exceedance, although populations are currently much higher and we may actually still have the exceedance levels of 1975 (page 37 Wild Horse Report):

The WFRHBA requires minimal feasible management when dealing with wild horse, therefore, we expect localized exceedance of allowable use standards on riparian areas within the Territory even when horse numbers are within the range of 55-65 AML. However, the expectation is that these localized exceedances of the allowable use standard and guideline will shift in location from one year to the next minimizing riparian species composition drift from grazing pressure. This shifting of areas where utilization exceeds the allowable use standards and guidelines from one year to the next is also expected to minimize the negative effects of this disturbance on stream bank dynamics. However, as horse numbers climb above the range of AML (like the current number of 135 is) the extent of riparian areas where utilization exceeds the allowable use standard and guideline will increase and the probability that any given riparian area will receive use levels that exceed the allowable use standard and guideline over multiple years will increase as well. Repeated exceedance of the allowable use standard and guideline, when over upper AML of 65, over multiple years increases the probability that this and associated disturbance will result in negative impacts to long term riparian conditions.

But then, the ONF alludes, again, to the multiple causes of resource condition decline (page 27 Wild Horse report):

Summary of the monitoring information indicates that overall resource conditions have declined since the 1975 Herd Management plan was implemented. There are several factors that have contributed to this resource decline. The biggest factor that appears to have affected upland forage condition is the increased conifer canopy cover. However there appear to be several factors that have affected riparian condition, including conifer encroachment and loss of water table as well as a shortfall of available forage resulting in periodic exceedance of the allowable use standard and guideline. The current number of wild horses are contributing to the declined riparian conditions, as riparian areas have been repeatedly over-utilization by horses. Allowable use level is based on current resource conditions and must be partitioned among all of the multiple species competing for forage, in the Big Summit Territory this includes permitted livestock, wildlife species and wild horses. While permitted livestock numbers have remained the same since 1975, wildlife and wild horse numbers have increased resulting in an available forage shortfall.

As shown further in our comments, livestock forage allocations have indeed increased since 1975, and apparently the proof of over-utilization by horses is that (page 148 Wild Horse report) "*The cross-section data is the most important relative to grazing because it measures the vegetation on the meadows w(h)ere utilization occurs most by horses.*" But, the species attribution evidence remains elusive.

What is also missing from this "analysis" is any suggestion of alternative explanations for greater wild horse use of certain springs (if there is indeed greater wild horse use), other than horse numbers. As integrated natural resource managers, the ONF should seek to understand less-obvious influences, as these forces may impact other resources. Horses can either be pushed or pulled to specific locations. Despite the downplaying of wolf presence in the Territory, wolves are there. On two trips along the 2300-220 Rd., as far as Crooked Tree Spring this winter, wolf tracks were observed on both occasions. Anecdotal sightings indicate the wolves' interest in young horses. Increased predator pressure may also explain the horses' relatively new preference for large congregations, generally moving to different locations after a few to several years. Horses are drawn to minerals available in the soil, particularly in wet soil or water intentionally mixed freshly with mud. It is possible that minerals or nutrients formerly obtained through forage have been depleted through 100 years of removal by transient

livestock, or to a lesser degree, other wildlife. If the ONF would view the wild horses as an indicator species, and one that is confined to a specific land base, rather than an inconvenient invasive, much could be learned from the horses' changing behaviors, fluctuating numbers, and different preferences for various habitat components.

In light of Dr. Mills' et al finding that the Big Summit horses show evidence of Konik lineage, not inherited from the recently-cultivated Polish breed but more likely from shared Tarpan beginnings, following is an excerpt from one of several studies of rewilding programs featuring wild horses; Konik Polski horses as a mean(s) of biodiversity maintenance in post-agriculture and forest areas: an overview of Polish experiences:

Discussion

Presented overview confirms that the idea of introducing horses into wastelands and forest habitats was generally purposeful. The ability to cope with local wildlife in different natural environments without provoking any harm to highly valued plant species was confirmed by all persons that introduced them into wastelands for plant and animal biodiversity maintenance. As expected, grazing increased observed plant, invertebrate and bird biodiversity and all programs of free-roaming year-round maintenance of Konik polski herds are continued, even after main sources of funding have expired.

4. FOREST SERVICE "DO NOT FEED THE HORSES" POLICY

The ONF misrepresents several of our comments received during the scoping period, some of which were addressed in the first section of these comments. As we previously stated, the Central Oregon Wild Horse Coalition was involved in the short-lived Wild Horse Working Group, wherein the first task was to develop language to inform the Wild Horse Management Plan writers on the subject of a comprehensive emergency response plan. The initial subtopic was emergency feeding. In this EA, the suggestion of emergency feeding is summarily dismissed as being against policy, deleterious to the natural behavior of wild horses, and for artificially elevating the carrying capacity of the Territory. It is also implied that wild horse advocates recommended this as a regular practice, rather than as a last-resort means of preventing mass mortality in the event of a bonafide catastrophe. The ONF knew this to be the intent of the Working Group. Further, the ONF, and top-level Forest Service management, contend that feeding the horses would violate law. The ONF has threatened public, who were suspected of providing hay to specific horses, with jail time regardless of the void of statutory basis for prosecution. We are enclosing, with our attorneys' permission, copies of correspondence between the ONF and our attorneys, as the public record must illuminate the vitriol which has guided Forest Service management of our wild horses and burros. Readers of this EA must not mistake the charts and graphs, research citations, and tedious verbiage within this EA for "science", and certainly must be skeptical of a plan to reduce the horse numbers to dangerous levels which concurrently assures that the action is for the humane benefit of the horses.

Following is a working draft of the outline prepared for the Working Group. This only addresses our first subtopic, whereas a similar outline would have been written for each potential emergency, with the decision protocol used in each type of emergency:

EMERGENCY RESPONSE

BIG SUMMIT WILD HORSE TERRITORY

OCHOCO NATIONAL FOREST

Supplemental Winter Feeding/Trapping Wild Horses on Forest Service Lands

Decision Standards for Determining if Action is Appropriate

The practice of feeding wildlife, including horses, is generally thought to be undesirable, with the potential for habituating animals to artificial feed sources and otherwise causing them to deviate from natural behaviors and migration patterns. However, it is also accepted that, under extreme, atypical, and extenuating circumstances, supplemental feeding and/or trapping and relocating may be necessary for the survival of specific populations.

Single, epic events may necessitate supplemental feeding or trapping. Fire, extended drought, inordinately deep snow, prolonged cold temperatures, and even human activity are examples of extreme circumstances. Though any of these hypothetical situations meet the definition of a drastic and extraordinary scenario, there must also be a demonstrated need in terms of body condition and projected recoverability. Short-term assistance must be weighed against any long-term detriment to the horses, if any.

The causative agent necessitating emergency response, though, must be considered secondarily to the primary criterion of the degree of suffering and loss of life anticipated if action is not taken. This factor must take precedence over the level of circumstantial abnormality supporting emergency response.

This order of decision standard priority is a function of the wild horses' unique situation, in that the ability to move between historic ranges has been impeded by administrative boundaries, and the quality of the horses' range has been diminished by human presence. The wild horses cannot leave the area in search of better habitat. Therefore, the horses' situation can be precarious without meeting the test of dramatically-unusual and extenuating conditions. It should be noted, also, that the specter of climate change may have effects that have not been previously measured in the experience of decision makers. For example, a protracted drought might create a shortfall in available winter forage, followed by shifts in winter temperature extremes or snowfall. Horses may enter the winter season in good body condition, but may not locate adequate forage for reasons of poor late season recovery compounded by challenging snow depths. Extremes may become the new normal. These tenuous situations may be further degraded by forest management practices which place acres of forage under untreated slash, or that schedule controlled burns to consume remnant grasses. Combined, these factors may create unsurvivable conditions; not resultant from horse numbers but from the effort/benefit equation as individual horses traverse steep slopes with untenable snow depths. Separately, these factors might not constitute "unusual" circumstances; yet the horses' body conditions should weigh heavily in any decision to activate supplemental feeding or trapping/relocating.

Decision Process

Response time is critically important to the success of any emergency action. Preparedness, as described in the text to follow, will eliminate snags in the quality and timeliness of the response. Equally important is the quality and timeliness of the decision itself. In order to streamline this process, a Decision Panel should be established in advance of a crisis. This panel should consist of experts in the fields of equine health, wild horse welfare, Agency policy, and specific knowledge of the Big Summit Wild Horse Territory. Panelists might represent: Wild Horse partner organizations; members of interested, informed equine public; Veterinary professionals; Henneke Scale Equine Body Scoring experts; Lookout Mtn. employees familiar with local terrain and conditions; and Ochoco National Forest Wild Horse Program staff. Some panelists may have expertise in more than one of these areas, and could serve in concurrent roles in the interest of expediency. The panel should consider information from a variety of sources and recent photographs, and at least some of the panelists must have current, first-hand knowledge of the given situation. A checklist could be developed, but decisions will more appropriately be made based on a holistic, situation-centric, interactive process in accordance with criteria described above.

Panelists should have a minimum of one back-up representative to render opinions in the immediate absence of the primary panel member. Ochoco National Forest Executive Staff or Wild Horse Program staff should: initiate the decision process; make contact with each panelist; set up meetings, field trips, or phone conferences; document decision notes; and promptly convey the panel's recommendation to Executive Staff.

Trapping vs. Supplemental Feeding

Trapping horses perceived to be in danger of starvation should be considered before the horses' conditions deteriorate; not as a last resort.

Trapping should only be used as an alternative when there is a reasonable expectation that removal from the current situation would result in a safe and successful relocation. To merely move horses residing outside the Wild Horse Territory to a random location within the Territory would be senseless without substantive assurance of the horses' survival at the new location. The objective of any trapping effort should be to strategically and safely relocate horses to areas where feed is available or will be available within a period of time commensurate with the horses' body condition. Feeding at the new location should be considered.

- Trap ONLY if horses are in fair or good body condition, which can be maintained under the stress of trapping and moving.
- Trap only intact bands or bachelor stallions; do not leave members of family bands behind.
- Do not trap when road conditions are likely to prevent ability to care for trapped horses or to safely transport.

- If ground inside trap is bare or iced-over, assure horses have adequate water (haul warm water in sub-freezing weather) when horses will not be transported within 3 hours. If it is necessary to trap horses in poor body condition, the horses should have hay, water, and mineral blocks available at all times, and should not be transported until body condition improves.
- If horses are to be removed from the National Forest and placed in the care of private citizens or partner organizations, make such arrangements well in advance.

Feeding Logistics and Prior Planning

- Networking and Reconnaissance

The public can assist in identifying wild horses which may be in peril. Steps should be taken prior to winter to expand the network of public partnerships to help prevent needless suffering and death of the horses. The following are examples of methods of building this network:

Place signs on Forest Roads, at visitor kiosks, Forest Service Office, and other public locations, which indicate the type of information sought (horses outside typical sighting areas, poor condition, injured, etc.) and the point(s) of contact within the Forest Service. Provide information to all Front Desk and Dispatch personnel so that information is relayed to appropriate Staff as quickly as possible.

Contact area winter recreation organizations (snowmobile, skiing, etc.) to request sightings of wild horses as stated above.

Issue press releases in area newspapers, radio, etc.

Assure that Crook County Sheriff is apprised of reporting protocol and chain of command.

Reconnaissance of Wild Horse Territory should be an ongoing effort, shared by the Forest Service and partner organizations. This can be accomplished by driving, snowmobiling, snowshoeing, skiing, hiking, or by aircraft. All pertinent information gathered should be immediately provided to the Forest Service and shared with partner organizations.

- Preparedness

Determine in advance of need: Sources for certified weed-free grass hay, large and small bales; method of payment and assignment of payment responsibility; source for water troughs and means to transport heated water if necessary; equipment availability/terms for snowcat, snowplow, snowmobiles with sleds; public access restriction signs and barricades.

Establish agreements/protocols with Oregon National Guard for air-dropping feed to remote locations. Guard could also be used for reconnaissance.

Determine location criteria for supplemental feeding stations, such as: distance from roads and recreation trails; south vs. north-facing slopes; proximity to cover; suitability to attract multiple bands with least travel distance; sufficient area to drop multiple hay piles to minimize hoarding and injury.

Develop monitoring criteria and plan, to determine if horses are receiving adequate help and to assess appropriate supplemental feeding termination.

Wild Horse Welfare/Emergency Response Private Lands

The management of Federally-protected horses which stray onto private lands is covered by statute and is incorporated into existing Forest Service policy. While certain aspects of Emergency Response can be applied to situations occurring on private lands, there are defined procedures in place which clearly differentiate between actions authorized or required based on land ownership.

- Laws/policies governing Wild Horse on private lands

The Wild Horse Free-Roaming Horses and Burros Act of 1971 is codified as follows:

(16 U.S. Code § 1334 - Private maintenance; numerical approximation; strays on private lands: removal; destruction by agents

*Sec. 4. If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary. **Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands.** Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.)*

Code of Federal Regulations:

36 CFR - Subpart D Management of Wild Free-Roaming Horses and Burros Part 222.60 Authority and Definitions

(a) Authority. The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and **shall maintain vigilance for the welfare of the wild free-roaming horses and burros that wander or migrate from the National Forest System.**

Forest Service Manual 2200 Range Management (Wild Free-Roaming Horses and Burros)

2264.3 - Private Lands

Agency officials may permit owners of private land who wish to maintain wild free-roaming horses and burros to do so when excess animals are available, and when the owners agree to provide management, protection, and control of the animals, and as a condition of such agreement, to provide

an annual report of the welfare and condition of the animals. When wild horses and burros stray or migrate seasonally from National Forest lands onto private lands and the owner does not object to their intermittent presence, **the authorized officer should formulate agreements that establish a mutual understanding about the animals' management.**

(Note: Wild Free-Roaming Horse and Burros Act, Sec. 6 The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local government agencies and may issue such regulation as he deems necessary for the furtherance of the purposes of this Act. This Section does not speak to Sec. 4 above, but is intended to cover other situations not so named in the Act. Forest Service policy does not merely authorize cooperative agreements but strongly encourages or mandates the formulation of such agreements.)

- Practical Application

Whenever possible, notifications of Forest Service horses residing on private lands should be addressed promptly on receipt of notification. Although it is the responsibility of private land owners to fence his/her property to protect stock and resources from wild horses, failure of the Forest Service to respond may result in injury to land owner's own horses and/or wild horses, or loss of capture opportunities. In accordance with law and policy as stated above, **the Forest Service must *either* remove the wild horses from the private lands, or enter into a formal agreement for the horses' care** until the horses can be removed, or for a time frame specified in the agreement.

A care agreement must address issues of adequate feed, water, and shelter, at a minimum. The wild horses must not be domesticated or used for any purpose which would in any way harm the horses or cause them to be exploited commercially. The care standards must essentially mirror those specified in a BLM or Forest Service Care and Maintenance Agreement associated with a formal adoption, but in the instance of wild horses residing on private lands, the horses would remain the property of the Forest Service and not the private land owner. This agreement would not preclude future adoption by the land owner should both parties wish to pursue that alternative.

Although removal from private lands could typically be accomplished during temperate weather, situations may arise where conditions preclude safe trapping and transporting. The Forest Service is not prohibited from providing feed and other assistance on private property until the horses can be removed successfully. This is authorized under the Wyden Amendment as well as statutes and policies listed above. Specific aspects of this care should be documented in the care agreement.

The private land owner may enlist the services or aid of a partner organization for the purpose of insuring appropriate care of horses residing on his/her property. The Forest Service would bear no responsibility for any agreement between the land owner and a third party, providing care standards are being met.

(end of draft Emergency Response)

Following are copies of correspondence between our Attorneys and Ochoco National Forest:

McDermott Will Emery

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami
Miami Munich New York Orange County Paris San Francisco San Jose Silicon Valley Washington DC
Strategic alliance with MWE China Law Offices (Shanghai)

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November 26, 2018

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Shane Jeffries
Ochoco National Forest Supervisor
3160 NE Third Street
Prineville, Oregon 97754

Dear Mr. Jeffries,

This law firm, McDermott Will & Emery LLP, represents the Animal Legal Defense Fund ("ALDF") in connection with the Ochoco National Forest Service's ("Ochoco Forest") interpretation of the Wild Free-Roaming Horses and Burros Act of 1971 (the "Act") and associated regulations, particularly concerning the supplemental feeding of wild horses during severe winter conditions. It is our understanding that the Ochoco Forest has taken the position that it intends to criminally prosecute anyone who provides supplemental feed to wild horses, regardless of extreme winter and forage conditions or where and how the feeding occurs. As addressed below, this position is improper, unprecedented, and inconsistent with clear congressional intent and should be withdrawn immediately.

Further, the stated position of the Ochoco Forest is contradictory and outside the spirit of previous Memoranda of Understanding ("MOU") in place for over ten years between the Ochoco Forest and the Central Oregon Wild Horse Coalition ("Coalition"). These MOUs established a collaborative and cooperative arrangement between the two parties, with the purpose of ensuring a thriving wild horse herd contemplating that the Coalition would provide practical assistance in support of the wild horse herd's welfare.¹ We request that a new Memorandum of Understanding be commenced between Ochoco Forest and the Coalition to allow the Coalition to continue providing practical assistance and support, including the provision of feed to wild horses during severe winter conditions.

¹ See Exhibit A for an attachment of the most recent Memorandum of Understanding between Ochoco Forest and the Coalition.

A. The Ochoco Forest's Interpretation of the Act Is Improper

District Ranger Slater Turner has threatened to prosecute individuals under 16 U.S.C. § 1338 for providing hay to horses facing starvation in the winter. These threats can be attested to and confirmed by Gayle Hunt² and other members of the Central Oregon Wild Horse Coalition. The Ochoco Forest's interpretation of the Act to allow such criminal prosecution has no basis in the law. Under the Act, a person may only be criminally prosecuted for "maliciously caus[ing] the death or harassment of any wild free-roaming horse . . ." 16 U.S.C. § 1338(a)(3). Importantly, "the Wild Free-Roaming Horses and Burros Act only prohibits the harassment of wild horses when it is done *maliciously*. . . ." *Mountain States Legal Found. v. Hodel*, 799 F.2d 1423, 1428 (10th Cir. 1986) (quoting 16 U.S.C. § 1338(a)(3) (1982) (emphasis added)).

Under your strained interpretation, a camper who feeds a wild horse an apple, not understanding the harm it may cause, "shall be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both." 16 U.S.C. § 1338(a). That is because your interpretation overlooks the statutory requirement that the individual act with malice. Malicious harassment means:

any intentional act *demonstrating deliberate disregard for the well-being of wild free-roaming horses* and burros and which creates a likelihood of injury or is detrimental to normal behavior pattern of wild free-roaming horses or burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather wild free-roaming horses or burros. It does not apply to activities conducted by or on behalf of the Forest Service or the Bureau of Land Management in implementation or performance of duties and responsibilities under the Act.

36 C.F.R. § 222.60 (emphasis added). Feeding a wild horse on the brink of death cannot possibly demonstrate "deliberate disregard for the well-being" of the horse. To the contrary, feeding under these circumstances goes to improving the well-being of wild horses. See 36 C.F.R. § 222.60 ("Humane treatment means kind and merciful treatment, without causing unnecessary stress or suffering to the animal."). Thus, your interpretation of the Act defies common sense.

Providing supplemental feed to wild horses on the brink of starvation is not unlawful under 16 U.S.C. § 1338. Indeed, the Ochoco Forest's own inaction will inevitably result in wild horses not receiving the food they need and therefore constitute inhumane treatment under the Act.

² Ms. Hunt is the President and Founder of the Central Oregon Wild Horse Coalition which was established as a non-profit organization in 2002.

Inhumane treatment means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or *allowing an animal to suffer from a lack of necessary food*, water, or shelter; using any equipment, apparatus, or technique during transportation, domestication, or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

36 C.F.R. § 222.60 (emphasis added).

While we understand that in most situations individuals should not feed wild horses, there are exceptions to this guideline, such as when the feeding is being coordinated by a coalition or group of individuals with experience in the supplemental feeding of wild horses. As demonstrated herein, we strongly believe that a trier of fact would determine that the threat of criminal prosecution of individuals offering supplemental feed to starving wild horses is wholly improper and contrary to law, particularly if it does not occur in urbanized areas and is performed in a way that avoids direct interaction with the wild horses. Because your threat of criminal prosecution will deter individuals from feeding starving horses thereby causing the horses to suffer and die, it is completely at odds with the Act's purpose to prevent the inhumane treatment of wild burros and horses.

B. The Act Has Never Been Used To Criminally Prosecute Individuals Under These Circumstances And For Good Reason

We are not aware of the prosecution of an individual under similar circumstances. In fact, 16 U.S.C. § 1338(a) has been applied to punish indisputably cruel acts, such as shooting a wild horse or selling wild horses to a slaughterhouse. See *United States v. Binks*, 23 F. App'x 912 (10th Cir. 2001) (convicting defendant for shooting a wild horse, causing the horse to suffer and ultimately its death); *United States v. Christiansen*, 504 F. Supp. 364 (D. Nev. 1980) (denying motion to dismiss indictment charging the defendant with willfully removing wild horses from public lands and maliciously causing the death of one wild horse). The following three court decisions highlight the application of Section 1338 to true criminal behavior:

(1) *United States v. Johnson*, 685 F.2d 337 (9th Cir. 1982). The defendant was convicted under 16 U.S.C. § 1338(a)(1) for removing six wild horses from public land and later selling those horses, where an orphan colt was among the horses and its mother was found dead from being dragged by the defendant's truck. *Id.* at 338.

(2) *United States v. Tomlinson*, 574 F. Supp. 1531 (D. Wyo. 1983). The defendant was indicted under 16 U.S.C. § 1338(a)(3) for malicious harassment of wild horses because he removed the wild horses from federal lands and sold them to a slaughterhouse. The court recognized that "[t]he conduct alleged goes to the heart of the evil which the Burros Act was

intended to prevent, and potentially threatens to eliminate or greatly reduce the presence of wild and free-roaming horses and burros from the federal public lands." *Id.* at 1537.

(3) *United States v. Hughes*, 626 F.2d 619 (9th Cir. 1980). The defendant was a participant in the Adopt-a-Horse program, under which excess wild horses are captured and loaned to participants for their use but cannot be sold for commercial exploitation. *Id.* at 620. Despite the government's requirements under this program, the defendant sold a number of his adopted horses to a slaughterhouse where the horses were processed into horsemeat for human consumption abroad. *Id.* Among other things, the defendant was convicted of maliciously causing the death of the horses. *Id.* In affirming the determination that defendant acted with malice, the Ninth Circuit agreed that "malice" under the Act requires "a finding that the defendant committed intentionally a wrongful act toward the animal without justification or excuse." *Id.* at 625-26.

The purpose of 16 U.S.C. § 1338 is to criminally prosecute those who seek to harm wild horses, not well-intentioned citizens. An attempt to save a wild horse from starvation, particularly during periods of extreme winter and forage conditions, does not demonstrate a deliberate disregard for the well-being of the animal nor constitute a wrongful act without justification or excuse. Any position to the contrary defies common sense. Therefore, as demonstrated herein, individuals cannot be subjected to criminal prosecution under the Act for providing supplemental feed to wild horses during extreme weather conditions.

C. The Ochocho Forest's Statutory Interpretation Is Inconsistent With Clear Congressional Intent

At the outset, courts strictly construe criminal statutes against the government. *United States v. Denny-Shaffer*, 2 F.3d 999, 1014 (10th Cir. 1993). Further, the intention of the lawmaker governs the construction of the criminal statute. *Huddleston v. United States*, 415 U.S. 814, 831 (1974). Here, the intent of Congress does not support your interpretation of the Act.

In fact, the criminal provisions in the Act are designed to preserve and protect wild horses on public lands. E.g., *United States v. Hughes*, 626 F.2d 619, 620 (9th Cir. 1980) (citing 16 U.S.C. § 1331); see also *Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976). Indeed, the use of criminal prosecution to protect wild horses is well supported in the Act's legislative history. See, e.g., H.R. Conf. Rep. No. 92-681, p. 5 (1971), U.S. Code Cong. & Admin. News 1971, p. 2159 (The purpose of the legislation is "the survival of wild free-roaming horses and burros."). The Senate similarly concluded as follows:

During the course of this century, the wild horse population has dwindled to a minuscule fraction of the estimated 2 million that once roamed the western plains and mountains. They have been cruelly captured and slain and their

carcasses used in the production of pet food and fertilizer. They have been used for target practice and harassed for 'sport' and profit. In spite of public outrage, this bloody traffic continues unabated, and it is the firm belief of the committee that this senseless slaughter must be brought to an end. *Kleppe v. New Mexico*, 426 U.S. 529, 535-36, 96 S. Ct. 2285, 2290, 49 L. Ed. 2d 34 (1976) (citing S.Rep.No.92-242, pp. 1-2 (1971), U.S. Code Cong. & Admin.News 1971, p. 2149-50).

In passing the Act, Congress deemed the regulated animals "an integral part of the natural system of the public lands" and found that their management was necessary "for achievement of an ecological balance on the public lands." 16 U.S.C. § 1331; H.R.Conf.Rep.No.92-681, p. 5 (1971), U.S.Code Cong. & Admin.News 1971, p. 2159. Thus, the purpose of the Act is to protect the wild horses, not to force their death from starvation.

Accordingly, we demand that the Ochoco Forest withdraw Ranger Slater Turner's statement that individuals providing hay to horses facing starvation in winter will be criminally prosecuted and instead issue a statement that no such prosecution will occur. Until you do so, individuals, like Ms. Hunt, face the threat of criminal prosecution if they feed wild horses during this upcoming winter, and therefore they will do what it takes to enforce their rights to protect the wild horses while being free from criminal prosecution.

D. The Ochoco Forest's Position Is Particularly Troubling In Light of Its Refusal To Intervene And Provide Supplemental Feeding

In addition to being inhumane, your interpretation of the Act to mandate death by starvation of wild horses ignores your responsibilities under the Act and its regulations. If concerned citizens intervene, it is because the Ochoco Forest has failed to intervene in the first place to ensure "the *survival* of wild free-roaming horses and burros" (H.R.Conf.Rep.No.92-681, p. 5 (1971), U.S. Code Cong. & Admin.News 1971, p. 2159, emphasis added) and to prevent inhumane treatment, which is defined to include "allowing an animal to suffer from a lack of necessary food." 36 C.F.R. § 222.60. Given that the Ochoco Forest refuses to abide by its mandate and feed horses facing starvation in severe weather conditions, our clients must be permitted to do so.

As you know, the Forest Service Chief "may enter into agreements as he deems necessary to further the protection, management, and control of wild free-roaming horses and burros." 36 C.F.R. § 222.68. The Chief may also "authorize the use of non-Forest Service personnel to assist in specific situations of short duration." 36 C.F.R. § 222.72. In light of the Chief's authority, it is our hope that you will work with our client ALDF, along with Ms. Hunt and the Coalition (as you have done in the past), and commence a new Memorandum of Understanding, which allows the Coalition to provide practical assistance and support, including

November 26, 2018

Page 6

the provision of feed to wild horses during severe winter conditions. These stakeholders are ready and willing to support collaborative efforts, or otherwise proceed with litigation to effectuate a change in the Ochocho Forest's position regarding criminal prosecution. To this end, we request a meeting to discuss the Ochocho Forest permitting a limited group of individuals to provide supplemental feed to horses facing starvation without fear of criminal prosecution.

I hope to hear from you regarding this matter. You may contact me at jmwhite@mwe.com or (202) 756-8694.

Sincerely,



Jeremy White

cc: Vicki Christiansen, Chief of the U.S. Forest Service
Glenn Casamassa, Regional Forester for the Pacific Northwest Region
George "Sonny" Perdue, Secretary of the U.S. Department of Agriculture
Stefano Mechelli, McDermott Will & Emery LLP
Nicholas Alarif, McDermott Will & Emery LLP
Calli Turner, McDermott Will & Emery LLP

(end of correspondence)

The Report to Congress by The Secretary of the Interior and The Secretary of Agriculture on Administration of the Wild Free-Roaming Horse and Burro Act, June 1974, states (page 20):

(f) The Board recommended that the two Agencies follow the policy of not resorting to supplemental feeding of wild horses and burros except in extreme emergency.

The Agencies concur in this recommendation.

This recommendation, though long relegated to the archives, is virtually the same recommendation which our Working Group labored over, during the Wild Horse planning process. We asked only that under the most dire of circumstances, the ONF prevent cruel suffering and death, and our intent was to create a preparedness framework which would eliminate logistical delays in delivering life-saving feed.

Additionally, BLM Wild Horse and Burro Program Guidance, January 1983, states:

2. Provisions for Natural Catastrophes. When the welfare of a herd of wild horses or burros, or the condition of its habitat, is threatened due to extreme conditions of nature such as drought, snowstorm, fire, or epidemic disease, reasonable measures may be taken to alleviate the situation. Such measures must have the effect of reducing the suffering of a large number of animals and/or controlling damage to the public lands and related resources. Reasonable measures include, but are not limited to, feeding, watering, and/or removing animals, or destruction of animals in place. Such destruction must be in accordance with section IV.

IV. E. Destruction of Free-Roaming Animals

1. Old, Sick, or Lamé Animals. Wild horses or burros found on the public lands that are old, sick, or lame and whose condition is such that it is obvious they will not recover may be destroyed by firearm from the ground, as an act of mercy.

Note: Starvation is recoverable, when agencies are vigilant and a plan is in place which facilitates action prior to a non-recoverable situation.

These statements preceded the working agreement between the BLM and Forest Service, and do not confer a mandate for the ONF then or now. They merely speak to the most reasonable and minimally-humane direction that was academic - basic, obvious - to a group of cognizant humans tasked with the "protection, management, and control" of America's wild horses and burros. Consistent with the extreme/catastrophic filter for emergency feeding, the Working Group designed a decision protocol and advance preparation/logistical outline. We envisioned a response plan for the numerous other potential emergencies we delineated in our reply to the ONF Scoping letter. Rather than including any sort of plan, even incorporated by reference, the ONF's emergency contingencies consist of arbitrary standards governing the euthanasia of wild horses.

We reiterate that the genetic "bottleneck" referred to in this EA was very likely the result of the ONF's "do not feed" policy during the extreme winter conditions of 1992-93. Employees were threatened

with termination, and concerned public with jail time, if they attempted to alleviate suffering and certain starvation. Because of the sudden and persistent nature of the snow accumulation, untold numbers of wild horses, deer, and elk were entrapped and ultimately perished.

5. HISTORY OF HORSES ON THE OCHOCO NATIONAL FOREST

We have enclosed the excerpt from a 1932 "Ochoconian", an internal Forest Service newsletter referenced in our response to the 2017 Scoping Letter. Despite the claim that boundary delineations and estimated 1971 wild horse numbers are "already decided" and therefore outside the scope of this EA, the validity and integrity of any Big Summit Wild Horse Management Plan rests upon the accurate representation the wild horse locations and total numbers in 1971. This is the time to correct the early failures of the ONF to adhere to the Wild Free-Roaming Horses and Burros Act; adjusting Territory boundaries to include areas clearly shown to be occupied by horses in 1971 but without increasing AML based on boundary correction. This is the time to insist that the Big Summit Wild Horse Territory be recognized in the Ochoco Forest Plan and for the habitat needs of the wild horses to be considered in all Forest actions going forward (yes, it is within the scope of this document to ask that Forest actions such as prescribed burning of winter forage be accomplished in spring, and that thinning slash be treated immediately in Big Game winter range shared by wild horses). It is the time to acknowledge the horse numbers persisting on the Forest into 1971, in spite of unlawful ONF capture, "horse-chasers" and other brutal forms of past population control. It is time to recognize the genetic evidence of this herd's actual heritage, and to protect it while more analysis is completed to fully understand the unique attributes of the MtDNA hoofprint; only two founding matrilineal branches represented; Lusitano and Andalusian predominance; evidence of Konik heritage which links to the extinct Tarpan.

It is time to objectively consider the symbiotic relationships and the contributions of the wild horse as a Native species.

This subject has been ordered "off the table" since the first Wild Horse Planning Open House. However, with this EA, citing the National Forest Management Act's direction to "*provide habitat to maintain viable populations of existing native and desired non-native vertebrate species*", the question of the wild horse as a Native species is firmly on the table. It is difficult to locate a uniform definition for Native species, since Executive Order 13112 replaced EO 11987, and was then amended by 13751. This EA refers to 13112 in its Invasive Plants section, which demonstrates that the Native species designation has diminished in importance compared to the heavier emphasis on invasive species necessary to recover natural ecosystems. Following are sample Native Species definitions:

Bern Convention 1979: *A species that has been observed in the form of a naturally occurring and self-sustaining population in historical times.*

International Council for Exploration of the Sea (ICES) 1994, modified after the Convention on Biological Diversity (CBD): *A species or lower taxon living within its natural range (past or present) including the area which it can reach and occupy using its natural dispersal systems.*

According to the late Jay F. Kirkpatrick, PhD, and the late Patricia M. Fazio, PhD, "The key element in describing an animal as a native species is (1) where it originated; and (2) whether or not it co-evolved with its habitat. Clearly, *E. caballus* did both, here in North America."

Executive Order 13112 provides this definition:

Native Species means, with respect to a particular ecosystem, a species that other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

The Horse, in all its evolutionary stages, occurred in virtually every region of North America. This is undisputed. But unlike every other mammalian species now considered Native, the Horse is expected to account for its whereabouts during the last 10,000 years; this is not required of deer, elk, pronghorn, moose, or cougar. Paleontologists and agencies have been content to agree on the Horse extinction hypothesis, though it is impossible to prove and has not been proven, and this plays well with Forest Service managers who must grudgingly accommodate the unwanted wild horse. This theory has always conflicted with Native American tradition and physical evidence, and is now beginning to crumble under still more discoveries. We are enclosing the specimen accession record for findings archived at the Illinois State Museum (as of 2004), documented through correspondence with Illinois State Museum, and a very recent statement directly from Wade E. Miller, PhD.

Dr. Miller's work in Mexico has been documented in a paper currently under peer review, but he has authorized the Central Oregon Wild Horse Coalition to cite this statement regarding his 7 equine fossil finds spanning the entire Holocene period:

"It is my opinion that based on all the C-14 dates I've obtained, that horses were here in North America at the time they were being re-introduced by the Spaniards. Therefore they qualify as a native species."

Following are copies of 2004 Illinois State Museum records:

Note: ISM catalog; MHOL= Mid Holocene, LHOL= Late Holocene. All fossils shown are *equus caballus* (modern Horse)

and 1932 "Ochoconian" internal Forest Service newsletter



FaunMap

Listing of Faunmap sites with EQca dating from All

Please note that this listing may include some localities which were removed from the mapping dataset. Some individual specimens may have been removed, also. At this time, the maps and tabular data are based on slightly different versions of the Faunmap database.

This is a relatively new feature (added March 2003) and I would be interested in hearing what you think (Erich)
Faunmap sites with EQca dating from All

Site ID	Site Name	State	Age	Taxon	Include?
1187 <u>Awatovi</u>		AZ	HIHO	EQca	OUT
1145 <u>Ventana Cave</u>		AZ	MHOL	EQca	
1145 <u>Ventana Cave</u>		AZ	LWSC	EQca	
1145 <u>Ventana Cave</u>		AZ	LHOL	EQca	OUT
1145 <u>Ventana Cave</u>		AZ	HIHO	EQca	OUT
1145 <u>Ventana Cave</u>		AZ	LHOL	EQca	
1145 <u>Ventana Cave</u>		AZ	EHLG	EQca	
593 <u>Fort Davy Crockett</u>		CO	HIHO	EQca	OUT
610 <u>Kin Tiish</u>		CO	LHOL	EQca	OUT
667 <u>Long House</u>		CO	LHOL	EQca	OUT
599 <u>Merino</u>		CO	LHOL	EQca	OUT
2408 <u>Fort Shantok</u>		CT	HIST	EQca	
625 <u>Planters Hotel</u>		FL	HIST	EQca	
2325 <u>Cemochechobee</u>		GA	LHOL	EQca	OUT
1696 <u>Cherry Point Plantation</u>		GA	HIST	EQca	
1697 <u>Harmony Hall Plantation</u>		GA	HIST	EQca	
1695 <u>Kings Bay Plantation</u>		GA	HIST	EQca	
516 <u>McQuistan</u>		IA	HIST	EQca	
68 <u>Crawford Farm</u>		IL	HIST	EQca	
118 <u>Fort De Chartres</u>		IL	HIST	EQca	
2743 <u>Waterman</u>		IL	HIST	EQca	
59 <u>Fort Ouiatenon</u>		IN	HIST	EQca	
1995 <u>Blue Earth Village</u>		KS	HIST	EQca	
806 <u>Big Bone Lick Ken-I</u>		KY	HOLO	EQca	OUT
806 <u>Big Bone Lick Ken-I</u>		KY	WIHO	EQca	OUT
806 <u>Big Bone Lick Ken-I</u>		KY	WISC	EQca	
2170 <u>Calf Island</u>		MA	HIST	EQca	
2170 <u>Calf Island</u>		MA	HIHO	EQca	OUT
588 <u>Blacktail Cave</u>		MT	WIHO	EQca	
588 <u>Blacktail Cave</u>		MT	MHOL	EQca	OUT
374 <u>Hoffer</u>		MT	LHOL	EQca	
374 <u>Hoffer</u>		MT	HIHO	EQca	
374 <u>Hoffer</u>		MT	HIHO	EQca	OUT
576 <u>Shield Trap</u>		MT	MHOL	EQca	

<http://mapserver.museum.state.il.us/faunmapweb/listsites.php?Taxon=EQca&Age=ALL>

5/6/2004

576 <u>Shield Trap</u>	MT	EMHO	EQca	
576 <u>Shield Trap</u>	MT	LHOL	EQca	OUT
576 <u>Shield Trap</u>	MT	LMHO	EQca	OUT
494 <u>Amahami</u>	ND	LHOL	EQca	
494 <u>Amahami</u>	ND	HIHO	EQca	
494 <u>Amahami</u>	ND	HIST	EQca	
670 <u>Biesterfeldt</u>	ND	HIST	EQca	
482 <u>Ft. Union</u>	ND	HIST	EQca	
464 <u>Ice Glider</u>	ND	HIST	EQca	
460 <u>Like-A-Fishhook</u>	ND	HIST	EQca	
484 <u>Rock Village</u>	ND	HIST	EQca	
459 <u>Sakakawea</u>	ND	HIST	EQca	
1473 <u>Navajo Reservoir Site LA 3430</u>	NM	LHOL	EQca	OUT
1473 <u>Navajo Reservoir Site LA 3430</u>	NM	HIST	EQca	
1473 <u>Navajo Reservoir Site LA 3430</u>	NM	LHOL	EQca	
1220 <u>Dead Pile Village</u>	NV	HIST	EQca	
1218 <u>Ridge Village North</u>	NV	HIST	EQca	
1042 <u>Tule Springs</u>	NV	WISC	EQca	OUT
1042 <u>Tule Springs</u>	NV	LWSC	EQca	
1042 <u>Tule Springs</u>	NV	LATE	EQca	OUT
2137 <u>Dutchess Quarry Cave</u>	NY	HOLO	EQca	OUT
2137 <u>Dutchess Quarry Cave</u>	NY	LATE	EQca	
2341 <u>Eaton Furnace Site</u>	OH	HIST	EQca	
2352 <u>Kettle Hill Cave</u>	OH	HOLO	EQca	OUT
809 <u>Fort Ligonier</u>	PA	HIST	EQca	
2201 <u>Martin</u>	PA	HIST	EQca	
415 <u>Ft. George V</u>	SD	HIST	EQca	
959 <u>Ft. Randall Historic Site</u>	SD	LHOL	EQca	OUT
419 <u>H. P. Thomas</u>	SD	HIHO	EQca	
419 <u>H. P. Thomas</u>	SD	HIST	EQca	
419 <u>H. P. Thomas</u>	SD	LHOL	EQca	
939 <u>Citico</u>	TN	HIST	EQca	
714 <u>Lewisville</u>	TX	LATE	EQca	OUT
13 <u>Lubbock Lake</u>	TX	EMHO	EQca	
13 <u>Lubbock Lake</u>	TX	LWSC	EQca	
13 <u>Lubbock Lake</u>	TX	LATE	EQca	
13 <u>Lubbock Lake</u>	TX	LMHO	EQca	
13 <u>Lubbock Lake</u>	TX	EHOL	EQca	
13 <u>Lubbock Lake</u>	TX	HIHO	EQca	
13 <u>Lubbock Lake</u>	TX	MHOL	EQca	
13 <u>Lubbock Lake</u>	TX	HIST	EQca	
13 <u>Lubbock Lake</u>	TX	LHOL	EQca	
1147 <u>45AS80</u>	WA	LHOL	EQca	
1147 <u>45AS80</u>	WA	HIST	EQca	
1426 <u>Chief Joseph Dam Site 45OK2</u>	WA	HIHO	EQca	
1426 <u>Chief Joseph Dam Site 45OK2</u>	WA	LHOL	EQca	
1426 <u>Chief Joseph Dam Site 45OK2</u>	WA	HIST	EQca	
1424 <u>Chief Joseph Dam Site 45OK258</u>	WA	LHOL	EQca	

1424 <u>Chief Joseph Dam Site 45OK238</u>	WA	HIHO	EQca	
1424 <u>Chief Joseph Dam Site 45OK238</u>	WA	HIHO	EQca	OUT
2264 <u>48TE1107</u>	WY	HIST	EQca	
2263 <u>48TE111</u>	WY	HIST	EQca	
235 <u>48UT370</u>	WY	MHOL	EQca	OUT
228 <u>River Bend</u>	WY	HIST	EQca	
194 <u>Rock Ranch Trading Post</u>	WY	HIST	EQca	

Illinois State Museum

History of the Wild Horse on the Ochoco National Forest

From the Primary Source,

"Ochoconian", 1928-1932.

This quote from Ochoco NF Forest Supervisor in February of 1928, explains why the wild horse was targeted as an animal to be removed at every opportunity from federal lands:

"Every horse taken off the range means room for more cattle and sheep."

V. V. Harpham, Ochoco NF Supervisor

The following is a compilation of when wild horses were rounded up, how many, and from where on the Ochoco National Forest. Not all captures were recorded in this monthly newsletter shared by the rangers on the Forest during this time. The Beaver Creek RD and then the Beaver/Maury RD referenced in the Ochoconian is now the Paulina RD.

July, 1925: 191 head of wild horses shipped from Snow Mountain to Denver, Colorado.

December, 1925: BEAVER CREEK DISTRICT - C.S. Congleton, District Ranger. The district ranger is planning on a wild horse round-up about January 1, to remove all horses off the Forest.

February, 1926: BEAVER-MAURY DISTRICT: Just finished the horse round-up on February 10th. Got 250 head of the wild horses off the Forest.

March, 1926: BEAVER CREEK DISTRICT, C.S. CONGLETON, DISTRICT RANGER ; Just returned from grazing inspection of the district to determine whether or not the horses gathered and removed from the Forest in the Sunflower country last winter had found their way back onto the Forest; I found one old pack mare and her colt on the Forest and that's all.

March, 1927: Ranger Blevins advises by telephone (March 24) that his horse ride in the vicinity of Ochoco Ranger Station has netted thirty-two horses up to the present time. He says that these horses are mighty poor but that they are still able to travel like aeroplanes when the time comes to corral them.

April-May, 1927: Report on the wild horse ride. Messrs. Chas. Kieth, Frank Jones, and Fred Houston rode five days in upper and lower Ochoco and Marks Creek watersheds for wild horses. During this period they gathered a total of 32 head of horses. It is presumed that the balance of the 75 or 100 head that annually graze on this area are wintering in the Bear Creek section. The ranchers of the Bear Creek section report that there are approximately 150 head of wild horses on the Forest and outside lands in that section. 1,160 wild horses are reported to have been shipped from the Cherry Creek and Muddy Creek country last year

February, 1928: Beaver-Maury RD: The last of the wild horses are gone from the Wind Creek country. Every horse taken off the range means room for more cattle and sheep.

July, 1928: 191 head of horses shipped from Snow Mountain to Denver, Colorado

February, 1929: BEAVER-MAURY DISTRICT - R.R. BUTLER, DISTRICT RANGER : There were about 235 head of horses gathered off the Beaver creek and Sunflower neutral ranges. This horse situation has been a problem on the Sunflower range. In some places the instituting of trespass against the owners could take care of the situation, but on the Sunflower range the horses are wild, and no inexperienced horse-chaser could run them in.

March, 1929: A horse ride is in progress in the Bear Creek and West Branch country. Art Martin was in town Saturday and reported a ride started in the Birch Creek and Black Canyon country

December, 1929: ANTONI DISTRICT - Ralph Elder, District Ranger: C. G. Nicholas and Fred Vole passed through town with about 35 horses. These wild horses were gathered off range on Mt. Creek.

The Forest Service is mandated to protect Wild Horses and Burros under the Wild Free-Roaming Horses and Burros Act, but as a Native species, wild horses should also be protected as rightful inhabitants of the specific environment to which they are adapted, and by the appropriate suite of statutes and policies protecting every other Native species.

As we discussed in our Section 3, whether it is thought that the wild horse could conceivably be native to North America, or conversely, that North America, Australia, and Antarctica are the only continents where horses were not indigenous even though all equines originated and evolved in North America, the success of horses in land restoration efforts is unquestioned. When the wild horse is allowed to function as the wildlife species it definitely is, natural resource managers can begin to observe and encourage the interrelationships built into its physiology and psychology. The current situation, by contrast, is less likely to be conducive to positive contributions of the Big Summit wild horses to their habitat. It first must be restated that this generation of wild horses inherited all the artifacts of human avarice and ambition; logging, ranching, hunting, road building, intensive recreation, and the Agency-fueled, malevolent belief that the wild horse does not belong. Now there are fences, structures, paved roads, loud and threatening noises, dotted lines on maps, and Forest Plans. Again, there can be no semblance of a Thriving Natural Ecological Balance, with or without wild horses. To this historic and ongoing encroachment on a once-functioning natural environment, add the brutal methods of control inflicted upon the horses since Europeans arrived, and the sum is a significant net loss of wild behavior and ability to exploit habitat components. This can change; with new attitudes. Horses evolved with the very flora and fauna, aquatic networks, elevations, terrain, and (though precarious) climate, as they are now accused of threatening or being limited by. The logical conclusion to be drawn is that since the horses are adapted to this environment, humans must determine why that balance doesn't exist, or whether it may indeed exist now, and considering the numbers of wild horses occupying this area previously were far greater and virtually ubiquitous; AML is not at issue. Deeper, vastly more objective, understanding of the ecosystem including Native wild horses, is and has been at issue for 100 years.

6. PURPOSE AND NEED

This EA begins with the premise of a Purpose and Need for Action, with the Action identified as being "...to develop a new herd management plan to replace the 1975 plan...". No reasonable person or recognized wild horse advocacy organization would disagree with this purpose and need. However, the Purpose and Need is inextricably tied to the Proposed Action, which is predicated on assumptions so subjective, unsupported, and prejudicial that a predetermined outcome is evident throughout this EA. A discussion of the ONF's key management elements listed under Proposed Action is important, as it becomes the basis, the legal framework, for management of this herd for the foreseeable future.

- Establish an appropriate management level (AML) based on current habitat conditions and the most limiting factors in the Big Summit Territory are winter forage and space.

"Space" seems to be an afterthought, or perhaps another layer of unsubstantiated, irrelevant litter in which to sow additional seeds of disdain toward the wild horses. The discussion under Cover and Space in the AML Determination is a contorted stumble around the issue of whether or not the Big Summit Territory provides enough space for the herd at a higher population level. In the end, it seems like the case could not be made for larger numbers resulting in increased migration beyond the

Territory boundary. The first false assumption is based, in part, upon "studies" of wild horse habitat preferences rather than real time knowledge. Also, consistent with assumptions about where horses winter, even personal observations do not tell the story with totality. If it were easy to know where the entire Big Summit Herd resides, it would not require 80 volunteers three days each summer to locate the horses. Too, according to repeated less-than-subtle insults in this EA, these dedicated, highly-experienced volunteers fail to count the horses with accuracy. The ONF does not know where these horses are at a given time, therefore they do not possess sufficient data to ascertain whether adequate space exists within the Territory.

The ONF vacillates continually between hard statements that population levels drive outbound migration, and that no such correlation has been documented. The associated graphics don't support the correlation, nor does our personal experience spanning two decades. The ONF states (page 200) *"An indicator that the Territory does not have sufficient cover and space for the number of horses is a recurring pattern of horses moving outside the Territory. Such egress is evident in the Big Summit Territory and requires constant management to move horses back into areas where their occupancy is authorized."* We are not aware of the ONF's constant management in this regard. In one instance, many years ago, ONF managers attempted to move four horses from a private pasture adjacent to ONF land. Three horses were successfully pushed out, whereas one horse was wounded when it jumped into a Forest Service pasture where it was left to die. Following non-governmental intervention, the horse was rescued and lives happily as an adoptee. On another occasion, the ONF attempted to herd several horses from the Coyle Creek area back to the Territory. The horses were known to move between the areas at will, due to poor fence maintenance, and witnesses observed that the horses were already settled back in the Territory when the herders found them. A pasture adjacent to Forest Service land is frequently grazed by wild horses, but is owned by a landowner who does not mind their temporary use, though the ONF does indeed spend time and resources trying to entice them back anyway. These efforts are rare, when the horses are "relocated" rather than captured and removed. It is important to note that nearly all of these relocations/removals occurred when horse numbers were substantially lower than current levels. Too, since horses have always stepped across private property lines, there are alternative means of addressing this which require no such effort or expense on the part of ONF. The Forest Service is authorized to craft agreements with landowners which grant formal permissions for the horses to occupy private lands when the landowner or legally-designated representative makes an official request. The Forest Service may not prevent private landowners from providing life-sustaining care for wild horses residing on his/her private land, which has been yet another costly void in the ONF's comprehension of and adherence to wild horse law and its responsibility for protection, management, and control of wild horses.

The notion of the horses' behavior changes - tendencies to congregate for a period in a specific location - would indicate a "cover and space" shortfall is completely unfounded if not illogical. On its face, it is immediately counter to "expanding outside the Territory" when the majority of horses prefer to come together. This behavioral change began to manifest 10-12 years ago. The horses have alternately selected the Douthit area; the Coyle Creek drainage; and the timberline near Cram Creek. In recent years, the horses have returned to Douthit, with a smaller contingent in the Cram-Howard Creek area. Since this had been occurring while herd numbers were lower, it would be prudent for the ONF to examine other potential root causes for the behavior. One possible explanation might be sheer "strength in numbers" as predator impacts increase, since this occurs at the height of foaling season. If this is the dominant variable, it is not a failure to achieve Thriving Natural Ecological Balance, but

evidence of a step toward a Thriving Natural Ecological Balance and the horses' ancient, inherent capacity to adapt.

It is unfortunate that BLM and Forest Service both narrow down the habitat needs of wild horses and burros to the "four essentials" of forage, water, cover, and space. A wild horse needs these essential amenities, but also - salt, minerals, medicinal plants, insect control, wind breaks and wind currents, predator protection, mud and dust, companionship of their choice, freedom, and countless other things whose necessity the horses cannot express nor can we fathom. On passage of the Wild Free-Roaming Horses and Burros Act, agencies immediately set out to pare away the land base allocated to wild horses and burros. This was often accomplished on the basis of acres "not suitable for year-round residence", whereas horses may need to occupy specific land for short periods because they provide certain essentials; a medicinal plant available only in late summer, for example.

Perhaps most critically, though the ONF insists this topic is also outside the scope of this EA, it continually notes that the Forest Service is bound by law to honor the 1971 Territory boundaries. We were witness to the ONF stating at a semi-public Wild Horse Planning meeting that the ONF captured 40 horses between 1971 and 1975. We also know (personal communication) that the Biologist who counted horses between 1971 and 1975 was told to do so within boundaries already drawn; he was NOT tasked with locating horses within the total Ochoco National Forest land base. But the ONF vehemently refuses to honor locations and numbers of horses found in 1971. As we have stated, this is very much within the scope of this EA. A notarized statement from a former ONF District Ranger validated locations of wild horses in the late 1960s. The ONF must either 1) determine the beloved career Forest Service official was untruthful or 2) acknowledge that even when horse numbers were (thought to be) held in check by "horse-chasers" (and by contract killings ordered by the ONF per additional signed witness statement), horses resided in virtually all quadrants of the former Big Summit and Paulina Ranger Districts. The ONF can contrive optimal scenarios through non-site-specific studies, formulas, and speculation; or they can correct the Territory boundaries to conform to documented historical use and populations.

- Manage for genetic variability through introduction of new genes, adjustments of the sex ratio or other actions.

This tenet of the Proposed Action clearly pre-supposes Alternative 2, which is also the most genetically detrimental of all alternatives. As we have already shown, reducing the Big Summit Herd to numerically-vulnerable levels and translocation-dependent genetic viability is unacceptable, unless one considers the end of the Big Summit Herd the desired outcome. But that is the only aspect of the above statement which pertains to genetic viability; *adjustments of the sex ratio or other actions* are related to population control. This oversight does not cause the reader to have confidence in the data or text of this EA.

- Slow the herd's rate of growth using approved fertility control methods and/or adjusting age distribution.

Elsewhere in this EA, the ONF's suite of potential population control methods is troubling, and unquestionably controversial. We must assume that this element of the Proposed Action includes those control measures. We do not support age class manipulation for the purpose of artificially inflating or deflating breeding age adult numbers to achieve a management goal. We are adamantly opposed to

adjusting sex ratios to favor stallions, as there is already a high incidence of yearling pregnancy. Both of these approaches entail the risks and trauma of capture, separation, removal, dependence on the subjectivity of human intervention, and certainly do not conform to the standard of Minimum Feasible Level Management. Conventional immunocontraception, if truly random, used to suppress births, not eliminate them, and if not repeated to the point of sterilization, could be acceptable. Any form of permanent sterilization is not only in conflict with the parent text of the Wild Free-Roaming Horses and Burros Act, there is absolutely no way this is indicated in a genetically at-risk herd.

The fact that the ONF is so willing to commit this herd's future to the unqualified and malevolent whims of the National Wild Horse and Burro Advisory Board is extremely concerning. Contrary to the direction of the Wild Free-Roaming Horses and Burros Act, the current Advisory Board is comprised of cattle industry loyalists, anti-horse biologists, pro-sterilization veterinarians, the Director of the Society for Range Management, a few random anti-horse placeholders, and a couple of supposed wild horse advocates with questionable knowledge or commitment to wild horse and burro welfare. The Board has been strategically pruned until the wild horses and burros have little to no meaningful representation - when the mandated purpose is to inform agency decisions regarding *protection*, management, and control of the animals. When there was still one authentic wild horse advocate serving on the Board, vote after vote was 8-1 in favor of solutions such as unlimited sale, mass euthanasia, and ovariectomy via colpotomy. It is particularly alarming that the Society for Range Management Director was appointed to the Board. As the ONF well knows, the Society for Range Management has long been the vanguard of rangeland education and research, with tentacles reaching from institutions of higher learning to government, to industry, with an emphasis on resource exploitation. The Society for Range Management is essentially a branch of government, which should disqualify the Director from serving on the Board, while it concurrently serves as Vice Chair of the violently anti-wild horse National Horse and Burro Rangeland Management Coalition. This is a flagrant, despicable conflict of interest which the Forest Service should resoundingly reject; not embrace by its continued adulation of the Society for Range Management and its worship of the National Horse and Burro Rangeland Management Coalition. The ONF's blind acceptance of Advisory Board recommendations instills no trust in the decisions this Forest will make on behalf of these horses which belong to the American public.

- Develop an Emergency Action Framework for effectively and humanely managing situations such as sick, lame, or old horses or public safety concerns.

The Emergency Action Framework presented in this EA is sorely limited to the destruction of horses, whereas this can and should include the prevention of injurious situations and the readiness to respond, as our earlier enclosure addresses.

- Develop an off-range plan to include protocols for capturing horses, handling horses, adoption, training programs and sale of horses. The corral at Ochoco Ranger Station compound is one location that may be used for off-range management.

This EA is alarmingly vague about their off-range vision. The Central Oregon Wild Horse Coalition has been engaged, directly or indirectly, in the placement of captured Big Summit horses for nearly two decades. This has varied from the rescue and adoption of individual horses, to large-scale events which featured Big Summit horses and promoted all wild horses and proper methods of training. We are closely attuned to adoption markets and trends, and how to transform struggling adoptions into

successes. We have served in the role of certified compliance officers for BLM for many years and we also know what leads to failure. Adoptions must begin with educated adopters, solid economies, and stable agrarian balance in communities. Agencies which rely on safe adoptive homes to justify and sanitize massive roundups are delusional. Farmland is rapidly becoming gentrified; well out of reach for most rural families and unprofitable as hay ground. Climate change is already affecting the productivity of pasture land and jeopardizing hay crops; demographics are shifting away from age groups and lifestyles which lean toward horse ownership. Adoptions will remain a component of off-range management, but cannot be assumed on a scale commensurate with captures. All these factors have increased the appeal of value-added training program, and the Forest Service should anticipate this as part of any off-range strategy. But the reality is, adoptions will continue to diminish as a humane alternative to intelligent on-range management.

Our first meeting with the ONF Supervisor was very encouraging, in that he seemed to share our long-held vision of a local wild horse training, adoption, and education center which could serve different National Forests and even other jurisdictions. The Central Oregon Wild Horse Coalition has the experience and network to lead an effort such as this, in partnership with the ONF. But for unknown reasons, that star quickly dimmed, and now the long-awaited revised Big Summit Wild Horse Territory Management Plan is, at best, non-committal on the matter of disposition of captured horses. We had expressed concern previously that the ONF might be contemplating shipment of Big Summit horses to the Modoc National Forest's short-term holding facility in Alturas, California. Although this was denied, we have seen video footage of the Modoc Forest Supervisor expressly stating that the facility was intended to serve other National Forests, naming the Ochoco specifically. We have every faith that this could come to fruition, despite the Modoc National Forest's demonstrated absence of knowledge and experience, their unholy alliance with sworn wild horse hating Modoc County Farm Bureau, and the clearly saturated adoption market of Northern California. We are also concerned about the subjective eligibility for the Sales Authority program, given the ONF's admiration for Wild Horse and Burro Advisory Board recommendations. The 10-year age determination is difficult to confirm, and the 3-strikes rule has been undermined, in part by the Advisory Board, to move horses into the Sales Authority vortex.

Any new Big Summit Wild Horse Management Plan must set forth, with absolute clarity, its intentions to assure appropriate adoptions and sales including compliance follow-up, regardless of the alternative selected. This element is weak and disturbing in its lack of specificity.

- *Amend the Ochoco National Land and Resource Management Plan (LRMP) to provide overall management objective(s) consistent with the Act.*

The Central Oregon Wild Horse Coalition agrees wholeheartedly. The LRMP must be consistent with the Wild Free-Roaming Horses and Burros Act, rather than forcing the Act to conform to local standards written into the LRMP.

We also hope the ONF will take a fresh look at the foundational concept of Thriving Natural Ecological Balance, as it has traditionally been the primary statutory weapon used against wild horses and burros, rather than the sound fundamental guidance it was meant to be.

The 2013 NAS report makes the following observations about BLM's (by extension, Forest Service) approach to AMLs:

a. *FINDING: How AMLs are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change.*

b. *Thriving Natural Ecological Balance*

The handbook does not provide guidance on how to assess a thriving natural ecological balance as called for in the legislation. It is also easily conflated with the allocation process, which is a policy-driven and sometimes court-adjudicated decision rather than something derived directly from currently available scientific information.

The NAS report also states:

Third, although the legislation calls for setting AMLs to maintain a thriving natural ecological balance and to prevent rangeland deterioration, these terms are uninformed by science and open to multiple interpretations; precise definitions would improve the ability to use them as goals for management. For example, the concept of a thriving natural ecological balance does not provide guidance for determining how to allocate forage and other resources among multiple uses, which ecosystem components are to be included and monitored in the "balance," or when a system is considered to be out of balance. It brings up arguments over whether such a balance exists in nature or is even possible. Avoiding rangeland deterioration and setting of land health standards may be seen as a problem of developing specific ecological measurements and standards or as a matter of arriving at a consensus about how rangelands should be maintained. A standard, broadly agreed-on definition of rangeland deterioration and how to measure it has proved an elusive goal for decades.

Notably, Acting BLM Division Chief Bruce Rittenhouse stated at the 2018 Wild Horse and Burro Advisory Board meeting that "neither BLM or Forest Service has any definition of Thriving Natural Ecological Balance."

PART C. AFFECTED ENVIRONMENT

This section of the EA more closely resembles science than any other, but is still heavily weighted toward assumptions rather than actual - truthful - data. To counter every falsehood, advanced through repetitious rhetoric no matter how inconsistent with the Specialists' findings, would be painfully tedious and impossible within the response timeframe. We will, therefore, concentrate on the most egregious of statements within certain Affected areas.

Wild Horses

- The inaccurate origin story is perpetuated, with no shred of understanding of the implications of proven ancient heritage within the very MtDNA studies which the ONF cites in this EA.

- "*There is little evidence of predation on the herd as a factor affecting population growth*". Black bear, cougar, wolf, and disturbed humans are all documented within the Territory. Evidence of human predation has been confirmed in some cases and is highly probable in many others. Predation on foals

can be assumed, though traces of small horse remains, with soft bones and low body mass, are not likely to be found.

- The ONF never misses an opportunity to denigrate the efforts of volunteers who contribute a level of expertise unequaled anywhere in Federal wild horse management. This is stated again on page 31, but this time, the ONF also contradicts itself to say *"There is no discernible relationship between total herd size and the number of horses outside the Territory"* and then *"Personal observations seem to indicate increased numbers has resulted in increased pressure on horses to attempt to move further outside the Territory."* This entire paragraph exemplifies the ONF's desperate strategy to distract from their absence of data by casual musings and the blaming of others. As we have said previously, since repetition seems an acceptable means of strengthening positions, we have proven through sworn statements that wild horses occurred virtually all over the ONF, especially east of Hwy. 26. Little Horse Heaven Creek; Horse Spring; Horse Prairie, all in the South Boundary area, may be useful clues. We have shown that even in the 1975 Plan EA, it was known that horses resided outside the current boundary, specifically north to Cupp Spring and south to Brush Creek, and that this was during a time when the herd was supposedly at approximately 60. The 1975 Wild Horse EA stated this specifically (page 10) when it identified 11 bands of wild horses and where they supposedly resided: *11 - Cupp Spring band, has branched off since 1971. 5 horses, and 8 - This band runs from Winter Butte to Mary's troughs east to the west boundary fence of the Big Summit Prairie. South along this fence to the area of the Blue Mine and west to Winter Butte (Summer), Brush Creek (Winter). 4,602 acres Forest Service, 140 private, *40 Bureau of Land Management - 8 horses.* Too, the 1975 Plan documents not only that one band "wintered" at Brush Creek and missed being included in the Territory, but this area apparently provided additional *winter range*. "Personal observations" have value, but only if they are viewed in the historical context which shows definitively that these horses migrate - and always have - regardless of population numbers. Copy of the 1975 OCHOCO WILD & FREE ROAMING HORSE MANAGEMENT PLAN and ENVIRONMENTAL ANALYSIS REPORT, BIG SUMMIT RANGER DISTRICT, FERAL HORSE MANAGEMENT enclosed at end of this document.

Volunteer census riders will take exception to yet another insult to the quality of work they perform, at little or no cost to the ONF, every year, a week out of their lives, lost wages, investment in vehicles, stock, and equipment, only to have the ONF imply that significant numbers of horses are missed, inside and outside the Territory. While the ONF consumes studies conducted by wild horse-adverse researchers on areas bearing no resemblance to the Big Summit Territory, to gain insight into where horses *should* be; these volunteers are expertly documenting where the horses actually are.

The section continues in rambling, worn dissertation of conditions largely documented prior to 2015, and which cannot be scientifically connected to horse population numbers. Yet another photo of Douthit Spring, with horses utilizing it as they naturally would, does not equate to an accurate depiction of conditions throughout the Territory. To the contrary, measuring riparian forage utilization at pinpoint locations where horses seek life-sustaining elements within that micro-environment, is not only outside the AML development guidance in the BLM Handbook, it makes as much sense as measuring grass at livestock watering troughs. Agency managers would, instead, determine the effects of livestock use of a water source in a much broader landscape context. Such non-specific, but nonetheless condemnatory, statements such as (page 4) *"Horses have been documented frequently in riparian areas and some studies have shown that horses consume or otherwise impact riparian shrubs decreasing the shrubs' height or impacting shrub presence"*. This sort of circumstantial "evidence" pervades this EA, and is

called out by the USGS in the July 2017 GAO report, Animal Welfare: Information on the U.S. Horse Population:

According to USGS officials and documentation, research that evaluates and separates cattle and wildlife impacts from wild horse impacts has not been conducted, and studies on horse grazing effects are needed. And, BLM and USFS monitor vegetation on public rangeland but do not assign causes to changes in or damage to vegetation. According to BLM documentation, BLM is implementing its Assessment, Identification, and Monitoring (AIM) strategy to track environmental condition of BLM lands and establish a baseline for further analysis.

This meager approach to analysis culminates in the Summary of Affected Environment. The ONF admits that the biggest factor contributing to the decline in overall resource conditions is *increased canopy cover*. Other factors are conifer encroachment and loss of water table. An interesting alternative perspective is provided by riparian specialist Harold Winegar, who studied livestock effects on the water table of the Ochoco National Forest in 1982 and stated in Waste of the West - Public Lands Ranching, Lynn Jacobs, that usable water could be increased by 190,000 acre feet on Oregon's Ochoco National Forest by removing cattle for 10 years, and also that with only 5 years of no grazing on the Ochoco, fishery production could be expected to increase 150%. But the Summary section proceeds to declare *"The current number of wild horses are contributing to the declined riparian conditions..."* although this condition cannot be, or has not been by the ONF in this EA, scientifically attributed to wild horses when at the same time concessions are made to the severe impacts of 100 years of historic abuse and modern forest management practices. The only significant wild horse-specific "overuse" is the single habitat component necessary to wild horses at any population level - the infamous mudhole. The section ends with the pronouncement that *"While permitted livestock numbers have remained the same since 1975, wildlife and wild horse numbers have increased resulting in an average forage shortfall."* This sentence is problematic for two reasons. The ONF, in other sections, perpetuates the myth that wild horses are pushing elk away from - ironically - mudholes and calving areas and may push them onto private lands, causing conflicts. This clashes with wildlife increasing in numbers and eating forage, which doesn't necessarily even correspond to the forage consumed by horses due to dietary overlap ratios. Too, conflicts are already happening with wildlife on private lands. The article linked here Elk encroachment on Wallowa County ranch-land A complex issue Local News wallowa.com.htm discusses the large numbers of elk residing on private lands in Wallowa County, due to numerous factors on the National Forest, none of which are related to wild horses. Oregon Department of Fish and Wildlife is also aware of wildlife leaving public lands due to technological advantages now enjoyed by hunters, on 15 different hunting units. Lastly, the statement that *"livestock numbers have remained the same since 1975"* is patently false. According to the 1975 Wild Horse EA, a total of 2200 HEAD of sheep are permitted on all 27,300 acres of the Big Summit Territory. The total lbs. of allocated forage is 1,523,875. Calculations to arrive at the current forage allocated to sheep could be computed on a straight multiplication of .3 AUMs x 2200 x 26 lbs. x 107 days, which would equal 1,836,120 lbs., OR 160,875 lbs. of riparian forage consumed by 1100 sheep for 19 days = 8467.10 lbs. per day x 2 = 2200 x 107 days = 1,811,120 lbs. Either way, the difference between the 1975 and 2020 forage consumption by permitted sheep would sustain 30-32 horses year-round; of course, ignoring the 21% dietary overlap which is absent in any of the forage allocations and comparisons in this EA.

Perhaps more critically, though we may not know if the writers of the 1975 Wild Horse Plan meant "head of sheep" or "ewe/lamb pairs", the public needs to view the sheep presence as numbers of hooves

as well as numbers of mouths. The lambs, by the time they spend a summer on the ONF, are barely distinguishable from their mothers. They will have a similar trampling impact on the forage and soils and a similar impact on stream banks as they cross creeks as a herd of approximately 2000. We cannot discern from this EA whether a set of twin lambs counts as one lamb, and this would, of course, multiply impacts. As with all commercial livestock, individual animals are bred to be bigger and heavier with every generation. The ONF needs to be transparent regarding the reality of permitted sheep grazing. This includes statements about the permittee voluntarily grazing his sheep elsewhere for three seasons, especially when 2019 should have yielded above-average forage whether consumed by an elk, a sheep, or a wild horse.

Finally, the ONF's willingness to consider helicopter-assisted gathers is unacceptable. Regardless of any significant loss of timber cover, the terrain of the Territory would present real and glaringly obvious danger. This only punctuates the deficit of knowledge of wild horses and concern for their welfare which stains this entire EA.

Range Resources

We have discussed various aspects of sheep/wild horse interrelationships in other sections of our comments to this EA. From this topic under AFFECTED ENVIRONMENT, however, we affirm that the current livestock permittee *"feels that the increasing wild horse numbers and the associated competition for forage has made following the instructions untenable, due to the horse use prior to and while the sheep move between camps.* The ONF then authorized "resource protection non-use" for the years 2017, 2018, and 2019 (page 72). Our understanding was that the ONF authorized the displaced sheep to graze on another part of the Forest. What is questionable about this arrangement is that in 2019, though the winter was mild, deep snow accumulations occurred in February and persisted due to cloud cover and low temperatures. Wildlife and wild horses suffered until new grass finally grew, about a month later than is typical. But any herbivore or pollinator which survived the protracted end of winter was blessed with forage and water that flourished beyond all expectations. There could be no disguising any purely false assertion that the summer of 2019 was one of a dire competition for forage. The "resource concerns" are expressed under Grazing History as well (page 70), but they are somehow non-specific. If the concerns amounted to something other than low forage quantity it is unclear. *"In 2017 and 2018 the permittee requested non-use due to resource concerns, to rest one pasture each year."* We do not have access to the Allotment Plan, but are aware that pasture rest is normally built into a livestock permit. Whether or not the timing of this non-use represents any level of collusion related to the writing of this EA, we cannot say. We only know that many comments were heard regarding the excellent forage condition of the Territory these past few years. Muddying the facts a shade more, this EA lacks a definitive dietary overlap figure between sheep and wild horses. It might be 21%, according to a study cited in the Wild Horse report (page 38), or the overlap might be closer to the findings of another study between Pronghorn and horses. We've long been admonished by the ONF that the sheep don't eat the wild horses' forage, as "sheep only eat forbs" and one would expect the converse to be true. Until the dietary overlap figure is firmly established, it doesn't serve sheep or horses well to fight over forage allocations, and the ONF certainly does not have a solid basis from which to assess impacts on the sheep permittee operating in the Big Summit Territory or to present resource degradation data as "the best available science".

Wildlife

The Gray Wolf is present on the ONF. As we stated earlier, we provided photographs of adult wolf tracks in the Douthit Creek/Crooked Tree Spring area, observed on two occasions this past winter, more than a month apart. On one of these occasions, tracks of a large adult cougar were present, of the same vintage and in the same area. A herd of elk numbering from 100 - 200 was also seen in the area, though they are reportedly seldom seen in their winter range during winter.

On September 1, 1992, the Ochoco National Forest-Crooked River National Grassland Travel Plan was enacted pursuant to 36 CFR 261.50. This established formal Big Game Winter Range areas, wherein vehicular traffic was restricted. Because the Travel Management Rule did not exactly coincide with road closures imposed by the 1992 Travel Plan, it is important that the former restrictions continue to be implemented. Unfortunately, no signage was ever placed, so approximately 20 years following the 1992 Travel Plan's enactment, the Central Oregon Wild Horse Coalition was able to obtain signs from the ONF which we placed at portals to all winter range closures on the former Big Summit Ranger District. This did make a difference, but signs have been removed or vandalized. The winter range designations are important, and we can certify that deer and elk DO utilize these ranges in winter. We have also observed deer, elk, and wild horses in the same place at the same time, and on many occasions, deer and elk promptly exiting Douthit Spring and of course, leaving tracks. Wildlife managers should be aware that wild horses will relieve a certain amount of predator pressure from other native ungulates (and sheep operators should also appreciate this in summer).

Invasive Plants

No one would dispute that over-stressed lands are susceptible to invasive plants. This situation could arise from logging, off-road travel, or concentrations of humans, wildlife including horses, or livestock. But the one vector which cannot introduce new populations of invasive plants is the wild horse. They live and die on the Forest. Still, the ONF states in this section that wild horses are responsible for invasive plant introductions.

Recreation

Humans are the only species for which the Federal Government insists on an infrastructure for the sole purpose of their enjoyment. We are arrogant enough to believe all other species should be subjugated beneath our quest for that enjoyment, even when recreation impinges upon or degrades the other species' habitat, and even when enjoyment is achieved by killing the other species. We may believe ourselves to be endowed with the right to enjoyment, but we cannot also claim that the ONF is *ever* in a state of Thriving Natural Ecological Balance when we inject our endless pursuits of enjoyment. The wild horses of Big Summit Territory were here before dispersed camping, hiking trails, mountain bikes, off-road systems, or the level of hunting which inundates the Territory for much of the summer and fall. It is completely backward that this discussion would be about wild horses damaging trails which were created by humans in the horses' habitat. We question whether any analysis of impacts TO the wild horses was ever completed prior to the construction of the trail systems within the Territory or the designation of the Lookout Mtn. Recreation Area. We are well aware that impacts to the wild horses were disregarded in the ONF analysis of the Ochoco Summit (motorized) Trail System. This must change.

Heritage Resources

We were pleased that the author of this section was at least cognizant of the horses' positive impact potential in the form of fire intensity reduction. We would certainly concur, also, that it would be tragic for irreplaceable artifacts, sites, or context to be harmed regardless of who or what caused the harm. However, we believe the impacts from wild horses would realistically be incidental compared to other factors. Further, the Big Summit wild horses should themselves be considered a living heritage resource. At the very least, according to the ONF's unsubstantiated origin story, this herd began at the point of early European settlement. But MtDNA indicates that these horses were predominantly influenced by Iberian breeds, with evidence of ancestry to the extinct Tarpan. To say that we, or anyone, can know how to interpret these indicators would be extremely premature. We know that Native Americans raced horses on Big Summit Prairie prior to European arrival, and we know that primitive-phenotypic horses still exist in remote regions of the Confederated Tribes of Warm Springs lands. We intend to explore these potential linkages as well as others within the Pacific Northwest wild horse network. The trail may lead to a greater understanding of human history as well, but for the purpose of this EA, it is critically important to recognize how much history is yet unknown. Reduction of this herd, to below-viable levels, especially when so much of the American wild/indigenous horse population has already been lost to the will of obtuse humanity forever, would also be tragic.

The AFFECTED ENVIRONMENT section, in addition to the resource areas which we addressed above, contains so much conjecture, so many unsupported assumptions, that we elected to speak to this as a pervasive thread running through this EA. As an example, on Page 117, iterations on the stated premise that *"Too many horses over a too small area have been shown to have a negative effect..."* became the foundation for ensuing supposedly-scientific analysis until it finally stopped on page 124. Fundamentally, it is a false statement to imply that any studies have been conducted, specifically on the Big Summit Territory and specifically about these ecological components and specifically about how many horses are too many and specifically about how much area is too small. Where are the research citations? This approach, though slightly less laughable elsewhere in the document, is taken from beginning to end. Essentially, the science amounts to "if negative impacts are acceptable at the AML of 12-57, then the higher the AML, the worse the negative impacts are expected to be". This simplistic logic is made more suspect by continued use of the words *"appears to be"*; *"would likely be"*; *"seems to be"*; *"is expected to be"*; *"may be"*; *"could potentially"*; and of course, *"studies have shown"* even though cited studies were not conducted on sites and under circumstances substantively similar to the Big Summit Territory. In summary; actual, current data and science are missing from this EA.

This EA also fails to identify the boundaries of the Affected Environment, other than to confine physical Effects to the Big Summit Wild Horse Territory with exceptions such as horses allegedly driving elk to private lands. The Heritage Resource section does allude to "socio-cultural elements of the environment" and elsewhere, the wild horses are credited with providing enjoyment to those who want to view them, and with potentially interfering in others' enjoyment of the recreation experience or diminishing the value of an otherwise enjoyable hunt, or with eroding the profits of subsidized livestock operators on our public lands.

The Affected Environment, however, is more expansively defined in NEPA regulations:

Definitions, §1508.27 Significantly

(a) Context

Although the ONF considers this proposed action as site-specific, the broader context is society as a whole. One wild horse management plan in Crook County, Oregon plays prominently in the violently-contested battle over public lands; of exploitation versus conservation, and of non-native grazers versus equines native to the Continent. No matter the side of the metaphorical fence one stands upon, the wild horse issue is hotter than ever, and is receiving airplay on all brands of national media. In this proposed action, the term 'Human Environment' is not far removed from social values across this nation, and beyond.

The Central Oregon Wild Horse Coalition proposes that this EA be vacated, and that the ONF instead prepare an Environmental Impact Statement which presents fair and realistic alternatives supported by current analysis, objective data, and recognized, relevant science.

In addition to the excerpt from NEPA regulations cited above, other statutory guidance requires that this proposed action be analyzed at the level of an EIS.

Federal agencies prepare an Environmental Impact Statement (EIS) if a proposed major federal action is determined to significantly affect the quality of the human environment.

§ 1508. 27 Significantly (b) Intensity

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic river, or ecologically critical areas.

Lookout Mtn./Paulina Ranger Districts are not known for their glacial vistas, world-class fly fishing, or trees for people to drive cars through. It is a forest of placid meadows and sheltering pines, quiet streams, and enclaves of solitude, and gentle, inviting, grass-covered slopes. The unique history of this place is that many have found refuge here, since the first human and the first horse. It has not attracted (yet) the attention of glittering destination promoters, but those who know - who come from other states and other nations - will defend the place and its docile wild horses to the death. The subject of this EA cannot be described with such limited analysis.

(4) The degree to which the effects on the human environment are likely to be highly controversial.

The gravity of writing what is virtually a new Wild Horse Management Plan, not simply a revision, is not diminished by the fact that it involves a small Forest Service herd of no consequence or fame, or by an absence of network media coverage. At this juncture in wild horse management, every government action pertaining to wild horses or burros reverberates throughout the well-connected wild horse advocate community. The degree of response to this EA, or any other, is now a function of how many dozens of others are open for comment at any given time. But the awareness, both the divisiveness, and the unity, and the vast expenditures of resources generated by every single government action; advocates see the totality of the assault on wild horses and burros and foresee the irreparable loss of ancient genetics and identity, and the trauma, injury, and death inflicted in the process. On the other side, the livestock industry (including Society for Range Management) lives by the numbers; every wild horse gather getting them closer to the goals agreed upon by livestock associations and players like HSUS and ASPCA. The livestock lobby will be well-represented in response to this EA, and every

other. They will be joined by wildlife/hunting organizations such as the Mule Deer Foundation, the Wildlife Society, and Rocky Mtn. Elk Foundation, which will echo the vague but damning sentiments expressed in this EA, to strengthen their corporate narrative. This topic is highly, even violently, controversial, and no less so at the local level. An EIS must be prepared, presenting the most truthful, objective, and authentically scientific facts and analysis possible.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

We believe that all actions involving the living, sentient natural resource of Wild Horses and Burros deserve in-depth analysis which considers different perspectives and a wider Affected Environment than is typically prepared. Proposed NEPA rule changes threaten even the current level of analysis and public involvement. But even in a climate where Acting BLM Division Chief Bruce Rittenhouse bemoaned the cumbersome barriers of NEPA compliance (National Wild Horse and Burro Advisory Board meeting, Washington DC 2019), it should be agreed that a proposed action which establishes a Wild Horse Territory Management Plan with associated AML and management practices - into the foreseeable future - would merit full and objective analysis; an EIS. Not only will the adoption of any Wild Horse Management Plan firmly establish policy for the ONF, it will set precedents for other Forest Service wild horse management actions. The Apache-Sitgreaves National Forest (Heber Herd) Wild Horse Management Plan is in decision phase, and the Malheur National Forest/BLM Joint Wild Horse Management Plan, on the Forest adjacent to the ONF, will be written soon. We are aware of direction to manage the two Forests' wild horses similarly. This EA will establish future Wild Horse management policies and practices, entrenching them in Forest Service culture and handbooks for many years to come. The ONF is currently operating under the 1975 Big Summit Wild Horse Territory Management Plan.

The Central Oregon Wild Horse Coalition not only hopes that the ONF will prepare an EIS in support of this proposed action, but will incorporate different perspectives and constructive, informed input into the development of new, realistic, sustainable alternatives and practices.

For example, in our response to the ONF's 2017 Scoping Letter, we stated that *"The Big Summit Herd MUST be managed to at least the minimum viable number of 50 breeding adults, or 150-200 total animals, depending on use of fertility control and other factors."* Since the ONF cites Dr. Gus Cothran's recommendation of these exact numbers as a Minimum Viable Population, they surely recognized the same citation in our response. This was a Minimum Viable Population recommendation, and not expressed by Dr. Cothran or by us as an "AML", nor were we suggesting the herd total of 150-200 should be the AML. The number of 150-200 is an estimate of the total number in a herd where there are 50 breeding adults. In the Big Summit herd, since younger and older herd members are especially vulnerable in a Territory having harsh winters a high likelihood of predation, the herd total could be less than 150. But neither has the ONF proven that 200 horses would be deleterious to other resources; assertions that *"too many horses in a too small area are shown to have negative impacts"* do not make this case.

Further, what is also absent from this EA is any meaningful suggestion of mitigative measures when the horses may be actually and definitively shown to create resource damage. The ONF has equated a level of domestic livestock management to the Wild Free-Roaming Horses and Burros Act's precept of Minimum Feasible Level Management. That is not what Congress intended:

The committee wishes to emphasize that the management of the wild free-roaming horses and burros be kept to a minimum both from the aspect of reducing costs of such a program as well to deter the possibility of "zoolike" developments. An intensive management program of breeding, branding, and physical care would destroy the very concept that this legislation seeks to preserve....leaving the animals alone to fend for themselves and placing primary emphasis on protecting the animals from continued slaughter and harassment by man."

Not only is the supposed definition of Minimum Feasible Management Level found in this EA well outside any reasonable meaning intended by this term, especially since it originated in the Wild Free-Roaming Horses and Burros Act wherein there is no mention of livestock, but the various Range Resource Management Levels where Minimum Feasible Management Level was defined by Level B is where very puzzling utilization tables also occur (Wild Horse report page 25, 26 and other locations). It seems backward. We aren't questioning the content of the table, other than the figures as related to their respective Satisfactory/Unsatisfactory designations. It would seem reasonable that if utilization was shown to be within 0-30%, that would be Satisfactory, rather than Unsatisfactory. Why is it more satisfactory to utilize 40% than 0%? If this is meant to show remaining forage, as in 30% actually means 70% utilization, it might begin to make sense, except that there would be allowance for 100% utilization under all management intensity levels. Too, there are gradients of from 5% to 15% between Satisfactory and Unsatisfactory. How are those mid-point areas scored? This is concerning, when these tables seem to help determine that there are "too many horses".

Additionally, the use of the term Minimal Feasible Level management in case law has affirmed Congressional intent; that management alternatives representing the **least severe impact** on wild horses and burros must be considered over those alternatives having greater impact, in accordance with the Minimum Feasible Level doctrine. (American Horse Protection Association, Inc. et al v. Watt 82-1070 1982: I.a) *The Wild Horse Act's section 1333(a) mandate of "minimal feasible level(s)" of management by the Agency required BLM to consider "all alternative courses of action" that would affect the wild horse population less severely than would the proposed roundup and removal. Restricting cattle grazing on the horses' winter range - an option BLM had failed to consider closely - was a viable alternative that might achieve greater protection of the horses with less management by the Agency, and that therefore merited "full and careful consideration."* Yet, this term continues to be squeezed and smashed to fit into every conceivable situation where agencies don't want to incur additional work. According to the Conference language, and the context within the Wild Free-Roaming Horses and Burros Act, reducing horse numbers when provable damage can be alleviated through other means is consistent with Minimal Feasible Level Management. Whether this means traditional fencing of vulnerable resources, or some other measure, this strategy should evolve from a much deeper understanding of the interrelationships between the wild horses and their natural habitat. And obviously, the case cited above speaks directly to management actions which can increase available winter forage for Federally-protected wild horses; sheep grazing plans, slash treatment, spring prescribed burns as opposed to fall burns, and enforcement of travel rules intended to protect all wildlife.

The photo of a horse (Figure 27, page 65) with the caption "*Horse during winter in poor body condition*" is a stallion known as "Roy". As he matured and sought a band of his own, he paired up with one of the South Steens mares translocated to the Big Summit Territory to increase genetic diversity. Along with several other mares, Roy was often seen along main arterials in winter, before they chose to occupy the Claypool Spring/Coyle Butte area for most the year. At last count, there were 16 horses in

Roy's band. Prior to their full-time residence outside the Territory, they had been seen along the 22 Rd. with their growing family, but they apparently left a single yearling colt on the Territory side of the allotment fence as they moved into the Coyle Creek drainage. During this time we had heard of a lone, possibly sick, horse up the 22 Rd. En route, we encountered ONF staff with a horse trailer and a Forest Service Law Enforcement Officer, stating that they were going to "check on the colt." We believe this serendipitous meeting saved the colt's life, and some time later we were finally authorized to retrieve the colt (with ONF permission and assistance) for rehabilitation and adoption. The attending veterinarian stated that he would have lived a maximum of four more days. He is thriving in a perfect home where he will live his life. Roy continues to procreate, well outside the Territory, with his South Steens mare and what has become a satellite herd. This one horse's story speaks not only of the rich life led by every individual, but of how Agency management impacts every horse, and therefore must as integrated, flexible, and intelligent.

The Central Oregon Wild Horse Coalition has been a capable and ready resource for the ONF for 18 years, to the extent that our help has been accepted. It is our sincere hope that this proposed action can be the catalyst for a realigned and constructive partnership with the ONF. We offer our perspective and our resources toward a sustainable Big Summit Wild Horse Territory Management Plan, to include models for emergency preparedness and off-range success.

In addition to belonging to a large network of wild horse advocates who genuinely want to help, we drafted a plan for an All-Veterans Wild Horse Service Corps, which we can initiate for Forest Service use. The Service Corps would mobilize as a professional Team to accomplish fertility control, range restoration, data collection and monitoring, population censusing, and horse training. This was accepted as a Wild Horse and Burro Advisory Board recommendation and embraced by high-level labor agencies. Together we can take this forward in this challenging new era.

We can enlist local and national resources to develop innovative ways to help the Ochoco National Forest achieve the protection, management, and control of wild horses on the Big Summit Territory; we genuinely want the ONF to be 'wildly' successful. We are here to contribute to that success.

But, this process needs a re-set. We hope it can begin with an Environmental Impact Statement.

Gayle Hunt

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OCHOCO WILD & FREE ROAMING HORSE
MANAGEMENT PLAN

Ochoco National Forest
Big Summit Ranger District

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Date 7/11/75

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Date 7/7/75

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Forest Supervisor

Date 7/25/75

OCHOCO WILD AND FREE ROAMING HORSE MANAGEMENT PLAN

I. Objective

The objective of this management plan is to provide for the protection, management and control of wild, free roaming horses in order that we might perpetuate a sound biological unit consistent with the Wild Free Roaming Horse and Burro Act of 1971, and the principles of multiple use management.

II. Authority

Public Law 92-195 (85 stat. 649, 16 USC 1331-1340) establishes Wild Horses and Burros as part of the "Natural System" of National Forest System Lands and requires their protection, management and control. Other laws applicable to National Forest System lands also commonly apply to the administration of these animals. All actions must be consistent with the intent of the Multiple Use - Sustained Yield Act of 1960 (74 stat. 215, 16 USC 528-531).

III. Past History

The first horses on this range originated approximately 50 years ago according to local residents. The animals escaped from, or were set loose by different ranchers in the surrounding area, some of the horses coming from the area around Post, Oregon. Others coming from the Mitchell area, and still others from the Prineville area.

The horses established their territories on and around Round Mountain, and have since that time been kept at approximately 60 head by local horse chasers, natural deaths and predators.

When the Wild and Free Roaming Horse and Burro Act was passed in December of 1971, the horse chasing ceased and since that time we have had a yearly increase of approximately 8% in the herd.

IV. Basic Data

A. Description of Territory

Legal description is as follows:

~~T.13S., R.19E., Sections 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35.~~

~~T.13S., R.19E., Sections 34, 35 and 36. match~~

~~T.14S., R.19E., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17 and 18.~~

The horse range is located approximately 25 miles east of Prineville on the Big Summit District of the Ochoco National Forest.

For further information refer to the Environmental Analysis Report attached to this management plan.

See EA

B. Coordination With Other Uses

1. Watershed

At this time we foresee no unsolvable problems relating to this resource. Refer to attached EAR.

2. Wildlife

There is sufficient forage and cover for big game, small varmints, birds, etc. within the horse range. At this time we can see no conflict. Refer to attached EAR.

3. Recreation

Wild horses have no conflict with recreation. The two resources, in fact, enhance one another. For further information refer to attached EAR.

4. Timber

There is some conflict between wild horses and tree planting. The horses have destroyed some of the trees that have been planted in the O'Neil Butte area. In the future we plan to eliminate the conflict by fencing off the planted areas. Refer to attached EAR for further information.

5. Fire Control

At this time we see no conflict between the horses and fire control. Refer to attached EAR.

6. Mining

There are a number of mining claims on the horse range. All but two of these mines have been abandoned. There is no conflict between mining and horse use. Refer to attached EAR.

7. Range Management

The horse range encompasses portions of two sheep allotments (Canyon Creek and Reservoir) for a total of 27,300 acres. At this time there is no conflict between the uses, and we plan to manage the resource to provide sufficient forage for sheep, horses and wildlife in the future. Refer to attached EAR for additional information. Our objective in Range Management will be to manage in a manner that eliminates resource damage.

V. Analysis of Available Forage and Management

Refer to pages 10 and 11 of EAR, for A and B.

C. Management

1. Numbers - Refer to pages 9 and 10 of EAR

2. Age groups - Refer to pages 9 and 10 of EAR.

3. Culling of excess, diseased, aged, etc.

a. Horses That Have Strayed Out of 1971 Territory

Horses that have established new territories beyond those which they inhabited prior to December 1971 are considered excess animals. In accordance with the 1971 Act, these horses will be removed. Bringing these animals back into the original territory is not a logical solution. Existing studs within the territory have already established their domains which is what forced these animals outside the range initially. Removing these horses will minimize the possibility of additional horses being led or drawn out of their original horse ranges, causing further expansions of bands and their territories. Since the environmental report was written, one of the bands has expanded its range northwesterly, into the Coyle Creek area. Several young studs have also moved away from their original bands and have begun to establish territories of their own. All excess horses coming from these areas will be captured and put up for adoption. This category of horses will be our 1st priority for culling.

b. Culling of Excess Numbers Within the Original Territories

The bands within the original territories will be surveyed to determine which horses it will be necessary to cull. Priority for culling within these bands will be age and health conditions. This will include horses that are about 20 years of age and beginning to have difficulty foraging thru the winter and keeping a colt alongside. Also included are horses that are lame to the point that their movement is hindered and they are unable to maintain good flesh. After culling the old and unhealthy animals, and if the herd is still larger than the prescribed range (55-65), then other horses will be culled until the proper numbers are reached. This would include two year olds and yearlings. These healthy excess horses will be put up for adoption.

Any person interested in acquiring a mature horse should realize that these animals will probably never develop into gentle saddle horses. However, if one is interested in having brood mares, or has enough property on which he might like to run mares and/or stallions for the pleasure of seeing wild horses run free, adoption of healthy mature animals from culling within or without the legal horse range will be possible.

I. Field Application

A. Methods of Control

1. Analysis of Vegetation and Numbers (Present and Future)

At this time our analysis of vegetation, (types of forage and amounts), has been conducted with the use of Dr. Fred Hall's publication, "PLANT COMMUNITIES OF THE BLUE MOUNTAINS IN EASTERN OREGON AND SOUTHEASTERN WASHINGTON."

Our horse numbers have been determined by on the ground sightings, pictures, and having one man, Terry Bryan, Supervisor's Office, spend two months studying the horses in the field.

Future vegetation analysis will be done in conjunction with Dr. Hall's work and also by placing utilization cages in different parts of the horse range and reading them yearly. The cages will also be moved to different locations on the horse range annually. We plan to keep utilization records of forage on an animal basis so we can correlate our horse use to it and develop trends that might indicate a revision of total numbers is necessary. Total numbers will be analyzed on a 5-year interim basis using the environmental analysis approach.

2. Genetic Strains

We will not go into any type of sophisticated breeding program. We do not plan to favor certain genetic strains over others. Natural selection will be our goal.

Management of Genetic Strains would be economically unfeasable at this time.

3. Fencing of Key Management Areas

Fencing will not be done in management except in small isolated areas which may be the only way to protect the resource.

4. Substituting Studs - Control of Stud Numbers

We do not plan to substitute studs from the horse bands with studs of different breeds, or studs from other areas. This would involve us in a breeding program which is not needed. The individual bands mix occassionally thus providing a small degree of cross breeding.

Controlling our number of studs is the key to preventing establishment of new horse territories outside the original 1971 territory. This will be done on an as needed basis.

5. Reductions in Numbers

We plan to keep a current analysis on numbers from year to year on studs, mares and colts. Our reductions will come during the fall and/or winter months each year.

We feel that during the first two or three years, we will be culling from 10-15 head annually. After that we will probably cull 5-10 head per year to stay within our range of 55-65 head.

6. Management of Herd Instead of Management of Individual Bands

a. Maintain Herd as a Biological Unit

Management will be directed toward the overall herd as a biological unit instead of at certain bands or individuals within the herd. In so doing we can show a truer cross section of a normal herd and the bands within it. In doing any culling, etc. we will be doing it with the whole herd in mind instead of concentrating on each small band separately.

In culling horses out of small bands, for example, we do not plan to favor one animal over another for culling or retention in the band without specific reasons. Such qualities as color, size, breeding, etc. would not be sufficient reason. Disposition may be a factor to consider.

b. Management of Small Bands to Perpetuate Present Conditions in Horse Range

In concentrating on the overall herd size we must look at the small bands that comprise the herd; keep in mind our herd objectives, and retain only those numbers and individuals that would be conducive to total herd management. In doing so, certain dominant stallions must be removed so as to prevent their taking several mares away from other studs and establishing a large herd within the existing territory. Present distribution and utilization should be maintained in the range.

7. Removal Practices

a. Catch Pens

This method of catching horses will probably be used more than the others if it proves successful. A permanent pen can be made of poles encompassing .5 - 2 acres. At one end can be put either a swinging or sliding gate attached to a release mechanism that releases the gate and allows it to close automatically when a horse trips the release mechanism.

A portable pen can be made by building 8' x 8' panels, attaching them to one another at the ends, and installing a gate of the type/types mentioned above. This type of pen usually covers an area of approximately 40' square.

Salt or hay is placed inside the pen. When the animals come in to feed they set off the trip and cannot escape.

We plan to build at least two permanent pens, and use the portable pen we already have to catch horses for identification and removal purposes next fall and winter.

This type of pen is very humane. The main thing to keep in mind is the humane treatment of the animals when doing the culling, photographing for identification purposes, etc. Lack of harassment of the horses will be stressed at all times.

b. Tranquilizer Guns

At this point in time we are planning on using a tranquilizer gun. We have no one on the Forest who is experienced in the use of them, and we certainly will not attempt to become experienced by practicing on these horses.

We have been contacted by an individual who is experienced and bonded in using tranquilizer guns. When the time comes to remove horses from the range that simply refuse to enter the catch pens, we plan to contract the work to an experienced individual, or use trained Forest Service personnel. The person will then tranquilize our unwanted animals and we will haul them to a place where individuals applying for them can pick them up.

We have spoken to individuals from the OSWC about using their elk truck for transportation of tranquilized animals, or animals caught in pens, that need to be moved. We plan to pursue these ideas further.

c. Disposal of Unmanageable and Unwanted Animals

Shooting will be used to do away with animals that are old, lame and permanently injured, or just too wild to be handled in any other way. Good judgement will be exercised in all cases.

Those captured but not wanted will be put to sleep. This will be done only after the avenues of adoption, relocation, etc. have been pursued.

All disposal activities will be carried out according to State Health codes.

d. Roundup

This method of gathering horses will be used as a last resort since this horse range is rough, somewhat broken and brushy, and does not lend itself to this type of culling. Horse chasers have done this as a sport in the past, but we do not have the men or horses that can accomplish this job, and to rent or contract them would prove too costly.

e. Snares

We do not feel there is a place for this type of device in our management program at all. This type of catch apparatus many times hurts horses, leaves them maimed for life, and in extreme cases causes a slow death.

f. Helicopter and Fixed Wing Airplane

At this time it is unlawful to use aircraft for management of horses, and until the law is changed we have no plans for use of aircraft. Their utility would still be questionable in this particular range.

8. Non-Structural Improvementsa. Spraying and Reseeding

Areas to be sprayed and reseeded are very few, probably two or three. One area, of approximately 50 acres, designated "X" on the horse territory map will need rehabilitation work by 1980. We plan to do the work during FY 1978. The determination of this site is due mostly to sheep grazing done in the past. However, horse use has kept the area from re-establishing itself to palatable grass species.

Approximate Cost: \$2,000.00

Refer to pages 14 and 15 of EAR. Topics: Soil, water, vegetation adverse environmental impacts.

II. Fencing of Area

The areas that are rehabilitated will be fenced by building a mesh wire fence 36" high with 2 strands of barbed wire above it all around. This fence will eliminate use by horses or domestic livestock in order that the new seedlings may become established. The area will be fenced for three growing seasons in order to assure plenty of time for the new grass seedlings to become established.

Approximate Cost: \$1,000.00

U.S.D.A. FOREST SERVICE
ENVIRONMENTAL ANALYSIS REPORT
BIG SUMMIT RANGER DISTRICT
FERAL HORSE MANAGEMENT

Prepared by:

Joe Giron
Joe Giron
Range Conservationist

Date

4/7/75

Reviewed by:

Jack Royle
Jack Royle
Range Staffman

Date

4-7-75

George Boyesen
George Boyesen
Environmental Coordinator

Date

4-9-75

The applicability of the National Environmental Policy Act of 1969 to this proposal has been considered. The requirements of the Act have been compiled with, and it is determined that an Environmental Statement is not required.

Approved by:

John P. Kline
John P. Kline
District Ranger

Date

4/8/75

U.S.D.A. FOREST SERVICE
ENVIRONMENTAL ANALYSIS REPORT

Big Summit Ranger District
Feral Horse Number

Summary Sheet

- I. The proposed action is to manage wild horses within a range of 55-65 animals.
- II. The analysis shows some trampling, compaction, pollution, and over grazing is occurring in several key areas.
- III. Alternatives Considered - 1. No Action - which was precluded by the Wild and Free-Roaming Horse and Burro Act of 1971.

2. Increase numbers in excess of 65.
- IV. Federal, state and local agencies from which comments have been requested or received.

Oregon Wildlife Commission - Prineville Unit.
- V. An environmental statement is not deemed necessary at this time.
- VI. Recommendation: That the proposal be accepted to manage within the range of 55-65 animals. It appears that this is a safe range and that all uses and activities can exist in continuity at this number with the initiation of management activities to protect resources and control numbers.

A. Description

1. Legal Description

The feral horse range is located in:

T. 13S., R.20E., Sections 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

T.13S., R.19E., Sections 34, 35, and 36.

T.14S., R.19E., Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, and 24.

T.14S., R.20E., Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, and 18.

The feral horse range contains approximately 27,300 acres. 27,060 Forest Service acres, 160 private, and 80 acres Bureau of Land Management.

2. Physical Description

Round Mountain (East Side of Range)

The east side of Round Mountain is made up of lava scabs on the north and east which are vegetated mostly by juniper, Ponderosa Pine, and Mountain Mahogany blending into a level rolling timbered topography as you head south toward Johnson Creek. The topography then becomes steeper as you head west toward Round Mountain from Johnson Creek. Round Mountain is vegetated with Ponderosa Pine, Douglas-fir etc. until one encounters the upper, steep, rocky, talus slopes at about 5800' elevation. The lack of soil at this elevation explains why there are no trees in these upper reaches. The drainages run from west to east in a series as you head from north to south, the deepest one being south fork of Cram Creek.

The steeper areas are timbered more heavily in the lower, more moist elevations than in the upper, drier slopes. The north facing slopes are heavily timbered with Douglas-fir and Ponderosa Pine contrasting with the shallower more level drainages, or southern exposures.

Most of the drainages on the east side of Round Mountain are intermittent, Cram Creek being the only permanent, live, stream and even this stream becomes dry at its lower reaches, close to the Big Summit Prairie, during the latter part of the summer (August and September).

The more westerly area south of Round Mountain is a dry harsh rocky site occupied by Ponderosa Pine and juniper. The upper area has 20% slopes cumulating with a narrow ridge that drops off sharply towards the west (Canyon Creek). See attached map.

Round Mountain (West Side of Range)

The west and northwest sides of Canyon Creek where other bands of horses run is more broken and rough than the east side. Beginning on the northwest, in the Scissors and Judy Creek areas the terrain is steep, rough, and broken. The canyons are deep and narrow with only steep rocky trails leading from the tops of the ridges to the brushy bottoms.

As you round the points in a southwesterly direction the topography becomes less broken and although not easily accessible, it is not as rough as the northern portion of the horse range. Once you reach O'Neil Butte heading south the topography is more level and accessible. At the lower west end of the ridges is Canyon Creek, a perennial stream, that is used for watering throughout the year. Up high and to the east we have the steep Rocky Mountain Mahogany terrain that also characterizes the high east facing slopes of the east Round Mountain area.

Some of the areas where water is available to the feral horses on these north and west facing slopes are Scissors and Judy Creeks, Canyon Creek and a number of undeveloped springs in the O'Neil Butte and Kyle Creek areas.

Duncan Butte

This area runs from the ridge top across the road from the Ochoco Ranger Station south toward the ridge south of Duncan Creek. The east boundary is Lookout Mountain. The west boundary is Ochoco Creek.

This area has one main ridge running southeast from the Ochoco Ranger Station to Lookout Mountain. Smaller ridges and canyons branch off to the southwest and northeast. Most of the terrain in this area is quite accessible, and relatively smooth. The main tree species in this area are Douglas-fir, white fir along the draws, and Ponderosa Pine. Grass species are Bluebunch Wheatgrass, Fescue, Timothy, Orchardgrass and Brome. Duncan and Blevins Creeks, two perennial live streams, along with a number of springs make up the water sources for the feral horses. There are a number of roads running through this area. The lower elevations and south slopes of this area comprise the winter range for this band. Since these areas provide better forage and shelter than do the higher, colder, more windswept, snow covered elevations.

3. Origin of Proposal

The proposed action is management of feral horses in relation to the Wild and Free-Roaming Horse and Burro Act of 1971.

The act states briefly that the Secretary of Interior and the Secretary of Agriculture have the authority and responsibility for protection, management, and control of wild free-roaming horses and burros on public lands administered through the Bureau of Land Management and the Forest Service.

4. Purpose of Proposal

The intent of this proposal is to examine the present uses of the range and determine if an ecological balance exists between competing uses. In other words, is the range sustaining resource damage at the current use level? The objective will be to estimate a range of feral horse management intensity that we feel is compatible with other resource uses and meets the intent of multiple use - Sustained Yield Act of 1960 and the Wild Free-Roaming Horse and Burro Act of 1971.

The management objective in this territory is to establish a range of feral horse numbers that is in continuity with other uses and yet does not cause resource damage.

5. Characteristics of the Resources Affected by the Proposal

a. Water - There is a substantially large amount of water on this horse range due to the number of springs and streams. Even during the hot summer months there is much water available due to numerous seeps on shaded north facing slopes. One reason we are unable to get a completely accurate horse count is the abundance of water sources that allow the horses to remain scattered throughout the year.

1. The Springs that exist within the designated feral horse range are as follows:

Spring Names and Their Amount of Use for Water

Davis Spring - heavy use
 Scissors Spring - medium use
 Cram Reservoir - medium use
 Mary's Troughs - heavy use
 Judy Spring - medium use
 O'Neil Spring - medium use
 O'Neil Butte Spring - heavy use
 Wild Horse Spring - heavy use
 Kyle Spring - light use
 Hedgepath Spring - medium use
 Crooked Tree Spring - heavy use
 Douthit Spring - medium use
 Monument Spring - medium use
 North Point Spring - medium use

2. The creeks that exist within the designated wild horse range are as follows:

Creek Names and Their Amount of Use for Water

Scissors Creek - medium use
 Ochoco Creek - heavy use
 Canyon Creek - heavy use
 Cram Creek - heavy use
 Winter Creek - heavy use
 South Fork Howard Creek - medium use
 Kyle Creek - light use
 South Fork Cram Creek - heavy use
 Hedgepath Creek - medium use
 O'Neil Creek - medium use
 Fisher Creek - heavy use
 Judy Creek - medium use
 Douthit Creek - heavy use
 Blevins Creek - heavy use
 Duncan Creek - heavy use
 Cline Creek - heavy use
 Peaslee Creek - heavy use
 Madison Creek - heavy use

B. Soils

The territory is composed of two separate soil groups corresponding with the Clarno and Picture Gorge geologic formation. Both types can be described in relation to position and aspect.

Soil of the Clarno Formation

1. South aspect and some gentle north aspect, gentle rolling to concave lower toeslopes soils are 20" to 60" deep with dark sandy loam to clay loam surfaces overlying clay subsoils.
2. Soils on the straight to slightly convex ridge slopes under commercial timber are usually less than 30" deep to bedrock, sandy loam to loam surface soils overlying gravelly loam to clay loam subsoils.
3. North aspects slopes are similiar to south aspect slopes except they usually have covering of volcanic ash ranging from 6" to 30" thick.
4. Meadow land soils, interspersed among the timber, range from 1' to 6' in depth over bedrock. Some have seasonally high water tables, are poorly to moderately well drained, and consist of silt/loams to clay/loams and clay.
5. Alluvial bottoms are usually deep gravelly soils with variable textures and range from poorly to moderately well drained.

Soil of the Picture Gorge Formation

1. Scabland soils are normally 4" to 12" deep, ungravelly to very gravelly, sandy/loam to silt/loam and occur on slopes from 0 to 25 percent.
2. Gentle sloping, south aspect, commercial timber land soils range from 18" to 30" in depth, sandy/loam to loam surfaces overlying subsoils of silt/loam to clay/loam 0 to 15" slopes.
3. Gentle slopes (0 to 30%), north aspect, mixed conifer areas have soils which are 30" to 60" deep. They have ash surfaces of 12" to 40" over silt/loam to clay/loam subsoils.
4. North aspects, steep slopes (over 35%), mixed conifer to associated species have variable soils from those with a high ash content to very cobbly soils.
5. Alluvial bottoms are the same as those in the Clarno formation.
6. Soils of steep south slopes with commercial timber range from 15" to 40" deep and are cobbly, gravelly, sandy/loams to loams over gravelly, silt/loam and clay/loam subsoils.
7. Meadow land soils are similar to those in the Clarno formation.

All soils on steep slopes (over 35 or 40%), usually colluvial in origin, are highly variable. North aspect slopes have various thicknesses of ash surfaces while south aspect slopes have sandy/loam to clay/loam surfaces. Both can have a high gravel/cobble content.

C. Climate

The horse territory lies in a temperate climate zone. Winters are usually moderate with temperature rarely dropping below a minus 10 F. during winter, and rarely going above 100 F. during the summer months.

Warm and cold weather occur in an alternate manner during the spring of the year with temperatures dropping below freezing frequently. We usually do get some warm spring rains however.

Summer temperatures average about 90 F., the weather being very dry with full spring runoff streams dwindling to a trickle - livestock and wildlife obtaining most of their water from springs, which are somewhat lower during this period, and grasses drying out to almost beyond use for livestock.

During autumn, temperatures lower and plant transpiration rates decrease, causing streams to rise substantially. However, mild weather lasts well into November, when the rainy season begins. Fall temperatures do drop to 0 F., occasionally.

Most moisture comes during the fall and winter months in the forms of rain and snow. We get an average of 8 inches of standing snow at the ranger station throughout the winter, from 48 to 60 inches on Mt. Pisgah and Round Mountain, and up to 80 inches at the precipitation gauge on Lookout Mountain. The areas in which the horses winter - from 4,000 to 5,000' elevation usually have 8 to 12 inches of snow during the winter months. The depth of the snow becoming greater as the elevation increases.

6. Other Descriptive Material Important to Understanding of Proposal

a. Ecological Components

1. Soil

The most important sites to be considered are the critical soil areas which include the scabs, south aspect ridge slopes of the Clarno formation, meadow lands, alluvial bottom lands and cutbanks. The soil on the scab lands range from 4" to 15" deep and shallow gravelly clay/loams to sandy/silt loams. They are usually saturated early spring and late fall.

Vegetation cover is sparse on these sites, production potential is poor and the soils are highly erosive except when there is a high gravel content on the surface. Compaction, puddling and soil displacement are problems when the site is wet but are also minimized by a high gravel content. Marginal scabs are important to watershed in that they reduce high runoff rates. Poor condition scabs are very susceptible to runoff problems. Vegetation on these sites is important in reducing the erosion potential and maintaining some soil structure. Rocky areas are considered fairly stable sites but the erodibility potential increases on a deeper, less gravelly site. The most critical area to watch is the fringe between the scab and the timber. These sites have deeper soil and less gravel than the scabs themselves providing a high erosion potential upon disturbance. Disturbance of these areas would cause an increase of the scab land at the expense of the timbered land.

The south aspect, ridge slopes of the Clarno formation range from 10 to 70%. Soil depths range from 10 to 80" with textures of sandy/loams to loams with clay subsoils. The vegetation of these sites are non-commercial pine types, juniper types and Mountain Mahogany/low sage types. Soils are droughty due to the southerly aspect, shallow depths and excessive drainage. They are susceptible to trampling because of droughtyness. Erosion rates increase on these areas as the slope gets steeper but displacement is not a major problem.

Another critical soil area is meadow lands that are in poor condition. These soils are usually over 20" in depth with a silt/loam to clay texture. They range from poorly drained to well drained depending on position and slope. These sites are wet and given to compaction in the spring and fall. When wet, trampling and puddling cause vertical displacement. The sparse vegetation on these sites is important in protecting them from further erosion. Trampling should be avoided as it is destructive to the soil structure that may have accumulated over the past years, and minimizes recovery.

The alluvial bottom lands consist of slopes from 2-15%, and textures of sandy/loams. They are variable sites which range from non to very gravelly and from poorly drained to excessively drained, which are the problem areas. Any erosion on these sites is putting sediment into the streambeds.

Poorly drained sites compact early in the season, or rut causing vertical displacement depending on position and gravel content. Low, poorly drained sites are susceptible to flooding if they have been beaten out. It is important to consider their position along the stream as to their degree of affect on water quality.

Cutbank erosion is a major contributor to sedimentation of streams. It is important to stabilize these areas with a good vegetation cover as soon as possible. Rehabilitation is difficult in general, but south aspect and exposed sub-soil sites are especially hard to improve. Enhancement of stream bank vegetation provides an effective tool for erosion stabilization and improvement of water quality. Trampling is very detrimental in these areas as they are very susceptible to displacement along the edges causing quantities of soil to be removed into the stream itself.

North aspects slopes with ashy soils are susceptible to displacement especially when they are over 30-40% and when the vegetation has been removed. Clay surface, timbered (pine types) soils scattered throughout the allotment are susceptible to compaction late in the season. Stock trails are channels for erosion especially when there is overland flow prevalent in spring when lower terraces are flooded. Trails, up and down, dry draws, will cause flow channels during spring runoff.

2. Vegetation

The elevation of this horse territory goes from 3600' to 6750'. The horses feed on most of the grasses and woody plants in the area. However, their main feeds are the grasses. They prefer Bluebunch Wheatgrass, (a native) Timothy, Orchardgrass, and Brome (all introduced species) during the summer months. During winter Elk Sedge comprises their main diet, and they supplement their needs with the grass species mentioned above.

We have found very little evidence that they use brush as a forage to any great extent. However, we have learned that they use Gray Rabbitbrush (Crna) somewhat. Their use of mahogany, sage, snowberry and small brush plants is small. They seem to use brush as a forage more at lower elevations, than in the higher areas of the range.

The following list includes most of the plants found on this horse range.

They are listed as found occurring from the lowest to the highest elevations. There is evidence of horse use on most all of these plants except for the tree species. Those designations as to decreaser, increaser, or invader is based only on the sites on which they occur.

1.	Sandberge Bluegrass	Pose	Decreaser
2.	Pussy Toes	ANT spp.	Increaser
3.	Balsam root	Basa	Increaser
4.	Buscuit root	LOM spp.	Increaser
5.	Bluebunch Wheatgrass	Agsp	Decreaser
6.	Idaho Fescue	Feid	Decreaser
7.	Common Yarrow	Acmi	Increaser
8.	Wyeth Buckwheat		Increaser
9.	Bighead Clover	TRI spp.	Decreaser (first to increase)
10.	Bitter Brush	Putr	Decreaser
11.	Juniper	Juoc	
12.	Dwarf Squirrel Tail	Sihy	
13.	Prairie Junegrass	Kocr	
14.	Big Sage	Artr	
15.	Pine grass	Caru	
16.	Mountain Mahogany	Cemo	
17.	Snowberry	SYM spp.	Climax
18.	Strawberry	FRA spp.	
19.	Ponderosa Pine	Pipo	
20.	Needlegrass	Stco	
21.	Douglas-fir	Psme	
22.	Heartleaf Arnica	Arco	Increaser
23.	Vetch	Viam	Decreaser
24.	Rock Spirea	SER spp.	Climax
25.	Twin Flower		
26.	Hawk Weed	HIE spp.	
27.	Showy Aster	Asco	
28.	Pokeweed Fleece Flower		
29.	Timothy	Phpr	
30.	Smooth Brome	Bren	
31.	Orchardgrass	Dagl	
32.	Intermediate Wheatgrass	Agin	
33.	White fir	Abgr	

B. Social and Economic Uses in Area

1. Outdoor Recreation - This area is used principally by hikers, backpackers, deer, and elk hunters, and to a lesser extent by snowmobilers and cross country skiers. The greatest

use by far is by deer and elk hunters, who often come to camp and stay thru hunting season.

Use by rockhounds has not been measureable. There is a nature hiking trail that runs from Walton Lake to the upper reaches of Round Mountain. It runs thru T.13S., R.20E., Sections 21, 32, and 33. We foresee this trail as being used by horses somewhat for movement from one feeding area to another.

There is a proposed nature hiking trail that will be an extension to the one mentioned above and will be built to intersect with Road 142 at the summit between Canyon and Johnson Creeks. It will run thru T.14S., R.20E., Sections 5, 8, 9, 16 and 17.

There is a hunter camp and fishing area located in the southeast corner of Section 35 and southwest corner of Section 36 on Howard Creek. The horses do come down to this area, however, that is on an irregular basis since they will usually not go to an area where they are likely to be harassed.

2. Timber - Timber resources within the territory consist of 90% Ponderosa Pine and 10% associated species consisting of Douglas-fir, white fir and Western Larch. The entire area is in several stages of silvicultural treatment. Approximately 30% of the area has had large overstory removed with reproduction now existing. The remaining areas will receive some type of silvicultural treatment within the next 20 years.

3. Range (Sheep Allotments and Existing Feral Horses)

a. There are approximately sixty (60) horses in the Ochoco feral horse herd. The numbers are made up of ten separate small bands. Each band is headed by a stallion which herds a number of mares, two year olds, and colts. We have approximately ten stallions, thirty mares, and twenty colts two years of age and under.

Most colts that are about three years old are run out of the bands by the older stallion, and are, therefore, found roaming alone or in groups. These stallions seem to roam over the horse range indiscriminately with no apparent respect for territorial boundaries.

At present there are ten bands on the Big Summit District, each numbering from three to ten animals. A total acreage of 27,300 acres is being grazed by the horses.

The location of these bands are:

Band Numbers

1,2,3, - Runs around Mary's Troughs, west of the top of Round Mountain and down along Cram Creek to the west fence of the Big Summit Prairie (Summer), and Davis Spring (Winter). Con-

taining an estimated 7,240 acres Forest Service, 80 private, *40 Bureau of Land Management - 10 horses.

- 4 - This band runs in the Fisher Creek area (containing an estimated 2,002 acres) - 9 horses.
- 5 - This band runs in the O'Neil Spring area (containing an estimated 1,982 acres) - 6 horses.
- 6 - This band runs in the Hedgepath area.
2,862 acres - 9 horses.
- 7 - This band runs from Winter Butte to Mary's Troughs east to the west boundary fence of the Big Summit Prairie. South along this fence to the area of the Blue Mine and west to Winter Butte (Summer), Brush Creek (Winter). 4,602 acres Forest Service, 140 private, *40 Bureau of Land Management - 8 horses.
- 8 - This band runs in the Peaslee-Madison Creek area.
1,290 acres - 3 horses.
- 9 - This band runs in the Duncan Butte area.
6,970 acres - 9 horses.
- 10 - Two lone studs, seem to cover all territories indiscriminately.
- 11 - Cup Spring band, has branched off since 1971.
5 horses.

* Horses make no use of BLM acreage although the two isolated tracts are in the Cram Creek area.

b. Range Management - 20,000 acres of the feral horse range is located on the Canyon Creek Sheep Allotment, while 7,300 acres are found on the Reservoir Sheep Allotment.

Hay Creek Ranch and Cattle Company of Madras runs 1,100 head of sheep on each of the two allotments for three and one-half months (June 15 - September 30).

The following shows the breakdown of forage used on the area that comprises the horse range.

Horse Range	27,300 acres
Average air-dry forage per acre	300 lbs.
<u>Total Air-Dry Forage</u>	<u>8,190,000 lbs.</u>
Estimated forage requirements for deer (approx. 232)	278,400 lbs. ADF

Estimated Forage requirements for elk (approx. 20)	109,500 lbs. ADF
Estimated forage requirements for sheep (1100) (Canyon Creek Allot.)	1,060,400 lbs. ADF *
Estimated Foreage requirements for sheep (1100) (Reservoir Allotment)	463,475 lbs. ADF **
Estimated forage for horses (approx. 60)	792,000 lbs. ADF
Estimated forage for aesthetics	927,000 lbs. ADF
Estimated unusable and unused forage (with-in sale areas inaccessable etc.)	4,095,000 lbs. ADF
Available forage currently unused	<u>464,225 lbs. ADF</u> 8,190,000 lbs. ADF

C. Wildlife - The following have been observed on this horse range:

1. Small Varmints

a. Short tailed weasel	<u>Mustella erminea</u>
b. Vagrant Shrew	<u>Sorex vagrans</u>
c. Mountain Vole	<u>Microtus montanus</u>
d. Deer Mouse	<u>Peromyscus maniculatus</u>
e. Northern Pocket Gopher	<u>Thomomys talpoides</u>
f. Yellow Pine Chipmunk	<u>Eutamias amoenus</u>
g. Golden Mantled Squirrel	<u>Citellus lateralis</u>
h. Chicaree	<u>Tamiasciurus douglasi</u>
i. Belding Ground Squirrel	<u>Citellus beldingi</u>

* 20,000 acres which supply 73% of sheep forage.

** 7,300 acres which supply 27% of sheep forage.

2. Game Animals - The following have been sighted on this horse range:

a. Cottontail Rabbit	<u>Sylvilagus nuttalli</u>
b. Coyote	<u>Canis latrans</u>
c. Badger	<u>Taxidea taxus</u>
d. Bobcat	<u>Lynx rufus</u>
e. Cougar	<u>Felix concolor</u>
f. Mule Deer*	<u>Odocoileus hemionus</u>
g. Rocky Mountain Elk**	<u>Cervus canadensis</u>
h. Black Bear	<u>Ursus americanus</u>
i. Raccoon	<u>Procyon lotor</u>
j. Porcupine	<u>Erethizon dorsatum</u>
k. Gray Wolf	<u>Canis lupus</u>

* Approximately 232 deer on horse range.

** Estimated elk population on horse range equals 20 elk.

One wolf has been sighted three times, approximately, 2 to 4 miles from the horse range. Upon conferring about the animal with Roy McDonald, Biologist, U.S. Sports Fisheries and Wildlife Service, we were assured that this is entirely possible since there has been numerous wolf sightings in Oregon in the last five years.

C. Protection and Management Activities in the Area

1. Fire Control - This activity is only carried on when there are fires in the area. We protect the District from fires for the good of all resources of the National Forest, and in doing so protect the horse range.

Two shaded fuel breaks are being planned within the feral horse territory. One short continuous one will be located in T.14S., R.20E., Sections 28, 32, and 33 and south into T.14S., R.20E., Sections 5, 8, 9, 16, and 17 along the main ridges. These fuel breaks will not affect the horses adversely, or vice versa, however, it is quite probable that the animals will use them in their movement to quite an extent.

2. Timber Management and Transportation System - The feral horses territory has had timber harvest activities occurring for several years. The transportation system within the area is approximately 90% complete.

At present there are two going sales in the horse range, and another planned in the near future.

The Winter Creek Timber Sale is located in T.13S., R.20E., Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, and 16. This sale is very near completion with most of the disturbed ground having been reseeded with very little impact from horses.

The O'Neil Butte Timber Sale is made up of three units and is located as follows: T.13S., R.20E., Section 31; T.14S., R.20E., Section 6; T.14S., R.19E., Section 1, Units 1 & 2 of this sale have been logged. Unit two has been planted to Ponderosa Pine seedlings. Unit three has yet to be logged.

The future Davis Spring Timber Sale is located in T.13S., R.19E., Sections 20, 29, and 30, and will be sold within the next five years.

3. Erosion Seeding - This activity is performed after timber sales are logged, and is quite beneficial to horses. The mixture of seed being used consists of Timothy, Orchardgrass, Smooth Brome, Crested Wheatgrass and Meadow Foxtail all of which are highly palatable to horses. The Crested Wheatgrass greens up earlier in the spring than the other grasses. These grasses grow quite tall (15" and higher) and therefore are used quite heavily by the horses during winter since they usually grow higher than the depth of the snow. At times, Bitterbrush seed has been added to the grass seed mixture but does not seem to germinate very well due to the high elevation of the horse range. Human or mechanical activity during the seeding process does not appear to bother or disturb the horses.

4. Mining - There are several mining claims in and on the fringes of the feral horse range. They are listed as follows:

- a. Last Chance, Charles Houston, owner. Gold, silver slight trace of mercury.
- b. Mayflower Group, Elizabeth Houston, owner. High grade gold.
- c. Champion Lode, Johnson Brothers, owners. Cinnabar
- d. Ridge Clain, Westbrook Realty, owner. Cinnabar
- e. Amity Mine, Jennings & Felix, owners. Cinnabar
- f. Blue Ridge Mine, Roy C. Stantion, owner. Cinnabar
- g. M.A.S. #1-4, Myrle and Louise A. Faubion, owners. Cinnabar

See attached map and descriptive information for mining claims listed above.

5. Water Uses - The runoff water from this horse range goes into Ochoco, Canyon, and Howard Creeks. Ochoco and Canyon Creeks run into the Crooked River which subsequently runs into Prineville Reservoir. The water in the reservoirs is used to a great extent for recreation. Later it is used downstream for irrigation purposes in raising crops.

6. General Descriptive Material

After being in contact with the feral horses for the past four years, I find they are very adaptable to their changing environment. When harassed they merely go into the dense thickets or steep canyons until the intruders leave, and then return to their regular feeding areas. They do not "scare away" to remain gone for long periods from their feeding areas, but usually return within a week; and rarely do they leave their home range, particularly in winter.

They are rarely frightened by the presence of cars, humans, sounds of engines running, etc. When their preferred areas are logged over, as happened on the O'Neil Butte Timber Sale, they do not leave in search of other more densely wooded home ranges, but instead, go right on feeding in the same areas and living in the same home ranges.

While these animals have become somewhat wild and at times difficult to locate, they are by no means the sensitive animals some might think. For example, when one approaches their home range or feeding areas it is not necessary to be "absolutely" quiet as it would be with most other wild animals. Upon walking or riding into their areas in a normal manner, one will find them grazing contentedly, rolling in dust beds, etc.

Many times one pictures the stallion as being "always on the lookout." On the contrary, the stallions are usually found dozing under a shade tree, and the intruder is usually spotted by the mares. Sometimes the stallions will act in a distinctive

manner by pawing the air, snorting, etc., When one approaches, but usually the whole band simple trots off with the lead mare in front and the stallion in the rear - between the band and the intruder.

The fighting display seems characteristic of only certain individual stallions. This seemingly is attributed to their temperamental makeup, the more excitable animals putting on more of a performance, while the more placid ones are content with merely trotting or running off.

Once the stallions discover they are actually being followed they all act nervous and excited, stamping, snorting and occasionally nickering as they try to move the band. When the band is on the move, the stallion does not always move with them, but periodically moves away from the rest in semi-circles at approximately 500 feet as though making an attempt to draw attention to himself, and away from the band.

With the exception of one stallion that was destroyed after jumping into a cattleguard, none of the stallions have been known to become aggressive and "charge" anyone. It seems their main concern is to move their bands away to cover.

B. Environmental Impacts

1. Soil - There are certain key areas within the territory where concentrated use from rolling, feeding, drinking and trailing have caused soil compaction. (Individual locations are shown on the attached map.) Undesirable species such as tarweed and False Hellebore are starting to invade in the heavier use areas. The compaction occurring from horse use is greater than would be expected from domestic livestock or other wildlife. This is true for several reasons. Domestic grazing is controlled by herders and limited to specific areas, a certain time of year, and with utilization and distribution requirements in mind. The horses run year round. They acquire lush feeds in early spring while the soils are still moist thus producing compaction. The very nature of the horse's physical make-up, consisting of a weight of 800 to 1,000 pounds and their hoof development cause soil compaction that lighter weight deer or sheep do not cause. Horses tend to inhabit critical soil areas (steep with shallow 2-3" soil mantle on scab rock flats and south facing juniper hillsides) during the crisp spring and winter days to soak up a little sunshine. Compaction and accelerated water run-off results. The horses within their range become very routine in their wanderings thus covering the same feeding areas, trails and watering areas with periodic frequency.

2. Water - The horses' use of water is extensive throughout the area. Since they come to water and make use of it a certain amount of pollution is occurring. This pollution is no greater than would be expected from other domestic or wild animals through deposition of excrement, etc. Many springs in the

territory has been fenced and developed for domestic use thus decreasing the incidence of source pollution.

3. Vegetation - The horses utilize vegetation all over the horse range, but are drawn mostly to preferred areas. Most of the grazing is done in these areas, and therefore the vegetation is undergoing a moderate change due to the stress placed upon the more palatable plants, by the horses. The sites are being invaded by tarweed and False Hellebore, (originally due to sheep grazing). Continued horse use has not allowed the sites to recover.

The type of grazing done by horses is quite similar to that done by sheep in that both animal species have a narrow head with a relatively more pointed mouth. This allows these animals to crop the plants off at the ground level.

The main difference between sheep and horses is that sheep have fine mouth parts and can graze only the softer, smaller plants, while the horses are adapted to feeding on both small, fine, and large, coarse feeds. (Horses having larger heads and tougher mouths and teeth are able to eat more ruffage than the sheep. This ability to eat ruffage makes more green sprouts available to sheep with their narrow, pointed but less tough mouths.)

The meadow types preferred by horses are also the one preferred by sheep, and although their grazing habits may not completely overlap there is some overlap in the species they both prefer and grazing of these species by both classes of livestock increases the impact on the plants.

Horses pull plants up by the roots during the spring of the year in erosion seeded areas where plants are becoming established, areas where soil has deteriorated away from plants due to overgrazing, and areas that contain species with very shallow roots. This is due simply to a horse's natural grazing habits.

C. Adverse Environmental Effects

As mentioned in impacts, trampling, compaction, pollution and overgrazing is occurring in several key areas necessary for horse survival. The quantity of damage is not yet alarming. On a scale of 1 to 10 with 1 being no resource damage and 10 being excessive*, I would place 90% of the damage at the 5-6 level with the remaining 10% at the 7-8 level. In other words, the damage is apparent but not excessive. Additional numbers would quickly move the damage quantity to the top end of the scale on key areas. The 7-8 level would be where we would like to eliminate damage before it becomes excessive.

- * Excessive being the point where site quality is deteriorated, soil is compacted, vegetation changes to less palatable species, pollution of water occurs, runoff is accelerated, loss of surface is occurring etc.

D. Alternatives to the Proposed Action

The proposed action being to manage at a level that is compatible with other resource uses. A range of 55-65 animals as currently exists, appears to achieve an ecological balance. After looking at the information contained herein, this seems a practical range of management. The forage figures indicate that enough feed is available after allocation for wildlife, sheep, horses and aesthetics to support an additional number of horses. This is somewhat deceptive when you consider that feed is not the limiting factor in this territory.

The natural social structure of the bands makes increases highly impractical. The stallions that exist today have their own territories staked and the opportunity for a stallion to establish a new territory is highly improbable. The situation would probably occur where stallions would split off from the existing herds and establish new ranges outside the existing feral horse territory. Herd increases could be limited to mares only, but this would require a highly sophisticated management system that is very impractical for a feral horse herd.

Another limiting factor is the existing amount of resource damage. Soil compaction and trampling is evident around areas of concentrated use. These areas being springs, south slopes, small meadows and especially rolling areas that have been disturbed to mineral soil through logging.

The natural social structure that these horses have developed at this time is providing satisfactory utilization of available forage, and dispersed use so resource damage is not excessive.

Alternative #1 - The alternative of no action. This alternative is precluded by the Wild and Free-Roaming Horse and Burro Act.

Alternative #2 - To raise total numbers beyond the proposed range. This alternative was considered but rejected because it would disrupt the apparent ecological balance that exists at this time between numbers of animals and the ability of the resources to support them without sustaining excessive damage.

E. Relationship Between Short-Term Uses of Man's Environment and the Maintenance of Long-Term Productivity.

At controlled numbers as proposed herein the long-term productivity of the range should not be jeopardized. Key use areas are our greatest concern. If some type of protection and rehabilitation of these areas can be reflected in the management plans and then, of course, money to carry them out, use can be regulated and sites restored to their original potentials. Just the natural year long use of all wildlife especially in early spring tends to reduce long-term productivity. The problem occurs when excessive damage is allowed to occur and then left to accumulate. By using current management techniques these impacts can be minimized. The herd that is present can

Not doing that any more

be managed in continuity with other uses and without resource damage if this agency has the flexibility and resources to do the job. If these are not forthcoming then any amount of horses will cause excessive damage on isolated areas and long-term productivity will be reduced.

F. Irreversible and Irretrievable Commitment of Resources

There will be no irreversible or irretrievable commitment of resources unless excessive damage on key areas is allowed to accumulate. It is practically impossible to determine a dollar value for loss of these resources. The management of feral horses on this range may preclude increased sheep numbers in the future.

G. Consultation With Others

Derald Walker - of the Oregon Wildlife Commission believes that only minimal conflicts currently exist between the districts feral horses and big game. His primary concern is that the horses be managed to the extent that the population is stabilized at the current level without any expansion of the occupied horse range. As more data is gathered on the public demand for recreational use of feral horses, adjustments will perhaps be needed in numbers and allowable ranges. It is felt that the major problems to be overcome in managing these horses lies in control of numbers and subsequent disposal of surplus animals.

Jack Royle - Range Staffman, Ochoco National Forest, feels the horses can be managed to maintain the same population that was present at the time the Wild Horse Legislation went into effect. This is essentially the numbers that are present now, as the population has not increased appreciably since December 1971. Sheep could be grazed on the upper, more brushy portions of the horse range if the herders would drive them there. They are usually reluctant to do so for fear of losing them. If the situation should arise where areas used by both feral horses and sheep were being over utilized, that particular number of horses (number present when "71" legislation was passed) would have priority over the area. There would be no basis for reducing numbers unless we know for sure that there are additional horses. It is important that the actual number of horses on the district be determined as accurately as possible.

M. Bagley and L. Walker - The B.L.M. considers the management of the horses to be a Forest Service responsibility as they make no use of the two small isolated tracts of land in the general area.

II. Management Recommendations, Requirements and Constraints

1. Protection of tree plantations when necessary.
2. Protection of spring sources.

3. Protection of erosion seedings on sale areas when necessary.
4. Rehabilitation of small areas on re-occurring basis;
examples: meadow around Wild Horse Spring, area along
Cram Creek.
5. Recommend that management plan be developed to maintain
herd in acceptable range of 55-65 animals and that if
money is not forthcoming to manage at proposed level
that numbers be reduced accordingly.
6. Provide for public information programs concerning feral
horses (history, population, approximate foaling time,
type of management systems now using, etc.).

L. HORSE RANGE

LEGEND

6, 7, 8, 9 - Horse Territories

f, g - Mining Claims

- Resource Damage Areas

Area where all bands concentrate

4/8/75 J.G.

