

**Public Comments Submitted for the Heber Wild Horse Territory Draft  
Territory Management Plan, Draft Environmental Assessment and  
Appropriate Management Level Determination Proposals**

Submitted April 22, 2021

**Part Two**

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## Introduction

Please accept the enclosed documents as the public comments submitted by the following organizations and individuals: Citizens Against Equine Slaughter (CAES), Wild Horse Observers Association (WFOA), Wildlife Protection of New Mexico (WFOA-Voters), Water for Western Wildlife Emergency Needs Initiative (WWWENI), and member Stacy Sanchez.

We do not support either alternative for the Draft EA and we do not support the TMP or AML Determination as they are presented for the reasons listed throughout this public comment.

We continue to object to the public comment period as held for the following reasons:

- Neglect to provide our prior Scoping Period public comments to the public with the rest of the scoping comments you received
- Failure to provide a response to our substantive scoping period public comments
- Missing reference materials, some of which were added during the public comments period, and some of which are still not available, 2 of which we received no update or explanation of their status.
- Draft EA Specialist Reports added during the public comment period, one as late as 4/15/21 after we notified you it wasn't there but that you had added the references cited file for that report
- An EA that was over the allowable pagination with no supporting letter that allowed for the increase and gave the new page limit
- The sheer volume of reports, supporting materials and references to review and provide substantive comment on being near 5,000 pages with only a 30 day comment period
- An EA that clearly should have been an EIS
- And the disjointed, often overlapping and often unnecessary information provided making this review cumbersome and a moving target

We feel that after 50 years the Forest Service has had to come up with these draft proposals there should be a much clearer presentation, and all materials should have been provided for the full 30 days.

We feel that after having 50 years and taking so much time even after the court order to develop a territory management plan nearly 14 years ago there is now a major rush that is being put upon the public to review what the Forest Service has decided is the plan.

We feel that after 50 years to do what is necessary to have good scientific information, observations and supporting census reports the Forest Service should not be making statements in the management plan or EA that say monitoring needs to be done because it was not. And the census should not be based on a 4 year old flight that left a span of somewhere between 270 - 420 horses, this indicates a poorly done census at a minimum.

We feel the Forest Service has not met the obligation to take a hard look at other resources, utilization, or causation of land degradation.

We feel that after 50 years the Forest should have genetic information, should have weight information, measures of successful population management which measure feasibility and humanity as well as measures for any adaptive management which always include a cost analysis with a public review following NEPA process. There should be proactive measures regarding climate change for every project on the forest rather than just passively monitoring once every 5 years certain watershed or soil conditions. Every project should have the cost analysis which includes climate impacts, carbon/greenhouse gas impacts, and albedo impacts.

The Forest Service blames forage degradation, riparian area degradation and competition for water resources on wild horse overpopulation. Where are the explanations for these assumptions. The Forest Service states that wild horses may begin to cause land degradation, not that they have at the current population levels. This does not support the need for population reduction, especially not such a large percentage of reduction. The Forest Service states fighting between horses, or between horses and other domestic and wildlife species occur over water, yet provides no proof of this occurring.

We believe these proposed plans are nothing but a furtherance of livestock management in the forest. The Forest Service, as we will prove throughout these comments has continually, and illegally removed wild horses from the forest as a result of fears of livestock permittees that if the wild horse territory was established on the forest were the horses were in 1971, and where they still currently live the whole area would be turned into a wild horse sanctuary (statement quoted in Sanchez Affidavit attached).

The forest is currently managed as a series of pastures for rotational grazing of livestock. This is proven just by looking at the Heber Allotment permit:

Past management on these allotments consisted of running 1047 head of cattle split into three herds for the summer season. One herd rotating on the Heber-Mud Tank Allotment, a second herd rotating on the Buckskin Allotment and a third grazing the Gentry. In 1987, due to deteriorating range conditions and a lack of forage, these numbers were reduced to a herd of 628 head 5/1 to 10/31 and 157 head of non-use until forage improvements can be made.

## II. Problems and Conflicts

- A. The Forest Plan has identified the winter habitat of Pinyon-Juniper areas as limiting in suitability for forage across the forest. These allotments contain approximately 48,000 acres of winter habitat. Approximately 90% of these acres are not suitable forage acres for cattle or wildlife due to dense Pinyon-Juniper stands. These dense stands have forced heavy grazing pressure on the riparian bottoms that traverse the Pinyon-Juniper.

This discusses "summer season" and "winter habitat" for livestock grazing, even though livestock are only permitted for 5 months on one allotment and 6 on another. We have also frequently brought gates issues to your attention. We have found that often a permittee will move cattle from one pasture to another, but leave gates closed to keep horses out and let

forage grow back for the next time they put livestock in that particular area. This is an agricultural practice that is common on private lands, but should not be a practice used in a wild horse area. Especially when water sources dry up and horses must move to the next area for water. This happens most often because water tanks filled by ranchers when cattle are on the land are then not filled when cattle are removed.

This same permit stated that 8 horse traps were set up to remove “trespass horses” from 2 areas that are not private land. This was sometime after 1989 based on the signatures on the document which occurred in 1989, 2001 and 2011. These traps and assumed removals were illegal. We discuss this in greater detail later in our comments.

D. Trespass horses from off-forest remain as annual problem on Gentry and Buckskin Allotments. Eight horse traps have been constructed to date and trapping of these horses started this year. More emphasis needs to be put on having adjacent landowners maintain the Forest boundary fence every spring.

This proves that the current management of the forest is for the benefit of the livestock interests in the area. Even much of the logging has been done to thin juniper stands for the benefit of ranchers as you can see in the first picture above, pinyon juniper was an issue. This proposal states that pinyon juniper may be cut to allow the canopy to be opened which allows better growth of forage for wild horses. This has not been a problem for the horses in the more than a century we know they have lived in the forest, but cattle growers have been concerned not only because of forage growth but also because it is hard to locate and roundup cattle who are in these stands.

We reject this as a set of proposals that are created to manage the herd for health, or to be self-sustaining. We discuss this throughout our public comments. This plan will not support genetic health and does not allow the herd the opportunity to be self-sustaining. The proposed AML is too low for that possibility.

We reject that these proposals accept the wild horses as an integral part of the natural landscape, rather it sees them as a nuisance and seeks to push them onto the least desirable part of the forest where very few have ever lived. It is simply a continuation of the practice of getting rid of these wild horses throughout the forest as you have done and allowed to be done for 50 years.

We have attempted to provide our comments by providing a review of and comments on various proposals and reports by section. Given the unfairly short amount of time to review the voluminous and ever-changing documents and reports we recognize our inability to be as short or as comprehensive as we would like to be. This does not suffice for an EA and clearly need to be an EIS. We have not been given sufficient time to be able to review, research and provide complete comments.

## Heber Wild Horse Territory Management Plan - public comments

On page one you discuss the location of the territory boundaries established by the Forest Service. We have commented on this throughout time, including during the working group meetings when our CAES Board Member Mary Hauser submitted recommendations to the working group. The working group did not incorporate our suggestions but instead kicked Ms. Hauser out of the working group. However, even the working group acknowledged that the boundaries needed to be expanded. This recommendation was not incorporated in these plans.

Later in this public comment we will provide proof of the wild horses living inside and outside the territory boundaries you mapped out from 1905 to present. The courts acknowledged the horses are one and the same with the White Mountain Apache wild horses living on the Fort Apache Reservation. If the horses went from point A on the Reservation to point C your territory as outlined now, they had to have been on the area in between (point B) and this area is where past and presently the majority of the herd resides. This area therefore must be included in the territory boundaries, that area has historically and still is south and east of the current boundary lines FS has drawn arbitrarily on a map. Additionally, it is not the healthiest part of the historic territory as it is the area of highest elevation, which is why the horses move to lower elevations outside the territory, especially during the winter. The 1971 WFRHBA mandated you to designate the territory where the horses were in 1971, not to decide the area you wanted to designate for them. You claim a population of 7 horses in the Congressional record, (see affidavit of Stacy Sanchez) that number did not include the majority of the herd which lived outside the boundary you drew. So the population statistics that are used in subsequent census statements which do include horses both inside and outside the territory paint a picture of an influx of outside horses or a greater population increase when the baseline was incorrect to begin with. Additionally a census of 7 horses was reached by "purported census". These population estimates were mostly word of mouth and rumors That is something we face in our documentation as well. Therefore we and the FS must acknowledge that no real census information was done for decades, and therefore the data that should be used begins much later than the 1970's, and not until the FS actually began documenting the accurate and true location of the horses, and the census numbers. There has to be an admission that everything until FS record began in the 2000's possibly as late as the court case filed by IDA et al, was conjecture and rumor. This is why we contend that if FS wants to rely on those rumors as the means by which to determine where horses were and how many were there we have included the research we found on the matter which shows hundreds of horses have always lived on and off the territory boundaries you drew on a map. We recommend that the boundaries be redrawn to accurately reflect where the horses were during the first aerial census the FS did, and that the AML be adjusted to reflect that acreage, not this artificial boundary.

Additionally you state that the aerial census of 2017 found 270 to 420 horses. Why was the range so large, it seems that this is outside the normal range for low to high numbers on a census report and that would indicate it was a failed attempt at a census. It makes a huge difference if there were 270 versus if there were 420. Also you do not state whether or not the Win Equis models run took into account the 10% of the population that was shot between 2017

and 2019. When you were working on the first management plan for the territory and coming up with the first AML wouldn't it have been prudent to do a more accurate census in 2019 instead of just a driving observation of the herd? Why hasn't this been done given it's been 4 years and the last census had such a poor estimate outcome? This should be done before a final TMP or EA is done. And this should be an EIS because a complete cost analysis needs to be done.

You go on to speak about the court stipulation agreement and the working group. CAES, and WHOA board member Patience O'Dowd consulted with attorney Pat Haight during the court case (see Patience O'Dowd Affidavit). And CAES board member Mary Hauser was in the working group. This would satisfy your stipulation agreement requirement to work with plaintiffs in developing the management plan except that when it was revealed that Ms. Hauser was a board member of CAES she was promptly kicked off the working group. So there was no collaboration in any manner in developing this management plan with any member of the plaintiffs. And as we brought to your attention through email when we were made aware of this public comment period the FS also neglected to acknowledge, list or respond to our scoping period public comments. So the court stipulation terms have not been met.

Further, the working group was not held in accordance with Sunshine Laws which it must have been due to the presence of FS and other federal employees attending during normal work hours as part of their job, and the funding of those meetings being paid by the taxpayers through the FS. The meetings were further in violation by not keeping or providing any minutes of the meetings. This was brought to the working groups attention, and the facilitators of the meetings, attention during the meetings, and Michele Anderson and Theresa Barbour both tried to attend one such meeting as members of the public and were told they were not permitted to listen to the meeting.

So the FS did not work with plaintiffs and did not hold open meetings in the planning and development of this management plan and Ea.

On page 3 you discuss goals and objectives. You state one goal is to manage the territory as a thriving, "natural" ecological balance. We point out that cattle cannot be part of the natural ecology of this environment as they are an invasive species native to wetlands, or marshlands of Asia, not arid deserts of the United States. This has caused great damage to our lands, native flora and fauna and contributes heavily to both water depletion and pollution. You state that balance would include adequate resources for wild horse habitat, Along with the heavy utilization of these resources by livestock there is also a depletion of things like juniper that provide cover because the ranchers acknowledge 2 problems with juniper growth that is thick. Those issues for livestock permittees are locating and moving their cattle through these thick stand, and the fact that grass for their cows to graze does not grow under the juniper. You state you want to thin this as part of improving the habitat for the horses, but also state in this plan that the horses may have used areas outside the boundary because there is better cover. So the statements of reducing cover, and providing cover are contradictory as they are used in this plan. therefore you are not meeting the natural balance you state i a goal for the territory rather you plan to continue to manage it to favor what livestock owners would like to make their job

easier and to allow more cattle forage to grow so they can continue to keep or increase the number of livestock permitted. Trying to use this as part of a needed part of the wild horse management plan is deceptive at a minimum.

You also cite 36CFR 222.21(a)(4) and this must have been an error as it doesn't pertain to AML

## 36 CFR § 222.21 - Parties.

CFR

### § 222.21 Parties.

Only the following may be parties to mediation of a term [grazing permit](#) dispute:

- (a) A mediator authorized to mediate under a State mediation program certified by the U.S. Department of Agriculture;
- (b) The Chief, Forest Service, or other Forest Service employee who made the decision being mediated or his or her designee;

Source: [Cornell Law Library: https://www.law.cornell.edu/cfr/text/36/222.21](https://www.law.cornell.edu/cfr/text/36/222.21)

In discussing AML on page 3 you state the AML proposed would prevent deterioration of range conditions, again we point to our earlier comments on the Wild Horse Report where you stated that currently there is adequate forage and water with the current population. This would not justify the need to reduce the herd to the dangerously low AML that will mean a destruction of genetics that will either cause the extinction of the herd or a watering down of the unique genetics (which was in the Testimony to Congress by Raul Grijalva in your references cited) If the resources are adequate then the base AML should be what the population is currently.

You rely on BLM Handbook multi-tier analysis process in determining AML:

[https://www.blm.gov/sites/blm.gov/files/uploads/Media\\_Library\\_BLM\\_Policy\\_H-4700-1.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H-4700-1.pdf)

Then compare the BLM information to page 3 of the FS TMP proposal

[https://www.fs.usda.gov/nfs/11558/www/nepa/33054\\_FSPLT3\\_5600895.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/33054_FSPLT3_5600895.pdf)

You state on page 3 that the second tier of this AML determination process using half the available forage to establish the high end of the AML which ensures proper allocation is left for livestock and other grazing wildlife, This contradicts the Wild Horse Report where you state the goal was not to exceed 35% utilization of forage in total for all three categories of grazers, and also contradicts the threshold indicators for determining excess discussed by FS n page 5 of the proposed TMP. That states that 35% utilization in 30% of key grazing areas, 2 out of any 5 years would indicate excess horses and initiate gather and removals. Therefore it isn't clear if the horses are allocated 50%, 35% or some percentage of 35%. But it is clear that the wild horses will never be allocated 50% of forage available without being considered excess and causing a gather and removal. The contradictory statements are arbitrary and capricious.

In this TMP the under Thriving Natural Ecological Balance (TNEB) subheading Herbivore Grazing, page 4 you state "*Wild ungulate, permitted livestock, and horse use does not exceed*



*the estimated grazing capacity. Structural range improvements are well maintained and in good condition*" As you know we have discussed at length with you the need for the dirt tanks to be dredged because of the build up of silt. We have offered to spend our time and money to do this however it should be acknowledged that it is the responsibility, by policy, of the permittee who installed a dirt tank to maintain that tank. Therefore if you are going to maintain TNEB through maintenance of structural range improvements you should address this issue, and take into consideration that wild horse volunteer groups are less likely to work in cooperation to clean out dirt tanks in areas outside the proposed territory if horses have been removed. This will negatively impact the goal you have stated.

You acknowledge there is generally enough water on the territory for the wild horses year round. We agree, and have hauled water during times there is not, and will continue to offer those services. However, the issues that occur are more often due to fences impeding movement of individual bands from one area to another as different water holes dry up. Gates are not left open when livestock is removed, and there has been an issue with side by side gates causing foal and mare separation, injury and death. These issues have not been addressed in the TMP. Additional water sources would be helpful, but only if maintenance of these is outlined and followed through with. And the gate issue needs to be outlined and resolved for the protection and safety of the horses.

On page 5 in discussing Excess horses you make a statement that indicates foals would be counted when determining population, this is not permitted, just as cows are counted as one where there is a cow calf pair, so are horses. You speak throughout this page of thresholds and determining factors, and many of these indications or thresholds are based on *"if wild horses are identified as a contributing factor"* You do not explain how you will determine the contribution of a horse to a cow or elk, or indicate the the difference in total populations of each species would be considered proportionately. You stated at one point in these proposed documents that an individual horse eats as much as an individual cow (we disagree with that statement) however you do not acknowledge that there are a few hundred horses versus a few thousand livestock and versus a few tens of thousands of elk (although the estimated population in the exact area of the wild horse territory or surrounding land is not provided. So any conclusions of horse contribution to utilization of resources can only be accurate if evaluated in the proper proportions based on populations.

You state one threshold for determination of excess wild horses is reaching or exceeding high end AML. The courts ruled in *Mountain States v Jewell* that AML in and of itself cannot be used to determine excess.

*"Chief U.S. District Judge in Wyoming Nancy Freudenthal wrote in her ruling that the BLM was not bound by AML levels and must weigh additional factors when deciding whether to remove horses."*

You state: *"It may be necessary to use telemetry collars or other individual animal tracking devices to determine which horses and their associated bands utilize the territory and which*

*horses have no association to the territory but reside on the national forest.” We object to the use of telemetry collars. (See Wild Horse Observers et al vs BLM WY, IBLA-2017-0048, Appellant’s Response to BLM’S Opposition to Petition for Stay, pg 4). Where we stated: “Figure 5 pg 7<sup>1</sup>. ”Rolling by this feral horse mare is a grooming behavior associated with pelage hygiene and insect control.” Studies of horses in corrals will not include rolling in the wild where these collars can get hung up on branches or pick up branches that may then impale the horse, etc.*

Telemetry collars along with being a hazard to the horses, especially in a forest area which obviously has more trees than other areas where they have been used, have been found to be ineffective in collecting desired data. The FS has provided no scientific support for use of these collars and they should be removed from the plan.

Another threshold to be used in determining excess is Animal health-condition is at risk. You do not state how many or what percentage of the herd would need to be showing compromised health to meet the requirements of this indicator. Is it one horse, 5 horses, 10 percent or what? Additionally the factors of age, and normal range of illness and injury should be figured into the equation when determining the overall health condition of the herd. You need to determine what that range would be and how you will take into account the naturally occurring events such as illness, injury and age that contribute to overall health. If there was a previous gather, and horses left on the land were predominantly older horses then one could expect that there would be an incidence of decline in overall herd health condition as those horses naturally age, and if this occurs at the same time that population increase has been limited by fertility control measure, that would create a false appearance of declining overall health of the herd. The method and ranges for determining this threshold is met must be outlined in this TMP proposal.

Under the Removal...Process for Preparing for gather...Bait trapping on page 7 you state the other territories have successfully used remote capture. You need to provide some reference, or even the Territory, date and a link to the project where we can evaluate and see your justification and statement of success for this method. Additionally you state FS may collaborate with non-FS persons or organizations or utilize new technologies developed by such persons or organizations. This needs to be information that is provided to the public in subsequent NEPA processes as some of these persons, organizations or developed technologies may be controversial or unacceptable to the public and not including the public in these decisions is in violation of NEPA. This statement is akin to giving yourselves a blank check and expecting the public to sign it.

You state that helicopters may be necessary. We are opposed to the use of helicopters which we will discuss in length later in this public comment.

You also state:”Additional contraception products and methods may be used which become licensed for horse use.” Again we assert that these additional products and/or methods would need to be proposed in and given proper public scoping, and public comment periods for

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<sup>1</sup> Ransom, J.I. and Cade, B.S., 2009, Quantifying equid behavior— A research ethogram for free-roaming feral horses: U.S. Geological Survey Techniques and Methods 2-A9, 23 p.

evaluation and involvement per NEPA. Again this is a blank check issue. You mentioned in the scoping documents that surgical spaying of mares was considered. We don't know by this vague statement if additional methods include those types of procedures, and cannot accept this inclusion in the TMP or EA. Each product or method will include different chemicals, different pros and cons, differing effectiveness rates, and the public involvement in what of these will be used is important to the public as has been proven by the number of public comments regarding PZP, GonaCon, surgical spays etc. It has been a huge issue, and the public involvement cannot be minimized or removed. The gathers that can happen at anytime without public notice already do that.

Discussion of the monitoring plan on page 8 show that over the past 50 years the FS did not perform the monitoring that should have been done prior to the development of this plan. Much of the information you plan to collect should have been done prior to development of this plan, and should be done in an EIS. When you discuss developing a vegetative baseline we need to know how that can adequately be accomplished when every part of the proposed territory is part of a cattle allotment. How does this impact the baseline, especially when you are determining causal effects of horses on vegetation? How does over 50 years of heavily grazed land create an adequate baseline. This scientifically would be creating a baseline that is already skewed. We also have concerns using ranchers who have been extremely vocal proponents of removing the horses from the forest altogether, and may have been involved in paying for the wild horses to be removed and or shot in the forest, which was proven through FOIA documents which included receipts paid by the FS to ranchers to remove horses and take them to sale. Additionally, you mention using university students, this causes concerns because of the illegal activities of the facilitation of the working group who developed this plan, which then causes a mistrust of accurate information. When we look at references used in writing these plans and proposals we often see studies or opinion reports that are written by people who have a conflict of interest, such as those by Kirk Davies, who grew up on a ranch in Eastern Oregon where Stacey Davies, the former ranch manager for Roaring Springs Ranch grew up. When we are utilizing people from the same pool, the ranching community being that pool, to do the studies and reports, to often get jobs at FS and BLM or to facilitate working and collaborative groups the outcomes are often predetermined and not accurate when looking outside this pool for information. That has happened with population size requirements of ungulates for genetic health. When we look at studies outside the US we find the required number of animals for a genetically healthy herd is much higher than those of the geneticists who often work with the federal agencies here in the US. So we want advocates for the horses to have more of a role in monitoring, decision making, record keeping and fertility control measures like PZP which we have discussed with you as a possible partnership. Rebuilding the trust between FS and advocates needs to include more involvement of advocates. This plan mentions advocates, but doesn't exclude business as usual.

Further you discuss the Annual Operation Plan, this plan to determine if there are excess horses and annually gather/trap and remove horses annually. You do not state that the public will be notified of each trapping/gather or how and where the public can observe.

You briefly mention microchipping horses that are bait trapped, but this is not discussed in length. What is the goal of microchipping? If the microchips are only going in horses to be removed and placed in homes, this is not an adequate way of tracking the animals. A police officer who pulls over someone hauling horses to slaughter could not look for a freeze brand, which is what the FS used to do, and he isn't going to be able to see a microchip to know this horse should not be going to slaughter. The auctions and slaughter pens will not be able to see these microchips and verify that the animal is titled and can be disposed of like livestock. So it is unclear what the purpose of a microchip is. You also do not tell the public what microchips would be used, what research has been done to determine the efficacy, etc. So this should be removed from the final plan.

Additionally these items you state are done at a secondary location could all be done at the trap site to avoid the chance of injury which is exponentially increased when putting wild horses into and out of a livestock trailer. You also mention gelding stallions at the secondary site. There is no research provided on the method used, or the death rate to be expected from complications such as infection. This information needs to be provided to the public in the TMP with the resources you have used to research this medical procedure. Will it be surgical or chemical, etc. Will the stallion be sedated, local anesthesia etc. What effect would any medications have on the environment if the gelding is released back onto the territory. Some medications have feed through consequences for carrion consumers.

You do not mention performing genetics tests before you begin castration and administration of other forms of fertility control such as immunocontraceptives. This must be done before any horses are permanently removed from contributing to the gene pool as discussed above. And again any darting of fertility control vaccines should be done on the range not after moving the horses from a bait trap to a 'processing' location.

You admit that there is not a scientifically supported population census done by stating (bottom of pg 8) "Surveillance" to obtain such a census would "begin" through a number of various methods. Having had 50 years to do this already it should be done before this EA is finalized. The last census you have provided was in 2017, and it was lacking at best in being accurate with a span of 270 to 420 horses. There is no acceptable reason for a span that large on a relatively small herd. That is a failed census count. Then you mention the 2019 Wild Horse Observations, and list it as a Draft EA Specialist Report. This report gives us nothing of value in determining population. It is a report from approximately 4 months, from various people whose initials are provided. It contains issues such as:

- Entry that Black mare "Precious" was seen, then later entry where under Stallion ID you list "Precious" black mare. Indicating one person did not recognize a stallion was a stallion. And that there was a wild horse advocate with the observer because FS does not name the horses.
- Entry that states 0 horses were seen, and of that 0 horses 5 were mares and 1 was a foal.

- Entry that states they were not sure what band they saw but would have to go back and check the records. While we were told in a virtual meeting by FS employee Marshall Moy that no such records are kept but plans are in the works to develop a herd book.
- Entries that state under the “Location” column -Location is the place where the band was located.

Surely this paper is not a Specialist Report supplemental to the Draft EA. And all references to it throughout these proposed plans should be removed.

Because the last census was done in 2017, 4 years ago, there should be a current census done before AML determination or Win Equus models were done. The WinEquus modeling was done using the 420 estimate of wild horses seen in 2017, which we have already pointed out might have only been 270 horses.

Additionally there were over 30 horses shot between the end of 2017 (after the 2017 census flight) and the beginning of 2018. If there were 300 horses in the herd that would mean 10 percent were killed, and another 10% death would be attributed to natural attrition, therefore the beginning number of wild horses that should have been used in the WinEquus modeling would have been much lower.

This all makes the current proposals inadequate and incorrect in statistics and assumptions surrounding the population. Therefore it supports our request for a current census to be done. Monitoring that was not done over the 50 years could be done during this time, and the plan could be put together in a more coherent manner instead of the rushed mess it has been presented to us as. (unnecessary information, missing reports and references, a moving target to review and comment on, etc. which is mentioned through this public comment and specifically in the Barbour Declaration.

Under year 3 of the Annual Population Plan example you discuss the effectiveness, or lack of as a determining factor. This plan is a setup for failure if all mares on the forest are not darted, but you discuss gathering specific areas which are prioritized and darting those mares. So it seems the desired outcome would not be possible if not all mares are darted. This needs to be clarified, and if the goal is 80% reduction then the appropriate number of mares must be darted throughout the forest not only in selected areas of trap and removal etc.

You also discuss what happens to horses removed from the forest, adoptions and such, and state that there would be an effort made to “find the horse’s forever home.” CAES et al recognizes this statement “forever home” for what it is and what it is not. What it is is an Orwellian, political propaganda statement to whitewash what will be processing these horses as ‘safe meat’ and nothing more. This is an insult to NEPA and to the public. Additionally we’d like to point out that if managed ON THE RANGE as we have proposed they have a forever home, and remain with their family bands.

You also state “mares could be introduced from other wild horse populations in accordance with the Wild Free-Roaming Horses and Burros Act. Nowhere in the act does it speak about translocation of wild horses for any purpose let alone genetic diversity. However it does state the herds should be managed as healthy, or thriving, “self-sustaining” herds. Self-sustaining is definitely not met by having to introduce outside horses.

The FS has not managed these wild horses on the faux territory because the horses aren't there. For fifty years the management has been to get rid of the horses who reside off the faux territory and then claim no horses or very few, 0 - 18 live on the faux territory. This plan is a plan to continue to do exactly that. Shove Horses onto the faux territory to meet the lower limit AML of 50, And then remove the horses that live off the faux territory as you did illegally for 50 years through paid gathers and ignoring illegal theft and shootings. The management of horses in this manner started before the 1971 act was passed when locals began expressing fears about the whole area being turned into a wild horse sanctuary or preserve. Which is also presented in the history tables and other sections of this public comment and the Sanchez affidavit.

Forest Service needs to go back to the drawing board with this plan, include all of the land used, including migratory lands from 1971 to present and include that area in the territory boundaries which has been our recommendation from the working group process to present, and which has never been acknowledged or responded to by Forest Service (which it might have been had our scoping period or working group contributions been read by FS). The Forest Service also needs to do a current census. Then FS needs to reconfigure the AML based on the acreage the herd has always lived on, and we believe they would come to an AML that is about what the current population is. This is supported by statements made on page one of the EA Specialist Report, pg 1 where the Forest Service states that the water and forage are adequate.

As mentioned in other sections after 50 years of not doing this original Territory Management Plan for this herd, and having never done an EA, there is now a sudden rush to have a finished product and this draft of that product is inadequate and lacking accurate scientific, observational and historic information.

## Wild Horse Report Public Comments

In the Wild Horse Report you state:

*“There are generally sufficient water sources within the Heber Wild Horse Territory to keep horses watered year-round. The water sources are reliable (under normal conditions) and well distributed across the territory” (pg. 1)*

*“However, during extreme drought years, many of the water sources may go dry”*

*“Capability of the land within the territory to produce forage was analyzed to determine forage sufficiency. That analysis indicated the territory is capable of producing an estimated 1,978,126 pounds of available forage in an average year “*

*“Current grazing obligations of the area, including forage needs of permitted cattle and the utilization data, were analyzed and disclosed. That analysis indicates an estimated 506,000 pounds of forage are needed yearly to meet the currently permitted livestock grazing within the territory”*

*“When these numbers are coupled with the utilization and land health data (plant composition and ground cover), the amount of grazing occurring (by all grazing species) within the territory is within the amount of forage the area produces, resulting in the determination that the forage component of the habitat is sufficient. “*

*“The appropriate management level determination concluded there is sufficient forage within the territory to support up to a maximum of 104 free-roaming horses on an average year, while still meeting management direction for other resources.”*

*“The horses have not been and are not consistently utilizing all the delineated territory. Based on aerial surveys and on-the-ground observation, horses are primarily using the southern portion of the territory during the spring, summer, fall, and mild winters. There is an assumption the horses may move to areas of lower elevation outside the territory or off the Mogollon Rim during severe winters following the behavioral patterns observed with the wildlife but monitoring data specific to horse use patterns is lacking”*

*“Existing livestock fencing within the territory may be limiting horse movement to the lower elevations in the northern portion of the territory. However, current monitoring is not sufficient to ascertain with certainty why horses are not utilizing the northern portion of the territory nor is it sufficient in determining why they are moving off the territory. Additional monitoring is needed to better understand how horses are using the territory. “*

Areas of inconsistency or concern from these statements are:

1. The years of extreme drought water seems to be available in other water holes, tanks etc but fencing has been an issue for horses to get to them. This situation has been



remedied by volunteers, like CAES and others obtaining permits and hauling water. Fencing is the ultimate problem during years of extreme drought.

2. The land is estimated to produce 1,978,126 pounds of available forage.
  - a. Cattle are estimated to consume 506,000 pounds of that.
  - b. You have also stated that the goal is 35% consumption of the total forage is the maximum utilization goal for land health which would include total utilization of cattle, wild horses and other grazers.
  - c. 35% is approximately 692,344 pounds
  - d. After cattle consume 506,000 pounds there is only 186,344 pounds left for wild horses and all other grazing wildlife
  - e. This means cattle are given approximately 25.6% of the total, leaving horses and other wildlife less than 10% of the total so as to not exceed the desired max threshold of 35% utilization.
  - f. This does not meet the goal of balanced uses.
  - g. It also assumes that any cattle in the territory meet a natural thriving ecological balance. Cattle are invasive whereas horses and other grazers on the territory are native.
3. You state that the forage component of the habitat is sufficient, then state the horse upper AML needs to be set at 104 horses, or approximately 25% of what is currently there per your estimated population per census reports and statement of Mr. Madrid in the Forest Stakeholder letter.
  - a. If water is sufficient per your first statement listed above, and forage is sufficient per this statement above, then what is the justification for reducing the current population by approximately 75%?
  - b. If you are trying to keep the uneven composition that is out there currently, you would need to reduce the number of all 3 categories of grazers (cattle, horses, and other grazers). What is the justification for reducing only the population of horses? What scientific study supports these decisions that assume only wild horses must have population reductions to achieve thriving, ecological balance?
4. Speaking of cover and space you reported that much of the territory is not used by the horses and that you are not clear why. According to statements from Stacy Sanches the King Phillips, Stermer and one other adjacent pasture on the territory are always fenced so that the horses cannot gain access to those portions of the territory. Therefore your second statement that existing fencing "may" be the issue is correct. We feel this information was readily available, has been an issue many of us including Stacy Sanchez have brought to the attention of Mr. Madril and others over the past few years and should be something that you are just now saying needs more monitoring or data collection. This is a lack of doing your due diligence in preparing for and making decisions about this management plan.
  - a. We submitted recommendations on the working groups recommendations when then member Mary Hauser was on that working group and a member of the CAES board of directors, which were not allowed by the working group to be combined with their version, so we sent those separately to the FS.



- b. We submitted comments on the scoping period with additional recommendations to you on this subject of the territory location and historical land use of the wild horses of the Apache-Sitgreaves National Forest in the Black Mesa district.
- c. When determining the territory boundaries the historic use of land south and east of the boundary that has been drawn by FS as the Wild Horse Territory was not included even though there were horses there in 1971 and still are horses there today. In fact, you admit in census documents and current statements in these plans and reports that most of the herd currently resides on these historic use land areas which are off the territory you drew for the horses.
- d. We recommend expanding the territory to include the lands south and east of the current boundaries which would be inline with the 1971 mandate to protect wild horses where they were in 1971.
- e. The working group also recommended expanding the territory, albeit a much smaller additional space but nonetheless they even acknowledged that the current boundary lines are just not where the horses live.

#### Summary and recommendations for Habitat Components section of the Wild Horse Report

We recommend that in order to fulfill multiple use mandates, some livestock grazing be continued, which also recognizes the socioeconomic needs of the few ranching permittees who utilize the territory and their employees. However, the number of permitted livestock should be brought down to a number that is in-fact more in balance with other uses that are native to the land. Hunters utilize other grazers in the area such as elk and deer. Tourists, locals and advocates across the nation utilize the wild horse resources. Both of these outnumber the ranchers and their employees who would be affected by livestock reduction. And priority should be given to native animals over invasive animals that contribute more to our current climate crisis and cause much more damage when total populations are compared side by side. We will comment more on the latter 2 later in our public comment. We recommend that cattle be given no more than 33% utilization of the 35% goal you have set. That would mean reducing the livestock to a population that consumes no more than 230,781 pounds of forage annually in a typical year. Wild horses and other wildlife grazers would each be allocated the same pound totals each. That is balance and doesn't penalize the livestock for being invasive but rather recognizes them as part of the socioeconomic needs of other land users and their employees.

We recommend that the TMP and EA be redone after a more accurate territory is developed which reflects the lands in use in 1971 and historically since then until present time. The territory, by your own admission is not where most of the herd resides. The story you tell of only 7 horses existing at one point didn't reflect how many horses in the herd were living on lands outside the territory at that time, so the population count was not valid. Court records and oral histories agree that horses have roamed between the reservation and the current territory boundary for decades, and since before 1971 when you were mandated to protect wild horses where they were in 1971. You left most of that land out of the territory when you drew the boundary. Leaving only a very small sliver of the least desirable habitat to the horses, and then saying the AML must be so small is not what you were mandated to do nor is it managing for

the protection and survival of a healthy, self-sustaining herd. We will touch on that again later in this public comment. The boundaries must be redrawn to reflect the land where the horses were in 1971 and still are presently.

## **Horse Herd**

In the Wild Horse Report you provide a table with census information. There is no explanation for why there is a very large span of estimated population after the flyover done in 2017. 270 to 420 is an unreasonable population span for a census that was done properly. 270 horses reproducing annually at approximately 19.5% annually as you stated is the mean population increase would be much different than 420 horses would be 4 years later.

In your written description of the observations of horses in 2019 included in this report you did not provide a population estimate for 2019. However, according to the Forest Stakeholder letter provided on the website by Mr. Madrid quoted the 2017 census and stated that if that data is correct the population, if no action is taken, would be 10 times the proposed upper AML by 2022.

This means that he proposes that 420 horses in 2017, would become approximately 1040 horses by 2022. Given that our herd count by Mr. Sanchez and others who work with him to document the herd estimate there are less than 400 horses out there now there is no way there could be over 1000 horses by 2022.

Additionally you state:

*“The appropriate management level that is proposed was developed based on the four essential habitat components of water, forage, cover and space present within the territory. This analysis discloses the effects to those resources; thus, the spatial boundary for analyzing the direct and indirect effects to the habitat components is the territory boundary. The spatial boundary for analyzing effects to wild horses is difficult because the effects are to the herd and individual horses. We do have limited data via the census flights that indicate horses have been located in an area south of State Highway 260 to the Mogollon Rim and from the western boundary of the territory nearly to U.S. Highway 60 going south out of Show Low. So, the spatial boundary for effects to the horses, if it must be defined, would be that area where horses are located during past census flights.*

*The temporal boundary for analyzing the direct and indirect effects to the habitat components within the territory is 20 years into the future. This time period allows for an adequate length of time to record vegetative changes. This analysis relies on current environmental conditions as a proxy for the impacts of past actions, because the existing conditions reflect the aggregate impact of all prior human actions and natural events. The temporal boundaries for analyzing the direct and indirect effects to horses is also difficult. A wild horse maintains that legal status until title is transferred either through sale or through a successful adoption process, the time frame*

*involved will vary for each individual horse. Each management action that has the potential to impact horses will likely result in both short-term and longterm impacts.”*

Our concern once again is that the FS did not perform due diligence in obtaining needed information to analyze and determine spatial boundary effects to the horses because the proper data was not recorded during census flights. This also would inform you to the facts we have recorded and observed since and before 1971 which leads us to our issue of where the horses have always historically resided. So we can assume the spatial boundary effects would be that if the proposed territory boundaries are not changed the horses will be forced onto a small area, where there are many livestock fences impeding free-roaming behaviors, and blocking a significant portion of the territory completely. This will also require an AML so low that is no longer genetically viable,

While you discuss the temporal effect of the horses' boundaries you admit you really can't do it even though you have already had 50 years to work on this. Again this is much ado about nothing as is many of the unscientific statements lacking data and a solid conclusion throughout this report and subsequent reports attempting to deny the horses their historic boundaries once again though they are known as well as easy to know.

#### Environmental Consequences Wild Horse Report

*On page 4 you state “Habitat Components The proposed appropriate management level was determined by considering the water, forage, cover and space available in the territory. The upper limit (104) of the appropriate management level is the number of horses which results in a thriving natural ecological balance and avoids deterioration of the range. Thus, any exceedance of that number has the potential to disrupt that balance and lead to deterioration of the range and a shortage of water, forage, cover and space. The no-action alternative would not ensure healthy rangelands, would not allow for the management of a healthy, self-sustaining wild horse population, and would not promote a thriving natural ecological balance”*

As discussed earlier in our public comments the historic land used by the herd, which is currently where the majority of the herd resides, was not included in the boundary you mapped out for the wild horse territory. This artificial boundary the FS created will not provide the acreage for an adequate and true AML of the herd that has existed since before the 1971 Act was passed. Therefore until the boundary of the territory is redrawn to adequately reflect where the herd was in 1971 and for decades before and after, the AML cannot be accurately calculated.

Also of special note on your above statement is the term “self-sustaining. This phrase is what the law mandates you to manage for. However, you then go on to propose that when you drop the AML to what you know and science proves is an unsustainable number for genetic viability and variability you would introduce outside horses thus not maintaining a self-sustaining herd.

These statements in your proposed TMP and EA and supporting reports are in contradiction with each other.

Also on page 4 where you discuss the no-action alternative, using the Win Equis model you state

*“left unchecked, could grow to an average population of over 1,900 horses over 10 years, with the most typical trial showing a potential maximum population of over 2,600 horses”*

The Forest Stakeholder letter from Mr. Madrid states that he believes the wild horse herd is no-action is taken would create a population 10 times the upper AML proposed limit of 104 horses. That would mean there would be approximately 1040 horses in 2022.

And if horses double in population approximately every 5 years using your statement that this herd population grows by about 19.5% annually that in 10 years there would be about 2,080 horses in 10 years which makes the latter estimate of a potential population of over 2,600 horses biologically impossible. This brings serious doubt about how accurate your calculations using Win Equis are.

There is also no mention of attrition. This EA, which we assert should determine in the FONSI that an EIS must be done, needs to include the actual attrition rates and should include the horses that have been shot because in one year a significant percentage of the population was shot. Some 30 horses were shot in one month. Where do your population statistics take that incident into account?

Where are the natural attrition rates by predators figured into your population statistics? We know that wolves, bears and cougars have taken old, injured and foals down. This must be part of the population control calculations and should also be provided to the public.

Alternative 2 - Proposed Action

As discussed in the Wild Horse Report

You State on page 5

*“The appropriate management level is the number of horses which results in a thriving natural ecological balance and avoids deterioration of the range. Thus, management of the horses within the range of the appropriate management level is expected to maintain the essential habitat components of water, forage, cover and space for a healthy, sustainable horse herd.”*

How have you determined the percentage of damage done by horses versus other grazing wild and versus livestock. We know that the number of livestock permitted is approximately 100 times the number of wild horses you are proposing at the upper limit of the AML, and elk also largely outnumber wild horses currently there. So as we addressed earlier, the way to more fairly provide equal protections for the wild horses would be to proportionately limit each of the 3 categories of browsing animals, not just the wild horses. But you have provided no scientific

evidence that supports this action to only remove horses, or that only wild horses are causing deterioration of the land.

For example if population ratios show that for every one horse there are 5 elk and 100 livestock (and if we acknowledge livestock are there 6 months of the year so we divide that in half to only use 50 of those livestock.) Then we should determine the damage done by 1 horse, 5 elk and 50 livestock to determine the percent damage done by each grazing category. That would then give the information needed to more fairly make changes in the management of each of these 3 categories of grazers that contribute to range deterioration.

This has not been considered, the data has not been collected, and therefore only the horses are removed at such extreme numbers. Your proposal to remove 75% of this herd is based on only one category and doesn't meet the need to manage the herd for a healthy self-sustaining herd. Whereas if more livestock were removed, and perhaps a greater number of elk permits were given to hunters then there would not be a need to create this arbitrary AML.

You also state: *"The Proposed Appropriate Management Determination document noted that although there appears to be sufficient forage, water, and cover available within the territory, many of the horses appear to be residing outside of the territory. Those observations indicate that cover and space may be insufficient within the territory, but further monitoring is needed to better understand how the horses are using the territory"*

Assuming you mean the Appropriate Management Level Determination document/report on the public website, your statement supports our concerns that horses who have historically resided outside your territory boundaries do in-fact still live outside the territory. The mystery as to why they are not using the territory is solved by acknowledging the fact that they never have. Most of the herd has lived, and continue to live outside of the territory that was drawn on a map by FS in 1973 when the territory was established. Which is why we believe that the boundaries must be redrawn to include the historic lands used by the herd as the 1971 law mandated. Then there would be no need to remove horses because there is adequate forage to sustain the existing herd. We recommend that the boundaries be redrawn and the AML be recalculated to include the additional acreage that is and always has been utilized by this herd.

Additionally the horses do not use almost the entire  $\frac{2}{3}$ 's of the northern portion of the territory mostly because of the fences and often closed gates that would allow them access. Plus as you note there is a migration during different seasons due to snow pack in higher elevations which would push the horses further from your desired area. This is akin to the government pushing the Indigenous people onto the least desirable lands, and then not providing what was necessary for them to survive. The same is being done here by this attempt to push the horses onto a smaller, less desirable piece of land, and not necessarily one where they have the desired forage or water sources they have used for the past 50 years and more outside the boundaries you want to use to manage them.

Additionally you state that further monitoring needs to be done. You have had 50 years since the passage of the Wild Free-Roaming Horses and Burros Act to do this monitoring and you have not done your due diligence. This is a dereliction of duty and the only management thus far has been to remove, through illegal deals with individuals to gather and sell wild horses, turn your head to thefts and shootings of the wild horses and now establish a boundary and AML that do not represent the whole herd and their real territory.

On page 6 of the Wild Horse Report you state *“As the size of the herd comes into alignment with the available resources, the decreased competition for water, forage, cover and space would reduce stress and promote healthier animals.”*

Earlier in this report you stated that the 2019 observations of the herd found horses to be in good to excellent condition with only 2 individuals that were in fair condition. Additionally there is no documented competition for forage or water and no stress for competition of those resources. You stated the forage and water were adequate so why would there be and then how would it improve by reduction of population by 75%? These statements are contradictory.

Page 8 of the Wild Horse report states:

*“In territories where there is an ongoing influx of breeding animals from other areas, such as this territory, contraception is not expected to cause an unacceptable loss of genetic diversity or an unacceptable increase in the inbreeding coefficient.”*

You need to provide proof that there is an ongoing influx of breeding animals from other areas to the Heber herd because we have not seen or documented such an influx in the 9 years Mr. Sanchez has been documenting the herd. There has been the occasional mare let loose in the forest to be bred by wild stallions and then recaptured. But you need to provide proof that this influx is happening. And what attempts are you making to stop this illegal release of other horses onto the Forest? We do admit and have observed horses going back and forth from the reservation, but those horses, as the court stated are indistinguishable from the horses on the forest, therefore were and remain part of the Heber wild horse herd, not an influx.

You go on to state that reference *“1931 Wright”* supported that a large breeding population is necessary and that the proposed AML would not be considered a large breeding population per Wright. You go on to state that this undocumented, unverified influx would correct that. However, allowing an influx of outside horses that is not done by the FS is illegal. Additionally the NAS Report stated that the actual minimum number for a breeding population of horses is closer to 5,000 animals. BLM had a geneticist Gus Cothran who stated that a minimum breeding population should be at least 150 - 200 horses. And because the NAS report said BLM should manage the national herd as one metapopulation and translocate horses as needed for genetics, BLM started the practice of translocation. In many administrative appeals we have pointed out how this method of genetic management has resulted in severe inbreeding, (See affidavit of Dr. Lester Friedlander, DVM, attached) We also noted that many of the horses euthanized during gathers were not listed as a death due to the gather itself in final paperwork because the cause of euthanasia was listed as a pre-existing condition which Dr. Friedlander



points out could not be pre-existing conditions, and were either a direct result of the gather, or of inbreeding.

Additionally you state that if this influx does not happen the FS would introduce new animals as needed from other herds which we have 2 issues with. Number 1 is that it goes against your FS policy found in FSM 2263.11 ***“Selective removal of excess animals or relocation of superior animals from other territories to improve gene pool is prohibited.”***

And Number 2 we believe that the Heber herd has special and unique genetics. Since you acknowledge that there has been no DNA done for this herd (Wild Horse Report pg. 9) you must do this before you reduce the herd by 75% and then cannot introduce horses of the same unique genetic markers. If you do not and you introduce outside horses you will be watering down this gene pool with horses that are, as you state *“consistent with admixtures from domestic breeds.”*

Also on page 9 of the Wild Horse Report you state *“At this point, there are no studies available from which one could make conclusions about the long-term effects of sustained and widespread immunocontraception treatments on population-wide immune function.”* Just taking a look at Assateague for 30 years, this statement is an odd path to go down and seems to have plenty of information available to have been studied if this is a valid concern. It seems that the statistics from the Assateague herd, where mares live an average 9 years longer, less foal mortality and healthier overall horses would indicate that the immune function is improved. It certainly seems to be healthier than horses dying from being shot.<sup>2</sup> However, this is an interesting scientific question but nothing that is relevant to the management of these horses when you are looking at shootings, and giving other contraceptives that are hormonal, and have not specifically declined the use of surgical sterilization of mares. Right now humans are taking an immunocontraceptive vaccine for COVID-19 that does not have information on long-term immune function. PZP joint report to Congress in 1995, by BLM and FS, stated that PZP worked and with high efficacy. If this had been implemented by both agencies at that time this data would be available, so there has to be a starting point for use.

Your population management plans also include the possibility of adjusting the sex ratio. Making adjustments that change what the natural ratio is changes the overall herd dynamics. You acknowledge that it could increase male fighting. It can also skew the natural genetic drift by forcing human influenced breeding through removal of or increase of the male genetics that may contribute to the gene pool via natural selection. You state on page 19 of the Wild Horse Report that adjusting the sex ratio aggressively could “result in males of higher genetic quality becoming breeding stallions.” ‘Could’ is a big word when analyzing scientifically. It also ‘could’ cause males of lesser genetic quality to be the ones left on the territory to become breeding stallions. Where are the scientific studies provided on this conjectural statement?

Wild Horse Report - Herd Dynamics, page 10

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<sup>2</sup> <https://www.sccpzp.org/wp-content/uploads/PZP-QA-June-6-2012.pdf>

You state managing the horse at the proposed AML would make sure the population doesn't exceed resources available. Again we want to remind you that you also made the statement that with the number of horses that are out there currently there is ample forage and water.

You go on to say "The density of horses would be reduced, and thus, competition for resources would be reduced, allowing horses to utilize preferred, quality habitat. Confrontations between stallions would become less frequent, as would fighting among bands at water sources." The Forest Service has provided no proof that fighting or competition is happening now and our people on the ground, primarily but not limited to Mr. Sanchez have all stated that there is no fighting now. The only skirmishes that happen are stallions defending or fighting for mares which is their natural behavior.

Also it is well known and documented that wild horse bands will take turns going to a water source. One band will go to the water source and drink as another will stand back a way and wait their turn. Once the first band is done and moves off the next band will come down and drink.

Additionally we documented during our water hauling efforts in the Heber Wild Horse Territory and surrounding areas that elk and wild horses would drink from our tanks at the same time. And cattle who linger for long periods in and around water sources where horses want to go and drink are not moved out by the horses. The horses will instead move in to drink slowly, a few steps at a time and will drink while cattle are still there. If a skirmish does occur between wildlife and wild horses or cattle and wild horses it is more likely to be because someone is defending a female or baby that they feel is threatened. But again in the Heber area we have documented these species all drinking together.

Your reports spoke of the problems for pronghorn. To our knowledge and observations there are no pronghorns in or near the Heber Wild Horse Territory. However, our observations of those animals with wild horses in other places in Utah and Oregon have been that pronghorn do not need as much water from a water source because they get much more of the water they need from plants consumed, plus they are simply smaller in stature and their water requirements are much less than that of larger vertebrae such as wild horses, elk, and cattle. However, once again we have seen them drinking with the horse bands at water sources even during the recent past years of drought.

Wild Horse Report page 10 You make these comments:

" using a passive gather technique may result in more impacts to herd dynamics by the separation of members of individual bands. But there is some question about how detrimental it is to separate a band member. We know wild horse bands form complex social structures, but this structure is often unstable"

"The remaining horses not captured would maintain their social structure and herd demographics (age and sex ratios). No observable effects to the remaining population



associated with the gather impacts would be expected except a heightened shyness toward human contact.”

The last paragraph on page 10 talks about the effects of helicopter gathers in comparison to passive gathers. You state they would be similar when examining overall herd dynamics.

Both of these conjectural assumptions do not account for the scientific fact that the horses are sentient and will go through a mourning process. Bands that are chased will get separated, and will have to be reestablished thus causing fighting between stallions as they fight to get mares for their bands. Foals get orphaned and may die, or may have bands who fight to adopt that foal. Both options cause harm to the overall herd dynamics and to minimize this without providing any scientific references or even FS documentation of other herds who were gathered passively or with helicopters is negligent in this NEPA process.

You state on page 12 of the Wild Horse Report that the BLM statistics for death regarding wild horse gathers is 0.5% to 1%. We have refuted that claim and just by compiling their daily reports after gathers have proved that statement to be false. (See Affidavit of Dr. Lester Friedlander attached) Many deaths are not documented, especially for horses who are not captured but who may have been injured and end up dying on the range. And as we stated above BLM will list horse deaths as pre-existing conditions and not a result of the capture itself therefore skewing the statistics because these horses survived prior to the gather, sometimes into their 20's with those 'pre-existing' conditions and would not have been killed if not for the gather. So the statistics BLM gives for a gather are incorrect and often objective in nature as pointed out in both the Friedlander affidavit attached to this section and others from Dr. Friedlander on helicopter gathers attached to the EA evaluation comment section.

You also state on page 12 of the Wild Horse Report that gathers may be done at any time of the year and will continue until desired AML is achieved. You do not explain how you will meet the mandate for the public to be able to observe these gathers, the transport of the horses etc. In the same paragraph you state that bait trapping would not harm mares or foals. This is not true. There was a trap on the forest in previous years where a mare was trapped in it with her nursing foal outside the trap. This happens frequently at trap sites and there have been many incidents where the mare was injured and sometimes died trying to get out of the trap to her foal. Injuries have included broken legs and necks. Again you can refer to BLM and their daily reports and veterinary reports to find these occurrences which are not uncommon.

You also talk about CAWP requirements which are that animals in the trap must be fed and watered twice a day, that animals must be checked every 12 hours. You state on pg 13 you would be checking the traps daily. You do not provide information for how long horses would remain in the traps, or that once horses are in the trap you would adjust by going to the trap site twice daily, or every 12 hours as required. Our concern is that you have a territory with a healthy apex predator population, and you will have their prey in a pen unprotected, or unable to run like they would naturally from predators which could also affect a foal separated from her band. We acknowledge that apex predators do kill wild horses, and we advocate for predators as a form of

population control. However, penning the prey of apex predators without protection is an unfair situation that isn't addressed in this plan proposal.

Wild Horse Report page 14 states that "Buyers must fill out an application and be pre-approved before they may purchase a wild horse. The application specifies that all buyers are not to sell to slaughter buyers or anyone who would sell the animals for commercial processing. As described in the "Adoption" section, after title has been granted to the approved buyer, the horse loses its wild free-roaming status."

The 2 statements made here are contradictory to each other. You state buyers may not sell to anyone who would sell them for commercial purposes (slaughter). Then you state they lose their federal protections, which includes banning them from going to slaughter. We frequently get calls and are tagged on social media posts because wild horses are in kill pens after the adopter or the buyer received the title and took them to auction. Where a kill buyer purchased them for shipping to slaughter. To make the assertion in this document that this does not happen is dishonest.

Wild Horse Report page 18 you state again that reducing the population would ensure horses that are left would be "healthy and vigorous." As we pointed out earlier in these comments, you stated in the beginning, when discussing the 2019 observation of the herd that horses were good to excellent condition with only 2 in fair condition. Considering that there are older horses in the herd that is an extremely good report so removing horses to improve the health and vigor of the horses does not hold water.

Also on page 19 of the Wild Horse Report you discuss effects to individual horses of PZP use and acknowledge that if given a number of consecutive years it could cause sterility. You do NOT state that GonaCon if used can sterilize with one injection. This is creating an unfair bias of the public against PZP use.

Page 20 of the Wild Horse Report discusses the cumulative effects of both alternatives. You state "The proposed appropriate management level considers the need for all grazers within the territory and was proposed at a level that allows for multiple use of the area. Thus, the continuation of livestock grazing at the currently authorized level is not expected to have impacts on the horses or their habitat."

We have discussed above that we feel the horses are not getting equal protections, equal use of what is designated through a federal regulation as their territory. Therefore the proposed AML does not consider all grazers, it proposes to minimize the wild horse population so no changes need to be made to other grazing wildlife or to livestock.

In the Wild Horse Report, Federal Law, Policies and Regulations, pg 22 and 23 we point out that PRIA acknowledged wild horses and an integral part of the natural system where they occur, this is also a mandate of the WFRHBA of 1971, and as you state on pg 22 your own FS policy in FSM 2260 defines your objective as maintaining population in areas they live on the national

forests. The horses have been documented throughout time from as far back as 1930 to present outside the small area you call the boundary of the territory. therefore, as we state throughout you did not make the boundary of the territory where they were and still are today. You acknowledge the laws and regulations require “protection” of the wild horses. This plan does not protect the horses rather it makes a herd that will be forced into a very small area where most of the herd has not and does not live, and also reduces the population to numbers that will not be genetically viable. You have also acknowledged throughout, including the tables on pages 24 and 25 that the goal (and federal mandate) is to manage for a self-sustaining herd, which will not be possible when you have to import horses from other areas for genetic purposes.

Throughout the Wild Horse Report the FS as we have pointed out, has made statements that are contradictory to one another, claims that are conjectural, or statements of fact that do not have scientific or even observed proof of those facts.

Further support for disagreement of your proposed AML, other than the territory boundaries themselves, is this statement you make on page 23 of the Wild Horse Report:

“If the horse population continues to grow as expected, there is the potential for a loss of livestock grazing as utilization levels increase and rangeland plant communities degrade. There would be no thriving natural ecological balance”

This statement makes clear that the degradation of plant communities, or loss of livestock grazing or decline in thriving natural ecological balance would occur POTENTIALLY and IF the current horse population grows. NOT that it is occurring now at the current population levels. Therefore, this should be the AML proposed not a 75% reduction.

Finally in evaluating and commenting on the Wild Horse Report we conclude that the need for an EIS has been met. We believe that the proposed management plan meets and exceeds significance tests 1 and 2.

There will be a significant effect to the overall genetic health of the herd, to the ecosystem which we address in our discussion of trophic cascade, and to the human environment who enjoy, document and observe this herd. These effects are not singular but will be cumulative. This proposed plan is a path to alter the unique genetics of the herd, move the horses away from areas where people have photographed, camped by and enjoyed them for nearly a century as documented through time.<sup>3</sup>

Thus we request that the FS do the required EIS because an EA does not meet the requirements per 40 CFR § 1508.27.

### **Horse Report Literature Cited**

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<sup>3</sup> <https://babel.hathitrust.org/cgi/pt?id=osu.32435077537389&view=1up&seq=319&q1=wild%20horses>  
<http://archive.library.nau.edu/digital/collection/cpa/id/21163/>

Based on references provided in part (see sample below), this can hardly be considered sufficient information for the public. It is not even a complete abstract regarding a study that was done 11 years or more ago and it doesn't include any final analysis. It includes information from the last year of the study, and only partial information. It does not include the entire report in any case. Based on this partial abstract or 'report' all we can say is that GonaCon has a low efficacy relative to PZP with, we guess, only one shot without a booster. We don't know if it can be darted on the range because this was done by helicopter roundup. We didn't get any of the behavioral information, limited though it might have been, and likely impacted by helicopter roundup and captivity, because we only got a portion of the abstract and again none of the paper. This cannot be considered reasonably accessible references that were cited in these NEPA documents.

became pregnant. The records prior to treatment showed that in 24 doe-years, 34 fawns were born (1.4 fawns/doe-year). In contrast, during 54 doe-years posttreatment with SpayVac®, only one fawn was born (0.019 fawns/doe-year). SpayVac has also been proven to provide multi-year efficacy with a single dose in Fallow Deer (*Dama dama*), White-tailed Deer (*Odocoileus virginianus*), horses (*Equus caballus*), and Gray Seals (*Halichoerus grypus*).

#### Field Evaluation of the Immunoconceptive, GonaCon-B, in Free-ranging Horses (*Equus caballus*) at Theodore Roosevelt National Park

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Unchecked free-ranging horse populations can have adverse effects on native plant communities and ecosystem processes, and may lead to conflict regarding appropriate resource allocation between sympatric grazing ungulate species. In response, many land management agencies have reduced free-ranging horse populations through periodic roundups and adoption or sale of excess animals. These methods are time and resource intensive, and can result in injuries to animals and humans. Consequently, more efficient, effective, and humane approaches are desired. One alternative is controlling the fertility of female horses through immunocontraception. We are currently in the final year of a 3-year study at Theodore Roosevelt National Park (ND) to evaluate the effects of the gonadotropin-releasing hormone vaccine, GonaCon-B, on fertility, behavior, and injection site reactions in female horses. In October 2009, park horses were captured via helicopter round-up. All mature mares and band sires were retained to avoid disrupting existing herd dynamics, whereas foals, yearlings, and most satellite males were removed. Mares were blocked according to age and pregnancy status and randomly assigned to a treatment ( $n = 29$ ; 2.0 ml GonaCon-B) or control ( $n = 28$ , 2.0 ml 0.9% NaCl) group. During March and July 2010 there was no difference between treatment groups in the number of foals observed with mares ( $P = 0.65$ ). During the same time period in 2011 treated mares were three times less likely to have a foal by side than control mares (odds ratio 0.11–1.01, 95% CI). Estimated foaling rate in 2011 was higher ( $P = 0.04$ ) in control mares (0.74, 0.56–0.88) than treatment mares (0.48, 0.31–0.66). Between 25 and 280 days posttreatment nearly 80% of treated mares had visible swelling at the site of injection and a purulent draining abscess was observed in one animal. By 380 days posttreatment approximately half of these swellings were no longer visually detectable. No treatment effects were observed on mare activity

budgets, and sociosexual behavior data are currently being analyzed. Our preliminary examination of the data indicate that vaccination with GonaCon-B during gestation does not affect foaling success, decreases fertility for one year posttreatment, is associated with injection site swelling, and does not affect general activity budgets in free-ranging female horses.

#### Effects of Gonadotropin-releasing Hormone Vaccination (GonaCon-B) on Fertility in Free-ranging Female Rocky Mountain Elk (*Cervus elaphus nelsoni*)

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Fertility control is one method, among a suite of management tools, which may assist in mitigating conflicts associated with locally overabundant wildlife. Rocky Mountain elk (*Cervus elaphus nelsoni*) are resilient, adaptable cervids that can have ecological as well as socio-political impacts on the coupled human-natural environment. We evaluated the safety and efficacy of the gonadotropin-releasing hormone vaccine, GonaCon-B, in free-ranging elk. In January 2008, 120 mature (>2 yr) female elk were captured in Rocky Mountain National Park (CO) and randomly assigned to treatment ( $n = 60$ ; 1.5 ml GonaCon-B) or control ( $n = 60$ ; 1.5 ml 0.9% NaCl) groups. All injections were given with hand-held syringes in the biceps muscle. Location of the injection was recorded in reference to anatomic landmarks. Transrectal palpation and pregnancy specific protein B analyses were used to diagnose pregnancy at the time of application. During the following three winters females were recaptured and euthanized in conjunction with park management culling operations (2009,  $n = 20$ ; 2010,  $n = 25$ ; 2011,  $n = 34$ ). At necropsy pregnancy status was determined. Tissues were collected and preserved from organs associated with the hypothalamic-pituitary-gonadal (HPG) axis. Injection sites were relocated, muscle tissue collected, and microbial culture performed when gross evidence of inflammation was present. There were no differences in pregnancy rates between groups at the time of treatment ( $P = 0.558$ ). In the following three years saline administered control females ( $n = 36$ ) had a mean pregnancy rate of 0.83 (0.71 - 0.95, 95% CI). Pregnancy rate in the treatment group was 0.0 (0.0 - 0.22,  $P = 0.0001$ ) year one, 0.33 (0.12 - 0.61,  $P = 0.05$ ) year two, and 0.65 (0.43 - 0.83,  $P = 0.17$ ) year three. Study animals showed no evidence of lameness or external swelling at the injection site prior to euthanasia; however, at the time of necropsy all females in the treatment group had pyogranulomatous inflammation at the site of injection.

In the next reference provided (see below) there is only a partial abstract provided.



## **Gonadotropin Releasing Hormone Vaccine (GonaCon-Equine) Suppresses Fertility in Free-Ranging Horses (*Equus caballus*): Limitations and Side Effects of Treatment**

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In many areas of the western United States, overabundant and rapidly expanding feral horse (*Equus caballus*) populations pose a significant challenge for natural resource managers. There is wide-spread concern that unregulated feral horse populations are severely altering or degrading native plant communities. Controlling the fertility of female horses offers a potential strategy for limiting the growth of overabundant populations.

We evaluated the long-term effectiveness of GonaCon-Equine vaccine both as primary immunization and subsequent reimmunization four years later to suppress fertility in free-ranging female horses at Theodore Roosevelt National Park, North Dakota. In the fall of 2009, horses were gathered via helicopter and 57 adult mares were randomly assigned to either a treatment (n = 29; 2.0 mg GnRH conjugate + adjuvant; 2.0 mL) or control (n = 28; 2.0 ml 0.9% saline) group. Females in both groups received an intramuscular injection in the gluteal musculature by hand-injection. Four years later, in 2013, horses were similarly gathered and revaccinated with the same doses. We determined the effectiveness, duration, and reversibility of vaccination with GonaCon on reproduction by comparing foaling rates of treated and control mares during 1 March to 31 December, 2009-2016. In conjunction with foaling observations, we also evaluated potential side effects of GonaCon on pregnancy, neonatal health and survival, injection site reactions, daily activity patterns and socio-sexual behaviors.

Foaling proportions in GonaCon-vaccinated mares, following the primary vaccination were lower than for control mares for the second (2011) (44.8% (13/29) vs 70.3% (19/27) ( $P = 0.047$ ) and third (2012) (53.6% (15/28) vs 77.8% (21/27) ( $P = 0.053$ ) post-treatment foaling seasons but were absent the fourth (2013) (73.1% (19/26) vs 69.2% (18/26) ( $P = 0.50$ ) post-treatment season, demonstrating reversibility of the vaccine. However, the effectiveness of a single immunization, measured as the percent decrease in foaling when compared with control mares, was low to modest; estimated at 36.3% and 31.1%, in years 2 and 3, respectively. In contrast, revaccination with GonaCon, four years post-primary treatment was 100% (0/25) effective in suppressing fertility, whereas mean foaling rate of control mares was 84% (21/25) (95% CI = 65.3-93.6%) in 2015 and 2016. The effectiveness of revaccination persisted, although slightly diminished, during the second year (2016) at 80.9% (16% (4/25) foaling rate; 95% CI = 6.4-34.6).

With the exception of non-debilitating inflammation at the vaccine injection site, no other adverse effects were observed. These data indicate that GonaCon-Equine can be effective in suppressing fertility in free-ranging horses when both a primary immunization and booster are administered. Ongoing research will inform the optimum revaccination schedule for effective contraception.