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Comments: These comments on the Heber Wild Horse Territory Plan, (#18916), are submitted on behalf of the American Wild Horse Campaign ("AWHC") and the Salt River Wild Horse Management Group ("SRWHMG"), collectively "the Groups."

AWHC is a national nonprofit organization dedicated to preserving the American wild horse in viable free-roaming herds for generations to come, as part of our national heritage. Our grassroots efforts are supported by a coalition of over 60 historic preservation, conservation, horse advocacy and animal welfare organizations.

SRWHMG is an Arizona 501(c)3 organization dedicated to the preservation and humane management of the Salt River wild horses. SRWHMG is currently under contract with the Arizona Department of Agriculture ("AZDA") and works in partnership with the Tonto National Forest. SRWHMG receives funding and support solely from the public and charges the government zero dollars for their programs, including the highly successful PZP fertility control program.

I. Overview

These comments are submitted pursuant to the National Environmental Policy Act ("NEPA"), 42 USC 4321-4370h and the Council on Environmental Quality's regulations that implement NEPA, 40 CFR 1500.1-1508.28.

The Heber Wild Horse Territory ("WHT" or "Heber Territory") is made up of 19,700 acres of public lands in Arizona. The US Forest Service ("USFS" or "Forest Service") estimated that there are roughly 22-51 wild horses currently within the WHT and approximately 270-420 wild horses outside of the WHT. The "Appropriate Management Level ("AM") is set for 50-104 wild horses within the WHT. However, the Environmental Analysis ("EA") fails to adequately consider increasing the AML, even while it admits the majority of the comments from the public asked for an increase of the AML. To hypothetically achieve the low AML, the USFS would have to permanently remove all the wild horses outside the WHT, which, while not specified in the EA, reaches far and wide all across northern Arizona where pockets of wild horses remain, all while livestock grazing is still allowed in the WHT and outside of it.

The EA also fails to consider humane, in the field management of this popular herd before removals. Instead of costly large-scale removals USFS has to consider fertility control management before wild horses are removed. Removals cannot be viewed as "management," but should rather be seen as simply a stop gap measure when there has been an absence or lack of proper management. Actual on range wild horse management is designed to stabilize the population and prevent the need for removals altogether. This herd is of the size that it can still be managed, even at the current level, using PZP fertility control to reduce population growth rates and population size, over time. As the EA notes, the PZP vaccine is a scientifically proven and cost-effective approach for reducing wild horse population growth rates and numbers over time. It is widely supported by mainstream humane and wild horse protection organizations. However, the vaccine must be used on a sufficient scale to impact population growth rates. (NAS Report, p. 99-112)

As such, and as described in more detail below, it is the Groups' position that the USFS:

- Revisit and seriously consider increasing the AML and instead provide for a range that will give wild horses their fair share of public rangelands. At the very least, the EA must account for the use of a comprehensive PZP program before removal, and thus the absence of a need to achieve the low AML; meaning, that if removals occur, they should be incremental, over time, and only when absolutely necessary. Horses should then be

offered for adoption to the Arizona public in pairs instead of adding to the already full off-range holding facilities.

- Adequately consider how reducing the population to a detrimental population number, just to let them grow again to 104, is not acceptable when viable and humane birth control is a simple and cost-effective option. The USFS must consider the high AML to be a population number applied with a goal of reducing the population growth over time, through birth control. Said another way, if the AML is 104, then the starting AML should be 200 in order to humanely reduce to 104 over time.

- Adequately consider how the current plan, to reduce the population so detrimentally just to have to add mares from outside the Territory for genetic viability concerns, is not acceptable when the original, and historically important, Heber mares should simply be retained but instead have fewer or no foals, through the implementation of a comprehensive fertility control program, until the population reaches desirable levels.

- Adequately consider the immediate start of a robust PZP program to manage the wild horses on the range. A real concerted effort should be put into documenting each band and the migrating patterns, while accommodating the current wild horse numbers with range improvements, fence removal (and boundary adjustment), cattle reductions, and water source improvements. USFS should certify volunteers and personnel immediately to dart PZP, in order to ensure that every mare is darted before giving birth to this year's foal. This way, each mare will not have a foal next year, and every foal not born in the future is one less horse for the USFS to remove in the future. Such a plan would lead to less cost to taxpayers and a more sustainable management for the foreseeable future.

- Drop consideration for the use of any alternate form or method of birth control, other than native PZP. IUDs in mares as a form of fertility control is an unproven and dangerous method of birth control, and sex ratio skewing is even worse for the wellbeing of the horses.

- Consider productive working relationships with Non-Governmental Organizations, including establishing public-private partnerships to implement the fertility control program and prevent future removals.

In short, the Groups strongly encourage the USFS to begin immediate implementation of a comprehensive PZP vaccine-based fertility control program for the WHT and to abandon any plan for the use of mass roundups, which are not supported by the majority of the public. As further articulated below, in the final EA USFS should engage in a meaningful analysis of the effects of, and reasonable alternatives to, the permanent removal of wild horses from the WHT.

I. LEGAL BACKGROUND

A. NEPA

Congress enacted the National Environmental Policy Act ("NEPA") more than four decades ago "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment[hellip]" 42 USC 4321. In light of this mandate, the Supreme Court has found that NEPA is "intended to reduce or eliminate environmental damage and to promote 'the understanding of the ecological systems and natural resources to' the United States." Dep't of Transp. V. Pub. Citizen, 541 US 752, 756 (2004) (quoting 42 USC 4321). NEPA is intended to "ensure [] that [federal agencies][hellip] will carefully consider, detailed information concerning significant environmental impacts" and "also guarantees that the relevant information will be made available to the larger [public] audience." Robertson v. Methow Valley Citizens Council, 490 US 332, 349 (1989).

In NEPA's implementing regulations, there are two specific mechanisms whereby federal agencies must evaluate the environmental and related impacts of a particular federal action - an EA and an EIS. See 42 USC 4332(c).

These procedural mechanisms are designed to inject environmental considerations "in the agency decisionmaking process itself," and to "help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." Pub. Citizen, 541 US at 768-69 (emphasis added) (quoting 40 CFR 1500.1 (c)). Therefore, "NEPA's core focus [is] on improving agency decisionmaking." Pub. Citizen, 541 US at 769 n.2, and specifically on ensuring that agencies take a "hard look" at potential environmental impacts and environmentally enhancing alternatives " as part of the agency's process of deciding whether to pursue a particular federal action." Baltimore Gas and Elec. Co. v. Natural Res. Def. Council, 462 US 87, 100 (1983). The alternatives analysis "is the heart" of the NEPA process. 40 CFR 1502.14. NEPA's implementing regulations require that the decisionmaking agency "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." Id. Importantly, the NEPA process "shall serve as the means of assessing the environmental impact of the proposed agency actions, rather than justifying decisions already made." 40 CFR 1502.2(g) (emphasis added); see also id. 1502.5 (requiring that NEPA review "shall be prepared early enough so that it can serve practically as an important contribution for the decisionmaking process and will not be used to rationalize or justify decisions already made") (emphasis added), Forest Guardians v. US Fish and Wildlife, 611 F.3d 692, 712 (10th Cir. 2010) (However, "the comprehensive 'hard look' mandated by Congress and required by [NEPA] must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made." Metcalf v. Daley, 214 F.3d 1135, 1141-42 (9th Cir. 2000)).

B. Wild Free-Roaming Horses and Burros Act

In 1971, Congress enacted the Wild Free-Roaming Horses and Burros Act ("WHA") out of concern that wild horses were "disappearing from the American scene." 16 USC 1331. Declaring that "wild horses are living symbols of the historic and pioneer spirit of the West," and "contribute to the diversity of life forms within that Nation and enrich the lives of the American people," Congress directed that wild horses "shall be protected from capture, branding, harassment, [and] death" and "be considered in the area where presently found, as an integral part of the natural system of the public lands." Id. To implement that mandate, Congress declared that USFS shall "protect and manage wild free-roaming horses and burros as components of the public lands," and provided that "[a]ll management activities shall be at the minimal feasible level." 16 USC 1333(a)

II. FACTUAL BACKGROUND

On March 23, 2021, the USFS released the Heber Wild Horse Territory Plan for public comment. This EA's management plan for the WHT includes analysis for two alternatives:

- Alternative 1: Proposed Action - Appropriate Management Level, Population Control Techniques, Adaptive Management, and Criteria for Best Management Practices

- Alternative 2: No Action

AWHC and SRWHMG provided comments during the scoping period, incorporated by reference and attached at Attachments 1 and 2. Additionally, both SRWHMG and AWHC applied, and were interviewed, for the Heber wild horse collaborative meetings that took place in 2018, but both groups were denied participation. We believe our expertise in actively studying and managing wild horses humanely in the field, as well as the input of our collective one million members and followers, should have been considered long before this comment period. Our position is that there are better ways to manage wild horses, ways that are far less expensive and more humane than removals. Our humane management proposals are also strongly supported by the public. Arizona legislators, and the Governor of Arizona.

III. DISCUSSION

A. The USFS Must Adequately Analyze Impacts of the Proposed Action

1. Fertility Control Vaccines

a. Implement the exclusive use of the PZP vaccine

The Groups support the USFS's consideration of PZP to manage wild horses in the WHT. Instead of implementing a proposed action that focuses on roundups and removals, the Groups argue that the USFS must humanely manage wild horses through a focus on the application of PZP. Thus, the focus of USFS's proposed action must pivot to implementing a vigorous PZP program at current population levels, darting mares in the field through documentation or utilizing Catch Treat and Release ("CTR") methods, for the vaccination of all mares over 11 months of age with the PZP-22 or native PZP fertility control vaccine. This approach would reduce population growth rates and population numbers over time, maintain herd social structures, and ultimately save taxpayers' money. It is also consistent with the USFS's legal requirement under the WHA to manage wild horse herds at the minimal feasible level.

The use of PZP fertility control is scientifically established, cost-effective, and widely accepted in the mainstream wild horse advocacy and scientific communities. See "Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward," National Academy of Sciences, p. 99-112, June 2013 ("NAS Report"). Thus, the USFS must analyze PZP in line with the National Academy of Sciences ("NAS") findings that:

Removals are likely to keep the population at a size that maximizes population growth rate, which in turn maximizes the number of animals that must be removed and processed through holding facilities.

And

The most promising fertility-control methods for application to free-ranging horses or burros are [] PZP vaccines, GonaConTM vaccine [for females] and chemical vasectomy [for males].

This conclusion is based on criteria such as delivery method, availability, efficacy, duration of effect, and potential for side effects. Of the recommended fertility control alternatives, the NAS concluded that the only method available for use now, without further research, is the PZP birth control vaccine. (NAS Report, pgs 81 and 6).

Ongoing research supports the warning in the 2013 NAS report that the continuing practice of roundup and removals is "expensive and unproductive." By using PZP fertility control, and reducing and eventually eliminating removals, the cost savings for USFS will be substantial. So the USFS must also analyze and explain why the agency has failed to utilize PZP in a manner and at a level that will impact population rates in the WHT.

Ultimately, the use of PZP within the WHT is the most economical and humane option for the USFS. This approach will also preserve the natural behaviors that distinguish wild-free roaming horses from domestic horses and stabilize populations within the WHT. Thus, is should not only be used after removals, but the USFS should start implementing PZP immediately and before any removals take place in the WHT.

b. Reject the use of GonaCon as a fertility control vaccine.

The Groups ask that any and all birth control that is not native PZP be eliminated from consideration, including the use of GonaCon in the Heber Territory. Currently, GonaCon is an experimental fertility control vaccine that interferes with the production of reproductive hormones, which drive natural behaviors in wild horses. Before the agency moves forward with this method the Groups ask that the USFS add to its analysis and state that not much is known about the long-term safety, efficacy, and impacts to wild horse behaviors and natural social

behaviors, which are the differentiating factors for these federally protected animals.

In fact, the peer-reviewed article on the ongoing GonaCon study in the Theodore Roosevelt National Park, emphasizes that research on the use of GonaCon as a form of fertility control for wild horses is in its nascent stage and therefore limited. The study was only conducted on a handful of mares and even so it showed that the mares still acted like cycling mares - further demonstrating that more research on the effects to wild and free-roaming behaviors of the mares is necessary before this vaccine would be appropriate for broad use as a management tool. Of note, records AWHC received via a Freedom of Information Act request showed that the Bureau of Land Management's ("BLM") Research Coordinator, Paul Griffin, reported that the use of GonaCon in the Park was showing "less than favorable results[hellip] when compared with hand injection" and that the reasons "were unknown;" further securing how little is actually definitely known about GonaCon. (Attachment 3).

The NAS specifically noted that:

Preserving natural behaviors is important, so GonaCon seems [emphasis] more appropriate for use in females in that some research has suggested [emphasis] that female sexual behavior continues. However, further studies on behavior effects of this product are needed. (NAS Report, p. 7)

It is clear that the NAS thought GonaCon required further study. This experimental fertility control drug is not currently appropriate for widespread implementation as a management tool and should be dropped from consideration. AWHC has addressed this issue previously in a September 2015 letter to the BLM regarding the use of GonaCon in the "Water Canyon" project in the Antelope Herd Management Area ("HMA") in Nevada. We incorporate by reference all the information contained in that letter, which is included at Attachment 4.

In short, because published research on GonaCon in horses is limited, there are remaining questions regarding native impacts to pregnant mares (including association with abortion when given in early stages of pregnancy), long-term physiological effects, and whether the vaccine is a permanent sterilant or reversible. Even the short-term social and behavioral effects are not yet established. Thus, this experimental fertility control drug is not appropriate for field use and should be removed from consideration in this proposed analysis.

2. IUDs

The inclusion of IUDs in the proposed alternative is also experimental and therefore the impacts cannot be properly analyzed in the EA because they are unknown. In fact, the USFS has never implemented IUDs in wild, free-roaming horses before. Further, even the BLM has only implemented IUDs to control fertility of wild horses on the range in one HMA, the Swasey HMA in Utah. However, the agency has not released any information about the IUDs implementation, complications, or success in this HMA. Instead, the agency relied on unpublished studies conducted under far different conditions than on range management in order to wrongly justify its approach. Given this, AWHC is concerned that the USFS is following in BLM's footsteps and proposing IUDs for the purpose of some sort of research experiment on wild horses rather than an established management program that will safely, humanely, and effectively control their population in the WHT.

The USFS and BLM have yet to conduct a research project on wild horses in order to study and determine what impacts IUDs will have on wild horse health and behavior. In the Heber WHT, the agency cannot gather scientific information on these untested methods in the absence of an affiliation with an academic institution, a scientifically sound and approved research protocol, and approval from an Institutional Animal Care and Use Committee ("IACUC"). Additionally, the USFS must disclose and identify any IACUC it works with in the WHT.

Therefore, if the USFS were to implement IUDs in the WHT it would be as an experiment. Thus the USFS must remove the use of IUDs from the chosen action or follow the guidance of the federal Office of Research Integrity which states "An institutional animal care and use committee (IACUC) is required by federal regulations for most

institutions that use animals in research, teaching, and testing. The IACUC must approve protocols utilizing animals to ensure that the "animals selected for a procedure should be of an appropriate species and quality and the minimum number required to obtain valid research results."

The IACUC must also ensure the "proper use of animals, including the avoidance or minimization of discomfort, distress, and pain when consistent with sound scientific practices." Because the EA proposed to implement IUDs even though the management method has not yet been studied in wild horses, there is a strong likelihood that an IACUC could impose changes to the proposed action. At the very least, when the USFS abandons this management decision and instead pursues a study, an IACUC will insist on clearly articulated protocols for the implementation and study of IUDs in wild mares of the WHT.

Until USFS acknowledges that by utilizing IUDs the proposed action is simply a thinly disguised, and poorly composed, research experiment, takes action to implement an experiment only as part of a well-designed, rigorously-controlled and documented scientific study conducted in conjunction with a reputable scientific institution, and then receives IACUC approval from that institution, it cannot accurately describe the proposed action or analyze its true impacts.

Finally, on July 13, 2020, AWHC sent BLM a letter explaining its concerns with the BLM's push to implement IUDs in various HMAs across the West. In short, the letter explained the various issues with the BLM's intentions and requested that the BLM revise its plans in recent and pending NEPA actions to reflect the lack of scientific data on the use of IUDs and their unknown impacts on wild horses, as well as questions raised about those impacts. Further, AWHC asked that any use of IUDs that takes place on wild horse herds under the BLMs jurisdiction be implemented only as part of a well-designed, rigorously-controlled and documented scientific study conducted in conjunction with a reputable scientific organization or institution. This letter is incorporated by reference and attached at Attachment 5 for its relevance to this USFS proposed action.

For all these reasons the implementation of IUDs as a management tool must be dropped from consideration for implementation in the WHT. However, if the USFS chooses tomove forward with the implementation of IUDs as a management tool in the WHT, then the agency must develop clear, precise, and humane protocols. Without clear protocols for use, neither the agency nor the public can begin to properly analyze and consider the use of IUDs on the wild mares in the WHT, and without these additions, the EA is considered incomplete.

3. Mass Roundup and Remove to Such a Low AML

For scientific, economic and social response, this plan to reduce the wild horse population in the WHT to such a low AML of 50-104 wild horses should be eliminated from consideration. Achieving this AML would result in the removal of hundreds of wild horses, a remaining density of one horse on roughly every 394 acres at low AML and reduce the population to an unnaturally low population size that the NAS warned maximizes population growth rate. (NAS Report). As such, if this roundup option is retained in the final EA, it is essential the USFS, at minimum, further analyze the following:

- Impacts of drastic reduction of population size on population growth rate;

- Impacts of drastic population reduction on genetic health of the populations within the WHT (beyond, and in addition to, the now dated 2012 work of Cothran);

- Direct impacts of helicopter drive trapping to the environment and the horses when/if used and

- Economic and welfare concerns related to increasing the off-range holding population of wild horses.

In short, if the USFS receives authorization to move forward with the roundup and removal of more wild horses in

this action, the agency must justify how that decision is in line with the requirements of the WHA that the USFS to manage wild horses at the minimum feasible lebel when it's clear that the proposed action will continue the business-as-usual approach of "management" by removal and stockpiling more wild horses in off-range holding facilities.

4. Economic and Social Impacts

According to the Council on Environmental Quality, under NEPA, "agencies are required to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions." The USFS and BLM are facing an escalating fiscal crisis off-the-range as a result of the mass removal of wild horses from the range and the stockpiling of captured mustangs in government holding facilities. The proposed roundup and removal will add wild horses to taxpayer-funded holding facilities. Instead, a comprehensive field-darting fertility control program will save the agency, and taxpayers, money while managing the hoses humanely.

For example, AWHC operates the largest humane management program for wild horses in the world by managing 3,000 mustangs on 300,000 acres of land in a cooperative with the state of Nevada. With a team of two dozen volunteers and a budget of $182,000, the program vaccinated more wild mares with fertility control than either the USFS or BLM did with their multi-million-dollar program budgets. Fertility control is feasible and will work to stop population growth if used appropriately. It is also extremely cost-effective compared to roundups, removals, and stockpiling. IN the first year of the program, AWHC darted 958 mares(1) with PZP fertility control and as such prevented the birth of an estimated 690 new foals(2). If those 690 foals had been born, the USFS's cost to round them up would have been approximately $690,000. Then, the lifetime holding costs for those 690 horses would have been approximately $34,500.000. Thus, it is clear that a field darting program can lead to substantial savings. In this case, the savings equates to roughly $35,200,000.

Further, in Arizona, the SRWHMG operates a similar fertility control program on the Salt River wild horses who live on the Tonto National Forest. Under contract with the AZDA, SRWHMG has darted over 750 treatments in the field without capture, on 220 mares. In 2019, before PZP, the Salt River wild horses had 109 foals. In 2020 the first year of results, the horses had just 16 foals. This year, 2021, the herd has had just one foal born so far and fewer than 5 are expected for the entire year. Importantly, the foals born in 2020 were out of mares who did not receive their primer and booster in time before they birthed the previous year's foal. Every mare that did receive the primer and booster in time did not conceive the following year. This is an unprecedented 100% efficacy rate of PZP. Importantly, this program is carried out by SRWHMG at no cost to the AZDA or Forest Service. The enormous success of this program also recently drew media attention and carries continuous huge public support. Governor Doug Ducey even mentioned the cost savings and humane management of the Salt River wild horses as one of his greatest accomplishments of 2017. The Arizona public loves and cherishes their wild horses. The Heber Territory is the last territory left in Arizona managed by the Forest Service and as such the Forest Service should take the responsibility for actual humane and sustainable management seriously.

The EA must consider the social preference of American taxpayers, 80 percent of whom want wild horses protected and managed humanely on public lands. (Attachment 6). IN fact, there is currently interest among members of Congress to require that humane, fertility control vaccine programs be implemented in areas across the West. Thus, the option to implement vaccine-based fertility control before, and perhaps in place of a roundup and removal action, is not only cost-effective but also in line with the wishes of the majority of American taxpayers and many members of Congress.

In sum, in this EA USFS should evaluate, in specific terms, how a proposed plan of utilizing a darting fertility control program in the WHT will not only successfully manage wild horse population numbers without perpetual roundups, which are costly to American taxpayers and the horses themselves, but will also decrease unnecessary and wasteful spending of taxpayer funds.

B. The USFS Must Adequately Analyze Alternatives

An agency's duty to consider alternatives to the proposed action has been described as the "heart" of the NEPA process. 40 CFR 1502.14. Agencies are required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 USC 4332(E); see also 42 USC 4332(C)(iii). An EIS must "provide full and fair discussion of significant environmental impacts and[hellip] inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." Klamath-Siskiyou Wildlands Ctr. V. Bureay of Land Mgmt., 387 F.3d 989,993 (9th Cir. 2004) (citing 40 CFR 1502.1). It is essential that an EIS contain "detailed and careful" analysis of the relative merits and demerits of the proposed action and proposed alternatives, as a requirement which courts have characterized as the "linchpin" of an EIS. Natural Resources Defense Council, Inc. v. Callaway, 524 F.2d 79, 92 (2d Cir. 1975) (quoting Monroe Cnty Conservation Soc'y, Inc. v. Volpe, 472 F2d 693, 697-98 (2d Cir. 1972)).

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"The purpose of NEPA's alternatives requirements is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." Envtl. Defense Fund, Inc. v. US Army Corps of Engrs., 492 F.2d 1123, 1135 (5th Cir. 1974). That analysis must identify multiple viable alternatives, so that an agency can make "a real, informed choice" from the spectrum of reasonable options. Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024, 1039 (9th Cir. 2008).

Federal courts have consistently held that an agency's failure to consider a reasonable alternative is fatal to an agency's NEPA analysis. See, e.g. Muckleshoot Indian Tribe v. US Forest Serv., 177 F.3d 800, 814 (9th Cir. 1999) ("A 'viable but unexamined alternative renders [the] environmental impact statement inadequate.'") (quoting Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985)); Idaho Conserv. League v. Mumma, 956 F.2d 1508, 1519-20 (9th Cir. 1992) ("The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate."). If the action agency rejects an alternative from consideration it must explain why a particular option is not feasible and was therefore eliminated from further consideration. 40 CFR 1502.14(a). The courts will scrutinize this explanation to ensure that the reasons given area adequately supported by the record. See Muckleshoot Indian Tribe, 177 F.3d at 813-15; Idaho Conserv. League v. Mumma 956 F.2d 1508, 1522 (9th Cir. 1992) (while agencies can use criteria to determine which options to fully evaluate, those criteria are subject to judicial review), Citizens for a Better Henderson, 768 F.2d at 1057.

In order to comply with NEPA, the USFS should continue to consider the following alternatives:

1. Bait and Water Traps Without Helicopters

While the Groups appreciate that the USFS has made an effort to prioritize bait trapping methods of removal, we ask that the EA further analyze the exclusive use of bait and water trapping. In the case where this option is used exclusively, it is an important management tool to consider given the sensitive and unique habitat of Forest Service lands. Thus, the USFS must, at the very least, consider the exclusive use of bait and water trapping because, in addition to being a more humane practice, bait and water trapping could be significantly less stressful on the particular environment present in this WHT.

If the use of helicopter roundups is still selected as part of the management plan, the USFS must consider, analyze, and implement humane standards as noted above. (See for example, BLM's Standard Operating Procedures for Wild Horse Gathers) The USFS should amend the EA to include an analysis of existing information available to determine if improvements could be made to reduce potential stress and harm to the horses during roundups. Improvements, to minimize stress and injury to horses during roundups must include the following:

1. Limit the distance horses/burros may be chased by helicopter to no more than 5 miles;

2. Require that the helicopter not chase/move horses at a pace that exceeds the natural rate of movement of the slowest animal in the band. Every effort should be made to keep older, sick and young animals together with their bands as they are moved into the trap. If there are compromised, old, weak, or young animals in a small band - the helicopter should not move or capture those animals; and

3. Establish strict parameters for suspending helicopter roundup operations in temperatures below freezing (32 degrees F) or over 90 degrees F.

Helicopter roundups are known to inflict stress, trauma injury and death on wild horses and collateral damage to sensitive sagebrush, grasslands, and riparian habitat areas and disruption to other wildlife species. Bait and water trapping will minimize stress to the horses, eliminate collateral environmental damage (as horses will not be stampeded through sensitive habitat), and maintain herd social structures. The USFS must analyze how a similar application of bait and water trapping use could be applied in this WHT.

As the USFS is aware, the use of bait and water trapping can be used to greatly reduce the stress of roundup operations and maintain the social structure of bands, thereby reducing stress to the animals and is a minimal feasible management.

2. Adjustments to Livestock Stocking Rates and AML

The USFS has a statutory mandate to protect wild horses, while livestock grazing is permitted only as a discretion. Federal regulation 43 CFR 4710.5 "Closure to livestock grazing" authorizes the USFS to "close appropriate areas of the public lands to grazing use by all or a particular kind of livestock" "[i]f necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury." Livestock grazing is not required to fulfill the agency's "multiple use" mandate.

Therefore, the USFS should pursue analysis of an alternative that considers how the agency could accommodate a larger wild horse population through adjustments to livestock stocking rates with options such as voluntary grazing retirement opportunities. Such options should be explored with permittees in order to determine an equitable means to achieve a fairer allocation of resources for wild horses on USFS public lands.

According to Table 12, and taking into account percentage overlap of the allotments with the WHT, there is

roughly the equivalent of 43 cow/calf pairs utilizing the WHT in both allotments. Specifically, since the most recent allotment management plan for the Black Canyon allotment was implemented in 1998, it is due for review. When the Black Canyon allotment is reviewed, given that the EA notes the land is in better condition than it was in 1998, the USFS should revise the boundary to exclude the 60% overlap with the WHT. At the current 300 allotted AUMs, or 25 cow/calf pairs, only 15 pairs would have accounted for use of the WHT to begin with. Now, with the allotment in better condition, the USFS should adjust the boundary and consider the current stocking rate for use exclusively outside of the WHT boundary. Additionally, the EA notes that Livestock grazing on the Heber allotment is currently undergoing site-specific environmental analysis. The USFS should also consider the elimination of the 6% overlap of that allotment with the WHT. At 5,430 currently allotted AUMs, or 453 cow/calf pairs, even with this small boundary adjustment the allotment would still stock 426 pairs. Together, by adjusting the boundaries of both allotments, the total AUMs re-allocated from livestock use would equal 506 AUMs and leave the majority, or 5,225 AUMs, for livestock exclusively and outside of the WHT. Those 506 re-allocated AUMs could allow for an additional 42 wild horses within the WHT or could be spread between wild horses and wildlife at a 60:40 ratio, allowing for 26 additional horses and the remaining AUMs for wildlife of various species.

In short, to the extent that the USFS unjustly blames damage in the WHT on the wild horses, it is simply logical for the cow/calf pairs who graze in the WHT to be greatly reduced in number, or otherwise eliminated from the WHT. Nothing precludes the USFS from adjusting these levels to accommodate the current wild horse population inside the WHT, or at least re-allocating AUMs as described above. The final EA should fully analyze this alternative, including the cost benefits of offering permittees compensation for reduces use or non-use of AUMs. In combination with PZP, this would be far more cost-effective than removing wild horses from this WHT and warehousing them in holding facilities. In addition, the EA must provide data to explain why a reduction of livestock grazing could not fulfill the same objectives outlined for the removal of horses.

With holding facilities full and the costs for every horse removed totaling nearly $50,000 by the BLM's own estimate (where USFS sends many of their removed wild horses and burros). Thus, adjusting grazing is a viable and cost-effective alternative that must not be dismissed. The cost-savings realized by reductions in heavily subsidized livestock grazing make this alternative even more desirable.

The EA fails to consider an alternative that would allow livestock grazing while compensating permittees for non-use in order to provide the agency time to address the necessary land use planning process for wild horses by giving wild horses a fairer share of AUMs in the WHT. It is unreasonable - and frankly poor policy - for the USFS to continue to allocate AUMs for livestock use in WHTs while the USFS removes wild horses toward unreasonable low AMLs. The USFS must demonstrate (providing empirical data in the EA for the proposed action) that the removal of wild horses, over cattle, is necessary to maintain or achieve a true thriving natural ecological balance.

C. The USFS Must Consider Reasonable Foreseeable Actions

1. Study of Population Management Tools

As explained above, the Groups' position is that the USFS must first proceed with a study of IUDs before it can proceed to potentially using this tool as a management option for wild mares. Thus, it is reasonable foreseeable that the agency will develop study protocols, partner with an accredited institution, and receive IACUC approval for an IUD study, perhaps in the WHT. As such, analysis of a reasonably foreseeable IUD study is necessary in the final EA to ensure that the management plan preserves humane wild horse management in the WHT.

2. Range Improvements

The USFS must analyze how the implementation of any future range improvements, such as the development of additional water sources and addition or removal of fencing to maintain or amend the WHT boundary could affect

the management of wild horses in the WHT. Such impacts could be negative or positive, such as limiting the intermixing of USFS and reservation horses within the WHT. The analysis must include a map that shows the boundaries, livestock allotments, horse distribution (census map), water sources and fencing (including planned fencing). Thus, analysis of reasonable foreseeable range improvements and their impacts on wild horses is necessary in the final EA to ensure that the management plan preserves wild horse use in the WHT.

D. The EA Must Disclose Necessary Information

In order for the public to meaningfully provide public comment on the proposed action, the USFS must disclose the following information for the planning area.

1. Add a description for "outside the Territory"

The current description in the EA for "outside the Territory" is too broad. USFS must further define this phrase in the final EA because the Apache Sitgreaves National Forest has many small pockets of wild horse populations from Forest Lakes to Show Low. Under the current understanding o this phrase from the draft EA, it is unclear what areas are included. The Groups would like to know, and have further defined, the following in the final EA:

- Where the pickets of wild horse populations "outside the Territory" are in relation to the Territory boundary;

- Where the bait trapping operations will be concentrated; and

- If the USFS plans to remove all wild horses still considered "outside the Territory."

2. Information about the Shootings

The Heber wild horses have been the subjects of ongoing shootings. IN the final EA, the USFS must describe for the public how it plans to monitor the forest in order to prevent further shootings of the Heber wild horses. To date, 28 wild horses have been confirmed shot and killed by a shooter, but more than that have been found dead. As the USFS is aware, there are many desolate areas of the forest, making it difficult to accurately account for the actual number of wild horses this shooter has killed. Thus, if the USFS proceeds with a low AML of 50 wild horses, the agency must explain in the final EA how it plans to prevent the shooter completely decimating the herd in the future. Finally, this EA is the perfect opportunity for the USFS to update the public about any prosecution of the subject.

IV. CONCLUSION

For the reasons explained above, the draft EA for the USFS's management plan is currently insufficient and flawed. The Groups believe that the above information and analysis is the minimum required to satisfy NEPA and the WHA. We hope that the USFS will seriously consider the foregoing comments when preparing the final EA for yet another planned wild horse roundup in Arizona.

The Groups and the attached names of 10,768 concerned citizens (Attachment 7), expect that the USFS will provide the level of detail described and requested above, which is necessary for the agency's informed decision-making. The above-mentioned concerns, data and information must be fully analyzed in the final EA and adequately considered by the USFS.

Footnotes:

(1) Program progress from April 9, 2019 confirms a total of 10478 individual names have been darted with the PZP vaccine, with 888 mares given a primer and 1,035 mares receiving a booster dose. Total PZP treatments for

Virginia Range equal 1,923 administered doses. https://americanwildhorsecampaign.org/media/virginia-range-fertility-control-program-monthly-reports

(2) 80 percent of the 958 mares estimated to be breeding age (excluding yearlings); 90 percent vaccine efficacy.

Attachments:

Attachment 1: AWHC's Scoping Comments

Attachment 2: SRWHMG's Scoping Comments

Attachment 3: BLM Email Noting Paul Griffin's Report on GonaCon in North Dakota

Attachment 4: AWHC's Water Canyon Letter to BLM on GonaCon

Attachment 5: AWHC's July 13, 2020 Letter to BLM on IUDs

Attachment 6: Public Poll

Attachment 7: Petition Signatures