

September 10, 2018

Response to the WG, ASNF and CA recommendations for the Heber Wild Horse Territory Management Plan. I, Mary Hauser have put my comments in pink. Selected for the Working Group as a representative of the Heber Wild Horses Freedom Preservation Alliance which is a branch of Citizens Against Equine Slaughter, I have also included attachments from those groups as well, as they are the humans I represent in my efforts to provide input on this plan. Throughout the course of our working group meetings, other members of the working group have introduced information and research from alternative sources for consideration which was widely accepted by the Collaborative.

Agency Feedback on Working Group Recommendations

August 17, 2018

The Apache-Sitgreaves National Forests (ASNFs) and Cooperating Agencies (CAs) have reviewed the most recent documents from the Forage Allocation and Ecosystem Health and Horse Population Task Groups. We're grateful to the Task Groups and acknowledge the tremendous amount of time and effort that informs their analysis and recommendations. Overall, the recommendations are well thought out, carefully considered, and address the overall request - to work collaboratively to identify potential solutions, use best available science and experience, and, as necessary, think "outside the box".

The following review summarizes the ASNFs and CAs responses to the HWHT task team recommendations. The intention of these notes is to assist in developing constructive feedback for the Working Group. For clarity, each heading cites the relevant wording from Task Group recommendations, and offers ASNFs and CAs comments, points of agreement or disagreement, and suggestions moving forward.

**** During the Working Group meeting on August 17 th , 2018, the Forest Service and Cooperating agencies provided feedback (in black below) on task team recommendations, then clarified their responses and added comments within each section (in green). The Working Group was then given time to respond, discuss, and clarify their recommendations (in blue). This document is intended to reflect the discussion at the Working Group meeting so that each task team can make appropriate refinements to their final recommendations. ****

Appropriate Management Level

WG recommendation: *"The AML for cover and space needs to be reevaluated."*

- The ASNFs agrees with this recommendation, which should be helpful in reviewing the parameters used in calculating the AML. The review should lead to a new range of numbers, and should address concerns about the perceived arbitrary estimates suggested by the Task Groups thus far. ASNFs is prepared to lead this review, to be conducted concurrent with the collaborative process, with comment and feedback from Working Group members.
 - Is the AML the primary tool for removal (per FS Manual and Handbook direction)?
 - Currently, yes, but it would be ideal to have a focus on the resource conditions and the number. Within an adaptive management approach, there would be flexibility in using resource conditions and “triggers”
 - Verbiage from the Act – “there is immediate removal needed” when the AML is surpassed
 - If removals will be determined by resource condition those conditions should be listed and prioritized as the order or priority in triggering removals..
 - Recent case law has stated that the AML should not be the only factor used to remove animals, range conditions (damage) and animal health also need to be assessed/considered
 - Recent case law needs to be listed
 - Recent case law also determined that AML alone does not determine “excess”. Is that the case law being referred to?
 - Regardless of the % over the AML the population is on the land.
 - Need monitoring data and trends, in addition to population number
 - Need to see how the number of horses and the impacts to forest resources balance each other, especially considering the proximity to humans/human involvement (watering and feeding)
 - The AML is one component, among many, that need to be considered (in addition to resource indicators) – from the FS Directives
 - There is concern that if the AML is not considered for horse population decreases, then the number of permitted cattle will decrease as the horse population increases above the AML.
 - While multiple use is used in FLPMA and wild horses are most often managed using that mandate, the color of law of the under the law in the WFRHBA mandated that wild horses get principle use of areas they were found in 1971. Therefore, some livestock decreases may be necessary to achieve that goal. However, that is outside the scope of this wild horse management plan.FLPMA also stated that multiple use mandate of the FLPMA law did not override pre-existing Federal Land use policy, and courts have ruled that is what the WFRHBA is.
 - An existing study has shown that there is the ability to determine which species (cattle, elk, deer, horses) is/are utilizing forage in a riparian environment. This is done by excluding cattle and using cameras to

- monitor the number, frequency, and amount of time the animals are using the area. Could this methodology be considered for the HWHT?
 - If this methodology is used there has to be a baseline analysis of the riparian area and damage done before the study or analysis would be undertaken. A damaged area from grazing ungulates can take years to recover therefore not creating that baseline would give false end results.
- If there is capacity for an increase in horse and wildlife numbers, then there should be an analysis for increasing the cattle allocation – has this happened?
 - There have been court-ordered reductions of horses, based on similar considerations
 - Increasing cattle allocation is outside the scope of a wild horse management plan, unless you are strictly speaking of forage allocation, which again should be given principally to the wild horses per the WFRHBA. Wild horses must be managed as a protected special status species and BMPs maximized under applicable USFS glossary
- There is the example from another forest with WHBTs where there is constant bait trapping that captures horses for removal. This is happening concurrently with contraception implementation; however, they are still 7-8 times over the AML, and there is noted/significant resource damage on the forest. This is an example of constant removal of a small number of horses.
 - Constant bait trapping would create questions under NEPA, public comment for each gather, viewing of each gather etc.
 - There is social acceptance of the constant removal of horses, the handling facility has good care and can accept constant low levels (numbers) of horses.
 - We disagree with this statement. There is a recent poll which showed that 80% of Americans do not want more wild horses removed from the wild.
 - Constant bait trapping is not consistent with a natural family structure and will unduly increase reproduction rate due to compensatory reproduction.
 - Please provide examples of where this has been done and where this has been found to be acceptable and by whom.
 - This method is focused on avoiding crisis mode. If necessary, other removal methods may also be used.
 - The use of birth control, native PZP is proactive, feasible. Darting of all mares or a large percent of mares can end the need for round ups and allow for On Range Management vs holding pens or death.
 - If PZP native is darted scientifically and mathematically, there will be no need for round ups. Lure traps for darting can be up year round and darting can be accomplish for boosters or actual

- Darting should be accomplished by FS personnel or paid contracted personnel
 - If protocols are put in place for emergency then this is moot.
 - 20% reduction of animals would likely keep the population stable, without introduction of new/outside horses.
 - Using the terminology 'likely' indicates a willingness to reduce the herd to an unstable population. This decision has to be based on the best available science. To date that science is from Dr. Gus Cothran for wild horses. He recommended AML not drop below 150 - 200 breeding horses in a herd for self-sustainable genetic diversity.
 - Any reduction of "animals" is temporary
- ASNFs would hope to complete a new AML within the next 1-2 months
 - That may be premature given the public has had no input on the deliberations thus far nor the process for determining AML as NEPA demands and the Forest Service agreed to in the Stipulation Agreement (CV-05-2754-PHX-FJM)
- ASNFs is prepared to integrate and/or adapt calculations related to the following parameters:
 - Thermal Cover
 - Percent slope – 0 to 60% was analyzed in the draft AML
 - 35% utilization – if this is decided upon, then the 35% would apply to the portion of the allotment within the HWHT, regardless of which animals are utilizing the forage
 - Water
 - Others?
 - There is the chance that the new AML may not change drastically
 - "New" AML? This implies there is already an established AML?
 - Before any decrease in AML due to these parameters we would need to justify the change to AML that illustrates what other steps would be taken to continue to manage the Territory principally for the horses per WFRHBA (i.e. we reduced the AML due to lack of forage, and have continued to allocate forage principally to the herd, and given the allocation percentage per species or category etc.).
 - Is there a chance that the AML could also increase, or is this a pre-determined issue to be lowered repeatedly (AML)?
 - The horses outside the territory proper are still wild horses per Kleppe v NM. They have walked on and off the territory.

"Territory Buffer Zone"

WG recommendation: "All horses within an agreed upon territory buffer zone (TBZ) beyond the HWHT will be considered to be members of the HWHT population" (FAEH); "the management

proposal includes consideration of all horses currently within a territory buffer zone based on the aerial data collected by ASNFs.”

- The ASNFs’ concern is the impression of an expansion of Territory boundaries
- Per 16 CFR 30 §1322(c) “range” means the amount of land necessary to sustain an existing herd or herds ...which does not exceed their known territorial limits, and which is devoted principally...”
 - The areas of the Forest historically used by wild horses were not all included in the WHT boundaries and this must be reconciled with known historical use of the Forest which is evidenced by the FS data collected over the past 20 plus years and even included in the Teams Report. The Teams report pages 7 - 9 discuss where horses were found during specific years. It is clear by these tables that the only area observed for population census before 2005 was the current WHT, however, it is further evidence that the entire historical use of the Forest was not included by the tables that show population on and off the territory from 2005 on that the census was at that point including the historical use of the herd. This is likely exacerbated by livestock fencing however, newspaper clippings and interviews which can be found by simply using the library or even Google show that the horses have historically used a much larger portion of the forest than has been outlined in the current territory..
- The ASNFs and CAs accept the notion of a broader area (a “Monitoring Zone”) if this concept is used only for monitoring the numbers of horses and for monitoring vegetation conditions and utilization
 - For the record, neither I nor my group (HWHFPA/CAES) accept the creation of another tiered management level. See legal opinion attached which has been agreed to and adopted by CAES.
- ASNFs and CAs are also in favor of using existing fences to delineate the monitoring zone
- The use of current fenced boundaries (purple line) is acceptable, but additional fences may be needed to provide for public safety along the highway
 - We support fencing along highways, but disagree with existing fences remaining where they are.
 - Using fences to keep the horses on the territory is creating a sanctuary or zoo-like situation. This is in violation of protecting their free-roaming behavior (which is the exact wording in the WFRHBA.)
 - Water hauling by Heber Wild Horses Freedom Preservation Alliance and Citizens Against Equine Slaughter was started because of issues of livestock fencing on the existing HWHT.
 - Fencing for cattle grazing has effectively and incredibly reduced the territory of the wild horses, therefore increasing and removing fencing on the territory is called for and necessary
- The ASNFs and CAs are not in support of the 5-mile buffer proposed by the Horse Population task team due to appearance of expansion of the territory (violation of the

sideboards), safety considerations north of Highway 260, no connectivity to the territory, and expansion into other jurisdictions not managed by the FS

- What is a violation of sideboards, define sideboards as used here please
- Originally, the 5-mile buffer was recommended by the Horse Population Task Group to identify/monitor animals not using the HWHT and to have a clear sense of their movements.
- The buffer area was recommended in order to obtain a more realistic look at the horses on the forest – how many are out there, where they are, their movements, etc.
- The horses that have proximity (using the Monitoring Zone/Purple line) to the territory would then be considered “associated” with the territory. Monitoring outside the territory would be used to determine use, resource impacts, movements, etc.
 - The original boundaries did not take into account the historic use of the forest by the herd. This needs to be added to their territory.
 - Fences are an issue causing the horses to move off the current territory as the boundaries are set.
 - Migratory lands use needs to be added to the territory, as well as uses for roaming to water sources during a continuing drought.
 - One solution to more horses leaving the territory would be to open all places where water exists, to the horses and make sure they are not fenced out (example again is the situation that first occurred this past year resulting in the beginning of water hauling. Livestock fencing, where there were not gates, had a band of horses trapped where there was no water, and the horses could see water on the other side of the fence, gates will help that situation as well)
 - The fact that wild horses do get caught without water inside the territory, inside permittee fences causes death hence this is likely another cause for less horses inside the territory than outside the territory and this needs to be rectified as this is one of the very purposes of the 1971 Act. Our recommendations to solve this matter are:
 - Removing all fences on the territory.
 - Make sure every fenced enclosure created on the territory has a permanent/perennial water structure accessible to the horses year round.
 - When cattle are removed gates must be locked open by FS or the gate is removed.
 - Every fence line must have a gate(s) (at least 12 feet wide) every quarter of a mile or less.
 - There must be a straight line north to south, east to west and diagonally crossing the territory to allow the natural roaming and intermingling, to get to all water sources on the territory, especially Black Canyon Lake. Horses need to be able to get into this body

of water to roll, this cannot be achieved by tanks, troughs or other drinkers and must be accessible to all horses on the territory year round. Fences impeding this ability need to be removed and/or modified.

- All horses on the territory need to have access to all other horses on the territory. Fences impeding this ability need to be removed and/or modified.

Concurrent NEPA

WG recommendation: “an additional EA [will] be conducted leading to an updated NEPA for the Black Canyon and Heber grazing allotments.”

- The primary focus at this time will be on the development of the HWHT management plan. A decision to revise NEPA for grazing allotments will be made at an appropriate time.
 - If the HWHT Management Plan triggers a change to the management of the allotment, then a supplemental NEPA could be needed.
 - This could impact the utilization on the Black Canyon Allotment. A supplemental increase could then be tiered to match the utilization on the HWHT.
 - We are recommending a hard look at the impacts of livestock during drought. How will that impact the horses/wildlife access to needed water/forage?
 - There is limited FS capacity for conducting multiple NEPA's at the same time.
- Subsequent NEPA for the Black Canyon Allotment, when analyzed, will be brought into alignment with what is decided for HWHT.
- NEPA for the Heber Allotment is currently under analysis.
 - Any changes made to the Heber allotment should be made after the HWHT Management Plan is done to bring the Allotment in line with the HWHT plan as well.

Fencing/Permeability in HWHT

WG recommendation: “Water and forage improvements may need to be considered to enhance horse movement into parts of the HWHT.”

- ASNFs is amenable to enhancing horse distribution across the HWHT by increased permeability measures (fence modifications) and strategic water locations. Distance to water sources was considered as a factor in the AML, but drought conditions were not.
 - Wild horses will travel up to 10 miles a day for forage and water. The current territory size should have no bearing on AML based on distance to water

- availability, however fences are a major factor that will affect the AML through increased death as the drought continues to get worse, which it is expected to.
 - Drought should never be a factor when water is available on the territory, water improvements and providing water is the job of the FS pursuant to 36 CFR Ch. 11 Subpart B §222.20 (b) (6) and (8)
- ASNFs accepts the recommendations for widening gates inside the HWHT
 - Need to add a statement that installing new gates where there are long fence lines with no gates. This was the original issues that caused horses to be trapped without water when water hauling by the Heber Wild Horses Freedom Preservation Alliance volunteers.
- ASNFs is amenable to developing new water sources across the HWHT to facilitate more balanced distribution
- It would be helpful for the WG to continue working on the Partnership section as it relates to fencing and water improvements
 - Enhanced fencing and other improvements could be carried out with partners (e.g., providing supplies) after NEPA is completed.
 - Who is responsible for ensuring that water is in the tanks/drinkers/systems?
 - There is no law or policy that stipulates who is responsible for maintaining water in the systems.
 - Providing water is the job of the FS pursuant to: <https://www.gpo.gov/fdsys/pkg/CFR-2003-title36-vol2/xml/CFR-2003-title36-vol2-sec222-20.xml>

Code of Federal Regulations

Title 36 - Parks, Forests, and Public Property

Title: Section 222.20 - Authority and definitions.Context: Title 36 - Parks, Forests, and Public Property. CHAPTER II - FOREST SERVICE, DEPARTMENT OF AGRICULTURE. PART 222 - RANGE MANAGEMENT. Subpart B - Management of Wild Free-Roaming Horses and Burros.

§ 222.20 Authority and definitions.(a) *Authority.* The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System. If these animals also use lands administered by the Bureau of Land Management as a part of their habitat, the Chief, Forest Service, shall cooperate to the fullest extent with the Department of the Interior through the Bureau of Land Management in administering the animals.(b) *Definitions.* . . .

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

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

https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_054750.pdf

- Sec. 261.23 Wild free-roaming horses and burros. **The following are prohibited:** (a) Removing or attempting to remove a wild free-roaming horse or burro from the National Forest System unless authorized by law or regulation. **(b) Causing or allowing the inhumane treatment** or harassment of a wild free-roaming horse or burro. (c) Removing or attempting to remove, alter or destroy any official mark used to identify a wild horse or burro or its remains unless authorized or permitted by law or regulation. (d) Violating any terms or conditions specified in a care and maintenance agreement or permit. [46 FR 33520, June 30, 1981]
- **State law means the law of any State in whose exterior boundaries an act or omission occurs regardless of whether State law is otherwise applicable.**
- **Wild Horses are subject to the animal cruelty of the state once rounded up. WHOA v NMLB**
- Wild horses are considered captured if they are trapped inside a fenced area without water. Wild horses are subject to the animal cruelty statutes of each state as well as federal. Hence also given that the ACT (1971) was passed in large part because of the brutal practices of permittees trapping horses in their permit fences, removing their livestock and turning off the water. Thus killing the wild horses. Therefore not providing water year round while providing fencing and allowing water tables to be drawn

down for livestock and interfering with surface water flows and natural migration, as well as fencing off natural lakes etc., it would appear that this would be illegal activity, on both a state and federal level. Permittee fencing cannot block free movement of wild horses and then state that they should not be there due to lack of water. **In this case, all fencing must be removed.**

- Should consider limiting efforts to maintain artificial population numbers. This is a free roaming population and supplemental watering is not the responsibility of any one agency.
 - Efforts must be made when the problem is created by man. The free-roaming horses you speak of are not free-roaming when the entire territory is fenced and cross fenced preventing that free-roaming behavior which would naturally happen to move to alternate water sources as others dry up. This statement of artificial population is one that is already happening by the very presence of all the fences and restriction of movement not only for water sources but also for forage and breeding.
 - As far as “artificial population numbers go: We can clearly state that the non-native cattle which evolved 100% in Asia, never in North America until unnaturally brought here, and unnaturally bred here, and raised unnaturally here, are allowed to be unnaturally maintained while utilizing the natural resources of the natural wildlife. Even if the Forest Service were to maintain that wild horse were “feral” there is no question of where equus caballus evolved after having its predecessors here in North America for 56 million years plus.
 - Not providing sustenance because of theory of contribution to artificial population is not something supported by the USFWS as large game are provided water and feed when necessary across the nation. This displays selective management practices and not equal protection for preservation of the species.
 - It is extremely clear that the 1971 Act was called into being due to the fact that permittees et al. were wiping out a previously very successful species the returned native wild horse. Hence, without the interference of cattle and the concurrent conflict of interest, there would be little need of artificial anything for the wild horses. What we are requiring legally is that the wild horses are able to thrive DESPITE the huge numbers of non-native species, the bovine, which are utilizing both the forage, the water, as well as polluting said.
- Discussion raised the following questions:
 - If gates are open, why are horses not using all parts of the HWHT – is it due to a lack of water? Monitoring can help clarify this.
 - Should monitor before any actions are taken to gain better understanding of where site- specific changes are necessary (e.g. evidence of restricted

- horse movement). Not all gates on the HWHT will be widened immediately and not all cattle guards would be covered.
 - Provide the legal basis for not doing these things immediately to do the job of protecting and preserving the horses the FS is tasked with doing.
- This issue will also require conversations with the permittee to reach a common agreement over when and how often gates will be left open.
 - Conversations have begun with permittees regarding this effort.
 - There is also a need to identify who will be responsible for gates (open and closed) and fence modifications
 - FS is not required to provide fencing to keep livestock from wandering on or off the National Forest, it stands to reason they would not be responsible for providing fences, gates, etc. However, FS is responsible for the protection of wild horses & burros. To manage this wildlife species it also stands to reason the FS per the FSM would require permittees to leave gates open, and FS would still have the ultimate legal responsibility of making sure the horses have access to forage and water year round. Therefore we suggest it a task that should be required in the rules of the permit for permittees to leave gates open when livestock are not on the land, however it is the legal obligation of the FS to make sure they are open.
 - Because it is possible for anyone utilizing the forest to wander through an area and close an open gate we also recommend that the FS lock gates open during times cattle are off the land.
 - Fence modifications would also fall under the obligation of the permittee for the same reason listed above for gates. We recommend that all fence designs be given a hard look, and that the migratory routes that should exist in criss-crossing patterns for the horses to be distributed throughout the territory be opened up.
 - Some modification to existing grazing allotments needs to happen for migratory and historical use by the horses to be either opened or added to the HWHT. This is permissible pursuant to the WFRHBA, FLPMA, PRIA, Taylor Grazing Act and the FSM under 2231.62(d) both as land that (already was withdrawn under CFR) is needed for another use, and continuing issues of drought, which led to scarcity of water resources (expected to get worse) Not only should this apply because of wild horse territory, but also the other wildlife species in the area that are endangered, and as we clearly saw were impacted by drought. We had evidence of bear and wolf using our water tanks, and the number of elk and other wildlife was much higher than the number of wild horses using them. Livestock water consumption must be taken into consideration for the preservation of this wild horse territory.

Adaptive Management and Monitoring approach

WG recommendation: “Data provided by the HWHT AML will be reassessed using adaptive management criteria and placing less emphasis on model constraints”

- There are no meeting minutes for us to look at to know what the definition or parameters of “adaptive management are” This needs to be a report addressing exactly what is being proposed. Has it been used before, by whom and where? What are the differences in using ‘adaptive management’ and the way management has been implemented to date?
- There is general agreement that an upper number/cap, generated by the AML, is appropriate and needed. However, the implication for appropriate subsequent management actions was not agreed upon (e.g., more use of fertility reduction agents and methods, vegetation treatments, removal of horses or other animals)
 - Further discussion is needed on the “and/or” statement and its management implications.
 - An adaptive management approach allows greater flexibility with this number, suggesting that if a certain number (1, 2 or 3 ??) of the triggers are met and the AML is exceeded, then management actions would be taken.
 - We agree that AML should be a floating number that is reevaluated on regular intervals and also when environmental changes to habitat warrant an evaluation. However. Any such reevaluation, and the reasons or causes for any change would also be individually subject to NEPA requirements, and open for public inspection and review. Therefore, if this ‘adaptive management’ plan seeks to address specific changes, based upon specific criteria, there must also be a mechanism outlining how the public would be involved, notified and allowed to comment on each change to AML.
 - More discussion will be needed on how management actions will be carried forth and in what priority order
 - To maintain flexibility in contraception tools, “PZP” (above) needs to also include “new” contraception options, new variations and new techniques – i.e., “future techniques and strategies”.
 - Right now the ONLY immunocontraceptive accepted by the HWHFPA/CAES is PZP native and 22. We are adamantly opposed to the use of GonaCon because it works by altering hormones and effects the natural behaviors of the wild horses. Any addition immunocontraceptive would need to be evaluated by public inspection, and involve the public’s input.
 - We also recommend a statement that sterilization procedures are NOT included in contraception options for the Heber wild horse herd.If there is ever a time this becomes an option for the herd there would need to be a new discussion with wild horse advocates, especially CAES on the reasons for use, methods, safety

and science. CAES has several years of research in that area, and Dr. Lester Friedlander has spoken out and led legal actions against wild mare sterilization.

- Re the AM&M task group - Monitoring indicators have been identified by the task group. Desired conditions helped determine the objectives, but a lot of work remains to be done.
- Refinement needed on the reduction strategies, accepting current conditions, the order of stocking adjustments
- Defining and clarifications needed: who, when, how much monitoring.
- Some have concerns that the lag time in seeing trends and the speed of increase in population in horse numbers compared to time it takes to make management decisions.
- We have concerns that the actual population is being referred to as increase, when the actual population has not increased or decreased annually, more than 50 horses. These statements of problematic increase must be verified, and explained because we see a very healthy ecosystem. Predators have kept this herd within the same population range for 13 years. If you reduce the horses, you are reducing prey for the 3 apex predator species on the territory, and you will likely begin seeing predation on livestock. This typically leads to demands to destroy predators, and creates a downhill spiral.
- Removing horses to the suggested AML range would throw this balanced ecosystem into an unnaturally imbalanced system, and would have serious cascading effects. As a Mexican Gray Wolf recovery area, we feel it is important to look at the role of the wild horses and other wildlife in the habitat of the wolf, and even other apex predators such as bears and cougars.
- What science has been used to evaluate the impacts of reducing prey in apex predator habitat? If there is none this should be studied before any reductions are made.
- Need to include/address “immediate management actions”
- By determining AML capacity, the FS would have to manage within the range of the AML. Subsequently, adaptive management and monitoring would determine numbers not to exceed the upper limit. Having an upper limit outside of the AML is not appropriate for the plan.
 - By this reasoning FS would also have to adhere to the lower limit of AML, and adjusting the AML below the lower limit would also be outside the range of AML. Therefore a lower limit outside of the AML is also not appropriate for the plan.
- ASNFs and CAs would like the WG/AM&M group to offer recommendations on the “consideration of appropriate management actions” (including protocols or an algorithm) using adaptive management triggers.
 - For clarification: What does the FS start with, what monitoring is used to determine effectiveness and what are the next steps/actions if it is not effective? Especially with removal – if there are removals, which horses, how many, at what time, etc.?

- It is more of an iterative effort, similar to what is being done on other forests, where there is simultaneous removal and contraception implementation.
- Develop partnerships and community engagement surrounding this population and the investment of maintaining a healthy horse population – collaborative group in this geographic area. This aspect can be added to the Partnership section.
- The appropriate group to provide supportive input about any removals, or to implement darting, record keeping etc of the wild horses in this area should be done by HWHFPA. We suggest that you have CAES heavily involved in developing a collaborative group that does NOT involve those with a conflict of interest. Successful implementation of darting programs have been achieved by using the advocates for the horses who are most local to the area. We can provide a list of names, and would be willing to provide the financial means to have them trained for PZP darting should that be implemented as part of the HWHMP.

WG recommendations: *see sections on Data Collection for Adaptive Management (HP) for monitoring*

- The ASNFs and CAs generally support techniques listed in this section. These include WHIMS (which may now be considered an older technique), collaring, and herd handbook
- HWHFPA/CAES is adamantly opposed to radio collaring, especially in a forest where there are so many things for the horses to get collars caught on. BLM stopped the use of collars at one point because of horrible sores on the horses. The newest design has also proven problematic. So at this point they should not be included as a tool in this plan., If new technology is developed this could be readdressed.
- There is also recognition that the tools available should not be an exhaustive list, as better approaches become available over time.
- We recommend the language state that as new techniques or technology are developed they would be evaluated in the next WHMP.
- The ASNFs and CAs are not in favor of marking all animals within the territory due to concerns for an unnecessary amount of handling; however, it is USDA policy under 9 CFR Section 86.4(2) Horses and other equine species, to individually mark animals for identification purposes that would be removed from the territory and placed in private custody or for interstate movement.
 - This references the individual animals and the need to have traceability (for disease traceability) to home of origin – this is “if” there is removal from home of origin. No mandate exists for marking animals during the management of horses that remain on the territory.
 - When darting is conducted, there is no way to mark an animal other than through photography.

- As stated throughout my recommendations using the wild horse advocates who are most local and have most knowledge and access to the herd, a herd book can easily be developed and maintained for birth, death, census and darting should that be implemented. They already photograph, name and know the individual wild horses on and off the current outlined territory.

Forage Allocation Monitoring and Information Needs

- I was not part of the Forage group and did not hear the reasons for the decisions reached by the group. Without meeting minutes to refer to we cannot commit to agreement of forage allocation. Forage allocation must be principally given to the wild horses per current regulatory mandates. See Attachment A
- ASNFs and CAs generally support recommendations outlined in this section, since they are consistent with recognized FS protocols.
 - There may be FS year-end funds that could be used to gather updated range information, forage production, ground cover, species richness.
- It is anticipated that further detail on monitoring and adaptive management will be identified by the Monitoring and Adaptive Management Task Group.”

Drought Management

- HP Task Group can develop drought recommendations within their document if they so choose. The forage group has developed recommendations.
- Include additional to emergency measures to be taken during a drought.
- Without again, being part of or seeing meeting minutes from the forage group, I cannot comment on those, however, given the ‘principle’ use mandate of the territory for wild horses, and the ASNF being critical habitat for several endangered species, we would expect that drought protocols, if suggesting reducing any number of animals would fall to livestock before any wildlife, including the wild horses.
- FS can and must implement permanent water improvements, and it would be prudent to involve USFWS in that task as the large populations of elk, the endangered species in the territory, and the use of other native wildlife, all should be provided the same supplemental water and feed that are commonly seen for big game throughout the national forests.

HP Introduction and Executive Summary – language and interpretation

WG recommendation: *“The proposal should guide management decisions for the wild horses in HWHT until such time a complete plan has been approved”; “the horses should receive priority use of the HWHT”*

- WG proposals are recommendations, and should not be construed as binding in any way.
- “Priority use”: ASNFs is concerned about this interpretation of the Act – the HP task group’s language regarding the Act should be reviewed and edited for clarity and accuracy.
- Exact wording from the Act should be used where possible.
- See Attachment A

Genetic Diversity

WG recommendation: “AML levels should be increased to allow for more usage and higher numbers of horses in the territory to account for genetic diversity needs of 150 horses or more, based on the most recent research”

- The number really depends upon each population and the original genetics present, as well as analyzing the marker alleles present within the population.
 - See the recommendation to utilize the specific BLM Resource Notes below.
 - The genetic variation in the wild horses of each herd should be determined by DNA testing.
 - It is important to understand the difference between an open and a closed herd. The fencing which disallows wild horses coming in from the “Apache” wild horses causes the herd to be a closed herd and therefore more DNA testing through time will be necessary.
 - No tribal entity has claimed all their wild horses as livestock. The Apache horses are wild and wild horses in the same area are all the same herd consisting of different bands. The fencing creates an artificial genetic barrier which can endanger the wild horses and artificially reduce genetic variation and make them genetically vulnerable. The stipulated agreement spoke to this issue as well.
 -
- The ASNFs and CAs recognize that there are multiple measures to address genetic diversity should concerns arise. Those listed by the horse task team are generally supported.
 - HWHFPA/CAES are opposed to knowingly creating a population (through AML range) that will create a situation that makes it necessary to introduce mares from outside herds. The Heber wild horses have genetic markers that are unique, and these must not be watered down per the WFRHBA mandate to preserve the herds as self-sustaining populations where they have historically existed.
- The range of numbers of horses on the Territory will be set utilizing the analysis from the AML.
 - How does an AML provide a tool for analysis which can be used to decide the numbers of horses on the Territory? Isn’t the AML that range? Your statement implies that you will set the range using the analysis for the range that is set.

- When “science” or “research” is referenced in recommendations, it would be helpful to include appropriate citations from credible publications. The ASNFs and CAs would need the publication in order to further evaluate this recommendation.
- Suggestion cooperation with universities to help pay for the effort
- With 300 Sonoran pronghorns in the entire state of AZ, there is plenty of genetic diversity; with a similar number of horses, there is likely sufficient genetic diversity
 - “LIKELY” is not acceptable. And the science has been provided by Dr. Gus Cothran. We believe that is well known and this response from Forest Service is derogatory and misleading.
 - What is the current analysis of the Heber wild horse herd? Please provide those genetic analysis reports with the alleles present in this herd. NO AML should be adjusted before that analysis has been done of horses both on and off (as they are all legally part of the herd) the territory.
 - How does the genetic diversity of Sonoran pronghorns compare to equus caballus genetic diversity? Where is the research used to compare the 2 species and hypothesize that the number of animals necessary for one species, in this case the pronghorn, is therefore appropriate for another species in this case equus caballus?
 - The movement and therefore accessibility of pronghorn to one another is not impeded by livestock fencing, however movement of horse species is impeded by fencing, and that is a well known fact. So comparing the breeding, genetics, or population size needed for genetic diversity in these 2 species is utterly irresponsible and lacking in good management decisions.

○

General comments on genetic diversity recommendations

- ASNFs and CAs request additional dialogue with the Horse Population Task Group to clearly understand their recommendations in this section – specifically, recommendations on male to female sex ratios and maintenance of phenotypes within the Heber herd.
- If the horses are managed ON THE RANGE, there is in fact, no loss of diversity. The Heber horses should be managed entirely by their predators and native PZP. There is no reason for a round ups as shown by Assateague National Park.
- ASNFs and CAs generally support measures suggested to collect genetic material but recognize that these methods will be further influenced by cost, availability, etc., which must be considered within the implementation plan.
 - To perform the duties mandated to the FS to protect and preserve the herds we feel that genetic analysis is very important. If genetic analysis is not done than AML should also not be set. It is irresponsible to set an artificial range of population without first knowing if the genetic health of the herd can support such a man-made population.

- Genetic analysis is usually about \$100/horse.
- A baseline at least. 30 wild horses should be done.
- The ASNFs and CAs generally think that it will not be feasible to conduct genetic studies to prioritize whether to remove horses with genetic deformities, and additionally would want to leave flexibility to remove horses with genetic deformities if in fact a deleterious genetic condition was present in the herd.
 - Horses with deformities that are not serious should be left alone and nature should be allowed to take its course.
 - Genetic studies are important to determine the genetic diversity and, the more diverse the genetics the healthier the herd.
 - A deformity is easy to see and would not need a genetic study. and that horse may or may not need to be removed. Protocols for removing a horse with an obvious deformity should be in place.
 - The protocols should address evaluation of the possibility of passing that deformity onto future generations and weakening the health of the herd overall, as well as the individual health and quality or survivability of that horse.
 - Again, this is a habitat where apex predators routinely keep things like this in check, so removing every horse with a deformity might affect the food supply for another species, that must also be a consideration and done in consultation with USFWS and also appropriate scientists and predatory species experts.
- It was recommended that the genetic diversity recommendations would benefit from review from some other working group members and others with this expertise.
 - The BLM has resource notes which are very informational on this issue by Linda Coates Markle and by Dr. Gus Cothran. These must be utilized.
 - I suggest asking Dr Lester Friedlander, DVM and president of CAES, or Patience O'Dowd another member of their board be consulted and possibly even asked to speak on the issue.
 -
 - <https://www.blm.gov/nstc/resourcenotes/rn23.html>

RESOURCE NOTES



WILD HORSE AND
BURRO PROGRAM

NO. 23

DATE 07/18/00

Wild Horse and Burro Population Viability

*By: Linda Coates-Markle Program Specialist
Montana State Office, BLM*

The first in a series of 13 Resource Notes based on transactions from the Wild Horse and Burro Population Viability Forum, a Bureau of Land Management Sponsored Event, April 21, 1999, Fort Collins, Colorado

Background

The intent of the Forum was to provide a unique opportunity for useful discussion and strategy development on important conceptual and practical topics pertaining to population viability. Our approach included thought-provoking, science-based presentations, followed by in-depth question and answer sessions between scientific researchers, Bureau of Land Management Horse Program specialists and managers, Advisory Board members, and interested members of the public. Program organization and facilitation was handled by Linda Coates-Markle, Montana/Dakotas State Program Specialist. This Resource Note is the first in a series of thirteen Notes to summarize the issues of the Forum. It serves as an index guide for Notes in the series.

Goals and Focus for the Forum

Session 1 (Resource Notes 24-26): Identify and define the equine resource. Are there unique genetic resources, and/or smaller populations, in need of genetic conservation efforts or are we dealing primarily with larger metapopulations where genetic conservation is not a critical issue? Draw inference from wild equids of Africa and Asia. In other words, comparisons to other wild equid populations may help us to define and further understand critical inbreeding and/or density dependent issues.

- **Resource Note #24** - Conservation Issues for Wild Zebras, Asses, and Horses in Africa and Asia- Dr. Patricia Moehlman, IUCN/SSC Equid Specialist Group.
- **Resource Note #25** - Deciding Which Feral Horse Populations Qualify as Genetic Resources - Dr. Phil Sponenberg, Virginia-Maryland Regional College of Veterinary Medicine.
- **Resource Note #26** - Density Dependence in Population Dynamics of Feral Horses - Dr. Stephen Jenkins, University of Nevada, Reno.

Session 2 (Resource Notes 27-29): Clarify genetic terms and issues such as Effective Genetic Population (N_e) size and Minimum Viable Population size. What is meant by genetic diversity or heterozygosity and how does it relate to levels of inbreeding within a population? These are all terms used by researchers

and interested public requesting information about BLM herds, and it is important that we both understand these concepts and their applicability to populations and management decisions.

- **Resource Note #27** - Genetic Variation in Horse Populations - Dr. Gus Cothran, University of Kentucky.
- **Resource Note #28** - Genetic Management of Small Populations: The Special Case of Feral Horses - Dr. Oliver Ryder, University of California, San Diego.
- **Resource Note #29** - Genetic Effective Population Size in the Pryor Mountain Wild Horse Herd - Dr. Francis Singer and Linda Zeigenfuss, Biological Resources Division, USGS.

Session 3 (Resource Notes 30-32): Define Population Viability Analysis (PVA) and identify possible benefits and limitations to modeling efforts. What types of demographic, genetic and/or ecological data are needed for these models? Compare and contrast different methods of population monitoring which are used to provide the necessary data to estimate viability.

Resource Note #30 - Population Viability Analysis - General Principles and Applications - Drs. Barry Noon, Fred Sampson and Nels Johnson, Colorado State University.

- **Resource Note #31** - Methods to Collect Required Data to Develop Rigorous PVA Models - Dr. Gary White, Colorado State University.
- **Resource Note #32** - Development and Assessment of Tools that Managers Could Use to Monitor Wild Horse Populations - Drs. Francis Singer and Ron Osborne, Biological Resources Division, USGS.

Session 4 (Resource Notes 33-35): Finally, use PVA to evaluate real-life scenarios involving wild horse populations. What are the consequences of different management alternatives? Compare and contrast the complexities of herd management, using both removals and immunocontraception, for two very different populations. Demonstrate the potential for enhancing the adaptive decision-making process through the use of PVA.

- **Resource Note #33** - Viability of Feral Horse Populations on Atlantic Coastal Barrier Islands: Implications for Management - Dr. Brian Underwood, USGS Patuxent Wildlife Research Center.
- **Resource Note #34** - Effects of Contraception and Removal Treatments on Pryor Mountain Wild Horse Population Demographics and Genetics - Dr. John Gross, Natural Resource Ecology Laboratory, Colorado State University.
- **Resource Note #35** - Summary Recommendations of the Wild Horse and Burro Population Viability Forum - Linda Coates-Markle, Montana/Dakotas Wild Horse and Burro Specialist, Bureau of Land Management.

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Population Management

WG recommendation: “Management options will be applied using the least intrusive methods preferentially, and citing population thresholds at which movement to the next method would be necessary. The thresholds will be based on horse population studies and forage balance and availability.”

- The ASNFs and CAs generally supports this approach, utilizing the AML
- Reference the above discussions in the AML section.
- ‘Generally’ supports this is in no way specific enough or actually supportive.
- The Heber wild horses again, should not be rounded up. This is fiscally irresponsible to continue on the same old worn out “nod” to birth control and then continue rounding up and ware housing horses, for nothing and only provide a token number of horses that are vaccinated with PZP (native or 22)

Gathers

WG recommendation: “Trap sites and temporary holding sites will be located to reduce the likelihood of injury and stress to the animals, and to minimize potential damage to the natural resources of the area.”

- Reference what other forests have done successfully. Use low-stress techniques first. Consider entering into formal agreements for veterinary services with APHIS in a gather situation.
- There is general support for this recommendation from the ASNFs and CAs. This could be listed as a tool in the toolbox – the agency would then have the flexibility of using the higher priority options first.
- However, there is concern for the use of the term “temporary”. ASNFs temporary bait trap pens could be placed in areas of travel; however, it is likely that these would involve more permanent structures if they are to be effective.
 - Temporary traps are more effective with a moving population.
 - As long as the FS has flexibility, the most ideal would be to use “where feasible” language.
 - A mix of facilities would be better, i.e., a combination of permanent and temporary – this especially comes into play with drought (horses are more likely to use permanent facilities).

- We agree that trap sites may need to be temporary or they may not be readily utilized because they will not be trusted by wild horses if they are a new object in the forest.
- Protocols need to be in place to either lock open gates or remove them when traps are not in use so horses are not accidentally trapped in the enclosures.
- When traps are in use trail cameras should be in place so that monitoring can be done remotely, and this will also better allow public viewing and transparency during a gather.

Removal

WG recommendation: *“A number of animals are permanently removed from the forest and adopted out or put in private sanctuary locations”*

- The ASNFs and CAs support removal as needed.
- In addition to private sanctuaries, the ASNFs and CAs recognize that over time other facilities may be appropriate to receive horses. These could include other humane options such incorporation into university programs, equine science, equine therapy, etc.
- The ASNFs and CAs support techniques proposed for removal. It will be important to consider the correct tool for the need utilizing adaptive management.
- The ASNFs and CAs would prefer to leave helicopter gathering in the toolbox, recognizing, however, that it may be a difficult and expensive technique, and probably not considered as a first option.
 - Helicopter gathers should be used as a last resort.
 - May be better phrased: “helicopters are used when there is a “justifiable” need.
 - Targeted band/group.
 - Low stress techniques are not effective, or will not be effective.
 - Protocols for helicopter use should not include use for gathers as there have been too many incidents of death and injury resulting in death which was recently seen in the gathers in UT and WY where the mortality rate was above the norm stated by Rob Sharpe of Oregon BLM, to be under 1%.
 - Include justification for why the other gather options are not used first.
 - Concern that this may be limiting, in that all other options would need to be used first.
 - Other techniques
 - Drones.

Contraception

WG recommendation: *“The use of a birth control agent, (e.g., Porcine Zona Pellucida or Gonacon **), was discussed at length and most members support its use.”*

- Use terminology that includes new and current contraception techniques. Using the best, most recent science – new agents and methods.
- The ANSFs and CAs are in support of a wide variety of horse contraception measures including PZP and Gonacon.
 - As stated above we do not support the use of GonaCon because of the hormonal reaction which changes the behaviors of mares, and creates a change and disturbance between the horses and familial hierarchy and harem structure.
- The ANSFs and CAs also could support vasectomizing of stallions if it was deemed the best method for population management.
 - Vasectomy has been found ineffective as a population management tool. Unless every stallion is castrated (which would create a non-reproducing herd which is not legal under current regulations) one stallion can cover many mares and this would not create effective population size change. We do not recommend it.
 - SEE [Using Science to Improve the BLM Wild Horse and Burro Program](#)
 - A Way Forward (2013) the report to the BLM by the National Academy of Sciences (NAS) which studied these options and recommended PZP birth control native or PZP 22 (which is also best used with a booster at least within the first year).
- ANSFs and CAs request that the Task Group identify a preferred sequence of least to most intrusive management techniques.
 - MORE ON POPULATION MANAGEMENT herein:
 - We recommend predator management and protection be the number one method of wild horse population control
 - If the high end AML (when one is set) is reached we recommend the use of PZP native as the first choice of immunocontraceptive
 - If PZP native is not effective, or possible we recommend the next step be the use of PZP 22 with a booster within the first year.
 - When utilizing either form of PZP native or 22, it is best to vaccinate all mares for 2 or 3 years in a row and then take a year off. In this manner, all mares then can have an equal chance at contributing genetically and it is then not a human choice as to which horses breed. In this manner, herd numbers can be managed without round ups and expensive holding pens, and can stay WITH their families ON THE RANGE. Also in this way, no genetics are lost from the herd.
 - It is best to utilize mobile panels one family at a time to vaccinate them in lure traps ON THE RANGE. Leave a family in the trap for a few hours providing some feed and water and the wild horses will not be scittish about being darted the next time. INstead, they will remember the diversionary feed and water, salt block etc.
 - When utilizing lure traps for dart and release as recommended herein, one or two people can assist in “herding” the horses into the mobile panels. Although, with

the extent of the permittee fencing, in some Heber areas, mobil panels may not be necessary due to permittee fencing.

- At this time I do not recommend or support the use of any other form of population control. Predators or PZP native/22 or both.
- The first time PZP's are used, they become very effective upon a booster or upon second use. It is likely that PZP native and PZP 22 boost each other as well.

Relocation

WG recommendation: *“A number of animals are removed but moved to a different management location or holding location.”*

- The ASNFs and CAs could support relocation in order to increase genetic diversity, however, relocation is not a solution for population control due to cumulative impacts on other territories.
-
- Relocation is not a method of population control also for the following reasons. This information is also applicable to other sections on population management.
- There is no need to move or even remove horses at this time if the entire ‘historical’ territory that was and is used by the wild horses, as evidenced by years of data of these wild horses moving on and off the territory, is included in expanded boundaries of the territory.
- IN *Kleppe vs New Mexico* the courts made it clear that wild horses which roam off and on a wild horse territory are still the property of the people of the nation and still protected wherever they roam. This is also clear in the 1971 Act.
- Rounding up and moving horses is not acceptable. The USGS ethology on feral free roaming horses <https://pubs.usgs.gov/tm/02a09/pdf/TM2A9.pdf> shows that these wild horses have a close knit family structure and that the stallion’s every waking moment is spent in keeping his family together and keeping other stallions and other hrm away. While horses do form new families when their families are rounded up, this is a harmful disturbance. Due to this disturbance the remaining wild horses will reproduce at a higher rate. This is called compensatory reproduction and this is exactly counter productive to population management and is not necessary or humane. Removing older stallions is cruel and inhumane and should not be an option.
- Removing wild horses routinely every 3 yrs or so makes it clear that there is little chance any wildhorse will live out it’s life on the range. This effectively makes the Wild Horse Territory into a PUPPPY MILL. This is not in keeping with the spirit of the law.
- Removing a steady stream of wild horses rather than ON THE RANGE management has effectively ruined the Private industry of horse breeding Arabians etc. This constant glut on the market of horses at \$125 or less than kill buyer prices, has been very detrimental and between natural predators and PZP should NOT be occurring for the sake of the wild horse families AND for the sake of the horse industry which CAN recover.

- The USFS should spend moneys on jobs for people on the ground to dart rather on helicopters to round up and long term holding pens. Again, the role model for the nation is Assateague National Park. rather than try to figure out why this can't be done, figure out how this CAN be done and CONFER with Assateague as well as Citizens Against Equine Slaughter and their Veterinarian who has been trained in this area at the Science and Conservation Center in Billings Montana.
- In all cases the USDA Forest Service should do detailed cost analysis on each alternative rather than continue with off range management and round ups. In the cost, the 5% loss of life just in normal handling in long term holding pens is understood to be inhumane treatment as well as unnecessary.
- Transferring horses in trucks is harassment as is removing them from their homeland as is separating them from their stallion and families unnaturally in holding pens. Again see the USGS Ethology on Feral Horses.

Exigent Circumstances

WG recommendations: “...leveraging the BLM Animal Evaluation and Response protocols with some modification for wilderness temporary holding facilities vs. the holding facilities referred to in the protocol would be the best model to follow.”

- Need clarification from the HP Task Group on their reference to euthanasia protocols. What is the group's recommendation for utilizing Forest Service/BLM Protocol?
- Letter of direction (from Regional Forester) for those Supervisors with Territories. ASNFs has a copy of the protocols for the Forest (SDR will send out a copy).
- We recommend clear definition of “emergency” as it would pertain to gathers. We have brought into question recent gathers that could be challenged legally under definition or lack thereof of ‘emergency’
- The plan should also clearly outline how the and when the public is informed of emergency gather etc.
- With proper and proactive use of birth control, and or natural predators, emergency gathers should become a thing of the past.
- Emergency gathers are seen as an avoidance of public input and as a biased approach to wild horse management and should not be utilized. Rather removal of cattle which are not going to be allowed to live long lives anyway is much more logical and feasible. The cattle belong to the few, the wild horses belong to the many. The cattle get tremendous amounts of money from the USDA in grants to ranchers for conservation, drought, flood, depredation, price drops, you name it. This along with loans at banks regarding grazing permits, low grazing fees. Add to this the fact that cattle far out number wild horses in this country. 93 Million cattle to less than 100,000 wild horses. We MUST conserve our public resource the wild horse and their families.

WILD HORSE TOURISM

- The Heber wild horses should very definitely be ADVERTISED and utilized for tourism and camping facilities should be available.
- A LOOK at this page shows NO PICTURES OF WILD HORSES
https://www.fs.usda.gov/wps/portal/fsinternet/cs/main!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfljo8zjQwqwNHCwN_DI8zPwBcqYKAfDIZggAM4GuhHEaMfj4lo_MaH60dhtSLMB2ECITO89KPSK_KTIN51zEsytKjXjypKTUstSi3SKy0CCmeUIBQUW6kaqBqUI5frpefnpek6iXn56oaYNOSkV9coh-BqjK_IDc0wiDLNKfMx1ERAMzc-30!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?position=BROWSEBYSUBJECT&pname=Apache&navtype=BROWSEBYSUBJECT&ss=110301&pnavid=null&navid=0910000000000000&ttype=main&cid=FSE_003853
- Or at this page <https://www.fs.usda.gov/recmain/asnf/recreation> etc etc etc.
- Wild Horses have VALUE but BIASED management removes all value by NOT utilizing them for tourism and then glutting the market with them rather than Utilizing them for international tourism and managing them ON THE RANGE.
- There should be whole section in this plan that creatively looks at increasing the tourism value of our wild horses instead of hiding them. The public should be asked for their ideas, plans and projects for this and how to advertise in multiple languages etc. targeting other countries. This is RURAL ECONOMIC DEVELOPMENT for the people of the area as well as for the local livestock industry. It is clear that people come to this forest. It is also clear that the wild horses are not advertised as a value added, only as a glut on the market for adoption.
- Photo workshops, Educational Hikes and Jeep Tours etc. People can learn about wild horse ethology, history, biology, physiology, top down grazing, evolution (55 million years plus etc etc).
- We need to STOP villifying the wild horse and utilize them and allow them to be VALUABLE on the RANGE as a reintroduced specie that evolved here in North America and only here, regardless of whether they were bred in captivity for a time.
- Tourism is a growth industry not limited by acreage or water as is the livestock industry and tourism drives the national economy for the many without the large subsidies provided to the livestock industry for the few.

● ECONOMIC IMPACT OF THE TRAVEL INDUSTRY IN ARIZONA

- Arizona's warm weather and magnificent natural beauty made tourism the number one export industry in Arizona in 2017. **43.9 million people** visited Arizona in 2017 who collectively spent **\$22.7 billion** in the state. The money spent by visitors supports jobs and generates tax revenue. The **\$3.37 billion** in 2017 tax revenue equals an annual tax savings of **\$1,293 for every Arizona household** and supported **187,100** industry jobs.
- THE ABOVE IS FROM this website <https://tourism.az.gov/research-statistics/economic-impact>

- This tourism impact is still growing and again is not acreage or forage limited. These horses can be an incredible value added on our beautiful public lands and forests.
- There must be beautiful pictures of these beautiful horses on the Heber Forest Service website.
- There should be a wild horse license plate for the state of Az to fund tourism projects, advertise wild horse tourism, and assist in paying for Birth control and the JOBS it can provide for darting as well as the jobs due to tourism, hotels, rental cars, jeeps etc.

Partnerships

- The HP and Forage Allocation Task Groups should offer more detail on recommendations for potential partnerships. The ASNFs and CAs encourage the task groups to revisit and reference the partnerships document already created by the Working Group.
 - Add enhancing/implementing new water sources across the Territory as a Partnership topic
 - Who, when, etc.?
 - I addressed this issue above, the Forest Service is mandated to provide feed and water for the wild horses under 36 CFR 222.20(b)(6) & (8) etc. However if the FS choses to retain fences that inhibit access by all horses on the territory to all water sources on the same, then it may chose to partner with the permittees who have use of blocked water sources to provide alternate sources, however legal responsibility would still remain the duty of the FS. Partnerships do not negate that legal responsibility.
 - CAES could be called upon to assist in training on darting and humane lure trapping and humane herding of families for ON RANGE Management.
 - CAES could be called on for assist in value added tourism projects and rural economic development.

The Forest Plan may need to be updated with regard to the wild horses, their management and their value added.

Attachment A

Legal Opinion on Tiered Management Levels Used by the Bureau of Land Management and The Forest Service for the Management of Wild And Free Roaming Horses & Burros

The National Parks should also be tiered with the BLM and USDA Forest Service. The wild horses have faired well under the National Parks which tend to utilize birth control and be utilized for tourism in a value added manner. The BLM and USFS have much to learn from tiering from Assateague National Park and Yellowstone National Park etc. The national Parks are with the BLM under the department of Interior. If the USFS is going to tier from the BLM, they must also tier from the National Parks when it comes to wild horses as they are more applicable and do a much better job adding value to wildlife than does the BLM.

At Assateague National Park, there have been no round ups since PZP has been utilized since about 30 yrs ago. This park is over 40,000 acres (twice the size of the Heber WHT and is twice as large as a good number of BLM HMA's and IS remote, as can be easily seen by satellite view on google maps. The rhetoric that these horses are humanized to people is nonsense and that that is why PZP works there is nonsense. Only the few bands near the people area are used to people.

Tiering (sharing analysis from other areas) should not be used as an excuse to reduce public inputs. The horses are a public resource and the BLM and the USDA Forest Service are seen as biased against wild horses and hence this would not be acceptable or beneficial for these wild horses which belong to the people of the nation.

Citizens Against Equine Slaughter and all groups, or branches of, agree to and adopt the following legal opinion on the tiered or layered management style that has developed over time subsequent to the 1971 Wild Free-Roaming Horses and Burros Act (Public Law 92-195) referred to hereafter as the WFRHBA, and is used in the management of wild horses & burros by the Bureau of Land Management (BLM) and the Forest Service (FS).

Definition and Interpretation of Key Words "Range" and "Principally"

*To require the protection, management, and control of wild free-roaming horses and burros on public lands. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Congress finds and declares the wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this **they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.***

The case for eliminating the various ‘tiers’ of management applied both by BLM and FS to their implementation of the WRFHBA is best made by the simple, unambiguous description of which lands must be legally managed for wild horses, as shown above. There is no indication that either agency has the authority to dilute the protections afforded all wild horses and burros through the devising of Wild Horse Territories, Herd Areas or Herd Management Areas. The ONLY name for the area to be managed for wild horses is “Range”.

There is no authority granted to reduce the WFRHBA’s intended level of protection due to renaming areas of wild horse use, nor does this authority stem from amendments to the WFRHBA resulting from the Public Rangelands Improvements Act of 1978, the Federal Land Policy and Management Act of 1976, or the Burns Amendment. In fact, the amended language found in Sec.3(b)2 speaks to removal of “excess animals from the **range...**” If we are to accept these unauthorized tiers of management, then this section prohibits removal of excess animals from anything but designated “Ranges”, of which exist three in the whole of wild horse country. None of those are under the management of the FS.

Sec. 2 (c) of the WFRHBA defines “Range”:

“Range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted **principally** but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for public lands.

The FS first developed the concept of Multiple use, followed later by the BLM, when it was becoming clear that timber extraction was far outweighing every other land use to the detriment of the resources. This was one of the most constructive concepts ever to guide public land use, and yet even the Multiple-Use-Sustained-Yield Act of 1960 has been intentionally misconstrued to allow Multiple-ABUSE of our public lands. The definition, found in Public Law 86-517 SEC. 4(a) states principle succinctly:

“Multiple Use” means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the

*needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and **not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.***

By definition, the Multiple-use concept supports the designation of “Principally: as it relates to the unique value of wild horses.

As if there were insufficient clarity up to this point, the very language (a single word) used by agencies to “authorize” the creation of lower levels of wild horse protection also completely refutes their own logic.

Sec. 3 (a) of the WFRHBA:

*All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he **may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of the Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the state wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, [particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.***

First, note that the paragraph speaks to the inclusion of ALL wild horses and burros; not those residing on some tourist-oriented “wild horse preserve”. Then, it is important to see the context for the two phrases used with much elasticity when justifying management actions OUTSIDE designated “Ranges”; *thriving natural ecological balance* and *minimal feasible level*. Maintaining their logic that few ranges exist in the wild horse management system, apparently it is not required that wild horses be managed to maintain this sacred thriving natural ecological

balance, nor must wild horses be managed to a minimal feasible level. According to this context, wild horses on BLM HMAs or FS Territories could legally be given regular feeding and constructed shelter; they could push out all other uses and all other species including livestock; and could never be captured. Lastly, the word often extracted from this section is “may”. Managers are fond of saying they don’t have to create “ranges”, that rarefied sanctuary environment where the land is managed “principally” for wild horses. That is certainly one interpretation of the word “may”, but it just doesn’t apply here. More accurately, this word provides agencies with the authority to fulfill the law; not an option to disregard it.

It is also silently obvious in Sec.3 of the WFRHBA that permitted livestock do not factor into the measure of a thriving ecological balance.

The original author's name is redacted and CAES's interpretations include this interpretation currently.

Citizens Against Equine Slaughter Statement on the Overall Working Group Makeup & Process

- Several attendees are mandated to follow 5 USC § 552b and the meetings do not meet the requirements under this act for executive session therefore requiring enactment of the federal open meetings regulations as outlined in the act itself.
- Additional to the Federal laws that govern these types of meetings there are state laws and the federal employees in attendance do not create a sovereignty from following the state laws.
 - *Article I, section 8 enumerates the powers of Congress; Article I, section 9 limits the powers of Congress; Article I, section 10 limits the powers of the states; and the Tenth Amendment reserves to the states the legislative powers not delegated to Congress or prohibited to the states. Importantly, clause 2 of Article VI*

provides that congressional enactments consistent with the Constitution "shall be the supreme Law of the Land." Although the Supremacy Clause makes clear that congressional enactments have an extraordinary displacing effect on state law, the clause itself does not authorize Congress to preempt state laws. If the clause were an affirmative grant of authority, it would likely reside in the metropolis of congressional power, Article I, section 8, rather than in the suburbs of Article VI.

- Several attendees of the working group are an “Officer” pursuant to ARS §§ 39-121(A)(1), and this working group meets the legal definition of a “Public body” pursuant to Arizona Public Records Law (A.R.S. §§ 39-121(A)(2)) Therefore making the working group and those members that are ‘officers’ responsible for maintaining records of these meetings pursuant to ARS §§ 39-121(B).
 - Arizona Public Records Law
 - 39-121.01. Definitions
 - A. *In this article, unless the context otherwise requires:*
 - 1. *"Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.*
 - 2. *"Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.*
 - B. *All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.*
- Exclusion of public in the process coupled with no meeting minutes or recordings of these meetings is a violation of Arizona’s Open Meeting Law (A.R.S. §§ 38-431 through 38-431.09)
 - Arizona’s Open Meeting Law
 - “It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Accordingly, Arizona’s Open Meeting Law must be construed in favor of open and public meetings.”*
- Violation of the stipulated agreement of 2007 that in resulted in the formation of this group. (In Defense of Animals et al v. USDA/USFS et al; CV-05-2754-PHX-FJM)

- This stipulation states the Forest Service will both work with and involve the public in the development of the Heber Wild Horse Territory Management Plan.
- This may have something to do with the very late and ineffectual results of this team 11 years after the stipulated agreement.
- When an employee of the FS is working during their normal work week there must be transparency because all of their documents they work on are public record. What gives these federal employees, while they are intentionally not producing documents, this lack of documentation, at least by recording creates an entire body of work that is less effective can't be reviewed, and is non-transparent and therefore violates the stipulation agreement requirement for public involvement,
- These meetings have taken place during the work hours of the federal and state employees attending, therefore paid for by the public. This mandates these meetings be documented for the public. To date there are no recordings, no minutes, and not even regular updates of working group 'deliberations' as promised on the ASU webpage.
- While wild horse advocates and wild horse experts are not called in for consultation for working groups, or as stakeholders during planning for cattle, elk, deer, in the Heber wild horse territory we note that the overwhelming makeup of this working group for determination/planning for wild horses has no wild horse specialist according to the bios/cvs of the participants of this working group, unfortunately this includes Dr. Ole Alcumbrac.
- The one local wild horse advocate that was included in the working group was not allowed to utilize her team of experts even though she works full-time and at times needed substitution
- As a result this overall team of 24 members effectively has a conflict of interest with the very plan it is tasked to draft.
- The 1971 WFRHBA requires the FS to protect and preserve the horses and to do this such a biased team is likely incapable to serve the peoples wishes for this public resource.

Citizens Against Equine Slaughter(CAES) is a national 501cs non-profit corporation, with a board member owning property in Stafford Arizona. Heber Wild Horses Freedom Preservation Alliance is the Arizona branch of CAES. Part of the mission of CAES is to protect wild horses and burros, their habitats which includes their predators (in this case bears, wolves and cougars).

Cc
Arizona Attorney General Mark Brnovich

Arizona Auditor General Lindsey Perry
Arizona Board of Regents Executive Director John Arnold
President of Arizona State University Michael M. Crow