



***Bureau of Land Management
Director's Summary Protest Resolution
Report***

**Wild Horse Management for
the BLM Rock Springs and
Rawlins Field Offices
Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement (PRMPA/FEIS)**

September 7, 2022

This page intentionally left blank.

Contents

Acronyms	ii
Introduction	1
Protesting Party Index	2
FLPMA – Consistency with Other Plans	4
NEPA – Impacts Analysis: General	14
NEPA – Impacts Analysis: Baseline Information	18
NEPA – Impacts Analysis: Cumulative Impacts.....	20
NEPA – Impacts Analysis: Forage Condition.....	21
NEPA – Public Participation	25
NEPA – Range of Alternatives.....	26
NEPA - Purpose and Need	30

Acronyms

Term	definition
2015 GSG ARMPA	Greater Sage-Grouse Approved Resource Management Plan Amendment
AML	Appropriate Management Level
APA	Administrative Procedure Act
AUM	animal unit month
AWHC	American Wild Horse Campaign
BLM	Bureau of Land Management
CAWP	Comprehensive Animal Welfare Program
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Cir	Circuit
DEIS	Draft Environmental Impact Statement
DRMPA	Draft Resource Management Plan Amendment
ECF	Electronic Case File
FEIS	Final Environmental Impact Statement
FLMPA	Federal Land Policy and Management Act of 1976
HA	Herd Area
HMA	Herd Management Area
HMAP	Herd Management Area Plan
LUP	Land Use Plan
MVP	minimum viable population
Ne	effective population size
NEPA	National Environmental Protection Act
PRMPA	Proposed Resource Management Plan Amendment
ROD	Record of Decision
RSGA	Rock Springs Grazing Association
TGA	Taylor Grazing Act
TNEB	thriving natural ecological balance
U.S.C.	United States Code
WFRHBA	Wild and Free-Roaming Horses and Burros Act of 1971
WH&B	wild horses and burros
Wild Horse Management PRMPA/FEIS	Wild Horse Management for the Rock Springs and Rawlins Field Offices Proposed Resource Management Plan Amendment/Final Environmental Impact Statement

Introduction

The Bureau of Land Management (BLM) Wyoming released the Wild Horse Management for the Rock Springs and Rawlins Field Offices Proposed Resource Management Plan Amendment (PRMPA) and Final Environmental Impact Statement (FEIS) (Wild Horse Management PRMPA/FEIS) on May 6, 2022. The BLM received 26 protest letters during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons held standing to protest. Of the 26 letters received, 18 met these criteria. Eight letters had comments only, and 11 letters were dismissed from consideration due to lack of standing. Seven of the letters had valid protest issues. The BLM documented the responses to the valid protest issues in the protest resolution report. The decision for each protest was recorded in writing along with the reasons for the decision.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Wyoming State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Proposed RMPA were necessary. The decision was sent to the protesting party by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protests.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-WY-WildHorse-RMPA-22-001	Peter Wood	–	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-002	Lisa Blanck	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-003	Mitzi Frank	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-004	Cara Artman	–	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-005	John Schumacher	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-006	Eileen McKenzie	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-007	Angela Black	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-008	Jennifer Howe	–	Denied
PP-WY-WildHorse-RMPA-22-009	Deanna and Dan Horton	–	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-010	Erik Molvar	Western Watersheds Project	Denied
PP-WY-WildHorse-RMPA-22-011	Deanna and Dan Horton	–	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-012	Melanie Kowalski	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-013	Lex Talamo	Lady Freethinker	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-014	Laura Leigh	Wild Horse Education	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-015	Tammi Adams	–	Denied
PP-WY-WildHorse-RMPA-22-016	Chad Hanson	Wyoming Mustang Institute	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-017	Rebecca Falk	–	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-018	Chad Hanson	Wyoming Mustang Institute	Dismissed – Comments Only
PP-WY-WildHorse-RMPA-22-019	Joy Burk	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-020	Eileen Hennessy	–	Dismissed – Comments Only

Letter Number	Protester	Organization	Determination
PP-WY-WildHorse-RMPA-22-021	Jannett Heckert	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-022	Sheryl Street	–	Dismissed – No Standing
PP-WY-WildHorse-RMPA-22-023	Carol Walker, Kimerlee Curyl	American Wild Horse Campaign, Animal Welfare Institute	Denied
PP-WY-WildHorse-RMPA-22-024	Jennifer Best	Friends of Animals	Denied
PP-WY-WildHorse-RMPA-22-025	Constance Brooks	Rock Springs Grazing Association	Denied
PP-WY-WildHorse-RMPA-22-026	Eric South	Coalition of Local Governments	Denied

FLPMA – Consistency with Other Plans

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: But this is not what Congress intended in the Wild Horse Act and why, instead, it required BLM’s management decision to serve TNEB by constraining the agency’s discretion to permanently remove long-standing wild horse herds only when habitat conditions in HMAs cannot be maintained or restored to promote a TNEB for long-term, sustainable wild horse use. By flouting those congressional guardrails and relying on factors that Congress chose not to include as relevant to HMA designation or AML adjustment decisions, BLM has violated the Wild Horse Act.

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: BLM’s claim that the difficulty of preventing herds from straying onto private lands in the checkerboard necessitates preemptive HA) reversions (and the concomitant wild horse removals) is merely a repackaging of the logic rejected by the Tenth Circuit in *American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174 (10th Cir. 2016). There, BLM claimed that it was required to exercise on public lands its Section 4 authority to remove wild horses from private lands. The Court flatly disagreed. In reaching its holding, the Court explained that a concern over “stop[ping] wild horses from straying from the public land sections of the Checkerboard” is not a credible basis for preemptive removals because, in Section 4 of the Act, Congress has already provided BLM with a mechanism to address stray horses on private land. See 847 F.3d at 1189. Thus, what BLM is attempting to accomplish in the proposed RMP amendments is merely a variation-albeit a much more permanent and precedential variation-on its prior unsuccessful utilization of Section 4 authority.

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: While the scope of BLM’s proposed herd reductions is astonishing in its own right, it is made even more concerning by the fact that the agency lacks lawful authority to implement its proposed plan. According to BLM, the drastic wild horse reductions outlined in the amendment are meant to comply with a 2013 Consent Decree it entered into with the Rock Springs Grazing Association (“RSGA”), an organization whose members graze livestock that compete with wild horses for forage on BLM lands. Yet, as BLM concedes, the Consent Decree obligated BLM to “consider” the environmental impact of a similar plan; it did “not require that the BLM implement any specific action.” FEIS at 13 (emphasis added). Nor could it. Under the Wild Free-Roaming Horses and Burros Act (“Wild Horse Act”), 16 U.S.C. §§ 1331-1340, BLM may only remove wild horses from public lands once they have been labeled “excess animals”—meaning there are insufficient quantities of habitat factors, such as forage, water, cover, and space, to support the existing herd size in a “thriving natural ecological balance. in that area,” *id.* § 1332(f). But BLM did not make that determination here. Instead, the agency freely admits that its decision is predicated on extraneous factors that are outside BLM’s discretion to consider when managing wild horses. Thus, the proposed amendments, if implemented, are textbook arbitrary action under the Wild Horse Act and the Administrative Procedure Act (“APA”), 5 U.S.C.) §§ 551-559, 701-706.

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: The Proposed RMP Amendment Violates the APA and Wild Horse Act. BLM’s proposed amendments to the Rawlins and Green River RMPs contemplate drastic reductions in the number of wild horses that reside in the action area. However, BLM’s Preferred Alternative relies on extra-statutory factors that artificially constrain its discretion to retain a

population of wild horses that is already achieving “a thriving natural ecological balance,” as required by the Wild Horse Act. BLM’s Preferred Alternative, therefore, violates the Act and the APA, as explained below. A. BLM’s Justification for the Proposed Redesignation of HMAs and Removal of Wild Horses from the Range Exceeds the Agency’s Statutory Authority Under the Wild Horse Act. As the Coalition explained in their comments on the DEIS), BLM’s decision to eliminate and/or significantly curtail long-standing wild horse use of four HMAs based on factors unrelated to the natural ecological balance of these areas “violates the plain terms of the [Wild Horse] Act, its regulations, and BLM’s Handbook.” E.g., AWHC) Comments at 11-13. In the Wild Horse Act, Congress made clear that the protection of wild horses is a paramount concern, and that those herds must be managed “to achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. §§ 1331, 1333(a).

***American Wild Horse Campaign, Animal Welfare Institute
Carol Walker, Kimerlee Curyl***

Issue Excerpt Text: Similarly, BLM’s own guidance regarding the Wild Horse Act lays out a very detailed process for adjusting or eliminating AML in a given HMA, and that process is based solely on habitat factors and range conditions. See Wild Horse Handbook at 67-75. Despite this, the FEIS bluntly admits that BLM did not care “whether existing range conditions reflect [TNEB] as described in the [Wild Horse Act].” FEIS at 3, 13. Instead, the agency explains that its decision is predicated on extra-statutory factors, including, specifically, the difficulty of managing wild horses in the checkerboard portion of the planning area and an ostensible need to comply with Section 4 of the Wild Horse Act. Id. at 22. That concession, standing alone, demonstrates that BLM has exceeded its discretion in violation of the Wild Horse Act. *Am. Wild Horse Preserv. Campaign v. Jewell*, 847 F.3d 1174, 1188 (10th Cir. 2016) (The “very practical realities [of the Checkerboard] do not provide BLM with the authority to construe the Act in a manner contrary to its plain and unambiguous terms.”); see also *Kleppe v. New Mexico*, 426 U.S. 529, 537 n.7 (1976) (“Congress expressly ordered that the animals were to be managed and protected in order ‘to achieve and maintain a thriving natural ecological balance on the public lands.’” (quoting 16 U.S.C. § 1333(a))

Friends of Animals

Jennifer Best

Issue Excerpt Text: The RMP amendment violates the Federal Land Policy and Management Act of 1976 (FLMPA), which mandates that land use plans and amendments be consistent with the purposes, policies and programs of federal laws and regulations applicable to public lands. The proposed amendment is not. It is inconsistent with law, policies, and regulations designed to protect wild horses, manage public lands, and make informed decisions. Congress unanimously passed the Wild and Free-Roaming Horses and Burros Act of 1971 (WHBA) to protect wild horses. It mandates that wild horses be considered as “an integral part of the natural system of the public lands.” BLM can only remove horses if there is an overpopulation and removal is necessary to achieve a thriving natural ecological balance-neither of these elements apply here. Nonetheless, the amendment proposes to manage for zero wild horses on over two million acres of land where wild horses have been since the passage of the WHBA.

Friends of Animals

Jennifer Best

Issue Excerpt Text: The 2013 Consent Decree specified that private ranching organization RSGA “recognized” that BLM is “required to comply with other federal law in conjunction with undertaking the required actions herein.” In fact, the Consent Decree actually states that “fencing the private lands may violate the Unlawful Enclosures Act,” but the proposed amendments created a “virtual fence” around two million acres of grazing land to serve interest of ranchers at the expense of wild horses and the public at large. And BLM notes that the U.S. District Court for the District of Wyoming, in approving the 2013 Consent Decree, stated that the agreement is a “fair, reasonable,

equitable, and adequate settlement of RSGA’s claims against the BLM” which does not “on its face violate the law or public policy.” However, eliminating wild horses on public land to serve the interest of RSGA would violate the law and would essentially fence wild horses. BLM ignores this law and merely states that no fences are proposed as part of the alternative. However, even if the decision does not propose to build a physical fence, it is still unlawfully preventing and obstructing wild horses from free passage or transit over or through public lands.

Friends of Animals

Jennifer Best

Issue Excerpt Text: The plan to zero out wild horses in the Great Divide Basin, Salt Wells Creek, and portions of the Adobe town directly conflicts with the WHBA, and BLM’s implementing regulations and policy. BLM cannot protect these wild horses from capture, branding, harassment or maintain a self-sustaining population of horses if it proposes to manage for zero horses in existing HMAs. In addition, BLM is failing to consider wild horses principally, or even comparably with other resource values and instead is assigning them essentially no value by proposing to remove them due to requests of private landowners. Thus, the proposed amendment is not “consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands” as required by FLPMA.

Jennifer Howe

Individual

Issue Excerpt Text: The Wild Free-Roaming Horses and Burros Act of 1971 states wild horses and burros are to be managed at a “minimal feasible level.” It is difficult to think of a management activity that is farther from a “minimal feasible level” than zeroing out entire HMAs and managing them for zero horses.

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: The FEIS and related responses to public comment are erroneous because the FEIS addresses wild horse management on public lands. Section 3 of the WHA clearly applies and the FEIS needs to address the elements set out in Section 3 and how the 2022 Wild Horse RMP complies. The 2013 Consent Decree is not a substitute because it requires compliance with all federal laws, Electronic Case File (ECF) No. 92-1 at 16-17. This is not difficult, because the public land in the HMAs that will be converted to herd areas include almost one million acres of Greater sage grouse priority habitat. 2022 Wild Horse FEIS, Map 3-1, §3.6. The FEIS also quantifies the priority habitat acres within each HMA. Id. at §3.6.

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: The WHA, FLPMA and the Taylor Grazing Act govern management of the affected public lands. The FEIS declines to explain how the preferred alternative conforms to the Taylor Grazing Act (TGA) or FLPMA, particularly applicable federal, state, and local land use plans. These omissions should be corrected in the Record of Decision. The 2022 Wild Horse RMP must comply with federal land use plans, 43 U.S.C. § 1732(a); and be consistent with state and local government plans, Id. §1712(c)(9). The FEIS incorporates the Great Basin Region and the Idaho Greater Sage-Grouse Approved Resource Management Plan Amendment (2015 GSG ARMPA) by reference, FEIS §1.8 at 18 and discusses wildlife wild horse interactions; FEIS §3.5, at 57; §3.6 at 58. The FEIS does not however address conformance or consistency with these plans.

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: Numerous comments stated that the BLM must document compliance with Section 3 of the WHA or that the FEIS violated Section 3. BLM’s dismissal of this issue as outside

the Purpose and Need is not consistent with the law or the Consent Decree. *RSGA v. Salazar*, Civ. No. 11:263-NDF, ECF No. 92-1 at 16-17. The FEIS ignores these comments or dismisses them as outside the scope of the Purpose and Need. E.g. 2022 Wild Horse FEIS, §1.2. Because the Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands in accordance with its plans, 43 U.S.C. § 1732(b), and its plans must be consistent with state and local government plans to the extent practicable, the Record of Decision needs to address these issues.

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: Based on its narrow reading of the purpose and need, BLM declined to address consistency with the WHA, especially the thriving and natural ecological balance directive, and with other land use plans including the 2015 Greater Sage Grouse ARMPA. 2022 Wild Horse FEIS §1.2; App. C Comment Nos. 67, 71, 72, 76, 115; see also Ex. 2, RSGA 2021 Gather Comments Table ## 6, 10, 11, 13, 28, 30, 57. This makes no sense because public lands must always be managed in accordance with federal law and the 2013 Consent Decree recognized this. ECF No. 92- 1, 16, 17 at 11. Wild horse management entails meeting thriving natural ecological balance consistent with multiple use and resource protection. 16 U.S.C. § 1332(f) (“which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.”) §1333(a) (“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. . . 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.”) The FEIS fails to address this aspect of wild horse management.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: The agency has not determined that any of these HMAs lack the requisite habitat features (forage, water, etc.) required for maintaining wild horse populations. But the BLM proposes to eliminate wild horses entirely from the Great Divide and Salt Wells HMAs and from portions of the Adobe Town HMA anyway, instituting a change in AML to zero for each area without making a finding that there are “excess horses” as defined under the Act or that a reduction is required to reach a thriving natural ecological balance. BLM calculated the reduced AML for the Adobe Town HMA by reducing the AML proportionally to the proposed reduction of land to be managed for wild horses. Final EIS at 21. However, this original AML was itself arbitrary and capricious because it assumed allocation of the majority of available forage within the HMA to domestic cattle and sheep. Because BLM is reopening the question of AML, it must also reopen the question of livestock forage allocation, in order to properly allocate forage to reach a thriving natural ecological balance. And whereas wild horse protection is legally mandated, livestock grazing is not. In fact, BLM policy states that the BLM may discontinue grazing by all or a particular class of livestock for the benefit of wild horses and their habitats inside an HMA. 43 CFR § 4710.5(a).

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: Certainly, castration of males interferes permanently with their “free-roaming behavior” in contravention of 43 CFR 4700.0-6. BLM discusses at some length the unique and important social dynamics of wild horse herds (Final EIS at 52), which would be disrupted by gelding stallions, and potentially also by spaying mares. This likely violates the WFRHBA) requirements.

Western Watersheds Project***Erik Molvar***

Issue Excerpt Text: In addition, both gelding and spaying prevent future breeding and genetic contributions of such animals, exacerbating the likelihood that individual wild horse populations will fall below genetic minimum viable population (MVP) thresholds (N_e , effective number of breeding animals = 100 for genetic MVP, Frankham 2014, Attachment 24). It is important to note that N_e is highly sensitive to skewed sex ratios between males and females, as in wild horses where many mares may be bred by a single stallion. This outcome also violates the WFRHBA.

Individual***Tammi Adams***

Issue Excerpt Text: The BLM concedes that FLPMA is the primary authority for administration of public lands. Under FLPMA, Section 202(c)(3) states; “In the development and revision of land use plans, the Secretary shall give priority to the destination and protection of areas of critical environmental concern.” HMAs are designated land and critical habitat protected for wild horses and burros under Wild and Free-Roaming Horse and Burro Act of 1971 (WFRHBA) and must be administered as such. The BLM’s Proposal to “zero out” wild horse populations in the Salt Wells Creek and Great Divide Basin HMAs, reduce AMLs without documentation, sterilize an entire HMA (White Mountain), and change HMA designation to Herd Areas (HAs) is unreasonable and a direct violation of FLMAP and the WFRHBA.

Individual***Tammi Adams***

Issue Excerpt Text: Title 16 USC Chapter 30, §1332(c), defines “range” as “the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands”. The BLM often uses the term “Thriving Natural Ecological Balance (TNEB)” to determine landscape health. The BLM definition or scientific data for what constitutes a range as achieving a “TNEB” is deficient in 16 USC Ch. 30 and the Federal Land Policy and Management Act of 1976 as amended (FLPMA).

Individual***Tammi Adams***

Issue Excerpt Text: Each HMA is land designated for wild horses and burros under 1971 WFRHBA as amended and “Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands” (WFRHBA Section 3), livestock is not wildlife. While planning for multiple-uses on public lands is tasked to BLM, this Proposal is a gross violation of the multiple-use directive, WFRHBA as amended, FLPMA, and NEPA) law requirements.

Individual***Tammi Adams***

Issue Excerpt Text: Herd Management Areas (HMAs) were defined by Congress in the WFRHBA and should not be changed to Herd Areas (HAs) when the majority of the Checkerboard is public lands designated for wild horses and burros. Provisions of Section 4 of the WFRHBA never intended removal of wild horses or burros on private land to “zero.” Furthermore, Congress does not authorize arbitrary reduction of Appropriate Management Levels (AMLs).

Individual***Tammi Adams***

Issue Excerpt Text: The agency Proposal must also determine parameters for safe capture. Under Title 16 USC Chapter 30, §1331, the policy of Congress states, “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.” “Use of helicopters or motor vehicles for the purpose of gathering wild horses and burros shall be undertaken only after a public hearing (Sec. 404 FLPA); and shall be in accordance with humane procedures (73 Stat. 470; 18 USC 4).” Utilization of helicopters and motorized vehicles is inhumane and a vile harassment of wild horses as proven repeatedly by advocate documentation of roundups.

Individual***Tammi Adams***

Issue Excerpt Text: Currently, Representative Dina Titus, Nevada, has introduced bill HR 6635 demanding an end to helicopter roundups citing “cruelty and harm to wild horses and burros.” Hence, utilization of helicopters and motorized vehicles for proposed actions is unreasonable and rebuked by lawmakers and taxpayers alike and should not be proposed nor employed by the agency for wild horse and burro management. Along with awaiting passage of HR6635, BLM’s public hearing on the use of motorized vehicles just occurred on April 26, 2022. The pending responses from public testimony have not yet been addressed by the agency. Therefore, the utilization of helicopters and motorized vehicles for any wild horse or burro gather is unreasonable and requires reform and alternatives for capture defined and applied.

Wyoming Coalition of Local Governments***Eric South***

Issue Excerpt Text: Pursuant to FLPMA, the BLM must manage public lands consistent with other approved federal land use plans and coordinate the land use planning with the land use planning of other Federal departments and agencies. 43 U.S.C. § 1732(a). The BLM must become, and remain, apprised of state and local land use plans, and to assist in resolving inconsistencies between Federal plans and local government plans. 43 U.S.C. §1712(c)(9). The directive is clear in both statute and regulations - “[l]and use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” Id.; 43 C.F.R. §1610.3-2(a); *Am. Motorcyclist Ass’n v. Watt*, 534 F. Supp. 923, 936 (E.D. Cal. 1981). The BLM must recognize in the Record of Decision that the Proposed RMPA conforms with federal, state, and local land use plans, including those that adopt management actions to protect Greater Sage-grouse.

Wyoming Coalition of Local Governments***Eric South***

Issue Excerpt Text: Failed to adequately discuss how revisions to the HMAs and AMLs will protect and restore a thriving natural ecological balance for all wildlife species in violation of the Wild Horse Act, 16 U.S.C. §§ 1332(f), 1333(a), and BLM’s Wild Horses and Burros Management Handbook (H-4700-1), (see Proposed RMPA and FEIS at 3, 13, 57-58, 65, 68-69, 72, 78- 88, 90, 99, 106, and Appendix A).

Wyoming Coalition of Local Governments***Eric South***

Issue Excerpt Text: Failed to adequately explain how revision to the HMAs and AMLs is in conformance with the 2015 Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse for the Rocky Mountain Greater Sage-Grouse Sub-Regions and state and local government plans, including wildlife management plans, as required by the

Federal Land Policy and Management Act, 43 U.S.C. §§ 1712(a), 1712(c)(9), (see Proposed RMPA and FEIS at 57-58, 90-92).

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: BLM MUST EXPLAIN HOW REVISIONS TO THE HMAS AND AMLS WILL PROTECT AND RESTORE A THRIVING NATURAL ECOLOGICAL BALANCE FOR ALL WILDLIFE SPECIES. The BLM argues that the purpose and need for the Proposed RMPA is based on the need to adjust HMA boundaries due to the removal of private landowner consent and is not based on the current resource conditions of the HMA. Proposed RMPA and FEIS at 3, 13, Appendix C Response to Comments #67, #71, #72, #76. Therefore, the BLM does not address “whether the existing range conditions reflect a thriving natural ecological balance”. Id. at 3, 13. However, the BLM must also comply with the statutory mandates under the WHA and cannot ignore the requirement to address thriving natural ecological balance (“TNEB”) as it manages wild horses.

Summary:

The BLM fails to explain how the Wild Horse Management PRMPA/FEIS is consistent with the Taylor Grazing Act of 1934 (TGA), the *2015 Greater Sage-Grouse Approved Resource Management Plan Amendment* (2015 GSG ARMPA), and other Federal, state, and local government plans, as required by FLPMA.

The Wild Horse Management PRMPA/FEIS violates the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) by proposing to manage zero wild horses on some Herd Management Areas (HMAs), therefore failing to manage wild free-roaming horses in a manner that is designed to achieve and maintain a thriving natural ecological balance (TNEB) on public lands. Protesters assert that the Wild Horse Management PRMPA/FEIS specifically violates the WFRHBA by:

- Modifying HMAs and reducing the Appropriate Management Level (AML) without documentation that wild horses are “excess” and that their removal is necessary to restore a TNEB as required by the WFRHBA;
- Proposing fertility control methods, such as spaying mares and neutering stallions, and allowing use of helicopters and motor vehicles for wild horse gathers;
- Changing HMA designations to Herd Area (HA);
- Improperly allocating available habitat to livestock grazing, which is not statutorily mandated, rather than wild horses, which is mandated by the WFRHBA; and
- Failing to demonstrate that AMLs/HMAs were adjusted or eliminated using statutory factors and processes, and instead relied on inappropriate factors and BLM discretion, such as the possibility that wild horses might stray onto private lands.

Response:

Section 202 (c)(9) of FLPMA requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

In accordance with this requirement, the BLM has given consideration to state, local, and other Federal plans that are germane to the development of the Wild Horse Management PRMPA/FEIS.

Sections 1.7 and 1.8 discuss how the BLM considered and is consistent with applicable laws, regulations, and local plans (Wild Horse Management PRMPA/FEIS, pp. 17–18). The protestor fails to specify what management action from the 2015 GSG ARMPA would be in conflict with the Wild Horse Management PRMPA/FEIS. As stated on page 18 of Section 1.7, the Wild Horse Management PRMPA/FEIS does not change any of the management actions in the 2015 GSG ARMPA. Therefore, it is a condition that the BLM would comply with the management actions from that in the 2015 GSG ARMPA.

The BLM does not discuss how this plan relates to the TGA because that law is specifically directed at management of grazing permits on Federal land, which is not at issue with the Wild Horse Management PRMPA/FEIS.

The BLM is not required to perform a line-by-line analysis of all laws, regulations, and local plans, nor justify how the BLM is in compliance with those laws, regulations, and local plans. In the Record of Decision (ROD) for the Wild Horse Management PRMPA/FEIS, the BLM will discuss why any remaining inconsistencies between the Wild Horse Management PRMPA/FEIS and relevant local, state, and federal plans cannot be resolved.

The BLM manages wild horses under the authority of the WFRHBA, as amended, to ensure healthy wild horse herds thrive on healthy rangelands in balance with other resources. The WFRHBA requires the BLM to manage wild horses at the AML to achieve a TNEB. It also requires that the BLM arrange for removal of wild horses that have strayed onto private lands if the landowner requests their removal. Section 3 of the WFRHBA provides the BLM the authority to remove wild horses from public or private lands when necessary to achieve AML and restore a TNEB and maintain a multiple use relationship.

In June 2010, the Rock Springs Grazing Association (RSGA) filed a lawsuit (*Rock Springs Grazing Association v. Salazar*, No. 11–CV–00263–NDF) in the U.S. District Court for the District of Wyoming, contending that the BLM violated Section 4 of the Wild Free-Roaming Horses and Burros Act (16 U.S.C. 1334) by failing to remove strayed animals from private lands controlled by the RSGA in southern Wyoming’s checkerboard pattern of alternating public and private lands. In April 2013, the court approved a Consent Decree and Joint Stipulation for Dismissal that resolved the lawsuit and required the BLM to evaluate potential changes to its management of wild horses on checkerboard lands by considering an RMP revision for the Rock Springs and Rawlins Field Offices. The BLM initiated the planning effort and developed the Wild Horse Management PRMPA/FEIS to meet the terms of the 2013 Consent Decree. The planning criteria for this planning effort (Section 1.4) provide for compliance with both FLPMA and the WFRHBA, as well as other applicable laws.

The 2013 Consent Decree did not contain an agreement to convert HMAs to HAs managed for zero wild horses. Instead, it reflected the BLM’s agreement to consider such actions for certain HMAs through this planning process. The Consent Decree did not direct the outcome of the process. The *BLM Wild Horses and Burros Management Handbook* (BLM Handbook H-4700-1) provides guidance on how the BLM is to administer the Wild Horse and Burro Program. The BLM’s land use plans may include decisions not to manage wild horses in all or a part of an HA (BLM Handbook H-4700-1, Section 2.1.4).

The need for this plan amendment results from a change in consent for the use of private lands within the checkerboard portion of these HMAs. Section 2.1.4 of the *BLM Wild Horses and Burros Management Handbook* (BLM Handbook H-4700-1) directs that the BLM acquire written permission from private landowners before including their private land in determining adequate habitat for wild horses within an HMA. Because the Wild Horse Management PRMPA/FEIS responds to this purpose and need, the analysis does not focus on whether existing range conditions reflect a TNEB as described in the WFRHBA, or whether the wild horses are “excess” horses that

must be removed from the range. Instead, the analysis considers the effects on wild horses, other resources, and resource uses that would result from different management configurations in consideration of the pattern of public and private land ownership in the Planning Area (Wild Horse Management PRMPA/FEIS, p. 13).

Section 8.3.2 of the *BLM Wild Horses and Burros Management Handbook* (BLM Handbook H-4700-1) provides possible fertility control tools that the BLM can consider implementing as population-control methods, which includes spaying mares and vasectomizing studs (BLM Handbook H-4700-1, Section 8.3.2). The WFRHBA does not prohibit the BLM from spaying mares or vasectomizing studs, nor is band fidelity specifically protected by the WFRHBA. The Wild Horse Management PRMPA/FEIS acknowledges that the BLM may consider using population-management tools, such as gelding, spaying, sex-ratio skewing, or other population growth-control methods (Wild Horse Management PRMPA/FEIS, pp. 27–35). Likewise, the Wild Horse Management PRMPA/FEIS acknowledges that the BLM may consider gathering and removing wild horses from HMAs or HAs. However, the PRMPA/FEIS does not authorize any specific action to control herd size or population growth. Implementation of any herd-reduction or population-growth suppression tool would be performed through a separate decision following further analysis of a proposed site-specific activity plan and alternatives.

Appendix A of the Wild Horse Management PRMPA/FEIS provides adequate explanation and documentation for how the BLM established AMLs for each alternative, consistent with guidance in Section 4.2.2.2 of the *BLM Wild Horses and Burros Management Handbook* (BLM Handbook H-4700-1). For the proposed action, AML was calculated for the Adobe Town HMA by reducing the existing high AML (from Alternative A) in proportion to the reduction in acres within the Adobe Town HMA (Wild Horse Management PRMPA/FEIS, Appendix A). BLM revised Appendix A based on public comments received during the Wild Horse Management Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (DRMPA/DEIS) comment period, clarifying that the monitoring data—including information provided by cooperating agencies—available to the BLM is limited. However, the BLM used the best-available data, as required by the National Environmental Protection Act (NEPA), to calculate adjustments to AML (Wild Horse Management PRMPA/FEIS, Appendix C).

The Wild Horse Management PRMPA/FEIS does not allocate available forage and habitat to livestock grazing. None of the alternatives analyzed within the Wild Horse Management PRMPA/FEIS propose increasing the number of animal unit months (AUMs) for livestock use. Any adjustment of livestock AUM allocations would be addressed through future decisions following further NEPA analysis, using detailed, site-specific data (Wild Horse Management PRMPA/FEIS, pp. 19–24).

In Section 1.1 of the Wild Horse Management PRMPA/FEIS, the BLM acknowledged the difficulty in meeting its public-lands herd-management obligations in Section 3 of the WFRHBA while meeting its Section 4 obligations to remove wild horses from private lands on landowner request, due to the transient nature of wild horse herds across public and private lands within the checkerboard pattern in southern Wyoming (Wild Horse Management PRMPA/FEIS, p. 11). Section 3 of the WFRHBA states, “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...” This Section allows the Secretary of the Interior to designate which areas are set aside for wild horse “sanctuaries.” This language also provides the Secretary with discretion to determine which areas will not be set aside for wild horse “sanctuaries.”

In 43 CFR 4710.1, it states, “Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans

prepared pursuant to part 1600 of this title.” This section lists the establishment of new HMAs as an example of management activities that could affect wild horses and burros, but it does not restrict the authority to revert HMAs to HA status. Changing HMAs to HAs and adjusting the scope of designated HMAs, as proposed in the Wild Horse Management PRMPA/FEIS, are appropriate planning actions.

The *BLM Wild Horse and Burro Management Handbook* states, “Where appropriate, the LUP [Land Use Plan] may include decisions not to manage WH&B [wild horses and burros] in all or a part of an HA. An example is intermingled and unfenced private lands within HAs where the landowners are unwilling to make them available for WH&B use...” (BLM Handbook H-4700-1, Section 2.1.4). The *BLM Wild Horse and Burro Management Handbook* also states,

Decisions to change HA boundaries, to designate HMAs for the maintenance of WH&B, or to remove all or a portion of an area’s designation as an HMA must be made through a LUP amendment, revision or new RMP... An area may lose its designation as an HMA when WH&B cause unacceptable impacts to other resource values, or conditions change and one or more of the four essential habitat components are not present in sufficient quantities to sustain WH&B use over the long term...” (BLM Handbook H-4700-1, Section 2.1.5).

This section of the *BLM Wild Horse and Burro Management Handbook* makes it clear that when conditions change, the BLM may remove all or a portion of an area’s designation as an HMA, as long as these changes are made through the LUP process. In this case, conditions have changed because the BLM no longer has permission for wild horse use of private land in the checkerboard land-ownership pattern.

Section 4 of the WFRHBA states, “If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed.” This provides direction as to how the BLM should respond to requests to remove wild horses from private land. The protestor misunderstands the need for the planning action. The BLM is not undertaking the planning process because wild horses have moved onto private land, but because the existing HMAs include private lands, and the landowner has withdrawn consent for wild horses to occupy those private lands. Due to the nature of the land-ownership pattern, these horses will continually drift on and off of private land in this area if the HMAs continue to include private lands.

When a related case came before the Tenth Circuit Court of Appeals (Appellate Case 15-8033) the court determined that the BLM had improperly relied on the authority in Section 4 of the WFRHBA to remove wild horses from public-lands portions of the HMAs. The court observed that the checkerboard lands in this area present a unique management challenge:

In most parts of the country, the BLM can readily comply with these dual statutory mandates (the dual mandates provided in Sections 3 [and] 4 of the WFRHBA). As applied to the checkerboard region of Wyoming, however, the statutory scheme falls apart...it seems to me that the only way the BLM can ultimately lawfully achieve its Section 3 duty to maintain wild herds and prevent destruction of viability caused by over grazing on public lands is to go back to step one and make appropriate judgements by redetermining the HMAs without the non-permissive use of private lands.

The Wild Horse Management PRMPA/FEIS reflects the BLM’s effort to revisit the planning decisions that created the conflicting obligations.

The BLM satisfied FLPMA’s consistency requirement in preparation of the Wild Horse Management PRMPA/FEIS. Accordingly, these protests are denied.

NEPA – Impacts Analysis: General

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: However, because BLM asserts that its FEIS here is merely a programmatic decision, it contains no weighing of relative impacts associated with these fertility control methods, nor any discussion of which strategy will best preserve these animals’ free-roaming behaviors. See *id.* (“Analyzing detailed impacts associated with specific methods of population growth suppression techniques in specific herds is beyond the scope of this [FEIS].”). BLM’s decision to skip that analysis-yet simultaneously commit in the FEIS to employ “population growth suppression” strategies with known effects on horses’ free-roaming behaviors-fails to satisfy the agency’s duties under both the Wild Horse Act and NEPA.

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: See FEIS at App’x C (BLM response to comment #65). And, with respect to economic costs, the agency merely asserted, without explanation, that “costs associated with the overall management of the wild horse and burro program (including costs associated with gathers, holding, etc.) are beyond the scope of this EIS.” FEIS at App’x C. This attempt to hide from public scrutiny the effects of the ballooning costs associated with BLM’s wild horse removals violates NEPA.

Friends of Animals

Jennifer Best

Issue Excerpt Text: Although BLM claims to have made changes in Section 4.2.2 and 4.2.4 to discuss some of the potential positive impacts from wild horses, it failed to include an analysis of the detrimental effects of removing wild horses when discussing the proposed RMP Amendment. Instead, the FEIS merely added a cursory mention of potential positive impacts under the no-action alternative, but then failed to adjust its ultimate conclusions or analysis of the other alternatives to account for the positive impacts of wild horses. In fact, BLM still concludes that “the lower number of wild horses in the planning area is expected to have positive impacts to wildlife, soils, vegetation, livestock, and water resources.” Its analysis is contrary to the evidence that shows the existing wild horses are part of thriving, natural ecological balance in the area and removing them could negatively impact wildlife, soil, vegetation and water resources. There are serious unavoidable adverse impact of removing wild horses from over two million acres of land, including increased risk of wild fire, and loss of vertebrate richness and riparian ecosystems that are created by wild horses. The FEIS fails to fully consider this.

Friends of Animals

Jennifer Best

Issue Excerpt Text: The BLM has not taken a hard look at the impacts of the RMP Amendment as required by NEPA. BLM must take “a hard look” at the impacts of an action prior to making an irreversible and irretrievable commitment of resources.²⁴ NEPA requires BLM to adequately evaluate all potential environmental impacts of proposed actions.²⁵ To meet this obligation, BLM must identify and disclose to the public all foreseeable impacts of the proposed action, including direct, indirect, and cumulative impacts.²⁶ BLM failed to take a hard look at removing wild horses from over two million acres of land and zeroing out the population on the Great Divide Bison, Salt Wells Creek, and part of the Adobe Town HMA. In particular, BLM failed to take a hard look at the following: (1) the positive impacts of wild horses and the risk of removing them from over two million acres of land; (2) the negative impact of replacing wild horses with cattle and sheep; (3) the impacts of helicopter drive trapping on sage grouse; (4) the impacts of eliminating and reducing herds on the genetic viability and sustainability of the wild horse population; (5) the socioeconomic

impacts of depriving the American public of the right to view wild horses on over two million acres of land; (6) the impacts of sterilization and fertility controls; and (7) the ethical impacts of a wild horse management program that takes wild horses from the open range and potentially dooms them to a lifetime on BLM feedlots and a premature death. BLM must also consider additional alternatives.

Friends of Animals

Jennifer Best

Issue Excerpt Text: BLM must disclose the impacts on sage grouse resulting from helicopter removals and the removal of all wild horses from sage grouse habitat. BLM admits that significant populations of greater sage grouse are found throughout most of the planning area. In fact, 918,400 acres of the planning area are considered Priority Habitat Management Areas for sage grouse. However, BLM fails to consider the impacts of the removal of wild horses, and potential addition of cattle and sheep on sage grouse. BLM must consider the potential impacts of its proposed action on sage grouse and their habitat, including the degree to which sage grouse breeding is disrupted by helicopter trapping, and the extent to which cows and sheep, impact sage grouse. The FEIS vaguely claims that removal activities would be designed and conducted in a manner that would avoid or minimize impacts, but fails to disclose what measures would be taken and how sage grouse would be impacted. BLM must consider the impact of the RMP amendment, including the impact to sage grouse of zeroing out wild horses from over two million acres of land. This proposed RMP Amendment will directly cause significant roundups and removals of wild horses and potential destruction and disturbance of sage grouse and their habitat that would not occur if horses were left alone.

Friends of Animals

Jennifer Best

Issue Excerpt Text: BLM failed to consider the positive impact of wild horses. BLM’s NEPA documents fail to fully account for the positive impact of wild horses and the ecological risk associated with removing them from the planning area. A healthy, free-roaming wild horse population serves to fertilize soils, suppress catastrophic wildfires, and contribute to overall ecological stability.

Individual

Tammi Adams

Issue Excerpt Text: Under 43 CFR §4710.5(a)(b)(c), if necessary to provide habitat and protect wild horses and burros, public grazing areas may be appropriately closed “...to grazing use by all or a particular kind of livestock.” The agency is acting unreasonably by not assessing the damage done to TNEB in this RMP from livestock grazing, extraction industries, public encroachment, and recreational use (FLPMA).

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: Herein, we protest the arbitrary reduction in Appropriate Management Level for wild horses, which is inconsistent with the Wild and Free-roaming Horses and Burros Act (WFRHBA); the failure to take the requisite ‘hard look’ at impacts pursuant to the National Environmental Policy Act (NEPA); and the failure to consider in detail a full range of reasonable alternatives pursuant to NEPA including livestock removal and consolidation of checkerboard land ownership

Summary:

The BLM failed to take a hard look at impacts from the Wild Horse Management PRMPA/FEIS as required by NEPA. The BLM did not adequately analyze:

- The increased risk of wildfire and loss of vertebrate richness and riparian ecosystems due to removal of wild horses;
- Positive impacts of wild horses;
- Negative impacts from replacing wild horses with cattle and sheep;
- Impacts of eliminating and reducing herds and sterilization and fertility control on the genetic viability and sustainability of the wild horse population;
- Impacts on wild horses and to Greater Sage-grouse from helicopter wild horse gathers; and
- Socioeconomic impacts.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact, and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. The BLM is required to take a “hard look” at potential environmental impacts of adopting the proposed RMPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The baseline data provides the necessary foundation for making informed land use planning-level decisions.

Because the planning decisions under consideration by the BLM are programmatic in nature and would not result in authorization of on-the-ground actions (i.e., the BLM is not authorizing a specific wild horse gather), the scope of the analysis was conducted at a higher, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM addressed the impacts from the alternatives on the increased risk of wildfire in Section 4.2.7 (Wild Horse Management PRMPA/FEIS, pp. 94–95). The BLM determined that although the reduction of wild horses would result in an increase of fuel loads in some areas, these areas would experience better success with fuel treatments and post-fire rehabilitation. Additionally, wildfires would be mitigated by following the comprehensive fire-management plan for that area (Wild Horse Management PRMPA/FEIS, p. 95).

The BLM discusses the positive impacts of wild horses under Alternative A (No Action) throughout the Wild Horse Management PRMPA/FEIS. Beneficial impacts from wild horses on vegetation are discussed in Section 4.2.4 (Wild Horse Management PRMPA/FEIS, p. 80–83). Positive impacts of an increase of wild horses on recreation are discussed in Section 4.2.11 (Wild Horse Management PRMPA/FEIS, p. 100). Additionally, and in response to public comments received on the DRMPA/DEIS, Section 4.2.2 was revised to explain some of the potentially positive impacts wild horses may have on soil resources.

The Wild Horse Management PRMPA/FEIS does not propose an increase in livestock (including cattle and sheep) AUM allocations for any allotments within the HMAs in the Planning Area under

any of the alternatives. Therefore, this issue was not analyzed in the Wild Horse Management PRMPA/FEIS.

Impacts associated with implementation-level activities are not analyzed in detail in the Wild Horse Management PRMPA/FEIS because this amendment does not authorize any implementation actions. Implementation actions, such as helicopter gathers, would be evaluated during site-specific NEPA analysis that would be prepared prior to issuing a decision and conducting any such operations. The BLM addresses the potential impacts on wild horses related to each alternative in Section 4.2.1 (Wild Horse Management PRMPA/FEIS, pp. 65–74). As stated in the Mitigation Measures section, the BLM will follow best management practices and standard operating procedures for future wild horse gathers, such as those provided in the BLM’s Comprehensive Animal Welfare Program. These measures will minimize impacts related to the management of wild horses by maintaining appropriate conditions for wild horses on the range and ensuring the use of proper gather-and-removal procedures and appropriate care practices for wild horses after they are removed from the range.

The BLM discusses potential impacts on Special Status Species, including Greater Sage-grouse, in Section 4.2.6 (Wild Horse Management PRMPA/FEIS, pp. 90-94). Under the proposed action, reduced competition from wild horses would improve habitat conditions and provide greater forage and cover for special status wildlife within the HMAs. Additionally, because population growth–suppression strategies may be utilized under this alternative, it is expected that wild horse removals would be needed less frequently than in the current management situation. Therefore, impacts on Special Status Species from potential future gather operations (including helicopter gathers) is expected to be reduced under the proposed action (Wild Horse Management PRMPA/FEIS, p. 92). Such impacts would, however, be analyzed in detail prior to approval of any such action.

The BLM discusses population-management tools that may be used in the future, consistent with the Proposed Amendment in Section 2.2.4 of the Wild Horse Management PRMPA/FEIS, including the issue of genetic viability of wild horses. As stated in that section, wild horses may be relocated from other HMAs to the remaining HMAs to help maintain genetic diversity, as needed (Wild Horse Management PRMPA/FEIS, pp. 20–21). Population growth–suppression tools could be implemented through a site-specific activity plan, after further analysis and a decision on the proposed action. The BLM’s Management Action MA012 directs the BLM to supplement any herds with potential low genetic diversity with additional wild horses from other HMAs to maintain the genetic diversity of the herd (Wild Horse Management PRMPA/FEIS, pp. 32–33).

The BLM addresses socioeconomic impacts from each of the alternatives, including potential impacts on tourism associated with a reduction of wild horse viewing, in Section 4.2.12 of the Wild Horse Management PRMPA/FEIS. As stated in that section, although the Proposed Amendment would remove recreational opportunities to view wild horses in two HMAs in the Planning Area, visitors will likely choose to spend money in other areas that support wild horse viewing opportunities. The impact on the regional economy would be small (Wild Horse Management PRMPA/FEIS, p. 104).

The BLM complied with the NEPA requirement to analyze the environmental impacts in the Wild Horse Management PRMPA/FEIS. Accordingly, these protests are denied.

NEPA – Impacts Analysis: Baseline Information

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: By failing to provide this information, BLM has further demonstrated that its NEPA analysis is little more than a make-work exercise, whereby the agency is merely providing post hoc rationalizations for its decision to zero out or severely reduce AML in these HMAs to unlawfully satisfy RSGA and its demands in the 2013 Consent Decree. Using the FEIS in this way violates NEPA. 40 C.F.R. § 1502.5 (NEPA review “shall serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made.”)

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: Given BLM’s brazen departure from the requirements of the Wild Horse Act, it is unsurprising that its environmental impact analysis, prepared pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, is also fatally flawed. For vague or unexplained reasons, the agency’s NEPA analysis rejects from detailed consideration reasonable alternatives that entail fewer environmental impacts. Likewise, the FEIS ignores several important facets of the agency’s decision, thereby concealing the full extent of environmental impacts stemming from the RMP amendments. Taken together, these fatal errors demonstrate that BLM has not used the NEPA process to inform its decision-making, but instead to justify a decision the agency already made (and has attempted unsuccessfully to implement in the past through other, related actions in these same areas of public land).

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: BLM is required by NEPA to take a ‘hard look’ at the environmental consequences of each alternative. BLM still has not provided basic baseline information that is directly relevant to the proposed plan amendment. This information includes wild horse population status and trends, sage grouse population status and trends, and status and trends of other large herbivores (and their migrations). Without this information, which should be readily available to the agency, it is impossible for BLM to provide the environmental analysis - the “hard look” - required by NEPA. The BLM does not analyze the mileage of fencing required under each alternative, and the environmental impacts (particularly on sage grouse and pronghorn) of that fencing.

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: Failed to adequately address the current management situation and establish the baseline number of wild horses currently on the range in violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321-4375 and the Wild Horse Act, 16 U.S.C. § 1333(b), (see Proposed RMPA and FEIS at 47-52).

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: Under the Wild Horse Act, the BLM is required to “maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands” to “determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands” and whether AML should be achieved by removal of excess animals or other means. 16 U.S.C. § 1333(b) (emphasis added); see *Wyoming v. U.S. Dep’t of Interior*, 839 F.3d 938, 942-44 (10th Cir. 2016); *Dahl v. Clark*, 600 F. Supp. 585, 587-88 (D. Nev. 1984). The regulations also recognize that BLM must maintain a current inventory of wild horse numbers and their areas of use

“in order to evaluate population trends in relation to the environment.” 43 C.F.R. § 4710.2. NEPA also requires that the BLM establish the baseline environmental conditions of a project to provide an adequate assessment of the environmental impacts. *Or. Nat. Desert Ass’n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019); *Western Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 985 (D. Idaho 2021). Otherwise, “there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA.” *Rose*, 921 F.3d at 1190 (quoting *Great Basin Res. Watch v. Bureau of Land Mgmt.*, 844 F.3d 1095, 1101 (9th Cir. 2016)). The BLM must include within this FEIS and/or its Decision Record a discussion of historic and current wild horse numbers in the Adobe Town, Salt Wells Creek, Great Divide Basin, and White Mountain HMAs before it can appropriately assess the environmental impacts/benefits to adjusting the HMA boundaries and AML ranges. This discussion is relevant to establish the baseline resource conditions and the impact the overpopulation of wild horses has had on the resources, including wildlife and Special Status Species habitat. It is also important to the discussion of determining whether management of wild horses within the current and proposed HMAs is and/or will “achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1333(a).

Wyoming Coalition of Local Governments

Eric South

Issue Excerpt Text: The BLM must supplement its FEIS and/or include in the Record of Decision a discussion of the historic and current wild horse populations within the HMAs that are being amended under the Proposed RMPA in order to comply with the WHA and NEPA. This discussion will also only further support the conclusions in the Proposed RMPA that reverting the Salt Wells Creek and Great Divide Basin HMAs to herd areas managed for zero wild horses, and reducing AML for the Adobe Town HMA will benefit the resources, including wild horses, livestock, wildlife and Special Status Species habitat, and help maintain a thriving natural ecological balance among all multiple uses

Summary:

The BLM failed to adequately describe baseline conditions of historic and current wild horse populations in the Wild Horse Management PRMPA/FEIS Planning Area, and therefore did not adequately analyze the decision to reduce AML or change HMAs to HAs managed for zero wild horses.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact, and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. The BLM is required to take a “hard look” at potential environmental impacts of the Wild Horse Management PRMPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives, including baseline information presented in the affected environment, is typically broad and qualitative, rather than quantitative or focused on site-specific actions. Baseline data provides the necessary foundation for making informed land use plan-level decisions. Because the planning decisions under consideration by the BLM are programmatic in nature and would not result in on-

the-ground actions (e.g., the BLM is not approving a specific wild horse gather or fertility control program), the scope of the analysis was conducted at a programmatic level.

Section 3.1 of the Wild Horse Management PRMPA/FEIS presents the affected environment for wild horses and describes current AMLs and population estimates for HMAs in the Planning Area (Wild Horse Management PRMPA/FEIS, pp. 47–52). Section 3.6 describes the affected environment for Special Status Species, including Greater Sage-grouse Priority Habitat Management Areas within each HMA (Wild Horse Management PRMPA/FEIS, pp. 58–59).

As stated in Section 1.2 of the Wild Horse Management PRMPA/FEIS, the need for this RMPA is driven by the checkerboard pattern of public and private land ownership within the HMAs, the requirements of the WFRHBA, RSGA’s withdrawal of consent to maintain wild horses on privately owned lands (2013 Consent Decree (see Section 1.1), 43 C.F.R. § 4710.1, and BLM Handbook H-4700-1, Section 2.1.4).

NEPA does not require a detailed discussion of historical and current wild horse population counts, Greater Sage-grouse population status and trends, or status and trends of other large herbivores in the Wild Horse Management PRMPA/FEIS, nor does the BLM need this detailed data to analyze the effects of the four planning alternatives on wild horses, other resources, and resource uses, nor to make reasoned decisions about which checkerboard areas, if any, should be designated for wild horse use. The effects discussed in the Wild Horse Management PRMPA/FEIS are sufficient to inform the BLM’s planning decisions.

The BLM complied with NEPA’s requirement to discuss the affected environment and analyze the environmental impacts related to the Wild Horse Management PRMPA/FEIS. Accordingly, these protests are denied.

NEPA – Impacts Analysis: Cumulative Impacts

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: NEPA requires BLM to analyze not only direct impacts of the plan amendment, but also the cumulative effects of the plan amendment and how it will interact with other reasonably foreseeable actions and connected actions occurring in the same planning area, and elsewhere. For this wild horse plan amendment, it is clear that wild horses have an effect on vegetation and land health, as do livestock permitted to graze the same lands by the BLM. It is therefore incumbent on the agency to provide a detailed analysis of how these two types of grazing and other impacts interact to affect the soils, water, vegetation, and recreational resources in the planning area.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: Failure to analyze the impacts of that increase in cattle grazing - which could eliminate any speculative gains in rangeland condition from horse removal, or even result in worse overall range condition - render BLM’s assessment that range conditions will improve after wild horse removal arbitrary. BLM’s analysis of livestock impacts (direct or cumulative) is cursory and devoid of substantive analysis. In particular, BLM has not disclosed the cumulative impacts of wild horse and livestock grazing on migrating mule deer using the Red Desert to Hoback migration corridor; cumulative impacts to the Steamboat Mountain and Petition herds of desert elk, and cumulative impacts to sage grouse (with particular regard to the 7-inch grass height and other habitat objectives contained in the Wyoming Greater Sage Grouse ARMPA, required under FLPMA).

Summary:

The Wild Horse Management PRMPA/FEIS did not adequately analyze cumulative impacts.

Response:

When preparing an EIS, the BLM must discuss the cumulative effects of the proposed action and the alternatives (BLM Handbook H-1790-1, Section 6.8.3). Council on Environmental Quality (CEQ) regulations define *cumulative effects* as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the Wild Horse Management PRMPA/FEIS when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Chapter 4 of the Wild Horse Management PRMPA/FEIS describes cumulative impacts from each of the action alternatives combined with other past, present, and reasonably foreseeable actions in the cumulative impact analysis area for each resource. Chapter 4 describes cumulative impacts on wild horses (pp. 73–74), livestock grazing (p. 100), recreation (pp. 101–103), soil resources (pp. 76–78), wildlife and fisheries (pp. 88-89), Special Status Species (pp. 93-94), water resources (pp. 79-80), and vegetation (pp. 82–83).

The cumulative impact discussion under each of these resources identifies actions that were considered in the cumulative impacts analysis for the affected resource. The relationship between the proposed action and these other actions determined the extent of the analysis. The information presented in the Wild Horse Management PRMPA/FEIS enables the decision maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Wild Horse Management PRMPA/FEIS in compliance with NEPA. Accordingly, this protest is denied.

NEPA – Impacts Analysis: Forage Condition

American Wild Horse Campaign, Animal Welfare Institute

Carol Walker, Kimerlee Curyl

Issue Excerpt Text: BLM’s AMLs for each alternative in the FEIS relies not “on analysis of utilization data and use pattern mapping,” but instead on the agency’s agreement with the RSGA. See FEIS at App’x A (“The current AML for this HMA was established by agreement, and was not based on analysis of utilization data and use pattern mapping. The BLM currently lacks adequate utilization and use pattern mapping data to calculate an updated proposed carrying capacity for wild horses in this area.”). Rather than collect the requisite data regarding forage production or other habitat conditions on the pertinent public lands at issue, BLM quite plainly states that it will instead set AML in the FEIS at the levels “as proposed in each alternative.” Id. This blatantly arbitrary, outcome-determinative analysis cannot be, and is not, what Congress envisioned in the Wild Horse Act.

Friends of Animals

Jennifer Best

Issue Excerpt Text: BLM also fails to consider how increased cattle or sheep would impact the few remaining wild horses. For example, the FEIS claims that forage conditions for wild horses that remain on the range is expected to improve since there would be reduced competition as a result of

permanently removing the vast majority of wild horses. Again, this fails to take into account that BLM may increase cattle and sheep grazing. Because cattle and sheep cause significantly more damage to the range, forage condition and health of the few remaining horses, as well as other wildlife, could deteriorate

Friends of Animals

Jennifer Best

Issue Excerpt Text: BLM fails to take a hard look at the impact of reallocating wild horse forage. BLM’s analysis looks at the impact of removing AUMs from wild horses without disclosing where the AUMs would be reallocated and the impacts of that action. Instead, BLM claims that AUMs for the wild horses it proposes to remove would be available for potential allocation to other resources and resource uses, such as wildlife, livestock or other ecosystem functions. The reallocation of AUMs to livestock is a foreseeable consequence that must be analyzed. Notably, the FEIS erroneously indicates that the impacts of wild horse and livestock are similar and fails to analyze how allocating wild horse forage to livestock could impact the environment. BLM must provide a comprehensive analysis of the environmental impacts of grazing by cows and sheep compared to wild horses and the impact of transferring wild horse forage to other uses. Without this analysis BLM will not have provided critical information necessary to make an informed decision about the proposed RMP.

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: The CEQ rules require disclosure and discussion of unavailable or incomplete information. 40 C.F.R. §1502.22. Ex. 1, RSGA 2020 DEIS Comments noted that Appendix A did not conform to BLM H-4700-1 governing establishment of HMAs and AMLs. Instead of discussing the available forage and water, BLM estimated what the wild horses needed. The Appendix A discloses the last forage inventory dates from the early 1960s and that BLM lacks the data to estimate forage and water. FEIS App. A at 2. While the FEIS also refers to the Analysis of the Management Situation prepared for the Rock Springs RMP Revision, that too lacks the necessary information. In this situation, BLM needs to disclose and address the unavailable or incomplete information. The discussion in the ROD must address: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community, 40 C.F.R. §1502.22(b).

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: The National Environmental Policy Act (NEPA) requires that BLM address the unavailable or incomplete information and how it may affect or not affect the environmental impacts from the proposed action. 40 C.F.R. §1502.22.1 The FEIS acknowledges that the Field Offices lack the data to calculate the availability of forage and water for wild horses. 2022 Wild Horse FEIS, App. A-3. Because the 2022 Wild Horse RMP removes public and private lands from the HMAs, the BLM needs to address availability of forage and water for only the White Mountain and the modified Adobe Town HMAs. Similarly the 2022 Wild Horse RMP proposes to expand reproduction controls to limit gathers and maintain numbers in the two HMAs. Recent research expands on the options available to better manage wild horse reproduction rates. Ex. 2, RSGA 2021 Gather Comments Table #37; Ex. F, Fertility Control Tool Box

Western Watersheds Project***Erik Molvar***

Issue Excerpt Text: BLM notes that the Sublette Mule Deer Migration Corridor (referenced in WWP comments as the Red Desert to Hoback mule deer migration route) overlaps with the Great Divide Basin HMA. FEIS at 55. But the agency fails to disclose the condition of forage along the migration corridor and whether it is adequate to sustain the mule deer migration (id.). This constitutes a NEPA ‘hard look’ failure.

Western Watersheds Project***Erik Molvar***

Issue Excerpt Text: BLM’s AML analysis is problematic. For example, in its AML analysis (Appendix A, no page numbers), BLM states, “the BLM has determined that it lacks adequate forage production data, to make an accurate estimate of forage production throughout the planning area.” If it is unable to estimate forage production, then it is likewise unable to set legally viable AML levels; its numbers are the result of simple guesswork. For that matter, in the absence of forage production data, the BLM is likewise unable to credibly allocate forage on grazing allotments. The agency should therefore suspend all livestock grazing in the planning area until such time as it has the forage production data necessary to provide informed and credible management of livestock, under this plan amendment decision.

Individual***Tammi Adams***

Issue Excerpt Text: The agency has defined the issue as livestock versus wild horses, yet the agency refuses to provide data on livestock effects to a Thriving Natural Ecological Balance (TNEB). BLM identifies goals and objectives of “managing wild horses in the planning area at Appropriate Management Levels (AMLs) to support TNEB” (WH:1). However, the agency has not provided reasonable information for the basis of proposed actions such as availability of forage, water, space, and cover factors. None of the impacts from livestock grazing on TNEB within the HMAs/HAs are presented by the agency in this Proposal, hence the unreasonable proposed actions against wild horses in this Proposal is unfounded and arbitrary.

Summary:

The BLM has violated NEPA by not taking a “hard look” in its analysis of impacts from the Wild Horse Management PRMPA/FEIS on forage availability and not properly addressing unavailable or incomplete information.

Response:

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A *hard look* is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of the public’s involvement (40 CFR 1500.1(b) and 1502.24). NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and that NEPA documents must concentrate on

the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).¹

The level of detail in the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground actions (such as wild horse gathers or adjustments to livestock grazing), the scope of the analysis was regional and programmatic.

Throughout the Wild Horse Management PRMPA/FEIS, the BLM addresses impacts of the alternatives on forage conditions. Impacts on forage conditions related to vegetation resources are discussed in Section 4.2.4 (Wild Horse Management PRMPA/FEIS, pp. 80–83). As the BLM states in that section, the proposed action would result in a benefit to available forage because management actions allow the BLM a means of adjusting AML for HMAs where wild horses are reduced, based on up-to-date information about resource conditions. Impacts on forage conditions related to wild horses are discussed in Section 4.2.1 (Wild Horse Management Plan PRMPA/FEIS, pp. 65–74), and impacts on forage conditions related to livestock are discussed in Section 4.2.10 (Wild Horse Management PRMPA/FEIS, pp. 98–100). Under the Proposed Amendment, forage-condition health is expected to improve for both wild horses and livestock because competition would be reduced.

Under the Proposed Amendment, AML for HMAs where wild horse numbers would be reduced would be evaluated and potentially adjusted in the future. The BLM would conduct an analysis consistent with the *BLM Wild Horses and Burros Management Handbook* (BLM Handbook H-4700-1, Appendix 3). This analysis would include an in-depth review of intensive monitoring data, including grazing utilization, use patterns, Standards for Healthy Rangelands, trend monitoring, actual use, and climate data. Additionally, AML would be evaluated if monitoring data demonstrates that there is a substantial increase or decrease in available forage or if long-term conditions within the HMAs have changed as a result of prolonged drought, wildfires, noxious weed infestations, changes in livestock management, or other factors (Wild Horse Management PRMPA/FEIS, p. 21). The alternatives analyzed in the Wild Horse Management PRMPA/FEIS do not include increases in cattle grazing. Any potential adjustment of livestock grazing in the future would be based on a similar analysis.

An evaluation of wildlife population trends and forage availability for wildlife is not needed to analyze the effects of the four planning alternatives on wild horses, other resources, and resource uses, nor to make reasoned decisions about which checkerboard areas, if any, should be designated for wild horse use.

The BLM adequately disclosed and addressed the unavailable or incomplete information noted by the protestor in the section titled *A Note on Forage Production Data* in Appendix A of the *Wild Horse Management PRMPA/FEIS*. That section discusses the data that is not available and why the BLM is unable to estimate forage availability for supporting AML, the relevance of the incomplete data in determining forage available for supporting AML, and what data is available in the area. That section

¹ Though the CEQ issued new NEPA rules (40 CFR § 1500 et seq.) effective September 14, 2020, the rule's effective date applies to new projects begun on or after September 14, 2020. For the Wild Horse Management PRMPA/FEIS, the BLM is using the agency's previous NEPA procedures, in accordance with the regulations that were in place at the time the EIS Notice of Intent was published in the Federal Register.

also discusses rationale for the approach the BLM took (i.e., comparing the stocking rates of the various alternatives to the stocking rates on nearby allotments) and BLM’s assessment of AML under each alternative relative to the stocking rate of nearby areas. This information provided context about whether the stocking rate is an accurate assessment of known successful stocking rates (Wild Horse Management PRMPA/FEIS, Appendix A).

The BLM adequately analyzed impacts on forage condition in the Wild Horse Management PRMPA/FEIS in compliance with NEPA. Accordingly, these protests are denied.

NEPA – Public Participation

Individual

Tammi Adams

Issue Excerpt Text: Public comments published within the BLM Wild Horse Consent Decree Addendum to the Scoping Report for the Rock Springs Field Office Resource Management Plan Revision and Rawlins Resource Management Plan Amendment and Associated Environmental Impact Statement (January 2014) overwhelmingly demanded changes to the RMP to protect wild horses and burros and for management on the public lands designated for them. While comments are included within this document, few, if any, public comments were authentically considered or employed within this Proposed Resource Management Plan Amendment and Final Environmental Impact Statement Amendment for Wild Horse Management in the Rock Springs and Rawlins Field Offices (Proposal). Redundant and arbitrary BLM responses to public comments fail to satisfactorily address valid public concerns.

Summary:

The BLM failed to adequately respond to public scoping comments in the *Wild Horse Consent Decree Addendum to the Scoping Report* for the Wild Horse Management PRMPA/FEIS (Scoping Report Addendum).

Response:

The BLM must consider and respond to substantive comments that are submitted timely. *Substantive comments* are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24). CEQ regulations also state that the agency should “identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review” (40 C.F.R. § 1500.7). The BLM considered all public comments submitted during the scoping period.

The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received during the draft comment period. Appendix C (*Draft EIS Public Comments and BLM Responses*) of the Wild Horse Management PRMPA/FEIS presents the BLM’s responses to all substantive comments received on the Wild Horse Management DRMPA/DEIS. The Scoping Report Addendum for the Wild Horse Management PRMPA/FEIS presents the BLM’s responses to comments received during the scoping period.

The CEQ regulations state, “NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail” (40 C.F.R. § 1500.1). CEQ regulations also state that the agency should “identify and eliminate from detailed study the issues which are not significant, or which have been covered by prior environmental review” (40 C.F.R. § 1500.7). The BLM analyzes issues that are “necessary to make a reasoned choice between alternatives” or that are “significant (an issue associated with a significant direct, indirect, or

cumulative impact, or where analysis is necessary to determine the significance of impacts)” (BLM Handbook H1790-1, Section 6.4.1). Non-significant issues are identified as “non-significant” because they are: 1) outside the scope of the proposed action; 2) already decided by law, regulation, or other higher-level decision; 3) unrelated to the decision to be made; or 4) conjectural and not supported by scientific or factual evidence.

Chapter 4 of the Scoping Report Addendum and Table 1-2 of the Wild Horse Management PRMPA/FEIS summarize the scoping issues considered and explain why they were not analyzed (Scoping Report Addendum, p. 14; Wild Horse Management PRMPA/FEIS, pp. 14–15). The protester did not specify which BLM responses to submitted comments were unsatisfactory.

The BLM adequately considered scoping comments and responded to public comments on the Wild Horse Management DRMPA/DEIS in compliance with NEPA. Accordingly, this protest is denied.

NEPA – Range of Alternatives

American Wild Horse Campaign, Animal Welfare Institute Carol Walker, Kimerlee Curyl

Issue Excerpt Text: The Coalition’s comments on the DEIS identified significant gaps in BLM’s alternatives analysis for the proposed RMP amendments. See, e.g., AWHC Comments at 23-26. In particular, the Coalition noted that BLM overlooked and/or eliminated several viable alternatives that would entail fewer environmental impacts. These included: (1) an alternative in which livestock grazing is eliminated, pursuant to 43 C.F.R. § 4710.5(a)4, from all solid-block public land portions of the HMAs, while all wild horses would be removed from the Checkerboard portions of these HMAs; and (2) another alternative exploring “land swaps with private landowners in the Checkerboard . . . to create solid blocks of public lands within the HMAs,” AWHC Comments at 25-26. BLM’s alternatives analysis in the FEIS, however, remained essentially the same as that found in the DEIS. BLM eliminated the Coalition’s proposed alternative examining potential land exchanges to consolidate public lands by stating that it “does not currently have a proposal from a willing party (or group of parties) to a land exchange involving checkerboard lands in the planning area.” FEIS at 25. “Even if a proposal existed,” BLM explains, such an alternative “would not respond to the purpose and need for the plan amendment, which is intended to resolve private land conflicts in the near term.” Id. at 25. There are several issues with BLM’s rejection of this alternative. First, nowhere else in either the DEIS or FEIS does BLM claim that the purpose and need is limited to “near term” solutions. To the contrary, BLM’s own alternatives analysis explicitly envisions “long term” conditions within the HMAs. See, e.g., FEIS at 20, 21. BLM may not reject reasonable alternatives by inventing and imposing new restrictions on its already flawed purpose and need.

American Wild Horse Campaign, Animal Welfare Institute Carol Walker, Kimerlee Curyl

Issue Excerpt Text: At minimum, BLM’s exclusion of the land-swap alternative on this basis violates the agency’s duty to “[r]igorously explore and objectively evaluate all reasonable alternatives,” including “alternatives not within the jurisdiction of the lead agency.” 40 C.F.R. § 1502.14(a), (c); 6 see also *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 942-43 (D. Or. 2016) (“Because action alternatives in a NEPA analysis need not be under the jurisdiction or control of the lead agency, a comprehensive NEPA analysis would likely need to include such a reasonable alternative.” (emphasis added)); CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981) (“An alternative that is outside the legal jurisdiction of the lead agency must still

be analyzed in the EIS if it is reasonable.”). BLM’s failure to analyze the relative environmental effects of consolidating the Checkerboard is, therefore, arbitrary.

***American Wild Horse Campaign, Animal Welfare Institute
Carol Walker, Kimerlee Curyl***

Issue Excerpt Text: BLM also gave short shrift to the Coalition’s proposed alternative involving cessation of grazing on the solid-block portions of the HMA. Here, BLM claimed that the Coalition’s alternative was similar to its Alternative B, and therefore removed it from further consideration. FEIS at 290, 302. Alternative B, however, envisions (at best) only a modest reduction in grazing on the solid-block portions of the HMAs, yet retains reductions in AML proportional to the respective boundary adjustments. See FEIS at App’x A. Moreover, BLM artificially reduced AML for both the White Mountain HMA and Adobe Town HMA in Alternative B to comply with “the terms of the 2013 Consent Decree.” Id. BLM’s Alternative B, therefore, does not adequately analyze the Coalition’s proposed alternative, and the agency has failed to offer a convincing reason for why it was excluded. For all these reasons, BLM’s alternatives analysis is deficient under NEPA. Thus, BLM may not lawfully adopt its proposed RMP amendments without rectifying its deficient analysis in a new EIS that adequately examines all reasonable alternatives.

***American Wild Horse Campaign, Animal Welfare Institute
Carol Walker, Kimerlee Curyl***

Issue Excerpt Text: The agency’s NEPA analysis is also fatally flawed. By structuring its analysis to simply justify its desired wild horse reductions, BLM has failed to take a “hard look” at the full scope environmental impacts of its proposed RMP amendments. The agency has ignored reasonable alternatives that entail fewer environmental impacts and prioritized its discretionary authority to authorize grazing on public lands over its mandatory duty to protect wild horses on these same public lands, which have long served as wild horse habitat.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: BLM failed to analyze an alternative to increase AML while reducing livestock grazing for a net positive environmental benefit. The agency has failed to evaluate an alternative that would increase AMLs in the four wild horse HMAs, by decreasing or eliminating livestock pursuant to 43 CFR § 4710.5.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: BLM failed to consider an alternative consolidating checkerboard lands into block public and private ownership. The obvious solution to the Rock Springs Grazing Association’s (RSGA’s) desire to have wild horses removed from its checkerboard lands is obvious: To consolidate checkerboard lands into large block of private and public lands, such that the removal of wild horses from private lands, without removing them from public lands, is readily achievable. This alternative was recommended in public comments, is fully reasonable and well within the agency’s authority to implement (as discussed below), and it meets the Purpose and Need for this EIS. BLM eliminated this alternative from consideration because the agency “does not currently have a proposal from a willing party” and involved complications that would “make this alternative infeasible.” Final EIS at 25. To the contrary, the BLM could readily implement such an alternative, and should have considered it in detail in the EIS. Failure to have done so violates NEPA’s ‘range of alternatives’ requirement.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: Thus, not only would a land consolidation alternative obviate the need to depopulate federal public lands of wild horses for the benefit of interspersed private landowners, it

would also improve conservation of migration corridors, sage grouse, and potential wilderness, and would resolve long-festering public land access problems posed by the checkerboard ownership pattern. BLM’s failure to even consider this solution in the Rock Springs Rawlins Wild Horse plan amendment EIS is therefore not only a legal violation of NEPA, but also an abrogation of the agency’s duty to serve the public interest.

Western Watersheds Project

Erik Molvar

Issue Excerpt Text: BLM failed to consider an alternative raising AMLs to allow higher populations of wild horses while still meeting ‘thriving natural ecological balance’ requirements. See FEIS at 39, in which no alternative increases AMLs. BLM established that pre-roundup populations of wild horses as they existed in early 2020 were consistent with maintaining wild horses at thriving natural ecological balance levels, because these thresholds were being satisfied in 2020 before the roundups commenced. As of 2020, for all alternatives, “By managing wild horses at AML in combination with other permitted uses, the BLM would ensure a TNEB in Alternatives A, B, and D. ... Under Alternative C, all wild horses would be permanently removed from the planning area.” Draft EIS at 94. Alternative A managed horses at AMLs as set in the original Green River RMP. For the Adobe Town and Salt Wells HMAs, 2020 population levels were specifically found to be consistent with maintaining a thriving natural ecological balance.

Summary:

The BLM failed to analyze an adequate range of alternatives in the Wild Horse Management PRMPA/FEIS, including analyzing an alternative that:

- Involves cessation/elimination of grazing on the solid-block portions of the HMA;
- Considers increasing AML, while reducing livestock grazing;
- Results in fewer environmental impacts;
- Consolidates land;
- Raises AMLs to allow higher populations of wild horses while still meeting TNEB requirements; and
- Considers land swaps with private landowners.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives that were eliminated from detailed study, to briefly discuss the reasons for their elimination (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1, quoting Question 1b, CEQ, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, March 23, 1981).

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action. “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’... Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable...” (BLM NEPA Handbook, H-1790-1, at p. 50, citing Question 2a, CEQ, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, March 23, 1981); see also 40 C.F.R. Section 1502.14.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Wild Horse Management PRMPA/FEIS and address resource issues identified during the scoping period.

The Wild Horse Management PRMPA/FEIS analyzed four alternatives (including a No Action alternative), which are described in Section 2.2 (Wild Horse Management PRMPA/FEIS, pp. 19–21). The alternatives analyzed in the Wild Horse Management PRMPA/FEIS were developed based on input from the public via scoping, as well as discussions with cooperating agencies, and include the elements of the 2013 Consent Decree discussed in Section 1.1 of the Wild Horse Management PRMPA/FEIS (Wild Horse Management PRMPA/FEIS, p. 12). Additional alternatives were proposed during scoping and the public comment period for the Wild Horse Management DRMPA/DEIS. Section 2.4 of the Wild Horse Management PRMPA/FEIS documents each proposal, the BLM’s consideration of the proposal, and justification for its elimination from detailed analysis (Wild Horse Management PRMPA/FEIS, pp. 24–26).

Section 6.6.3 of the BLM NEPA Handbook provides criteria for eliminating alternatives from detailed analysis, as summarized in Section 2.7 of the Wild Horse Management PRMPA/FEIS. Public and agency input received during the scoping process was taken into consideration during the development of alternatives and can be found in the Scoping Report Addendum (January 2014).

BLM considered an alternative that uses land exchanges with private landowners to improve land management and consolidate ownership. As noted by the protester and discussed in Section 2.4 of the Wild Horse Management PRMPA/FEIS, this alternative was eliminated from a detailed analysis because the BLM does not currently have a proposal from a willing party (or group of parties) for a land exchange involving checkerboard lands in the Planning Area. Additionally, this alternative would not respond to the purpose and need for the plan amendment, which is intended to resolve private land conflicts in the near term. Because this alternative does not respond to the purpose and need, NEPA does not require the BLM to analyze this alternative within the Wild Horse Management PRMPA/FEIS. As noted on page 25, if an exchange were completed in the future, then the BLM would amend its land use plan to include newly acquired lands and could consider changes in management for wild horses at that time (Wild Horse Management PRMPA/FEIS, p. 25).

Similarly, the BLM considered, but eliminated, an alternative that proposed cessation of grazing on the solid-block portion of the White Mountain HMA. This alternative was eliminated from a detailed analysis because it is not technically feasible to prevent wild horses from straying between the checkerboard and solid-block portions of the HMA (Wild Horse Management PRMPA/FEIS, p. 25). Because this alternative is not technically feasible, the BLM appropriately did not analyze it in detail.

The BLM considered and analyzed in detail alternatives that would include flexibility for future adjustment of AMLs to allow higher populations of wild horses, while still meeting TNEB requirements. As stated in the Wild Horse Management PRMPA/FEIS, both Alternative B and Alternative D (the Proposed Action) include methods whereby the BLM may adjust AML and livestock AUMs upward or downward in the future after collecting and reviewing multiple years of monitoring data and completing further decision making and NEPA analysis. To evaluate and potentially adjust AML, the BLM will conduct and document the multitiered analysis process outlined in the Wild Horses and Burros Management Handbook (H-4700-1, Appendix 3). This analysis will include an in-depth review of intensive monitoring data (Wild Horse Management PRMPA/FEIS, p. 35).

The BLM properly considered a reasonable range of alternatives in the Wild Horse Management PRMPA/FEIS and complied with NEPA and BLM policy when dismissing certain alternatives from detailed analysis. Accordingly, this protest is denied.

NEPA - Purpose and Need

Rock Springs Grazing Association

Constance Brooks

Issue Excerpt Text: The Rock Springs Field Office interpreted its Purpose and Need as limited to complying with the 2013 RSGA v. Salazar Consent Decree without recognizing that Section 4 of the WHA imposes an independent basis to exclude private land from HMAs. 2022 Wild Horse FEIS §1.2, at 16. The FEIS states: The Consent Decree requires that BLM consider these actions, but does not require that the BLM implement any specific action. The BLM has met the requirements of the Consent Decree by considering each of these actions as elements of various alternatives in this EIS, though no single alternative considers all of them together. The FEIS assumes that BLM need not change the HMAs to comply with the 2013 Consent Decree terms and implies that it can force RSGA to maintain wild horses by not changing the HMAs and has no obligation to remove the wild horses. This is incorrect. Without RSGA consent to use private land, BLM cannot include that land in HMAs and cannot manage wild horses on the private land. The assumption that BLM retains discretion to do otherwise contradicts Section 4 of the WHA.

Individual

Tammi Adams

Issue Excerpt Text: Considering BLM deficiencies and out-of-date information identified in these comments, BLM has failed to demonstrate Purpose of and Need for Action. Without HMAPs, missing/vague/unsubstantiated AML population calculations, proposed helicopter/motorized vehicle use, incomplete and under-enforced CAWP, undefined nor demonstrated “TNEB” as a scientifically data-driven qualitative and quantitative term, and extensive fertility control measures (complete removal, sterilization, irreversible fertility control immunocontraceptives) with no proof of preserving genetic viability/variability or herd social structure, the only acceptable proposed action for the this Proposal is Alternative A: No Action.

Summary:

The BLM’s stated purpose and need for the Wild Horse Management PRMPA/ FEIS is too narrow. Additionally, the BLM failed to demonstrate a purpose and need for action in the Wild Horse Management PRMPA/FEIS due to data deficiencies and out-of-date information.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project.

As stated in Section 1.2 of the Wild Horse Management PRMPA/FEIS, the BLM established the purpose and need to create a plan for wild horse management in HMAs that contains checkerboard land (an area where every other square mile alternates between private and public land ownership). This purpose and need is specific to the issue of RSGA’s withdrawal of consent to maintain wild horses on privately owned lands within these HMAs, the associated requirements of the WFRHBA, and the directives in the *BLM Wild Horses and Burros Management Handbook* (H-4700-1).

The purpose and need for this amendment was not triggered by concerns regarding existing resource conditions within these HMAs. Instead, the need for this plan amendment is the result of a change in

consent for the use of private lands within the checkerboard portion of these HMAs. Section 2.1.4 of the *BLM Wild Horses and Burros Management Handbook* directs that the BLM acquire written permission from private landowners before including their land in determining adequate habitat for wild horses within an HMA (BLM Handbook H-4700-1, Section 2.1.4). Because the Wild Horse Management PRMPA/FEIS responds to this purpose and need, the analysis in this document does not focus on whether existing range conditions reflect a TNEB, as described in the WFRHBA, but instead considers the effects on wild horses, other resources, and resource uses that would result from different management configurations in consideration of the pattern of public and private land ownership in the Planning Area (Wild Horse Management PRMPA/FEIS, p. 13,) in compliance with NEPA.

Although foreseeable impacts on wild horses from potential future population management (including those associated with the use of population growth suppression strategies) are described in general terms in Wild Horse Management PRMPA/FEIS Section 4.2.1; a more exhaustive discussion of the impacts of various fertility control methods is provided in Appendix B of the Wild Horse Management PRMPA/FEIS. This includes a discussion of behavioral effects of each fertility control method, which addresses herd social structure (Wild Horse Management PRMPA/FEIS, pp. 65–74; Appendix B). Potential impacts on genetic viability are described in the Wild Horse Management PRMPA/FEIS, Section 4.2.1, as well as in Appendix A of that document, which provides a detailed discussion of the genetic viability under each alternative (Wild Horse Management PRMPA/FEIS, pp. 65–74; Appendix B).

The BLM properly defined the purpose and need for action in the Wild Horse Management PRMPA/FEIS in compliance with NEPA. Accordingly, this protest is denied.

This page intentionally left blank.