

October 1, 2021

VIA E-mail (wfoweb@blm.gov)

Bureau of Land Management
Humboldt River Field Office
Attention: Off Range Corral Project
5100 E. Winnemucca Blvd
Winnemucca, NV 89445

Re: Winnemucca ORC

Dear Bureau of Land Management Officer:

Friends of Animals¹ submits these comments in response to the Winnemucca Off Range Corrals Environmental Assessment, DOI-BLM-NV-W010- 2021-0036-EA² (hereinafter, "EA"). The Bureau of Land Management's (BLM) proposed action is to fund a Concentrated Animal Feed Lot (CAFO) to confine up to 4,000 wild horses on only 100 acres on private land owned by JS Livestock, referred to as the Off-Range Corral (ORC). The proposed action is directly connected to increasing roundups and removals of wild horses on public lands, a practice that is cruel, expensive, and unnecessary.

It is no secret that there are major problems with BLM's management of wild horses and burros. For decades, the BLM has ignored science to justify its wild horse eradication efforts. As the Governmental Accountability Office declared back in 1990, "despite congressional direction, BLM's decisions on how many wild horses to remove from federal rangelands have not been based on direct evidence that existing wild populations exceed what the range can support."³ In 2013, the National Academy of Sciences stated, that the

¹ Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. Friends of Animals regularly advocates for the right of wild horses to live freely on public lands, and for more transparency and accountability in BLM's management of wild horses and burros.

² DOI-BLM-NV-W010- 2021-0036-EA.

³ GAO (U.S. Government Accountability Office). 1990. Rangeland Management: Improvements Needed in Federal Wild Horse Program. Washington, DC: U.S. Government Accountability Office at 2-3.

“continuation of ‘business as usual’ practices will be expensive and unproductive for BLM.”⁴

The proposed ORC is the direct outcome of BLM’s continuation of “business as usual” practices. BLM has never addressed the problems with its program, and it should not proceed with funding the massive ORC until it does so. BLM needs to take a hard look at its management of wild horses and the data that demonstrates wild horses are an integral part of natural public lands. There was a time when millions of horses roamed the West; a time when the ecosystem was diverse, the land was rich, and the landscape wild. Wild horses are highly social and intelligent. They are also well adapted to our western landscape. Unlike the destruction to native vegetation caused by cattle and sheep, wild horses, like many native wild animals, work to ensure a healthy, thriving ecosystem. It was not until humans started to use our public lands for personal profit that the ranges started to deteriorate. Overwhelming evidence demonstrates that grazing millions of cattle for the meat industry, as well as destructive fossil-fuel energy development on public lands, have caused damage to the range, not wild horses.

Nonetheless, BLM continues on a path towards eliminating wild horses on public lands. Approving the proposed ORC merely paves the way for the removal of 4,000 wild horses across millions of acres of public lands into a concentrated feed lot that would pollute the air, water, and decrease the quality of life for the horses and human community alike. BLM cannot deny that the approval of this facility would be directly linked to the additional removal of wild horses. BLM’s removals have never been based on sound scientific principles and instead depend on the availability of holding space in corrals. Approval of the ORC is not in the interest of BLM or the public it serves. It will only benefit the pocketbooks of JS Livestock, ranchers, and those seeking to eliminate wild horses from public lands.

Friends of Animals asks BLM to consider giving horses room to roam freely in the limited space allocated to them. In particular, BLM should circulate an Environmental Impact Statement (EIS) or new Environmental Assessment (EA) that analyzes the true impacts of the No-Action and Proposed Alternative. In addition, BLM should consider an additional alternative that includes a moratorium on wild horse removals until BLM can fix the problems with its program. Under this alternative, there is no need to acquire an additional ORC. BLM could immensely improve its program and eliminate massive removals by recalculating the appropriate management levels (AMLs) for wild horses, reducing the amount of forage allocated to private ranchers for grazing their domestic cattle and sheep,

⁴ National Research Council. *Using science to improve the BLM wild horse and burro program: a way forward*. National Academies Press, 2013 at 12.

and protecting predators to create a thriving, natural ecological balance. This will save millions of taxpayer dollars. Friends of Animals also asks BLM to consider its obligations to protect wild horses under the Wild Free-Roaming Horses and Burros Act (WFHBA or “Act”) and applicable land use plans.

Finally, BLM cannot approve the proposed OFR corral without taking a hard look at the impacts of the proposed action, including the pollution that will be generated by proposed ORC, the impact on the surrounding environment and community, and the impact on the health and lives of the wild horses.

Discussion

A. BLM’s proposed action violates the Wild Free-Roaming Horses and Burros Act and applicable land use plan decisions.

In 1971, a bipartisan Congress passed the WFHBA because it was “concerned that wild horses were vanishing from the West.”⁵ Congress declared that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people.”⁶ Congress stated, “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 public lands.”⁷

The Act obliges BLM to “protect and manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands.”⁸ Additionally, the Act mandates that all management activities “be at the minimal feasible level.”⁹

According to the Senate Committee report accompanying the bill:

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

⁵ 16 U.S.C. § 1331.

⁶ *Id.*

⁷ *Id.*

⁸ 16 U.S.C. § 1333(a).

⁹ *Id.*

primary emphasis on protecting the animals from continued slaughter and harassment by man.¹⁰

BLM's regulations specify that there should be self-sustaining populations of healthy wild horses in balance with other uses and productive capacity of the habitat.¹¹ The regulations also state that management activities affecting wild horses shall be undertaken with the goal of maintaining free-roaming behavior of wild horses on public lands.¹²

The WFHBA mandates that the Secretary maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands to determine AMLs and make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals.¹³

BLM's proposed ORC is precisely the intensive management of wild horses that Congress sought to avoid. It would deprive wild horses of their freedom and cannot be considered management at the minimal feasible level. Nor can it be considered humane treatment. BLM has no authority to hold thousands of wild horses in the proposed ORC for an indefinite period of time. The WFHBA states that a private landowner can only maintain wild horse on private land "if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands."¹⁴ Here, the animals will be willfully removed from public lands, generally through harassment of the animals, and then would be forced onto the proposed ORC. The WFHBA does indicate that after BLM has determined there is an overpopulation and removal is necessary, some animals may be removed for private maintenance and care if it determines an adoption demand exists by qualified individuals, and that such individual can assure humane treatment and care (including proper transportation, feeding, and handling).¹⁵ Here, however, BLM has not determined that an adoption demand for up to 4,000 more wild horses exists. There is simply no legal authority for BLM to hold up to 4,000 wild horses in an ORC as proposed. Thus, BLM should not authorize the proposed ORC and should let these horses remain on the range.

Moreover, BLM's proposed actions violate its regulations and resource management plans that direct BLM to protect wild horses as viable populations of healthy animals, and to retain their free-roaming nature.

¹⁰ 92nd Congress, Senate Report 92-242, June 25, 1971.

¹¹ 43 C.F.R. § 4700.0-6(a).

¹² 43 C.F.R. § 4700.0-6(c).

¹³ 16 U.S.C. §1331(b)(1).

¹⁴ 16 U.S.C. § 1334.

¹⁵ 16 U.S.C. § 1333.

B. BLM should consider its obligations under the National Environmental Policy Act.

1. The proposed action meets the level of significance that triggers preparation of an EIS.

The National Environmental Policy Act (NEPA) requires an acting agency to prepare a detailed environmental impact statement (EIS) for federal actions that significantly affect the quality of the human environment. The EIS should include “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action.”¹⁶

The proposed action and alternatives in the Environmental Assessment (EA) would result in major environmental impacts and warrant preparation of an EIS. In particular, the proposed action would have a significant effect on the local area because the proposed CAFO would drastically alter the surrounding environment.

2. BLM should thoroughly analyze the impacts of the proposed action and alternatives.

As discussed above, the proposed action warrants an EIS. However, regardless of whether BLM prepares an EA or an EIS it must take “a hard look” at the impacts of an action prior to making an irreversible and irretrievable commitment of resources.¹⁷ To meet this obligation, BLM must identify and disclose to the public all foreseeable impacts of the proposed action.¹⁸

BLM must analyze the impacts of the proposed actions on wild horses and those interested in observing wild horses as an integral part of our public lands. It must also analyze the impact of the proposed ORC on the air and water quality in the area as well as the impacts the surrounding human community. Further analysis of these impacts is necessary for BLM to properly analyze the overall impacts of the proposed action under NEPA and to properly inform the public of those impacts. Such information is also important to the public’s ability to submit meaningful comments.

a. BLM failed to take a hard look at the risk that the ORC will be a source of pollution and a breeding ground for disease and parasites.

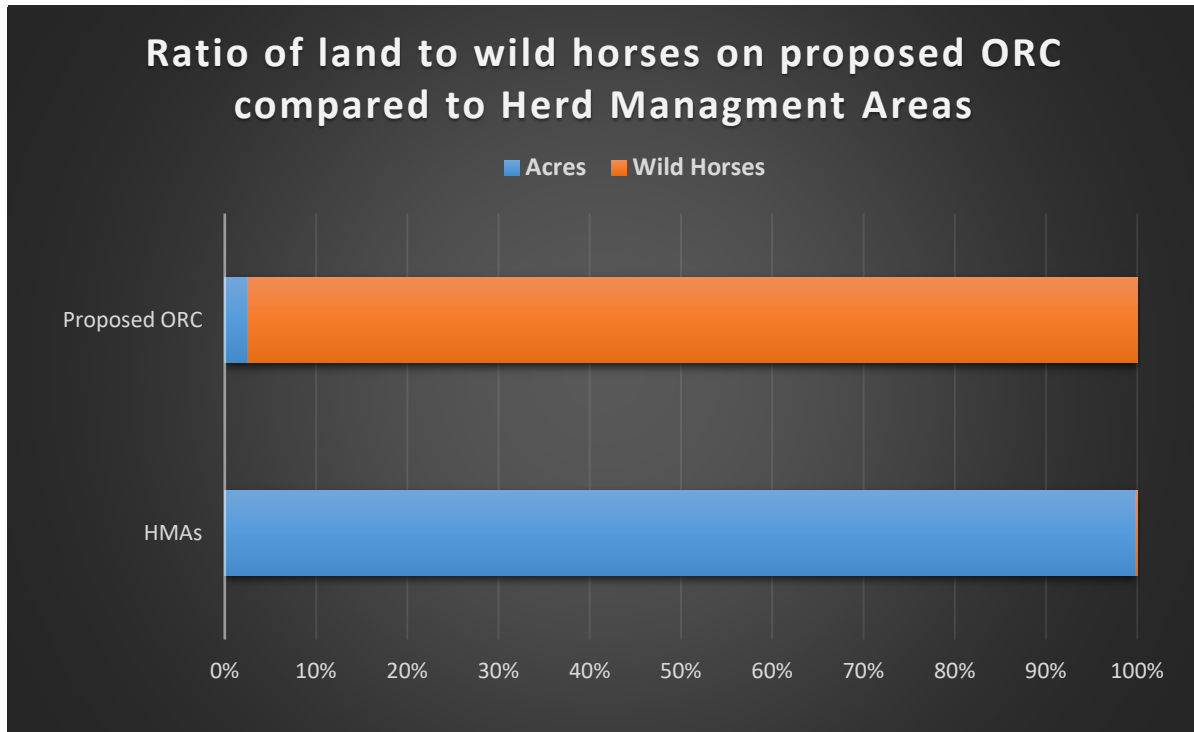
Concentrated Animal Feeding Operations (CAFOs), such as the proposed ORC, where large numbers of animals are confined to small areas, are a significant source of pollution,

¹⁶ 42 U.S.C. § 4332(2)(C).

¹⁷ *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97-98 (1983).

¹⁸ *See* 42 U.S.C. § 4332(2).

parasites, and disease. The concentration of up to 4,000 animals in 100 acres is vastly different than allowing the wild horses to spread across millions of acres in herd management areas. The chart below shows the concentration of wild horses in the proposed ORC compared to wild horses on public lands in herd management areas.¹⁹



The most pressing public health issue associated with CAFOs stems from the amount of manure produce in a concentrated area. This proposed ORC is unnatural and this amount of manure would never build up if the horses were left in the wild, nor are domestic horses generally kept in facilities similar to this. Manure contains a variety of potential contaminants. It can contain, among other things, nutrients such as nitrogen and phosphorus, pathogens such as E. coli, chemicals used as additives to the manure or to

¹⁹ Information in this chart is based on BLM’s most recent population estimate of wild horses and burros as of March 1, 2021, which states that there are an estimated 86,189 wild horses and burros across 31.6 million acres of HMAs. BLM Program Data, *available at* <https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data>.

clean equipment, and animal blood.²⁰ An adult horse can produce up to 55 lbs (25 kg) of manure daily or 10 tons per year.²¹

When concentrating so many horses in such a small area, nutrients overwhelm the absorptive capacity of the soil, and either run off or are leached into the groundwater, polluting local streams, creeks, groundwater, and drinking water supplies. In addition, emissions from degrading manure produce air pollutants that often affect ambient air quality in communities surrounding CAFOs including ammonia, hydrogen sulfide, volatile organic compounds, and particulate matter.²² These pollutants can lead to health problems, particularly for children and the elderly. Furthermore, liquid manure is often sprayed onto nearby fields, causing additional greenhouse gas emissions, odor, and particulate drift to surrounding communities. When this manure is over-applied to fields, it runs off into waterways, contributing to nitrate contamination. The smell from the manure lagoons also decreases the quality of life for surrounding communities.

The EA completely fails to consider these impacts, and merely concludes that, “[a]ir quality impacts are expected to be minimal. Proposed operations would not be expected to have significantly different impacts from the current agricultural uses at the site.”²³ There is no reasonable basis for concluding that the existing agricultural use, alfalfa, would have the same impact as a CAFO that would be holding up to 4,000 wild horses. Alfalfa does not generate up to 40,000 tons of manure each year and it is absurd to claim the impacts of growing alfalfa and housing 4,000 wild horses are similar.

In addition, the EA fails to consider the risk of run-off pollution and water contamination. The risk of run-off pollution and water contamination is high for the proposed ORC because, as the EA admits, the soil in the affected areas “are very poorly drained, subject to occasional flooding, and may have a high water table (USDA Natural Resources Conservation Service (NRCS) 2021). The soils are fine textured with high amounts of silt and clay and have a fairly high erodibility index for wind erosion.”²⁴ Thus, there is a high risk that waste from the facility will build up and runoff the area. This will cause unsanitary and unhealthy conditions for the wild horses, workers at the facility, and the surrounding community. BLM failed to analyze or disclose this impact. BLM merely states that “[a]ll

²⁰ *Id.*

²¹ Westendorf, M.L., Williams, C.A., Murphy, S., Kenny, L. and Hashemi, M. (2020). Generation and Management of Manure from Horses and Other Equids. In *Animal Manure* (eds H. Waldrip, P. Pagliari and Z. He). <https://doi.org/10.2134/asaspecpub67.c8>.

²² Hribar, C., & Schultz, M. (2010). Understanding concentrated environmental health animal feeding operations and their impact on communities. *Environmental Health*, https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf

²³ EA at 12.

²⁴ EA at 9.

corral pens will have adequate slopes for drainage, which would help to keep the pens from being wet and muddy. JS Livestock would establish a plan to mitigate any standing water that is found to occur and implement that plan immediately.”²⁵ BLM does not explain what slope is “adequate” in these poorly drained, silt and clay soils. Nor does it explain how it will deal with flooding. It also fails to disclose the “mitigation plan.”

In addition, the EA fails to disclose how the drainage will be collected and stored. Again, it just repeats conclusory statements with no analysis or information for meaningful comments and consideration of the environmental impacts. For example, the EA states “[d]esign features, the dust prevention and control plan, and the CAFO plan would reduce the risk of runoff and erosion. This plan would ensure all solid and liquid wastes along with sediment are stored on-site in a manner that prevents wastes and sediment from entering surface water and seepage of nutrients into ground water.” The EA must disclose these alleged plans and design futures. Storage units can break or become faulty, or rainwater can cause holding lagoons to overflow. While CAFOs are required to have permits that limit the levels of manure discharge, handling the large amounts of manure inevitably causes accidental releases which have the ability to potentially impact humans.

After refusing to disclose or analyze details of the proposed action and risks that come along with it, the EA concludes that impacts to riparian areas and aquatic wildlife, potential for nutrient release would be “negligible” when the requirements for the CAFO are implemented. However, BLM cannot merely rely on the undisclosed “requirements” to mitigate all impacts, especially without disclosing or analyzing those requirements.²⁶

b. BLM failed to take a hard look at how inadequate cleaning is likely to exacerbate the negative effects of the proposed ORC.

The EA claims that the pens will be cleaned at minimum twice per year and up to four times a year. This poses a serious health and safety risk that was not fully analyzed in the EA. Manure left in paddocks and pastures is the most common source of parasites. Manure removed at least twice per week can reduce a horse’s overall parasite load by more than 80 percent, according to veterinarian Dr. Wendy Pearson, Assistant Professor of Equine

²⁵ EA at 5.

²⁶ See *Great Basin Res. Watch*, 844 F.3d at 1104 (9th Cir. 2016), (quoting *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep’t of the Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (holding that failure to discuss environmental impact in NEPA document “was not excused by the fact that the facility ‘operate[d] pursuant to a state permit under the Clean Air Act,’ because ‘[a] non-NEPA document . . . cannot satisfy a federal agency’s obligations under NEPA.’”)); see also *ONDA v. BLM*, 625 F.3d 1092, 1121 n.24, 1122 (9th Cir. 2010) (BLM’s obligation to obtain and disclose environmental information during the public review process is central to NEPA’s principle of “democratic decisionmaking” and NEPA is designed to bring “fairly debatable issues” like these “out in the open” for analysis and discussion).

Physiology at the Ontario Veterinary College, University of Guelph. Picking up manure frequently also eliminates breeding habitats for flies, and it minimizes adverse effects on water sources from drainage across a manure-ridden pen. To the extent that BLM claims cleaning *may* occur more often, that is not sufficient to ensure impacts of the proposed facility are minimized. It is possible, and likely, that cleaning will occur at the minimum required level. BLM either needs to mandate additional cleaning or analyze the impacts of the proposed action which requires insufficient cleaning. The impacts of the proposed action include increased health and safety risk to horses, the people working in the ORC, and the surrounding community.

If an agency could “paper over flaws” in its analysis with assurance that its “mitigation team will implement, monitor, and adjust mitigation techniques” it would “effectively gut the environmental safeguards that Congress enacted in . . . NEPA.”²⁷

c. BLM failed to take a hard look at the impact to wild horses.

BLM completely failed to analyze the impacts of the proposed ORC to wild horses. Rather, it arbitrarily concluded that wild horses are “not affected to a degree that detailed analysis is required.”²⁸ This statement is absurd as the entire purpose of the facility is to hold wild horses.

Wild horses who are healthy on the range often deteriorate at off-range corals like the one proposed here. Confining wild horses and burros to small pens where they are kept in close quarters prohibits the animals from adequate space necessary for their well-being. Wild horse behavioral specialist, Dr. Bruce Nock, studied and described the intricate physiological events that take place when a wild horse is subjected to roundups and held in captivity at facilities like the proposed ORC.²⁹ As described by Dr. Nock, horses initially experience what is known as the fight-or-flight reaction—bodily changes that enhance horses’ chances of surviving a frightening situation by increasing their alertness, capacity for physical exertion, and ability to withstand injury.³⁰ In Dr. Nock’s professional opinion, while this reaction might enhance a wild horse’s chance of surviving the roundup itself, it is not “an exaggeration to say, as gathers are routinely done in the USA, if a wild horse doesn’t die straight off from the immediate devastation and commotion, it compromises him/her physically and mentally, putting him on a path of accelerated deterioration.”³¹ Dr. Nock explains that at facilities, like the proposed ORC, “everything is foreign . . . truly disturbing

²⁷ *Env'tl. Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 84-85 (D.D.C. 2007).

²⁸ EA at 12.

²⁹ Nock, B., & Horsemanship, L. (2010). *Wild Horses: The Stress of Captivity*.

³⁰ *Id.*

³¹ *Id.* at 2.

for a species that depends on familiarity for safety and comfort. [] Everything about captivity is probably stressful to one degree or another to wild horses, especially when it begins with the traumatic experience of a gather. It is extremely detrimental to their long-term health and soundness.³²

Essentially, the stress of capture and captivity can put the horse “on a path of accelerated deterioration,” leading to long-term physical and mental health problems and a shortened life expectancy.³³ Likewise, the ongoing trauma experienced by wild horses after the initial roundup extends to both the captured wild horses and those wild horses (if any) that were left on the range. The conditions at the proposed ORC will be particularly traumatizing for wild horses. As indicated in the chart above, wild horses have a vast area to roam in the wild, where they form complex social bands. In contrast, the area allocated to wild horses in the proposed ORC is smaller than the minimal area required for domestic horses in many states. Moreover, as pens are only cleaned 2-4 times per year, it means the animals eat, sleep, and live in their own waste. Bacterial infections spread often at facilities, like the one proposed, causing the death and suffering of countless wild horses and burros. For example, BLM reported that 25 wild horses died at a much smaller facility from colitis, or inflammation of the colon.³⁴ BLM must do a thorough investigation of current facilities and disclose problems at these facilities, including the death rate of wild horses at off-range corals compared to on the range. BLM can no longer sweep these impacts under the rug.

d. BLM failed to take a hard look at the impacts of the proposed ORC on the surrounding community.

Concentrating 4,000 wild horses into a 100-acre facility is not only traumatizing for wild horses, but it also has serious implications for the air, water, and quality of life of the surrounding community, as noted above. BLM erred in limiting its analysis to the physical location of the proposed ORC when the impact will extend far beyond this boundary. Quality of life can also suffer because of odors or insect vectors surrounding CAFOs, and property values can drop, affecting the financial stability of a community. The EA notes that manure may break down into finer particles and contribute to dust. But it fails to consider how this dust could be blown to surrounding communities affecting the quality of air and the quality of life. The waste odor will likely prevent local residents from spending time

³² *Id.* at 8-11.

³³ *Id.* at 2.

³⁴ BLM, Preliminary Results for Wild Horse Deaths at BLM Corrals. <https://www.blm.gov/press-release/preliminary-results-wild-horse-deaths-blm-corrals>.

outdoors, opening windows, putting laundry out to dry, or inviting visitors over as has been reported in communities with CAFOs.³⁵

The proposed cite for the ORC is particularly concerning as it will likely contribute to increased concentration of pollution in an area with a low-income, minority population. The EA indicates that a low-income environmental justice (EJ) population is present and an Indigenous EJ population is present. The EA includes an Environmental Justice Screening report, however it failed to fully fill out this report. It appears that BLM just included a template where the sections intended to be fill out are still highlighted. BLM did not disclose whether it anticipated there would be an any disproportionate impacts on the existing EJ population within the project area, or how the EJ would be affected. In fact, the EA highlights “additional explanation as needed.”³⁶ The EA fails to consider the proposed action’s exposure pathways (routes by which the minority or low-income population may come into contact with chemical, biological, or physical effects); the ecological, aesthetic, historic, cultural, economic, social, or health consequences to the community; and the distribution of adverse and beneficial impacts from the proposed action. CAFOs are a prime example of how environmental problems can directly impact human and community well-being,³⁷ and this information needs to be addressed.

The EA also fails to disclose whether there are other CAFOs in this area and whether the addition of the ORC will have a significant impact on the local community. Nor did it consider the cumulative impacts of the proposed ORC with other sources of pollution in the area. Notably, the State of Nevada recently issued notice that it proposed to issue a permit for another CAFO in Winnemucca, Nevada.³⁸ The increased clustering and growth of CAFOs has led to growing environmental problems in many communities and should be analyzed by BLM.

Despite the serious concerns and environmental impacts of the proposed ORC, the EA largely ignores them all. In Appendix A - Impacts Analysis Table, the EA concludes that air quality, wild horses, hazardous or solid wastes, social and economic conditions, environmental justice, hydrology and water rights, and noise are “not affected to a degree that detailed analysis is required.”

³⁵ Hribar, C., & Schultz, M., Understanding concentrated environmental health animal feeding operations and their impact on communities, *Environmental Health* (2010).

³⁶ EA at 17.

³⁷ Hribar, C. (2010). Understanding concentrated animal feeding operations and their impact on communities, available from https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

³⁸ State of Nevada, Notice of Proposed Action, available from <https://ndep.nv.gov/uploads/documents/NV0024244-PN.pdf>.

e. BLM failed to take a hard look at the impacts on the public's right to access wild horses and report on their condition.

The proposed ORC would hold up to 4,000 wild horses. The public has an interest in viewing these wild horses. However, the EA fails to disclose how the proposed facility would impact the public's ability to view these wild horses. As an initial matter, BLM must disclose that this will make viewing wild horses in the wild much more difficult. The ORC will be holding 4,000 wild horse that would otherwise be on public land in the wild. Taking them off public lands diminishes the interest in the public to see truly "wild" horses.

In addition, BLM fails to disclose whether people will be able to view and document wild horses and the conditions at the ORC. There is First Amendment right to view and document the condition of the wild horses, and BLM has traditionally provided access to view wild horses removed from the range. Recently, BLM has restricted access in other off-range corrals. Public access to the facility is necessary for oversight on BLM's wild horse and burro program and how wild horses are being treated. Holding up to 4,000 wild horses in 100-acre area is a dangerous endeavor. As discussed in more detail below, this is inadequate space for the wild horses to live and exercise in. There is also a high risk that there will not be proper care, food, water, and shelter for the wild horses. The proposed ORC would also be a breeding ground for diseases and infections. Public access to the facility is necessary to guard against abuse and unsafe conditions, or at minimum, to be able to report such conditions. Nonetheless many of these facilities are closed to the public – likely to prevent the public from reporting on the conditions within the facility. BLM must disclose whether the ORC will be open to the public, including whether members of the public will be able to access the entire facility to document the conditions of the facility. In addition, BLM should require that an inventory of all wild horse kept at the site would be maintained along with all treatments and records of deaths and that such information be publicly available.

Disclosing details about the public's access to the facility is essential for assessing the impacts of the facility and for the ability to provide meaningful comments.

f. BLM failed to take a hard look at the economic impacts of the proposed action.

NEPA procedures must ensure that environmental information is available to officials and citizens before decisions are made and before actions are taken. That duty includes a specific requirement to adequately discuss cost/benefit considerations which are likely to be relevant and important to a decision. Here the cost/benefit consideration of the action and no-action alternative are relevant to the decision. BLM failed to disclose the costs and economic effect of the proposed facility or conduct a cost-benefit analysis. BLM should disclose the proposed total cost of the facility, including the cost of constructing and operating the facility and the cost to the local community dealing with the smell and

pollution generated from the facility. This is necessary to consider the impact of the facility and choose between alternatives. The use of private short-term holding facilities, such as the proposal, wastes tax dollars and is wholly unnecessary as the wild horses could remain on the range at no cost to BLM or taxpayers.

3. BLM should consider a reasonable alternative, including placing a moratorium on wild horse removals and new OCRs until it reevaluates the program.

BLM should not continue to expand intake facilities before addressing the problem with its mismanagement of wild horses. BLM cannot just separate or ignore the impacts of roundups and removal of wild horses because the need and justification for the proposed ORC depends on BLM's large wild horse and burro program and the continued removal of wild horses from the range. The roundup and removal of wild horses is also connected to the proposed ORC, and they should be considered in the same environmental impact statement.³⁹

a. BLM should consider the positive impact of wild horses in the wild.

Studies demonstrate that equids support healthy ecosystems on public land if given sufficient habitat and left alone.⁴⁰ For example, wild horses help spread plant seeds over large areas where they roam. Wild horses do not decompose the vegetation they ingest as thoroughly as ruminant grazers, such as cattle or sheep, which allows the seeds of many plant species to pass through their digestive tract intact into the soil that the wild horses fertilize by their droppings. Wild horses also help to prevent catastrophic fires and help to build more moisture-retaining soils. Soil moisture dampens out incipient fires and makes the air coating the earth moister.⁴¹ Wild horses fill a significantly empty niche within the North American ecosystem.⁴²

If left on the range wild horses select preferred grasses, hedges, and herbs, including coarse, highly abrasive grasses, creating a mosaic of high and low vegetation that generates

³⁹ See 40 C.F.R. §1501.9(2)(1).

⁴⁰ See Lundgren, E. J., et al. (2021). Equids engineer desert water availability. *Science*, 372 (6541), 491-495 (attached); Downer, C. C. (2014). The horse and burro as positively contributing returned natives in North America. *American Journal of Life Sciences*, 2(1), 5-23 (attached); see also Lundgren, E. J., Ramp, D., Ripple, W. J., & Wallach, A. D. (2018). Introduced megafauna are rewilding the Anthropocene. *Ecography*, 41(6), 857-866.

⁴¹ *Id.*; see also Ripple, W. J., et al. (2015). Collapse of the world's largest herbivores. *Science advances*, 1(4), e1400103; Wild Horse Fire Brigade - Rebalancing North American Ecosystems: <https://grazelife.com/blog/wild-horse-fire-brigade-lessons-in-rebalancing-north-american-ecosystems-by-rewilding-equids/>.

⁴² Downer, *supra* note 33, at 12.

a more diverse habitat for invertebrates, small vertebrates, and herbaceous plants.⁴³ Unlike cattle, wild horses do not stay at water sources, but rather move after drinking and will travel long distances from water.⁴⁴

The EA assumes there is a need to remove and house wild horses. However, such concerns are misguided. Wild horses are self-regulated, and the population would likely come into balance with the ecosystem if left alone. In contrast, removing wild horses to artificially low numbers not only negatively impacts the individual horses and the genetic viability of the herd, but it is also short-sighted and ineffective because it prompts short-term population growth.

The National Academy of Sciences Report concluded that BLM's "management practices are facilitating high horse population growth rates."⁴⁵ It explained that, "[r]emovals are likely to keep the population at a size that maximizes population growth rate, which in turn maximizes the number of animals that must be removed and processed through holding facilities."⁴⁶ This directly conflicts with the WFHBA's mandate that "all management activities shall be at the minimal feasible level."⁴⁷

b. BLM should consider reducing the number of cattle and sheep that graze on public lands or the amount of forage allotted for such grazing.

BLM's regulations explicitly state that it can close public lands to grazing use by all or a particular kind of livestock "if necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury."⁴⁸ Reducing the amount of private grazing for cattle and sheep would be more likely to achieve a thriving natural ecological balance and can eliminate the need for a new holding facility. The proposed action, to house up to 4,000 wild horses in an OFC while refusing to reduce forage for private ranchers conflicts with the WFHBA, which states that the range should be principally devoted to wild horses. The multiple use principles of the Federal Land Policy and Management Act do not preclude BLM from reducing forage allotments to private ranchers. BLM still authorizes private grazing on the majority of BLM land. Of the 245 million acres of public land managed by BLM, 155 million is open to

⁴³ Naundrup, P. J., & Svenning, J. C. (2015). A geographic assessment of the global scope for rewilding with wild-living horses (*Equus ferus*). *PloS one*, 10(7), e0132359.

⁴⁴ Ganskopp, D., & Vavra, M. (1986). Habitat use by feral horses in the northern sagebrush steppe. *Journal of Range Management*, 207-212.

⁴⁵ See National Research Council, *supra* note 4, at 5.

⁴⁶ *Id.*; See also Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment at 63, available at https://www.fs.usda.gov/nfs/11558/www/nepa/100829_FSPLT3_5268324.pdf.

⁴⁷ 16 U.S.C. § 1333(a).

⁴⁸ 43 C.F.R. § 4710.5.

livestock grazing (virtually all BLM land outside of Alaska). By contrast, wild horses are restricted to just 26.9 million acres, which they must share with cattle and sheep. Reducing private grazing on the small fraction of public lands where wild horses are found (approximately 11%) is consistent with multiple use principles.

Recently, more than seventy equine protection, animal advocacy, and environmental groups, as well as numerous wild-horse and ecotourism businesses called on newly confirmed U.S. Secretary of the Interior, Deb Haaland, to halt livestock grazing and revoke grazing permits on Herd Management Area (HMA) lands.⁴⁹ As noted in the letter, BLM's allocations to private ranchers to graze cattle and sheep are severely biased against wild horse populations and other protected and native species. This has generated a severe excess in adverse livestock-grazing-associated impact within BLM HMAs that is inconsistent with both the letter and spirit of the 1971 Wild and Free Roaming Horse and Burro Act. The immediate elimination of all cattle and sheep grazing on all HMAs is needed. However, BLM failed to analyze any alternatives in detail that would eliminate cattle and sheep or even reduce the permitted use to avoid the need for an additional ORC.

c. BLM should consider managing wild horses by natural means.

BLM should also consider managing wild horses by natural means. There is no reliable science showing removing wild horses is necessary to maintain a thriving ecological balance in the area.

Moreover, studies have found that mountain lions can limit wild horse populations in the United States.⁵⁰ Indeed, there are valleys in the West where wild horse herds do not increase because their populations are kept in check by mountain lions.⁵¹ Managing wild horses naturally is not only free and sustainable, but also ensures that wild horses remain as they should—wild. Mountain lions hunted wild horses in North America for millions of years, and they still do. For example, a study in Nevada found that in several mountain ranges of the state, horses made up a majority of the diet of mountain lions.⁵² Biologists

⁴⁹ Letter to Secretary Deb Haaland (April 9, 2021), attached.

⁵⁰ See, e.g., Andreasen, A. M., Stewart, K. M., Longland, W. S., & Beckmann, J. P. (2021). Prey specialization by cougars on feral horses in a desert environment. *The Journal of Wildlife Management*, 85(6), 1104-1120 (attached); Turner Jr, J. W., & Morrison, M. L. (2001). Influence of predation by mountain lions on numbers and survivorship of a feral horse population. *The Southwestern Naturalist*, 183-190.

⁵¹ See Dave Philips, Let Mountain Lions Eat Horses, N.Y. Times, May 12, 2018, available at <https://www.nytimes.com/2018/05/12/sunday-review/let-mountain-lions-eat-horses.html>. See also *Wild Horse Country: The History, Myth and Future of the Mustang* (2018) (attached).

⁵² See Gray, M., Spencer Jr, J., & Thain, D. (2008). Live trapping and monitoring mountain lion movements within a feral horse population in Storey County, Nevada, 2005-2007. In Proceedings of the Vertebrate Pest Conference (Vol. 23, No. 23), available at <https://naldc.nal.usda.gov/download/27918/PDF>.

have documented valleys where just a few lions keep a herd in check.⁵³ “That kind of balance could be a boon not just for the wild horse program but for the entire Western ecosystem.”⁵⁴

Therefore, BLM should consider a natural control alternative, that includes protection of native predators, such as mountain lions. BLM’s failure to consider this alternative in detail ignores its obligation to manage wild horses at the minimal feasible level, and its obligation under NEPA to consider reasonable alternatives.

d. BLM should consider reevaluating the Appropriate Management Levels.

Finally, BLM continues to rely on outdated Appropriate Management Level (AMLs) to increase wild horse removals and the need to put horses in ORCs, like the one proposed here. The 2013 National Academy of Sciences Report found that “[h]ow Appropriate Management Levels (AMLs) are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change. Standards for transparency, quality and equity are needed in establishing these levels, monitoring them and adjusting them.”⁵⁵

BLM never addressed the National Academy of Sciences finding. BLM must consider improving its program and creating AMLs based on science before wasting money and time on a massive ORC that would harm wild horses, the environment, and the community.

Conclusion

BLM seeks to eliminate a healthy, viable, natural free-roaming population of wild horses by confining wild horses in private holding facilities. Building another holding facility is not the answer. Friends of Animals believes in (and Congress sought) a place on our public lands devoted principally to wild horses, horses free from human exploitation and manipulation. BLM’s increased management and restriction of wild horses strays from the vision of freedom and wildness that Congress sought to protect. The concentration of up to 4,000 wild horses to a 100-acre facility also creates significant adverse impact to the horses, the environment, and the surrounding environment. There is no justification for the proposed facility and Friends of Animals urges BLM to reject the proposed action.

Thank you for the opportunity to comment, and please contact me if you have any questions or concerns.

⁵³ Philips, *supra* note 51.

⁵⁴ *Id.*

⁵⁵ See National Research Council, *supra* note 4, at 12.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Best". The signature is written in a cursive, flowing style.

Jennifer Best
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