



Photo by Carol J. Walker

WHITE PAPER
on the
Bureau of Land Management's
Wild Horse & Burro Program,
with a Focus on Problems Related to Holding Facilities

Wild Horse Freedom Federation, Inc.
P.O. Box 390
Pinehurst, TX 77362-0390

July 2017

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 1

II. WILD HORSE FREEDOM FEDERATION..... 2

III. AREAS OF FOCUS OF WHITE PAPER..... 2

IV. LEGAL FOUNDATION AND POLICY 4

 A. The Wild Free-Roaming Horses and Burros Act..... 4

 B. The BLM is Supposed to Prohibit the Sale of Wild Horses and Burros for Slaughter..... 10

 C. Contrary to BLM Policy and in Violation of Federal Law, Wild Horses Are Sold for Commercial Slaughter. 13

 1. Americans Oppose Horse Slaughter for Human Consumption..... 13

 2. It Is Indisputable that Wild Horses Are Sold for Slaughter..... 16

 3. BLM Lacks an Enforcement Regime Sufficient to Prevent the Sale of Wild Horses for Slaughter. 17

 4. Commercial Slaughter Cannot Be Accomplished Without Horrendous Treatment of Wild Horses..... 19

V. DOCUMENTED AREAS OF CONCERN 22

 A. Horses and Burros are “Missing” from Long-Term Holding..... 22

 B. The BLM’s Contract-Monitoring Procedures Are Inadequate, Allow Illegal Activity, and Provide Little or No Enforcement of Contractual Breaches 32

 C. The BLM’s Population Estimates for Wild Horses and Burros On the Range Are Scientifically Implausible, So That All Decisions Relying On Those Estimates are Inherently Flawed 34

 D. The BLM’s Gather Protocol Threatens the Health of the Herds in Violation of the Wild Horse Act..... 37

 1. Zeroing Out Herd Management Areas Violates the Policies of the Wild Horse Act..... 37

2. Eliminating Entire Herds Also Violates the Multiple Use Principles That BLM is Required to Employ.	40
CONCLUSION.....	40

I. EXECUTIVE SUMMARY

This White Paper on wild horse and burro management has been prepared after years of targeted analysis and research by the Wild Horse Freedom Federation (“WHFF”). WHFF undertook this extensive effort in order to provide the public, and the federal agencies responsible for wild horse & burro protection and management, with a cohesive and comprehensive look at the current state of affairs regarding some highlight topics, an identification of areas of problem and of strength, and suggestions for a path forward that will serve stakeholders on all sides of the wild equid issue: the federal government, landowners and ranchers who are in proximity of wild horse and burro range, advocates who seek changes in federal management of the horses, and of course the equines themselves.

Based on our analysis and research, WHFF provides here constructive criticism and carefully considered suggestions for the treatment of wild horses and burros across America, in a way that will simultaneously honor the Congressional mandates of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 and the obligations of the Department of the Interior, the Bureau of Land Management and the Forest Service with respect to the management of these animals as it is directed and governed by federal law.

In the course of our research, WHFF has collected thousands of documents from the governing agencies, interviewed individuals close to the issues, and applied a science-based scrutiny to the data collected, in order to reach the conclusions and suggestions described in more detail here.

The purpose of WHFF’s years-long project has been to both identify areas of concern, and propose solutions to problems that seem to be hindering the government’s ability to perform its duties towards all stakeholders in the area. The White Paper follows up on the 2013 National Academy of Sciences report on the wild horse and burro program and on the various reports by the Office of the Inspector General, in order to provide additional depth, and information, which will hopefully promote a more open and informative view and vision for the future of our wild equines.

II. WILD HORSE FREEDOM FEDERATION

WHFF is a national organization that brings decades of experience, and an intelligent and measured approach to the area of wild horse advocacy. WHFF's goals are simple – to unite seasoned experts, solid science, and documented facts, in order to ensure a long and prosperous future for the wild horses and burros who make America's lands their home. In short, WHFF is committed to using a strong foundation of detail and a measured degree of legal advocacy to build a legacy for our descendants to be able to share the beauty and splendor of the herds protected by the Wild Horse Act.

From its inception, WHFF has brought together a group of supporters and experts who are some of the nation's leading equine welfare advocates, from some of the top equine organizations. Its focus and goal has been, and remains, the protection and improved welfare of American wild horses and burros. WHFF serves its mission by engaging in careful and detailed examination of the treatment of wild horses and burros by the federal agencies authorized and empowered to protect and manage these animals. This White Paper is the result of some of WHFF's work over the past several years.

WHFF is the voice of not only those animals that cannot speak for themselves but also, most effectively, for the majority of the American public which has repeatedly expressed the desire to stop the unnecessary removal of wild horses and burros from public lands where they should remain, and the proper, legal management of the Wild Horse & Burro Program.

III. AREAS OF FOCUS OF WHITE PAPER

The questions that have been raised by WHFF's research and data collection are many, but the topics addressed in this document are covered by the following three key points of inquiry:

1. Where are all the horses and burros that are being taken off the range going? WHFF's analysis demonstrates unequivocally that the BLM's counts of formerly-wild horses and burros in both short-term and especially in long-term holding facilities are regularly inaccurate or

inconsistent, so that there is and has been no reliable accounting of the number of animals being held by the BLM for years. Because of this, neither the government nor the public is able to obtain a true representation of the numbers of wild equids that are going to long-term holding facilities, or the numbers that are being adopted, sold, euthanized or dying. This absence of accurate data also raises the very serious question of whether wild horses and burros taken off the range are going to auction or to slaughter without proper reporting or factual justification for such transfers.

2. Why are there so many discrepancies in the counts provided by the BLM? As set out in detail below, based on documentation received directly from the BLM, and on visual observations by WHFF personnel, there are large discrepancies in the numbers of horses and burros being managed by the BLM – both on and especially off the range. While the causes of the discrepancies may be many, it behooves the BLM to rectify these ongoing problems with accurate population estimates and recordkeeping, in order to allow the agency, Congress and the public to get a firmer grip on the scope of the problems presented. Open and scientifically defensible reporting is the key to a successful management program, so the source data must be something upon which all stakeholders can rely. If these disparities were explained – and corrected – it might assist the public and the BLM in identifying areas of mutual interest and accord, and solutions for moving forward.

3. Are BLM procedures in compliance with federal law as well as internal regulations and requirements, and in accord with the agency’s mandate under the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (“Wild Horse Act” or “WFRHBA”)? As explained in this document, the BLM’s practices with respect to long-term holding contracts and contractors are lax at best, and likely in

violation of the agency's own requirements. On a larger scale, the BLM's conduct in removing wild horses and burros from their range, and the way the equids are treated once they get to the holding facilities, runs afoul of the BLM's statutory mandate under the Wild Horse Act. Given the importance of the procedures set up to protect and manage wild horses and burros in short-term and long-term holding facilities, we are sure the BLM recognizes the need for adherence to the established protocols.

4. Separate from the issue of disparity in the numbers of animals moving through the Wild Horse and Burro Program, WHFF has discovered many situations in which, per BLM's own statistics, the BLM's growth rate and corollary population estimates are scientifically and biologically impossible, skewing the basis for the removal of wild equines from the range, and jeopardizing the Program at multiple levels.

5. The BLM's justifications for wild horse and burro gathers has ignored the very real threat to herd population dynamics and genetic diversity, two features that are vital components of any wild animal conservation and population management program. The BLM's adoption of strategies that threaten to eliminate the functioning and self-perpetuating herds as healthy entities must be addressed and reversed.

IV. LEGAL FOUNDATION AND POLICY

A. The Wild Free-Roaming Horses and Burros Act

In 1971, Congress announced broad protections for America's wild equids, when it passed the Wild Free-Roaming Horses and Burros Act ("Wild Horse Act" or "the Act"), 16 U.S.C. §§ 1331–1340. Congress found as a federal policy that the animals needed special protection because

wild free-roaming horses and burros are living symbols of the historic

and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene.

16 U.S.C. § 1331.

America's wild horses and burros are true natives of the continent, having roots that were established here millions of years ago.¹ They once roamed the western rangelands of the United States in vast herds. But over time, desirable grazing land was fenced off for privately-owned livestock, while wild equines were slaughtered or captured for other private uses. The herds began to dwindle, and the remaining animals were driven to marginal, inhospitable grazing areas. By 1971, the number of free-roaming wild horses and burros had diminished from an estimated one to two million or more in the late nineteenth century to a number that has been estimated to have been between 17,000 and as many as 26,000 or more.²

Alarmed at the decline of these herds, Congress adopted the Act to protect the wild horses and burros from “capture, branding, harassment, or death.” 16 U.S.C. § 1331. According to Congressional findings, they had been cruelly slain, used for target practice and harassed for sport. S. Rep. No. 242, 92d Cong., 1st Sess., *reprinted in* 1971 U.S. CODE CONG. & AD. NEWS 2149, 2149. Congress also found that the wild horses and burros had been exploited by bounty hunters who sold them to slaughterhouses for commercial production. See also Johnston, *The Fight to Save a Memory*, 50 TEXAS L. REV. 1055, 1056–57 (1972).

The historical and symbolic importance of wild horses prompted Congress to enact the Wild Horse Act. Throughout debate over the bill, members of Congress celebrated wild horses as “living symbols of . . . the nobility of freedom,”³ “a symbol of American freedom and

¹ <https://www.livescience.com/9589-surprising-history-america-wild-horses.html> (accessed July 10, 2017). Burros were reportedly crossed the country with early surveyors and pioneers because of burros' lower needs for water and forage and heightened ability to scale rough terrain.

² 92 CONG. REC. 5028 (1971) (statement of Senator Jackson).

³ *Id.*

liberty,”⁴ “synonymous with ultimate freedom,”⁵ “a symbol of the Old West,”⁶ “living reminders of our great Western heritage,”⁷ and “living symbols of the pioneer spirit of the West.”⁸

As a result of wild horses’ historical importance, Congress determined that wild horses and burros deserve to be protected from abuse and exploitation.⁹ Congress found that “harassment, abuse, and wanton killing” and “inhumane commercialization” were responsible for their near extinction.¹⁰ Consequently, Senator Henry M. Jackson introduced the Act to end the “senseless slaughter” of wild equids.¹¹ The Senate Committee on Interior and Insular Affairs intended the Wild Horse Act to “remove the possibility of monetary gain from exploitation of these animals.”¹²

Beyond its concern for the welfare of the animals, Congress was aware of what its failure to act would say about the nation, our societal values, and our appreciation of these animals who had given us so much.¹³ If wild horses were not protected and preserved, we would be rejecting the “spirit which has kept them alive and free against almost insurmountable odds”—“the

⁴ *Id.* at 34775 (statement of Congressman Baring).

⁵ *Id.* at 34774 (statement of Congressman Conte).

⁶ *Id.* at 34775 (statement of Congressman Johnson).

⁷ *Id.* at 34779 (statement of Congressman Ryan).

⁸ *Id.* at 34780 (statement of Congressman Anderson).

⁹ *Id.* at 34773 (statement of Congressman Wiggins).

¹⁰ *Id.* at 34772, 44317 (statements of Congressman Wiggins and Baring, respectively).

¹¹ 92 CONG. REC. 5028 (1971) (“It is the purpose of my bill to end this senseless slaughter of the animals which played such a major role in the exploration and settlement of the Great Plains and the Far West with the refuges and sanctuaries they need and to place these animals under the protection of the Secretary of the Interior.”).

¹² SEN. REP. NO. 92-242, at 4 (1971); *id.* at 44536.

¹³ See 92 CONG. REC. 22670 (1971) (“We are dealing with not only the welfare of these animals but with an important part of our history. Boys and girls in our country grow up with tales of pioneers, Indians, and wild horses. This is part of the dream of growing up in America.” (Statement of Senator Jackson)).

national spirit which led to the growth of our Nation.”¹⁴ The Wild Horse Act serves to “reaffirm[] or restor[e] the faith of our Nation’s young people” that the government was “concerned with protecting our Nation’s wildlife and our national heritage.”¹⁵ Mahatma Gandhi is famous for stating that the greatness of a nation is reflected by the way in which it treats its animals. Congress’s enactment of the Wild Horse Act embodied that sentiment—the way we treat our wild horses and burros will determine how we feel about America’s heritage and future.

The Wild Horse Act further provides, *inter alia*, that viable herds of wild horses and burros should remain on the lands on which they were found at the time the law was passed, “as an integral part of the natural system of the public lands.”¹⁶ That is, barring compelling reasons to the contrary, wild horses are supposed to be, and are entitled to stay in their “herd area”—the “geographic area identified as having been used by a herd as its habitat in 1971.” 43 C.F.R. § 4700.0-5(d).

Congress delegated to the Secretary of Agriculture and the Secretary of the Interior jurisdiction over all wild free-roaming horses and burros “for the purpose of management and protection.” 16 U.S.C § 1333(a). Section 1333(a) provides that “[t]he [applicable] 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” *Id.*

The Bureau of Land Management (“BLM”) is charged with implementing the Wild Horse Act for the majority of America’s wild equids, with the Forest Service responsible for wild horses and burros on land under its jurisdiction.¹⁷ The BLM manages a larger area of land than any other federal agency — 264 million acres, which equates to roughly one-eighth of the United

¹⁴ SEN. REP. NO. 92-242, at 1 (1971).

¹⁵ 92 CONG. REC. 34774 (1971) (statement of Congressman Seiberling); *see also* 92 CONG. REC. 34781 (1971) (“sav[ing] and protect[ing] the free roaming horses and burros” would reaffirm “the pioneer spirit and the love of freedom that built this great land of ours.” (Statement of Congressman Hogan)).

¹⁶ *Id.*

¹⁷ *Kleppe v. New Mexico*, 426 U.S. 529 (1976) (finding the Wild Horse Act constitutional).

States.¹⁸ The BLM's implementation of the Act has led to the filing of numerous lawsuits, by ranchers as well as by animal advocates. At best, the BLM's management of wild horses and burros, and its exercise of its authority to do so, is a controversial hot button in all levels of state and federal government -- as well as among animal welfare professionals and the public.¹⁹

Congress requires the agencies involved to preserve and safeguard the horses and burros in a manner that causes the animals the least amount of interference. The Wild Horse Act provides that “[a]ll management activities shall be at the minimal feasible level ... in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species.” 16 U.S.C § 1333(a). Given their historic presence, a *natural* ecological balance logically includes the presence of wild horses and burros, whenever possible, over other commercial interests that were not part of the natural ecology of an area.

The BLM's own regulations mirror and amplify the statutory requirement that it engage in the least amount of interference with the free-ranging equids that is necessary. The regulations mandate that management of the herds *shall* “be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.” 43 C.F.R. § 4710.4. And 16 U.S.C. § 1333(b)(1) requires the BLM to maintain a current inventory of wild horses and burros so that it can

make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels).

¹⁸ Kristen H. Glover, *Managing Wild Horses on Public Lands: Congressional Action and Agency Response*, 79 N.C. L. REV. 1108, 1109 (2001).

¹⁹ See, e.g., National Research Council of the National Academy of Sciences, “Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward” (“NAS Report”), p. 2 (“BLM is subject to ardent criticism from various stakeholders regarding its approach to management of free-ranging equids.”).

Id. § 1333(b)(1). That is, under section 1333(b)(1), the BLM must make an independent determination regarding whether action *should* be taken to remove excess animals. The term “excess animals” means wild free-roaming horses or burros “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.” 16 U.S.C. § 1332(f)(2). So in order to be an “excess” horse or burro, the current state of affairs on the range must establish that the removal of the animal is *necessary* in order to “maintain a thriving natural ecological balance and multiple-use relationship in that area.”

Despite its constant program of removal and relocation of wild equids, BLM’s actual authority to remove them from their herd areas is quite limited. First, BLM must obtain reliable information about the herd, the environment, and the range conditions. Second, an analysis of that data must result in a finding that there is an overpopulation of horses or burros in that herd area. Third, BLM must identify those animals who are “excess.” Finally, and *only* if it is *necessary*, BLM can remove the “excess” horses or burros. *Id.* § 1332(b)(2). The agency can only take animals out of the herd who “*must* be removed.” *Id.* § 1332(f) (emphasis added).

Where BLM has not made a determination that wild horses or burros in a herd are “excess” and it is necessary to remove them, any removal decision is subject to being set aside as being “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”²⁰

The BLM has issued regulations implementing the Wild Horses Act, which require that “[w]ild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.” 43 C.F.R. § 4700.0-6(b). Simply put, the equines must be given at least equal, if not heightened, consideration in the BLM’s determinations as to what is to be done to maintain the wild animals on their home ranges.

Balancing the interests of ranchers and the extraction industry on one hand, and the wild equids on the other has been at the core of controversy over the BLM’s implementation of the Act. As of 2001, for every wild horse on the BLM lands, one hundred cows were grazing — a

²⁰ See, e.g., *Colorado Wild Horse and Burro Coalition, Inc. v. Salazar*, 639 F. Supp. 2d 87, 98 (D.D.C. 2009).

statistic that does not comport with the directives of the statute or the regulations.²¹

B. The BLM is Supposed to Prohibit the Sale of Wild Horses and Burros for Slaughter.

The 2004 “Burns Amendment” to the Wild Horse Act — “inserted behind closed doors,” without a single hearing, and in opposition to the will of a majority of legislators²² — permits the sale (as opposed to the adoption or long-term maintenance) of a limited number of “excess” animals.²³ But since April 2005, it has been and remains BLM policy to uphold congressional intent and prohibit the sale of wild horses for slaughter.²⁴ Indeed, following the passage of the Burns Amendment, the BLM began selling wild horses pursuant to its terms.²⁵ While a Wyoming horse protection group purchased the first excess wild horses sold by the BLM in 2005, some of these horses were eventually sold for slaughter.²⁶ Recognizing that most Americans oppose the slaughter of wild horses and that the Wild Horse Act was passed to prevent the commercial exploitation and slaughter of wild horses and burros, the BLM has

²¹ See Glover, *supra*, at 1120; see also Kenneth P. Pitt, *The Wild Free-Roaming Horses and Burros Act: A Western Melodrama*, 15 ENVTL. L. 503, 505 (1985).

²² 150 CONG. REC. E2174-03, 2004 WL 2805157 (2004) (speech of Congressman Whitfield).

²³ “Excess animals” are “wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) 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.” 16 U.S.C.A. § 1332(f). Only a fraction of excess animals are eligible for sale under the Burns Amendment — those who are “more than 10 years of age” or who have been “offered unsuccessfully for adoption at least 3 times.” 16 U.S.C. § 1333(e)(1).

²⁴ James R. Carroll, *House OKs horse protections*, THE COURIER-JOURNAL, May 20, 2005; United States Government Accountability Office, Report to the Chairman, Committee on Natural Resources, House of Representatives, “*BUREAU OF LAND MANAGEMENT: Effective Long-Term Options Needed to Manage Unadoptable Wild Horses*,” GAO-09-77, at 43 (Oct. 2008) (“*GAO Report*”) (“To reduce the likelihood that a buyer would purchase these animals and then sell them for slaughter, BLM changed its sales process to require buyers to sign a ‘statement of intent’ that they *do not intend to sell the animals for slaughter*.” (emphasis added)).

²⁵ *GAO Report*, *supra* n. 24, at 43.

²⁶ *Id.*

subsequently condemned that practice, and has acted to prevent the recurrence of wild equines being sold for slaughter.

In May 2005, the BLM reaffirmed its intention to prevent wild horses from going to slaughter. At that time, the BLM began requiring purchasers of excess wild horses to agree, in the bill of sale, to not sell wild horses for slaughter. The BLM's sample bill of sale states that "Purchaser agrees not to knowingly sell or transfer ownership of any listed wild horse(s) and/or burro(s) to any person or organization with an intention to resell, trade, or give away the animal(s) for processing into commercial products."²⁷ Any purchaser who misrepresents the intent to sell wild horses for slaughter is subject to criminal prosecution.²⁸

The BLM has also confirmed its policy with action. It enforced its ban on selling wild horses for slaughter in 2011, investigating two purchasers of wild horses in rural Utah — Robert Capson and Dennis Kunz.²⁹ After signing a bill of sale for wild horses with the BLM, Capson and Kunz were caught transporting 64 wild horses to holding pens in Presidio, Texas, the last stop before crossing the border to Mexico, where the horses were to be slaughtered.³⁰ According to a BLM Wild Horse and Burros Program director, the BLM acted quickly to protect the horses because the agency takes the "care and responsibility of these horses very seriously."³¹ Capson and Kunz ultimately pled guilty to the federal criminal charges associated with the sale of horses to slaughter.³²

²⁷ BLM Form 4710-23, Bill of Sale for Wild Horse(s) and Burro(s), https://www.blm.gov/sites/blm.gov/files/wildhorse_howtoadopt_doc4.pdf (accessed July 19, 2017).

²⁸ *Id.*; 18 U.S.C. § 1001.

²⁹ Steven Long, *Utah Indictments Come Down in BLM Mustang Killer Buyer Case*, HORSEBACK MAGAZINE, Sept. 11, 2011.

³⁰ *Id.*; Indictment, *United States v. Capson and Kunz*, 2:11-cr-00813 (D. Utah, Sept. 14, 2011).

³¹ Alex Cabrero, *2 Utahns indicted for alleged role in horse slaughter operation*, KSL.COM, Sept. 14, 2011, <http://www.ksl.com/?nid=148&sid=17247912> (accessed July 19, 2017).

³² Statement by Defendant in Advance of Plea of Guilty, *United States v. Capson and Kunz*, 2:11-cr-00813 DAK-1 (D. Utah, Feb. 15, 2011) (Capson); Statement by Defendant in Advance

In another sale-to-slaughter investigation, it was discovered that Tom Davis had sold nearly 1800 horses purchased from the BLM to slaughter. When the news became public, the BLM acknowledged the problem and pledged its adherence to its policy:

The BLM condemns any sale of wild horses for slaughter.... [I]t has been (and remains) the policy of the BLM not to sell or send wild horses or burros to slaughter. We take seriously all accusations of the slaughter of wild horses or burros.... Anybody that is found to have violated the 1971 Wild Free-Roaming Horses and Burros Act should be held accountable.³³

BLM also announced its vehement opposition to the sale of wild horses for slaughter on its website. In response to the charge that it sells wild horses to slaughter, BLM responded that it “care[s] deeply about the well-being of wild horses, both on and off the range” and “does not and has not sold or sent horses or burros to slaughter.”³⁴ Further, on its general adoption and sale webpage, BLM states—in bold and italicized font—its policy “not to sell or send any wild horses or burros to slaughter.”³⁵ And at the 2011 “Summit for the Horse” conference, a gathering of horse slaughter advocates, guest speaker and BLM Director Bob Abbey reiterated BLM’s anti-slaughter policy, declaring “slaughter is not an option for America’s wild horses.”³⁶

of Plea of Guilty, *United States v. Capson and Kunz*, 2:11-cr-00813 DAK-2 (D. Utah, Nov. 14, 2011) (Kunz).

³³ See

https://www.blm.gov/wo/st/en/prog/whbprogram/history_and_facts/from_the_public.html#davis (accessed Feb. 8, 2017).

³⁴ “Myths and Facts,” Bureau of Land Management,

http://www.blm.gov/wo/st/en/prog/whbprogram/history_and_facts/myths_and_facts.html (accessed Feb. 9, 2017).

³⁵ “BLM Wild Horse and Burro Adoption and Sales Information,” Bureau of Land Management, http://www.blm.gov/wo/st/en/prog/whbprogram/adoption_program/sales.html (accessed Feb. 10, 2017).

³⁶ “Horse Killer Summit,” <http://wildhorseinvestigationteam.wordpress.com/the-horse-killer-summit/> (accessed Feb. 15, 2017); see also “Prepared Remarks of BLM Director Bob Abbey at ‘Summit of the Horse,’” Bureau of Land Management (Jan. 4, 2011), <http://www.blm.gov/wo/st/en/info/newsroom/extras/summitstatement.print.html> (accessed Nov. 27, 2012) (“I want to be clear about one thing. Secretary Salazar and I have consistently stated

BLM's conduct, statements, and requirements unequivocally establish that the agency has interpreted the Burns Amendment in such a way that it does no harm to the spirit of the Wild Horse Act – to protect America's wild horses and burros from commercial slaughter – or to BLM's continued public and official opposition to and prohibition of the sale of wild horses for slaughter.

C. **Contrary to BLM Policy and in Violation of Federal Law, Wild Horses Are Sold for Commercial Slaughter.**

1. *Americans Oppose Horse Slaughter for Human Consumption.*

Despite its stated policy against sending wild horses and burros to slaughter, recent history demonstrates that these animals *have gone to slaughter* – well over a thousand if not thousands – in recent years. WHFF is very concerned about this possibility and the current information provided by the BLM – discussed in this document – is wholly inadequate in that regard.

In addition to the federal legal protections provided to wild horses, they are also undisputed icons of America's past and symbols of the freedom and individualism at the core of American idealism. Descendants of horses who escaped Spanish explorers, as well as from other origins, wild horses roamed the Western frontier before there was a United States of America.³⁷ Wild horses were a permanent and integral part of the landscape during the Nation's expansion across the continent. We have admired and continue to admire their wildness and herd cultures where they are left alone on the open range.

Just as Americans do not view dogs, cats, or domesticated horses as sources of meat, they

since taking on our current roles that we do not support nor are we willing to incorporate into any wild horse or burro strategy that we pursue . . . the unlimited sale of older horses. . . .”).

³⁷ 92 CONG. REC. 34779-80 (1971) (“In the remaining bands of free-roaming horses that still graze our western plains are the descendants of the stock brought to this continent by the first Spanish settlers in the 16th and 17th centuries. Over the years, these hardy animals mixed with the horses owned by the earliest American settlers until today, there remains a conglomeration of mustangs, burros, and several varieties of wild horses.”) (statement of Congressman Wolff).

do not eat or want others to eat their wild horses.³⁸ The role of horses throughout American history,³⁹ and in contemporary culture, makes their slaughter something that most Americans oppose.

Nevertheless, when some Americans no longer want or are able to care for their horses or when wild horses are captured on public land, the slaughter industry is ready: “killer-buyers” purchase them and send them off to slaughterhouses abroad, if at all possible. Horses are transported to Canada and Mexico, where they are slaughtered and butchered, and their meat eaten or exported to be eaten. In one case, horses were also shipped from the port of Wilmington, Delaware, on a fifteen-day journey, likely without enough food or water, headed to Russia for slaughter.⁴⁰ Horse meat is a common food, even a staple, in many regions, from China and Southeast Asia to Europe.⁴¹ Between 100,000 and 200,000 American horses, from a variety of sources, are slaughtered outside of the United States and end up in restaurants and markets each year, and hundreds of thousands of people eat American horse meat annually.

Because Americans view horses as somewhat totemic or “sacred” animals, horse

³⁸ See, e.g., *Cavel Int’l., Inc. v. Madigan*, 500 F.3d 551, 545 (7th Cir. 2007) (“Americans do not eat horse meat. . . .”); see also Terry L. Whiting, *The United States’ prohibition of horse meat for consumption: Is this a good law?*, 48 CANADIAN VET. J. 1173, 1174 (Nov. 2007) (“A commercial market for horse meat as food has never emerged in the USA.”), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2034431/> (accessed July 19, 2017).

³⁹ Kurt Brungardt, *Galloping Scared*, VANITY FAIR, Nov. 2006, <http://www.vanityfair.com/politics/features/2006/11/wildhorses200611> (accessed July 19, 2017) (“Celebrated in film, literature, and our nation’s history, the mustangs helped Lewis and Clark complete their historic expedition, and during the opening of the frontier, they pulled plows, delivered mail, and carried soldiers in battle.”).

⁴⁰ See <http://www.animalsangels.org/media-news/animals-angels-finds-evidence-us-quarter-horses-exported-russia-lebanese-livestock-vessel> (accessed July 10, 2017). Burros are also regularly sent to slaughter, as the use of their skins increases, with the market needing four to ten million donkeys (burros) each year to meet demand. See https://www.thedonkeysanctuary.org.uk/sites/sanctuary/files/under_the_skin_report.pdf (accessed July 17, 2017).

⁴¹ *Cavel Int’l. v. Madigan*, 500 F.3d 551, 552 (7th Cir. 2007).

slaughter for consumption is overwhelmingly unpopular in the United States.⁴² A January 2012 poll confirmed that eighty per cent of Americans strongly oppose horse slaughter.⁴³ The survey found that “Americans oppose horse slaughter overwhelmingly regardless of their gender, political affiliation, whether they live in an urban or rural area, or their geographic location,” or whether they own horses themselves.⁴⁴

Americans oppose horse slaughter and consumption for a variety of reasons. Some attribute this opposition to culture.⁴⁵ Others credit the diametric opposition in principles of eating horses, given their role in American history, from the founding era to westward expansion.⁴⁶ Another factor deterring American consumption of horse meat is the level of cruelty inherent in the slaughter of horses, who are especially frightened and desperate to escape in slaughterhouses. Yet others do not even attempt to explain their view, simply calling the eating of horse meat “repulsive[.]” and “gross.”⁴⁷

⁴² Christa Weil, *We Eat Horses, Don't We?*, NY TIMES, March 5, 2007, www.nytimes.com/2007/03/05/opinion/05weil.html (“Weil”); Josh Ozersky, *The Case for Eating Horse Meat*, TIME (Dec. 28, 2011), <http://ideas.time.com/2011/12/28/the-case-for-eating-horse-meat/> (accessed July 19, 2017).

⁴³ <http://www.prnewswire.com/news-releases/aspca-research-confirms-americans-strongly-oppose-slaughter-of-horses-for-human-consumption-138494089.html> (accessed July 19, 2017); see also Press Release, The Humane Society of the United States, USDA Threatened with Suit if Court Order Not Followed Before Horse Slaughter Resumes (Feb. 3, 2012), http://www.humanesociety.org/news/press_releases/2011/11/usda_threatened_02032012.html (accessed July 19, 2017).

⁴⁴ *Id.*

⁴⁵ Nicholas Day, *They Eat Horses, Don't They?*, CHOW, Nov. 17, 2006; Dan Flynn, *Horse Slaughter Issue Won't Go Away*, FOOD SAFETY NEWS, Oct. 25, 2011, <http://www.foodsafetynews.com/2011/10/horse-slaughter-issue-wont-go-away/> (accessed July 19, 2017) (attributing Americans' opposition to eating horse meat to the country's “Cowboy Culture”).

⁴⁶ Brian Palmer, *The Delicious Mr. Ed*, Slate Magazine, Oct. 24, 2011, http://www.slate.com/articles/health_and_science/explainer/2011/10/slaughtering_horses_for_meat_is_banned_in_the_us_why.html (accessed July 19, 2017).

⁴⁷ Weil, *supra* Note 42.

Regardless of the rationale, Americans do not eat horse meat and do not want their wild horses slaughtered and exported for others to eat either.⁴⁸ And it is vital that the federal agency given the important duty of protection over wild horses ensures itself and the public that it is not engaging in the transfer of horses to slaughter.

2. *It Is Indisputable that Wild Horses Are Sold for Slaughter.*

Both proponents and opponents of horse slaughter acknowledge that wild horses are slaughtered for consumption. At the 2011 “Summit for the Horse” conference, Bill desBarres, Executive Director of a Canadian horse advocacy group and consultant for Bouvry Exports, Canada’s largest horse slaughterhouse, acknowledged that BLM wild horses are slaughtered in Canada.⁴⁹ “We do see them in plants in Canada Lots of BLM horses” are slaughtered in Canada, according to desBarres.⁵⁰ More recently, a September 2012 investigation of Mexican horse slaughter plants uncovered, and took photographs of, numerous wild horses with BLM freeze brands being transported from the United States to an Inter Meats plant in Mexico.⁵¹ Even USDA employees admit that wild horses are sometimes exported to Mexico for slaughter. Specifically, USDA veterinarians stationed in Eagle Pass, Texas “sometimes see wild horses bearing the BLM brand in slaughter export pens.”⁵²

And the BLM is well aware of the nearly 1800 horses who were sold to Tom Davis, who then sold them to slaughter.⁵³ According to the report issued by the Office of Inspector General,

⁴⁸ *Id.*

⁴⁹ Horse Killer Summit, *supra* Note 36.

⁵⁰ *Id.*

⁵¹ Investigation of Mexican Horse Slaughter Plants approved for export to the European Union, Animals’ Angels, at 2-3, <http://library.constantcontact.com/download/get/file/1101655399670-322/Investigation+at+Mexican+horse+slaughter+plants.pdf> (accessed Feb. 8, 2017).

⁵² Dave Philipps, “Wild Horses Sold by US Later Ending Up at Slaughterhouses?” (Sept. 29, 2012) (“Philipps Article”), <http://investigations.nbcnews.com/news/2012/09/29/14153296-wild-horses-sold-by-us-later-ending-up-at-slaughterhouses> (accessed Feb. 15, 2017).

⁵³ Office of the Inspector General, “Investigative Report of Bureau of Land Management Wild Horse Buyer”, Oct. 23, 2015.

Davis admitted that most of the horses he purchased through [the BLM] ultimately went to slaughter. We determined that the BLM did not follow current law while managing [its Wild Horse and Burro Program.] BLM also failed to follow its own policy of limiting horse sales and ensuring that the horses sold went to good homes and were not slaughtered.

The BLM's conduct with respect to Tom Davis was in direct violation of the federal policy against selling horses to slaughter. It is also in violation of the prohibition on the use of appropriated funds for the destruction of healthy, excess horses.⁵⁴

While the BLM responded to the OIG Report with promises to prevent further instances like that with Davis, the potential for horses being sold to slaughter remains a very real one. In fact, WHFF has uncovered internal BLM documents demonstrating a potential plan to sell thousands of wild horses, probably to end up in slaughter facilities in Canada.

3. *BLM Lacks an Enforcement Regime Sufficient to Prevent the Sale of Wild Horses for Slaughter.*

In connection with its policies discussed above, BLM requires purchasers of excess wild horses to agree not to sell the horses for slaughter. Clearly the agency wants and is motivated to prevent the sale of wild horses for slaughter. But there do not seem to be any effective enforcement mechanisms for this policy. And as illustrated most drastically by the Tom Davis incident – but likely repeating itself on a smaller scale routinely – BLM's *actual enforcement* of its policy is inadequate if not nonexistent. Under current procedures, when BLM sells wild horses, it appears to take no action to ensure that the purchasers use them for the purpose(s) for which they were bought, or even retain ownership of the horses beyond a nominal period of time. Given this lack of safeguards, it is unsurprising that wild horses are sold for slaughter and somewhat surprising that BLM was able to uncover the Utah horse slaughter scheme in 2011.

⁵⁴ See *Consolidated and Further Continuing Appropriations Act, 2015*, Pub. L. 113-235, 128 Stat. 2130, 2399 (Dec. 16, 2014) (“Appropriations herein made shall not be available for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau or its contractors or for the sale of wild horses and burros that results in their destruction for processing into commercial products.”)

Unlike *adopted* wild horses, who BLM attempts to track to ensure they are properly cared for and not sold for slaughter,⁵⁵ “excess” horses sold by BLM receive no attention or oversight to ensure their purchasers comply with BLM policy. And because those who adopt wild horses only become owners of the animals after one year of demonstrating humane care, adopters are less likely to purchase wild horses with the intent to sell them for slaughter, as the year of maintenance costs makes adopted wild horses more expensive (if the intent is to send them to commercial slaughter) than other horses who may be bought at auctions. The greater expense and established monitoring associated with the adoption of wild horses, compared to the bargain price and absence of safeguards associated with the direct sale of wild horses, makes the purchase of wild horses an attractive option for killer-buyers and slaughter establishments eager to make a quick profit by selling wild horses for meat.

BLM could take simple, obvious measures to enforce its long-stated policy against the slaughter of wild horses. For example, with domestic horse slaughter effectively outlawed for the immediate future, virtually all slaughter of American horses, including wild horses, occurs in Canada and Mexico. Consequently, all wild horses exported for slaughter are examined by USDA’s Animal and Plant Health Inspection Service (“APHIS”) veterinarians, who must certify their fitness for travel to be slaughtered. But currently, even though these government employees observe wild horses with BLM freeze brands being exported for slaughter,⁵⁶ APHIS “does not monitor whether BLM horses are crossing the border.”⁵⁷ There is no evidence that BLM has asked APHIS to share information regarding these wild horses being sent to slaughter, which BLM could use to investigate the horse’s purchasers and, upon investigation, enforce its stated policies. BLM’s lack of any affirmative protection of wild horses, or active enforcement of its prohibition of the sale of wild horses for slaughter, enables unscrupulous purchasers to

⁵⁵ See BLM Manual Handbook 4760-1, Conducting Compliance Checks for BLM’s Wild Horse and Burro Adoption Program (June 17, 2004), https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h4760-1.pdf (accessed July 19, 2017).

⁵⁶ Philipps Article, *supra* Note 52.

⁵⁷ Horse Killer Summit, *supra* Note 36.

violate BLM policy and federal law, and to send American horses and burros to foreign consumers as meat.

4. *Commercial Slaughter Cannot Be Accomplished Without Horrendous Treatment of Wild Horses.*

The BLM is responsible for protecting and preserving wild equines, and any actions it takes which lead to the inhumane treatment of horses and burros under its care result in liability and a violation of law for the agency. If wild horses and burros are ending up in the slaughter pipeline, it is an indisputable fact that they suffer horribly. Not only are horses being slaughtered for food in violation of federal law and BLM policy, but from their acquisition at livestock auctions and other sources to their death at the slaughterhouse, horses destined for consumption are subject to unique and inescapable mistreatment and cruelty. Transportation to a slaughter facility is frightening for most horses but is especially traumatic for wild horses, due to their untamed temperaments.⁵⁸ Because of their innate nature as well as their wildness, the fear they display in response to proximity to people in strange environments, and their resistance to handling and transport, means that wild horses experience extremely high levels of distress and have an exponentially greater risk of injury, during the events leading up to slaughter.

Poor conditions during transportation result in slaughter facilities filled with frightened, food- and water-deprived, sick, and injured horses. Federal law usually requires transported horses to be off-loaded for food and water every twenty-eight hours, but horses are often transported continuously for over thirty hours.⁵⁹ Some horses arrive at slaughterhouses with their backs broken or with other serious injuries.⁶⁰ And the lack of proper food and water in already weakened horses can lead to further injuries and death during extended transport.

⁵⁸ See C.L. Stull, *Response of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter*, J. ANIM. SCI. 77:2925-2933 (1999) (“Horses tend to travel longer distances to slaughter than other livestock, because there is a limited number of equine slaughterhouses.”).

⁵⁹ T.H. Friend, *A Review of Recent Research on the Transportation of Horses*, J. ANIM. SCI. 79:E32-E40 (2001) (“Continuous transport of slaughter horses for 30 hours is common, and some trips last 36 hours or longer.”).

⁶⁰ See 151 CONG. REC. H4247 (finding that horses are “transported in excess of 1,000 miles in the most inhumane conditions perceived”).

According to a 1999 study of sixty horses transported for slaughter, one animal had to be removed from the transport trailer after twelve hours of transport, dying two days later.⁶¹ And eighty-one injuries were identified (with many others likely undiscovered) in the fifty-nine arriving horses on just that one truck.⁶²

At slaughter facilities, horses are often subject to appalling abuse before and during their slaughter, so the mistreatment continues at the end of the transport phase. Many horses are not given hay or water in overnight holding pens.⁶³ Many of the horses in holding pens are, or become, “downers” — non-ambulatory animals too sick or injured to stand up and walk, some of whom may be dragged or pushed into their pens.⁶⁴

Because they frighten more easily than cows, horses — and especially wild horses—are unsuited to be processed at a slaughter plant. As horses are more sensitive to odors than cows, the scent of blood that necessarily exists in the slaughter facility exacerbates their fright. Some horses slip and fall in the tight “stun box” in which they are placed so that they can be rendered unconscious prior to slaughter.⁶⁵ As a result of their keen perception and subsequent fear, horses are more likely to injure themselves trying to escape the slaughter plant.⁶⁶ Wild horses, of

⁶¹ Stull, *supra* Note 58, at 2925-33.

⁶² *Id.*

⁶³ See *Pasture to Plate: A Report by the Canadian Horse Defence Coalition on Equine Slaughter*, at 5 (July 2011), <http://canadianhorsedefencecoalition.files.wordpress.com/2011/12/pasture-to-plate.pdf> (“*Pasture to Plate*”) (accessed July 19, 2017).

⁶⁴ See Gary D. Anderson & Don R. Lee, *Salmonella in Horses: A Source of Contamination of Horse Meat in a Packing Plant Under Federal Inspection*, 31 *Applied and Environmental Microbiology* 661 (1975), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC291172/> (accessed July 19, 2017) (“[S]laughter horses have usually been trucked for extensive distances. Many times they are injured or unhealthy, housed poorly, fed and watered improperly, and sometimes held for long times, as much as a week, in dirty confined pens at the slaughter plant.”).

⁶⁵ See *Pasture to Plate*, *supra* Note 63, at 4.

⁶⁶ See *id.* at 5.

course, generally have had even less exposure to humans, and are therefore even more hypersensitive to the handling necessary in commercial slaughterhouses.

Some horses may even be slaughtered while still conscious. Under federal law, horses must be rendered unconscious prior to slaughter,⁶⁷ but because of their natural agility and flight instinct (undoubtedly heightened in wild horses to avoid predators and capture), many horses are improperly stunned and remain conscious when they are hoisted to have their throats cut.⁶⁸ According to a recent report, almost half of the horses going to slaughter had to be stunned more than once.⁶⁹ The desire to slaughter as many horses as quickly as possible inevitably contributes to the inaccuracy and cruelty of the slaughtering process.

The United States Department of Agriculture (“USDA”) is aware of and has documented appalling cruelty at horse slaughter plants, including gruesome descriptions and photographs of the mistreatment inherent in horse slaughter.⁷⁰ The suffering seems to be an inevitable occurrence anytime that horses are slaughtered, as documented recently in Canada.⁷¹ The examples cited in this section, which are only those that were discovered in a small sampling of plants, speak volumes for the absolute terror that transport to slaughter, and slaughterhouses

⁶⁷ See Humane Methods of Slaughter Act, 7 U.S.C. § 1902(a).

⁶⁸ See 151 CONG. REC. S10,220 (daily ed. June 8, 2005) (“[H]orses sometimes remain conscious throughout the slaughter process. . .”).

⁶⁹ *Pasture to Plate*, *supra* Note 63, at 4.

⁷⁰ See, e.g., USDA, Food Safety & Inspection Service, Noncompliance Record No. 0019-2005-8243 (Apr. 13, 2005); see also, e.g., Noncompliance Record Nos. 00 18-2005-8243 (Apr. 4, 2005) (“Nine horses were overcrowded in the alleyway causing undue excitement which was further exacerbated when two more employees from the kill floor began yelling and hitting these horses causing the one in the end of the line to slip and fall.”); 0013-2006-8243 (Oct. 9, 2006) (“horse was down” . . . “in the upper middle compartment of a pot bellied trailer” and “[o]ther horses within the compartment were trampling the downed horse”); 0006-2007-8243 (Jan. 24, 2007) (“two downed horses being trampled upon by the other horses as well as the front horse being kicked with the hind feet from another horse”); Press Release, Animals’ Angels (Nov. 2008); see also Mary Nash’s Horse Meat Website, <http://www.kaufmanzoning.net/foia.htm> (accessed July 19, 2017) (making available for download USDA documents describing and depicting regulatory violations, mistreatment, and cruelty).

⁷¹ See generally *Pasture to Plate*, *supra* Note 63.

themselves, are for wild horses, and the danger to them and to the public in processing them for meat.

If the BLM is involved in any activity with respect to wild horses and burros, that in any way provides the potential or opens a door for wild horses to go to slaughter, it is actively causing multiple violations of federal law, as well as breaching the spirit and the language of the Wild Horse Act. Because of the strong public policy against slaughter, and the multiple federal laws that confirm that policy, the BLM should be taking every precaution necessary to ensure that each and every wild horse and burro that leaves the range is protected from the possibility of going to slaughter.

V. DOCUMENTED AREAS OF CONCERN

A. Horses and Burros are “Missing” from Long-Term Holding

WHFF has assembled extensive documentary and percipient witness evidence that the BLM’s reported numbers of horses and burros in many of the long-term holding facilities for America’s wild equids are wildly incorrect. In short, thousands of horses and burros that are supposedly in long-term holding are seemingly not actually in those locations, and not obviously in the control of the BLM or any other government agency or contractor. Somehow, these horses and burros have disappeared. The BLM has a similar set of problems with respect to the wild horses and burros still left on the range, and this demonstrates its endemic inability to account for the animals under its jurisdiction. As the National Academy of Sciences (“NAS”) group stated in its report, this is a real problem: “[I]mproving the accuracy and quantifying the uncertainty of population estimates would allow the BLM to respond with data to criticism about the number of equids that it reports on public lands.”⁷²

WHFF came to, and then repeatedly confirmed, this startling conclusion about the missing horses and burros only after years of collecting documents obtained from the federal government in response to WHFF’s Freedom of Information Act requests. WHFF then validated this documentary evidence with eyewitness affirmation of these disturbing disparities. After

⁷² NAS Report, *supra* Note 19, p. 268.

compiling and comparing the documentation of equids transported to government facilities, the determination that the equids (mainly horses, but burros as well) were simply not in any government facility became undeniable and indisputable.

The Exhibits to this document lay out an extensive, but not exhaustive, list of the evidence that WHFF has compiled. While much of the evidence comes directly from government documents, it is also the result of extended visual surveys of the long-term holding facilities at issue.

In connection with the documentary evidence, WHFF found multiple circumstances in which truckloads of horses were supposedly on their way to a facility, but then all of the horses on these trucks somehow did not show up at the facility for which they were destined. That is, documents obtained by WHFF have horses going out to a facility, but the number of horses reported at the receiving facility do not reflect increases commensurate with the number of horses shipped. This is evident in multiple circumstances, and the number of horses reported being shipped and received is different to a degree that cannot be explained by any of the documents WHFF has obtained.

This documentary evidence is supplemented by sworn percipient witness testimony. WHFF first obtained maps of all of the long-term facilities. WHFF personnel then drove the public roads that go through and around select long-term holding facilities and did their own careful counts of populations, and the results are significantly different from those reported by the BLM.⁷³ After viewing the perimeters and/or driving down roads in the middle of almost half of the facilities, and using comparisons and confirming conclusions with GPS, photographic, and videographic evidence, including GPS overlays of the travel path over the map of the long-term facilities, WHFF has evidence that in some cases less than one-half of the horses supposedly on the grounds of the facilities were actually there.

The disparities are further compounded by a lack of full disclosure – identification and accounting – with respect to newborn horses that are born after wild horses and burros are captured. It is well-known that many mares captured on the range and relocated first to short-

⁷³ See Declarations of Debbie Coffey (Exhibit 1) and R.T. Fitch (Exhibit 2).

term holding facilities and then to long-term maintenance are pregnant when captured. Newborn foals in long-term holding facilities obviously add to the populations and need for care and management, and increase the burdens placed on the BLM with respect to management of the horses. Some of these foals may be born in the short-term holding facilities and be subject to special needs in care and transport. Yet the daily counts of horses at the facilities do not seem to reflect any change in the inventory of the horses, and agency personnel have stated that the BLM often does not include the number of foals in facility inventory reports at various holding facilities.⁷⁴

The pregnancy and foaling issue raises another cogent question for the agency and the public: what is the effect of the gathers on wild mares' pregnancy? There is little data available to the public online regarding nonroutine veterinary care of the gathered horses, and there should be documentation of any problems with pregnancies and other complications from birth, miscarriages and the like. In order to obtain this information, members of the public will usually have to file a Freedom of Information Act request.

The problems described above are well established in the documentation collected and summarized in additional documents included in the Appendix provided with this White Paper. By way of a few examples:

1. WHFF obtained documents supposedly describing all horses and burros captured in the period of 1980-1999. There were 131,559 entries, but on other BLM records, the BLM claims that in this time period, 168,627 equids were captured. With this document alone, some 37,068 wild horses and burros were somehow left out of the BLM's Wild Horse & Burro Program System Database. (Exhibit 3.)⁷⁵

⁷⁴ <http://archive.constantcontact.com/fs161/1101655399670/archive/1114323721413.html> (accessed July 5, 2017).

⁷⁵ The Declaration of Debbie Coffey (Exhibit 1) provides authentication of all nonpublic documents submitted with this White Paper.

Exhibit 4 consists of the pages 1 and 4 of the U.S. Department of the Interior, Office of Inspector General Investigative Activity Report (“Report”), with respect to the case of Tom Davis, BLM Wild Horse Buyer (Case Number OI-CO-13-0004-1). Davis was of course the individual who bought close to 2000 horses from the BLM and sold them to slaughter.

Although the names in Exhibit 4 are redacted, it is clear that this report is based on an interview with Joan Guilfoyle, then Division Chief of BLM’s Wild Horse & Burro Program.

On page 4, the Report states “(redacted name) recognized that WHB’s database, WHBPS, was another issue that needed addressed [sic] within the adoption and sales programs. As background, WHBPS database is used to track wild horses that have been freeze marked, adopted and/or sold. While (redacted name) was able to access WHBPS to conduct limited queries, BLM employee (redacted name) controlled all rights to the system. The system, in (redacted name’s) opinion, was unreliable and problematic since different results could be obtained for the same query. She argued that WHB needed a reliable system, capable of providing accurate numbers that WHB could use and stand behind....”

2. Exhibit 5 includes Government Bill of Lading # H-529568, which shows that Ourada Truck Line Inc. was paid to haul 35 horses from BLM’s facility in Elm Creek, Nebraska, to the BLM facility in Piney Woods, Mississippi, with a delivery date of November 18, 2013. However, documents obtained by WHFF show that only *seven* – not 35 – horses arrived at the Piney Woods facility on November 18 (and the next shipment was not until December).

3. Exhibit 6: Government Bill of Lading D-4108131 shows that Ourada Truck Line, Inc. was paid to haul one truck of approximately 32 horses from BLM’s Elm Creek, Nebraska facility to BLM’s Piney

Woods, Mississippi facility, and that horses were picked up on Dec. 19, 2012, and delivered on December 21, 2012. But on December 21, Piney Woods only received *nine* – not 32 – horses.

4. Exhibit 7: BLM shipping records show 132 geldings (4 loads) were to be shipped to Teterville East LTH, with the receiving date for 66 geldings (2 loads) on 9/12/13 and the receiving date for the other 66 geldings (2 loads) as 9/14/13. However, BLM shipping records show 132 geldings were shipped to Teterville East, but the Teterville East invoice indicated only 112 arrived.

5. Exhibit 8 demonstrates the kind of inaccurate, unexplainable accounting that seems to randomly have horses and burros in the inventories moving in and out of the holding facilities. The documents contained in this Exhibit show wildly disparate numbers for the same facility in a short period of time. According to the inventory at the Piney Woods facility, there were 160 equids on site on January 31, 2011, and 101 equids a month later, on February 28, 2011. But based on the records of equids coming and going out of Piney Woods in that same time period, there should have been *136 – not 101* – equids at the facility on February 28. Somehow 35 equids – at least – remain unaccounted for. Then again four months later, the inventories claim that on May 2 there were 107 equids, and on May 30, there were 113. But reviewing the attached documents demonstrates a total increase in numbers of equids bringing the total to *157 – not 113*. Bottom line, with numbers this far apart though, the truth is that no one can really tell what the inventory was at any point in time. The numbers are completely unreliable, given these few examples of identified disparities.

6. WHFF obtained two different sets of documents with records of deaths of horses at Gunnison Prison during the same time period. In

fourteen months of reporting, the documents only were in accord – having the same numbers for identical events -- on *one of the fourteen months*. In other words, the accounting with respect to the number of horses at Gunnison Prison was able to be validated less than ten percent of the time, over that entire period. *See Exhibit 9.*

7. The BLM had a contract with a rendering plant, Nevada By-Products (d/b/a Reno Rendering), to process the dead horses and burros from the BLM's Palomino Valley Center Holding Facility in Sparks, NV. During the time period of January 1, 2010 through May 31, 2012, Palomino Valley Mortality Detail Reports reported that 241 horses and burros died at the Palomino Valley Center facility, and 50 died at the Indian Lakes Road facility in Fallon, NV. (Exhibit 10.) A large number of foals and colts were included in the rendering plant invoices that obviously died at the Sparks facility also, with 64 colts dying at Palomino in March 2011 alone -- though these were not officially reported, pursuant to BLM policy. *See Exhibit 11.*

8. Another area of concern in which inconsistent reporting has been identified and not explained focuses on horses and burros who die at holding facilities. This is obviously an area that the BLM should be keeping careful track of, in order to evaluate the reasons for in-facility deaths and to work to ensure that potential harms to horses and burros in long-term holding are reduced as much as possible. Yet it is an area in which the BLM's recordkeeping is sadly lacking in accuracy.

WHFF has obtained copies of contracts between the BLM and private contractors for long-term holding facilities, also known as "Off Range Pastures." Most of those contracts require, on each monthly invoice submitted by the contractor, that each equine death "be recorded by the freeze-mark and/or description of the animal, [and the] date the animal was noted as dead." WHFF has also obtained corresponding invoices

that indicate horse deaths -- but *do not* include the freezemark number or description of the dead animal that was supposed to be submitted on each month's invoice.

Examples of this seemingly systemic problem, where invoices indicated dead horses do not include the freezemark numbers or descriptions of the animal, include:

(a) Drummond Land & Cattle Co. for February 2014 (see Exhibit 12, pp. 1 (list of dead horses), 2 (first page of contract), 3 (including contractual provision requiring reporting of freezemark, and/or description of dead horses, as well as date noted as dead);

(b) Cross Bell Equine Services LLC for February 2013 (see Exhibit 12, pp. 4 (list of dead horses), 5 (first page of contract), 6 (including contractual provision requiring reporting of freezemark, and/or description of dead horses, as well as date noted as dead);

(c) Grand Eagle Summit for March 2014 (see Exhibit 12, pp. 7 (list of dead horses), 8 (first page of contract), 9 (including contractual provision requiring reporting of freezemark, and/or description of dead horses, as well as date noted as dead),

(d) F. Ford Drummond for January 2015 (see Exhibit 12, pp. 10 (list of dead horses), 11 (first page of contract), 12 (including contractual provision requiring reporting of freezemark, and/or description of dead horses, as well as date noted as dead),

(e) Hughes Cattle Company LLC for March 2015 (see Exhibit 13, pp. 11 (list of dead horses), 14 (first page of contract), 15 (including contractual provision requiring reporting of

freezemark, and/or description of dead horses, as well as date noted as dead); and

(f) Shadow 7, LLC for April 2013, 2015 (see Exhibit 12, pp. 16 (list of dead horses), 17 (first page of contract), 18 (including contractual provision requiring reporting of freezemark, and/or description of dead horses, as well as date noted as dead)).

9. In an invoice submitted by Tadpole Cattle Co. there were 36 deaths in November 2010, and another 45 deaths the following month, in December 2010 (81 deaths in two months). The public is left to wonder what caused so many deaths in a short period of time, because the BLM doesn't demand greater accountability from the contractor in its contracts. (*See* Exhibit 12, pp. 19-21.)

10. As another example of the obfuscation of facts related to the wild horse and burro program, the BLM's bait/water trapping program provides little or no transparency or accountability, so that the public, and the BLM, are unable to account for or track the horses who are captured under that program. Under the applicable contracts, the public is prohibited from viewing the capture pens where the wild horses or burros are trapped. The public may only be allowed to view the captured horses at a subsequent holding area, the "staging area," by appointment.⁷⁶

11. WHFF was especially alarmed by the absence on the BLM's database of large percentages of horses who had supposedly been gathered. For example, in connection with FOIA 2013-00557, the BLM Colorado Records Administrator provided a list of all horses that were bait/water trapped from October 1, 2012 through May 20, 2015. (Exhibit 14.) WHFF selected 100 random freezemark numbers (used to

⁷⁶ See Exhibit 13, "L12PC00123- Pricing – Statement of Work- Clauses- Horse Trappers," p. 9.

identify each horse) on this list, and compared it to a BLM database provided in FOIA 2015-00593, which supposedly included every wild horse and burro captured from January 1, 2000 until May 13, 2015. Of the 100 freezemark numbers, 74 were not on the BLM database. Exhibit 15 provides a list of those freezemark numbers that referred to horses gathered in a bait/water trapping but that are *not found on the BLM database*. If a random sampling demonstrates such an incredible disparity, there can be no question that the BLM's records are completely unreliable. And it is completely unclear where all those horses have gone.

This problem is also evident with respect to bait trapping contractor Horse Trappers, LLC, which sent three invoices billing for 200 horses that were captured at Murderers Creek. (See Exhibit 16.) However, BLM's records only indicate receipt of 157 horses from Murderers Creek in the relevant time period. (See Exhibit 17.) WHFF has found no explanation for the 43 missing horses.

This evidence and discussion in this section raises several areas of concern, including (1) the potential for fraud (where more horses are claimed to have been shipped or cared for than actually were), (2) the falsification of government documents, and (3) breaches of the contractual agreements between the BLM and its contractors (trucking companies and/or the entities that operate the long-term holding facilities), which is discussed in the next Section. And as alluded to previously, the biggest question is – if the horses are not where they are supposed to be – where are they?

Another area of identified concern is BLM's lack of compliance with its obligations to ensure the proper, safe and humane adoption of wild horses to individuals who obtain horses through Private Maintenance and Care Agreements (PMACA) from BLM.⁷⁷ If adoptions are not

⁷⁷ See generally 43 C.F.R. § 4750 *et seq.*

properly monitored, it is possible that wild horses could be improperly used in exploitative demonstrations such as rodeos, or be funneled into auctions where they are sold for slaughter.

Under the PMACA program, the horses remain the property of the BLM unless and until adopters apply for title to the horses they have obtained from the BLM. Adopters are entitled to seek all rights of ownership after they have had the horses for one year.⁷⁸ From the records received and reviewed by WHFF, some adopters never seek to have title transferred, and the BLM does not do regular follow up on the adopted horses. In such cases, the BLM may lose track of the horses, and they may be used in ways prohibited by federal law.

The number of horses that are, or are not, in long-term holding, dictate another aspect of the BLM's Wild Horse and Burro Program that raises a point of major interest and deep concern for the public, Congress, and the federal budget. That is, the federal budget allocation in 2015 for the Program was \$80 million, with 65 percent of that used for off-range holding of captured wild horses.⁷⁹ Therefore, the questions raised regarding how many wild equids are actually in long-term and short-term holding are also questions about how much money the BLM should be receiving to manage the Wild Horse and Burro Program overall, and the long-term and short-term holding facilities in particular. This potential for millions of dollars being allocated, when they are not needed, presents a further compelling basis for a more detailed and complete explanation of where the horses and burros really are.

Whether it is the BLM, or its contractors, or both, who are generating these inaccurate reports, the result is the same. The public is unable to ascertain with any certainty where the wild horses and burros are going after the gathers. Nor can the public tell where they are actually going when they are supposedly being shipped to long-term holding facilities. And the federal government may be paying out thousands, if not millions, of dollars for horses who are not under federal control.

⁷⁸ *See generally* 43 C.F.R. § 4750.5.

⁷⁹ Department of the Interior, Office of the Inspector General, "The Bureau of Land Management's Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations," Report No.: 2016-WR-027 (October 2016) ("OIG 2016 Report"), p. 1.

These troubling facts, combined with an ongoing lack of transparency by the agency, raises a specter of potential concern that puts into question the location and welfare of thousands of wild horses and burros for which the BLM bears primary responsibility. What the National Academy of Sciences group said in 2013 remains clear: “Making the data that it collects available to the public would also be an opportunity to increase public confidence that BLM could explore.”⁸⁰ The time to make the data available and explain it is now.

B. The BLM’s Contract-Monitoring Procedures Are Inadequate, Allow Illegal Activity, and Provide Little or No Enforcement of Contractual Breaches

The unanswered questions raised above regarding the actual number of horses in long term holding facilities, and about the location and disposition of all the horses removed from the range, demonstrate a compelling need for the BLM to become more transparent and exhaustive in its reporting. But many of the problems can also be attributed to a systemic underlying problem – the agency’s inability and lack of diligence in monitoring its contracting partners and subcontractors who are actually in possession of the captured wild horses. Because of the BLM’s lack of oversight, and its lack of enforcement of its own contractual terms and the laws governing agreements with the federal government, violations of both the agreements and of federal law are commonplace. Worse, because of the myriad agreements and the lack of enforcement or adequate monitoring, the system promotes abuse and denies the BLM, the public, and the horses the guarantees they deserve.

And within the last year, despite multiple criticisms and identification of these types of problems in the past, the federal government in its oversight capacity has once again established that the BLM is continuing to violate federal law, despite plenty of notice and warning. The title of the October 2016 report by the Office of the Inspector General, Department of the Interior (OIG) says it all: “The Bureau of Land Management’s Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations.”⁸¹

⁸⁰ NAS Report, *supra* Note 19, p. 268.

⁸¹ Department of the Interior, Office of the Inspector General, “The Bureau of Land Management’s Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations,” Report No.: 2016-WR-027 (October 2016) (“OIG 2016 Report”), p. 1.

The most obvious breach of the agreements between the contractors running the holding facilities and the BLM are the inaccurate reporting of the numbers of horses. Each agreement requires accurate reporting of the numbers of horses being held by these facilities, and the evidence presented in connection with Section V.A. makes it clear that the contractors are not meeting their obligations in that regard, and the BLM is not requiring compliance with the contracts. Given the ease of technology to allow adequate reporting, standardized electronic forms should be used by all contractors, with photographic or videographic documentation of exceptional circumstances. This would ensure up-to-date, accurate, systematized documentation that can both streamline the processes and vastly improve recordkeeping capabilities.

One area of especial concern is the lack of reporting of animals who die in long-term and short-term holding. This is an important set of data for both the BLM and the public to evaluate the quality and effectiveness of the work being done by the contracting facilities. And if information about animal deaths is missing or unreported, the potential implication that the horses have been subjected to conditions or treatment that have resulted in unnecessary and suspicious deaths is raised for all involved. Moreover, if the data regarding animal deaths is adequately recorded and reported, it would be an important tool in the evaluation process going forward. Such information can lead to further evaluations of the conditions of confinement, the health of the animals (both long and short term), and the methods and means of improving the situation for all involved.

One notable example that did pierce the veil of secrecy around contracting compliance in long-term holding facilities was the OIG's 2013 audit of the BLM's cooperative agreement with Utah Correctional Industries ("UCI"), in which UCI agreed to maintain wild horses in a long-term facility. That agreement, the OIG found, was entered into illegally and involved the overpayment of significant funds to UCI, which was having prisoners care for the horses. The OIG audit found that, rather than complying with the law by paying for the specific and identified costs of caring for the horses, the BLM was paying UCI a specified rate that surely exceeded the actual costs – in direct violation of federal contracting law.⁸² Additionally, the OIG

⁸² Department of the Interior, Office of the Inspector General, "Financial Audit", Report No. WR-CA-BLM-0013-2013) ("OIG 2013 Report").

2013 audit noted that the BLM should have entered into a standard contract, and not a cooperative agreement, in order to comply with federal contracting laws. The OIG found the same illegal situation occurring at the Carson City prison, “resulting in inaccurate or inflated claims for reimbursement and allowing for potential profits, which are not allowed under a cooperative agreement.”⁸³ And the Carson City institution even had an additional illegal option for profits, under a fee-for-training provision.

While the BLM has since transitioned some correctional institutions to contracts, and not cooperative agreements, this was of course only done as a result of the OIG study, despite the longstanding and obvious violation of federal law. And the BLM’s willingness to ignore the law was again exposed recently, when OIG’s 2016 Report identified continuing problems, including that the BLM had reported conditions that would “make it difficult to transition the remainder of the existing cooperative agreements for correctional institutions that provide holding services to contracts” – despite the fact that cooperative agreements continue to be in violation of federal law.⁸⁴

The problems noted with contractual noncompliance are greatly compounded by a lack of consistent enforcement, or regularly scheduled review for enforcement, of contractual violations. Rather, the notion of enforcement seems to be one that exists only on paper and in principle, with virtually no actual or active review of the contractors. As one relatively simple fix to the multiple problems facing the BLM, increased oversight and attention to contractors’ compliance would certainly be a step in the right direction to provide the BLM and the public with information regarding how contractors are dealing with the contractual terms, and the extent to which the contracts comply with federal law.

C. **The BLM’s Population Estimates for Wild Horses and Burros On the Range Are Scientifically Implausible, So That All Decisions Relying On Those Estimates are Inherently Flawed**

As has been reported by the OIG, the growth rate of wild horse populations across America has been estimated to range from a low of five percent annually to a high of twenty

⁸³ OIG 2016 Report, *supra* Note 80, p. 5 (summarizing OIG 2013 Report).

⁸⁴ *Id.*

percent annually.⁸⁵ Yet WHFF has identified multiple instances where the BLM's growth estimates and population increases on specific HMAs is biologically impossible and scientifically absurd. The BLM has reported, on more than one occasion, statistics that would establish a *750 to 1250 percent increase* in population over the course of a year. This is not feasible or possible under the absolute best circumstances, and demonstrates once more the unreliability of the BLM's records.⁸⁶

This inaccurate – indeed, impossible – factual reporting must be understood for the damage it does, on multiple levels, and for the legal violations it admits. First, the BLM presents its budget to Congress, and takes money from the public fisc, based on its population estimates and the correlated growth rates. Inaccurate representations of number of wild horses translate directly into unfounded and improper requests for funding in the budget. Besides the obvious implications of obtaining funds that are not needed, this inflation of population estimates compounds the perceived problem with the Wild Horse and Burro Program that has been repeatedly addressed by the public and federal oversight groups.

Second, the inaccurate reports about on-range populations then lead to support for increasing the number of wild horses and burros that will be taken from their Herd Management Areas. This directly impacts wild equids who should actually be allowed to remain on the range. And in doing so, it also creates an indisputable violation of the Wild Horse Act's directive that wild horses and burros be managed at the minimal feasible level, and that only truly "excess" horses be removed. If the population numbers were as incredible as those presented here – but they clearly are not – the entire system is broken in this respect.

Third, and most relevant to the concerns raised in this document regarding the long-term holding facilities, the BLM's wildly off-the-mark numbers contribute to the glut of horses being

⁸⁵ See generally NAS Report, *supra* Note 19, pp. 48-56; OIG 2016 Report, p. 1 ("The on-range wild horse and burro population currently grows at a rate of 18 to 20 percent annually.").

⁸⁶ With respect to burros, the National of Academy of Sciences noted that "little is known about the demography of free-ranging burros in the western United States. Because key aspects of burro life-history characteristics and their ecological niche differ from those of horses, this committee recommends separate studies on burro population growth rates." NAS Report, *supra* Note 19, p. 49.

sent to those holding facilities, as well as the animals who seem to be disappearing from the actual population everywhere.

A contributing factor to the problems discussed in this section is the BLM's unscientific and outdated calculation of a foundational figure in wild equid management – the Appropriate Management Level, or AML. The BLM sets the AML for each Herd Management Area and uses it as a basis to help it determine how many horses it can justify removing from a given area. Obviously, if the AML – the foundational data point -- is wrong, then so is everything that follows that relies on that estimate. The BLM's decision with respect to how many horses should be captured will also be wrong, and this will lead to all of the same issues and problems discussed in this section, related to the inaccurate population growth rates. Nothing has changed in this regard, with respect to AMLs, since the NAS issued its study which concluded that “[h]ow 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.”⁸⁷ The NAS stated that it was “necessary [for the BLM] to develop and maintain standards for transparency, quality, and equity in AML establishment, adjustment, and monitoring,” and that the process of AML determination needed to be “adaptable” to changing conditions.⁸⁸ With many AMLs a decade or two old, that is clearly not the case, and it is ripe for positive change.

All of these cited problems are caused in part at the inception, when the BLM's population and growth estimates are so radically inaccurate and unscientific. This was a key finding of the NAS report, that the BLM's management was not based on “rigorous population monitoring procedures”, and that the population estimates from the BLM “cannot be considered scientifically rigorous.”⁸⁹ “Data and methods used to inform decisions must be scientifically defensible.”⁹⁰ Currently, the BLM clearly does not meet these minimum standards. In order to

⁸⁷ NAS Report, *supra* Note 19, p. 11.

⁸⁸ *Id.*

⁸⁹ *Id.* at pp. 3-5.

⁹⁰ *Id.* at p. 11.

fix this broken part of the system, the BLM needs to increase all AMLs to allow for viable herd levels of a *minimum* of 150-200 animals, with at least fifty breeding age adults. And it needs to monitor and correct its errors involving population growth estimates.

D. The BLM's Gather Protocol Threatens the Health of the Herds in Violation of the Wild Horse Act

1. *Zeroing Out Herd Management Areas Violates the Policies of the Wild Horse Act.*

A final area of documented concern is the BLM's repeated removal of horses and burros from Herd Management Areas in ways that directly and negatively impact the herds' abilities to maintain a healthy genetic pool so that the populations on the range can survive.

The BLM has engaged in two types of wild horse capture and removals that both lead to the same unacceptable end – the elimination of horses and burros in an area where they were living at the time of the adoption of the Wild Horse Act. It is unequivocal that the BLM is required to “manage” the wild herds. However, the BLM's skewed idea of management includes, in some cases, the removal of all equines from certain areas in some cases.

In the first method, the BLM, time and again, has threatened removal of *all* wild horses and burros in a herd. And in other cases, the BLM “manages” the herds to numbers well below the minimum amount necessary to maintain a healthy population (whether that is characterized as AML or carrying capacity or maximum sustainable population), effectively dooming the herd to eventual elimination. In fact, even the BLM's conservation biologists and scientists agree that the herd sizes forced by the BLM are smaller than the minimal size necessary to maintain a thriving population. Gus Cothran, a geneticist used by the agency for decades, has consistently stated that wild horse and burro herds need a *minimum* of 150-200 members, with at least 50 breeding age adult animals, in order to sustain genetic diversity in the herd and maintain a viable population. But the BLM, much more often than not, drops below those minimal numbers.

Congress enacted the Wild Horse Act to “extend federal protection to wild horses and empower BLM to manage horses roaming public lands as part of the Agency's management of the public lands.” *Am. Horse Prot. Ass'n v. Watt*, 694 F.2d 1310, 1311-12 (D.C. Cir. 1982). In removing all wild horses and burros from any Herd Management Area, or reducing them to sizes

that will endanger their future, BLM is also disregarding its obligations to protect and minimally manage these wild animals on public lands.⁹¹

The Wild Horse Act's core legislative intent includes the preservation of the natural state of the herds where they were found in 1971, when the Act became law. This mandate is violated if a herd population is zeroed out or reduced to a number that is genetically infeasible. By such actions, BLM is violating mandatory activities under the Wild Horse Act. It is *not* (1) managing wild horses where they were found in 1971, (2) promoting a "thriving natural ecological balance", (3) treating wild horses as an integral part of the natural system of public lands, or (4) providing them with the federal protection to which they are entitled under the Act.

In either of the scenarios at issue – total removal of the herd or diminution below accepted genetic viability levels – there are eventually no equids in areas where there once were wild horses and/or burros. In both cases, there are no more animals to manage – a requirement under the law. BLM cannot, as a matter of law, "manage" horses and burros that are not there. And in eliminating the animals it is required to manage, it is violating the Wild Horse Act. If a supervisor at the BLM was directed to manage a particular office, and she was paid for the "management" of personnel, she obviously could not terminate everyone in the office, since there would be no more employees to "manage". What the BLM is doing with the herds that it is eliminating, or that it is dooming to genetic failure, will cause exactly that result.

These activities also flagrantly conflict with the agency's obligation to take a somewhat hands-off approach in its efforts and to manage herds "at the minimum feasible level." 16 U.S.C. § 1333(a). The BLM has an obligation "to protect, maintain, and control viable, healthy [wild horse and burro] herds while retaining their free-roaming nature." 43 C.F.R. § 4700.0-6(c) (BLM must manage "with the goal of maintaining free-roaming behavior."). This obligation is certainly violated if BLM foregoes all management practices short of eliminating the herd from public lands. Efforts need to be made, as directed by the Wild Horse Act, to "preserve" and

⁹¹ Even if such a drastic agency action could be supported under the Wild Horse Act, herd elimination cannot be undertaken without complete study and disclosure of how such an action may significantly impact the herd and the broader natural and human environment. The cumulative effects of an action as drastic as complete removal must be carefully examined under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

“protect” these herds, not to endanger them – and certainly not to get rid of them. Indeed, as one federal district court has succinctly stated, “[i]t is difficult to think of a ‘management activity’ that is farther from a ‘minimal feasible level’ than removal.”⁹²

And in both scenarios mentioned above, neither is there any “thriving natural ecological balance” – another requirement under the law. In fact, the BLM is creating the very opposite of a thriving, natural, or ecological, balance. In moving towards a zeroed out, or a nonproductive, population of equids, the BLM is forcing the wild horses and burros to dwindle and die out – the exact opposite of “thriving.” And it is removing wild equids from the landscape where they have been for all this time – the very other end of the spectrum from “natural.” Both results are in direct conflict with the Wild Horse Act’s premise, its promise, and its clear language. The BLM, through their routine practice, is creating a dying, unnatural, unecological tragedy on lands that have been reserved by Congress for wild equids. So this conduct is in violation of the Wild Horse Act’s mandate, as well as being in direct contravention of the BLM’s own regulations that require the agency to treat wild horses and burros as “self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.” 43 C.F.R. § 4700.6.

These ongoing violations of the BLM’s mandate are direct results of the BLM’s two cited practices – actually eliminating all horses from certain Herd Management Areas, and reducing the herds below the level of viability. And the fact of this practice is clear – despite the BLM’s expert’s position that 150 to 200 individuals are needed for a healthy population, the statistics are astounding. In fact, there are over 150 individuals in only 27 of the 148 wild horse herd management areas across the country; and there are over 150 burros in *only three* of the 30 documented burro herds. So according to the BLM’s own scientist of more than two decades, most of the herds the BLM manages are on the road to grave genetic danger, impairment, and potential extinction.

⁹² *Colo. Wild Horse and Burro Coalition, Inc. v. Salazar*, 639 F.Supp.2d 87, 96 (D.D.C. 2009).

2. *Eliminating Entire Herds Also Violates the Multiple Use Principles That BLM is Required to Employ.*

BLM also has a mandate under the Federal Land Policy and Management Act of 1976 (P.L. 94-579) (“FLPMA”) to manage land resources for multiple uses. Management for “multiple use” has an extensive definition in the Department of Interior’s federal regulations. In short, “[m]ultiple use means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” 43 C.F.R. § 1601.0-5. And careful consideration must be given to the “relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *Id.*

In accordance with the regulatory mandate for “multiple use” management, the National Academy of Sciences studied BLM’s management approach and issued a formal recommendation that BLM consider an “adaptive management framework” for wild horses and burros, which calls for management actions that are responsive to the mandates to the agency and the needs of the resources it is required to protect.⁹³ The agency has not satisfied the multiple use mandate and adaptive management framework with respect to the Wild Horse Act, as BLM has persisted in a static management approach that for years has been determined to eliminate all wild horses and burros from these federally protected lands, regardless of population health conditions or the contributory impacts from livestock and other wildlife present in the herd area.

BLM’s *modus operandi* to slowly eliminate wild horse herds is in direct conflict with its express statutory mandates under either the Wild Horse Act or FLPMA; and it is also in conflict with the congressional intent behind the Wild Horse Act. It is time to revisit these policies, and develop new practices that will embody the sentiments of Congress and the American people, and adequately manage the herd populations.

CONCLUSION

As recently as last October, the Department of the Interior’s Office of the Inspector General concluded that the “BLM does not have a strategic plan in place to manage the wild

⁹³ NAS Report, *supra* Note 19, p. 250.

horse and burro populations. . . A long term strategic plan is necessary to sustain land health, animal populations, and affordability.”⁹⁴ And that plan must include sufficient transparency so that the public can see the changes that have been made in the BLM’s practices with respect to wild horses and burros. What the NAS said in 2013 is just as true today: “[T]ransparency is an important contributor to the development of trust between agencies and stakeholders.”⁹⁵ WHFF urges the agency to enter into a new phase of wild horse management that brings an open approach to the BLM’s important work. In that regard, WHFF offers its expertise and assistance to the BLM in doing so, and encourages an open and productive dialogue with respect to the future of America’s wild horses and burros.

⁹⁴ OIG 2016 Report, *supra* Note 80, p. 6.

⁹⁵ NAS Report, *supra* Note 19, p. 13.