

## Wild Horse Education

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Comments re: *DOI-BLM-NV-B000-2019-0006-EA*  
Warm Springs “Spay” EA

### **Comments RE: DOI-BLM-ORWA-B050-2019-0013-EA**

On September 12, 2018, Burns District BLM issued a decision record (DR) for DOI/BLM-ORWA-B050-2018-0016-EA to gather and remove excess wild horses and burros from Warm Springs HMA and initiate a spay feasibility and on-range behavioral outcomes assessment study.

From EA dated 2019:

*The September 12, 2018 DR was challenged in the United States District Court for the District of Oregon and the District of Columbia, as well as in the Interior Board of Land Appeals (IBLA). A motion seeking a preliminary injunction (PI) was filed in the District of Oregon. On November 2, 2018, one court preliminarily enjoined implementation of the spay portion of the DR. On November 26, 2018, IBLA issued an order vacating the DR in its entirety.*

*... The BLM prepared a determination of NEPA adequacy (DNA) to assess whether the 2018 EA adequately analyzed the environmental impact of permanently removing wild horses and burros from the Warm Springs HMA, the proposed return of horses to low appropriate management level (AML) for the HMA, and the treatment of mares to be returned to the HMA with porcine zona pellucida (PZP).*

*... The DNA gave BLM discretion to “issue new management decisions pertaining to these horses that could rescind, nullify, set aside, supersede, or adopt this potential decision record in whole or in part.*

*... The BLM, through this EA, is now analyzing different approaches relating to the fertility treatment and return of some of the wild horses gathered in October 2018.”*

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**The new EA appears to make an assumption, absurdly, that the DNA creates new legal authority for a plan that had been previously vacated by the court.**

This EA analysis no “new plan” in truth, it simply changes a few words on the very plan presented to the public, and rejected, multiple times, and in multiple forms.

The EA itself is an exercise in waste of tax payer funding and the underlying factors behind this repeated proposal, that forwards an agenda of a private corporate interest heavily involved with BLM Deputy Directors under this administration, should itself be part of a probe by Congress into violations of ethics protocol. These Deputy Directors, with acting authority of Director, may be illegal and the subject of multiple inquiries, the latests a PEER complaint for the same system changing policy in our National Parks.

The EA appears to cite as underlying legal authority, processes that have absolutely no legal authority; the BLM Advisory Board and a proposal (unadopted) brought by BLM and Chris Stewart (R-UT) to Congress. Neither of these lay a legal foundation for this proposal.

From EA:

*“In October 2012, the Advisory Board recommended that, “BLM add ovariectomy as one additional tool for population growth suppression,” and drafted a seven-page description of their interpretation of this specific recommendation (BLM 2012)... Prioritize use of currently available tools in the field to reduce population growth right now and implement promising new tools as quickly as they become available (2018).”*

*“Although this was not included in the 2019 Appropriations, the House Committee requested giving “the Bureau legislative authority to manage groups of wild horses and burros as non-reproducing or single sex herds, including through the use of chemical or surgical sterilization.” The BLM responded in 2018 with their report to Congress titled Management Options for a Sustainable Wild Horse and Burro Program that included sterilization in all 4 options analyzed.”*

**Neither the Advisory Board, that has no legal authority under law, nor an unadopted report present legal authority to continue to utilize taxpayer funding to repeatedly create EAs and then face the inevitable litigation.**

In fact, Congress did not only “not adopt” the BLM Report to Congress for FY2019 funding, it soundly rejected the report. BLM was to prepare a new report and present to Congress for

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FY2020, which it has not even completed, nor presented, poor to BLM trying to ram another spay experiment into action.

**Three Rivers RMP/ROD (1992) does not analyze the potential impacts of sterilizing wild horses to the herd, nor the environment.** This plan is not in compliance with the 27 year old, antiquated, RMP.

The Warm Springs HMA has no Herd Management Area Plan (HMAP) that could serve as a supplement to the absurdly antiquated RMP.

**BLM must abandon this plan until the RMP, or other revised planning document, supports the action.**

BLM has no legal authority under the Wild Free Roaming Horses and Burros Act to manage populations as sterile. Citing different jurisdiction, not under the jurisdiction of Act, such as Fish and Wildlife Services, does not create legal authority. Citing the Advisory Board, that has no legal authority, does not create an authority under the Act. Citing an unadopted report, does not create legal authority.

**This plan must be set aside as BLM currently has no legal authority to carry out such an experiment on free roaming wild horses on public lands, this is not private property.**

The rest of this EA is a reiteration of the “public comments” section to the last EA vacated by the court. Simply repeating inadequate assertions, does not make them adequate.

*CFR Title 42 Part 4700,*

*§4700.0-5 Definitions.*

*(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.*

*(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.*

*7(c). Wild Free-Roaming Horses and Burros Act of 1971 §1332. Definitions*

*(d) "herd" means one or more stallions and his mares.*

**Nothing in authorities allows for non-reproducing herds, but instead demands self-sustaining.**

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**This plan must be abandoned as BLM has no legal authority to implement.**

*§ 1338a. Transportation of captured animals; **procedures** and prohibitions applicable. The provisions of section 47 (a) of title 18 shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.*

**The humane procedures, as outlined in policy by BLM, are defined in IM-2015-151.**

The Comprehensive Animal Welfare Policy (CAWP) was designed and implemented only after extensive and repeated litigation (by Wild Horse Education). CAWP was to be a beginning document, revised each year, to include policy for holding facilities and any other action proposed by the BLM.

BLM has failed to continue it's work on the most basic premise of the the law; to manage wild horses humanely. CAWP includes no holding facility protocol for simple infectious disease. CAWP includes no protocol for the experiment outlined in this EA.

**BLM must abandon this EA until CAWP is revised.**

**In summary:**

- **This plan must be abandoned as BLM has no legal authority to implement.**
- **BLM must abandon this plan until the RMP, or other revised planning document, supports the action.**
- **BLM must abandon this EA until CAWP is revised.**
- **This plan may be a direct violation of law involving Ethics violations, Hatch Act violations, BLM having no Director (vetted by Congress) as policy changes are proposed through acting authority, etc. This plan should be set aside until Congressional inquiry is complete, or an OIG/GAO investigation is done to determine the legality of proposing it in the first place.**
- **An EA is inadequate, an EIS must be completed.**

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Sincerely,



Laura Leigh

President, Wild Horse Education for Wild Horse Education, WildLands Defense, their staff and members.

**All of our previous comments to the last EA are applicable and repeated.**

*RE: DOI-BLM-ORWA-B050-2018-EA, Spay Feasibility and ON-range Behavioral Outcomes Assessment and Warm Springs Herd Management Area (HMA) Population Management Plan.*

*Jeff Rose (Burns District Manager) and Lisa Grant (Wild Horse and Burro Specialist),*

*The action proposed is simply premature. The components required for analysis to determine any basis for a determination of appropriate action simply do not exist at this time. In order to begin the analysis for this “research” a Herd Management Area Plan (HMAP) would be a required (appropriate) document to tier any discussion. An HMAP is a document outlined in the Wild Horse and Burro Handbook (as amended, H-4700-1) as a cornerstone to determine long term objectives for both herd management and resource preservation. In this instance no such document exists to determine if the proposed study even fits into established and approved objectives that have been scrutinized through the NEPA process. In essence this study puts the “cart before the horse.” Simply claiming this is a limited experiment that does not require analysis of application is capricious.*

*The analysis proposed is inadequate. The scope of analysis on such a proposed action would need to include any potential application, the legality of that potential action and cost analysis that includes implementation and litigation (the proposed action is unacceptable to the majority and will inevitably face repetitive legal actions). In addition, included in analysis would be the necessity of addressing the impact to overall population dynamics and the impact to the individual animal and harms to individual citizens associated with such. The process for such a project would not be appropriate under an “Environmental*

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*Assessment” and require an Environmental Impact Statement (EIS). Simply claiming this is a limited experiment that does not require analysis of application is capricious.*

*Any research that makes any pretense referencing measurable horse population behavior changes would require that extant horse population behavioral analysis be compared to an existing bank of ethograms over an extended period that encompasses impacts from varied precipitation, temperature and human impact (recreation, livestock, mining) as a basis for accuracy. A herd of wild horses has a distinct social structure well beyond a family band or a subset population; impacts to any single component of the larger structure must be weighed.*

*A minimum of 5 years of structural ethograms would provide a basis for discussion and would need to be completed prior to any introduction of non-reproducing females.*

*(Observational information was performed at Sheldon NWR over a period of years.*

*Aggressive behaviors increased as the number of non-reproducing anestrus females were introduced; competition for mares increased.)*

*The basis for the USGS component is not present. A baseline must be established prior to introduction of any aspect that changes the baseline. A “portion” of a herd is not a “control” group. The whole is effected. THE USGS STUDY IS INADEQUATE IN FRAME until they document the herd as a unmanipulated population, in it’s entire, for a minimum of 5 years to create an actual behavioral trend.*

*Surgical spaying is an expensive and dangerous procedure. This procedure is only done in a domestic setting under extreme circumstances in a highly controlled environment. In the field only older mares that have documented contribution to the herd genetic equation might have a genetic pathway that could be closed. Older mares, even in a highly controlled hospital environment, are not good candidates physically or psychologically for this procedure.*

*The Animal Welfare Act (AWA) guidance clearly states: “Activities that involve surgery include appropriate provision for pre-operative and post-operative care of the animals in accordance with established veterinary medical and nursing practices.” The previous EA included the CSU research protocol that acknowledged that the chute where the ovariectomy surgery would be performed would not be fully sterile. Without the CSU involvement, the aseptic procedures and environment required for major surgery would not be present.*

*Without a highly respected veterinary team “trying” to achieve aseptic conditions, the Burns corral reverts to its default mode, which is far from clean or sterile. Following surgery, the mares would be turned out in a pen where the already elevated risks of infection would be*

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*magnified, and released into the wild within a week's time. This is a violation of standard veterinary practice and of AWA guidance.*

*The revised EA claims that PZP is too costly, stating that besides the \$30 per vaccine, the per-mare roundup cost of around \$2000 must be included. That cost is also associated with the proposed experiment, yet omitted. (citing Nunez, who admits her research was flawed, is inadequate to reject PZP).*

*The claims that "incessant handling" would be required for fertility control treatments (PZP) and that this in itself would violate the "minimum feasible management" principle of the Wild Free-Roaming Horses and Burros Act. Yet this EA completely ignores that the spay procedure is an intense, dangerous and permanent stressor. This is an offensive omission.*

*The public has a right to see how their tax dollars are being spent. I have personally observed wild horses being processed in the area demonstrated in the EA and photographed from that area. A camera did not disturb employees. Photographic documentation must be permitted. (this has been addressed in the 2019 EA)*

*Prior to a discussion involving any research, the application of any tool created from that expensive and dangerous research, must be thoroughly evaluated to justify the expense.*

***AN EA IS NOT THE RIGHT ANALYSIS FORMAT, AN EIS IS REQUIRED.***