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July 22, 2003

Mr. Owen Billingsley
Field Manager
Surprise Field Office
Bureau of Land Management
P.O. Box 460
Cedarville, CA 96104

Re: Comments on the Carter Reservoir Herd Management
Area AML Establishment/Capture Plan Environmental
Assessment (CA-370-03-19)

Dear Mr. Billingsley:

On behalf of the 200,000 members and supporters of The Fund for Animals (The Fund) nationwide, including our members who reside and recreate in the states of California and Nevada, please accept the following comments on the Carter Reservoir Herd Management Area AML Establishment/Capture Plan Environmental Assessment (CA-370-03-19) (Draft EA)

To begin, The Fund must again strongly criticize the Bureau of Land Management (BLM) for continuing to base its wild horse management decisions on documents that are intolerably outdated -- specifically for this draft EA, the Cowhead-Massacre Management Framework Plan (MFP)/Final Grazing Environmental Impact Statement (EIS) and Record of Decision (ROD) approved on April 24, 1981. Decision No. 10 for the Subunit 3, Long Valley/Sand Creek called for the establishment of the Carter Reservoir Herd Management Area (HMA) and to manage for a total population of 20-30 wild horses (Draft EA, p. 3). Although this MFP is more than 23 years old, the BLM has incredibly decided to rely on this document to establish an Appropriate Management Level (AML) for the Carter Reservoir wild horse herd. The time is long overdue to review and rewrite this plan, and until such time as this process is completed with full public involvement,

the BLM must not attempt to establish an AML for this herd.

To make matters worse, it was this 23 year-old MFP that established the Carter Reservoir HMA from the original New Years Lake Herd Area. In the process, wild horses lost more than 90% of the original acreage in the HA, which comprised 277,100 acres of public land (Draft EA, p. 10). Today the Carter Reservoir HMA, the only HMA established from the original HA, consists of only 21,100 acres of public land and 2,349 acres of private land for a total of 23,423 acres (Draft EA, p. 2). Before an AML for this herd is established, the Cowhead-Massacre MFP must be rewritten and one of many alternatives considered for wild horse management must be redrawing the boundaries of HMA to incorporate the 256,000 acres of public lands lost to wild horses in 1981. With this acreage added to the HMA, the AML could be set at a much higher population target that would indeed meet the BLM's legal obligation to manage for "viable" and "self-sustaining" populations, something the proposed AML of 25-35 wild horses does not do.

In fact, one of the issues identified in the Draft EA is the need to completely remove a number of wild horses who seasonally roam outside the HMA (Draft EA, p.5). It stands to reason that wild horses do not recognize politically drawn boundaries, especially those who have had more than 90% of their habitat stripped from them. There is nothing in the Draft EA to indicate that the BLM considered the seasonal migration of wild horses, their biotic needs or their long-term health and viability in the drawing of the Carter Reservoir HMA during the development of the Cowhead-Massacre MFP. In actuality, based upon the public land scraps that were thrown to these wild horses, it would seem that the BLM completely lost sight of its legal mandate to protect wild horses in the areas where they were found in 1971 as an integral part of the natural system of public lands as required by the Wild Free-Roaming Horses and Burros Act (WFHBA).

Furthermore, the Draft EA is a continuation of the BLM's implementation of its new comprehensive strategy, A Strategy to Achieve Healthy Lands and Viable Herds, The "Restoration of Threatened Watersheds" Initiative, the purpose of which is to remove 50% of wild horses from public lands over the next few years. However, although this new strategy calls for several substantial changes in the management of wild horses and burros, it has never been subjected to National Environmental Policy Act (NEPA) analysis. Instead, agency officials have elected to adopt a piecemeal approach to management, never analyzing the cumulative impacts of this strategy on the long-term health and welfare of wild horses

and burros. Instead of complying with NEPA by preparing an EIS on the strategy, the BLM has decided to expedite the process of establishing AMLs for wild horse and burro herds throughout the West (in this instance by shockingly relying on a document 23 years old!) so the strategy can proceed without delay. The BLM must immediately prepare an EIS on this new strategy.

In line with the strategy, this Draft EA is illegally proposing to remove wild horses to 30% below the proposed AML (Draft EA, p. 4). In the process, the BLM will remove 210 wild horses and leave just 25 wild horses, a number that, based upon the best scientific data available regarding wild horse genetic viability, including information generated by the BLM itself, will not and cannot maintain the long-term genetic viability and variability of this herd.

The BLM is churning out EAs in order to establish wild horses AMLs that apparently are based solely on resource availability after existing livestock and wildlife use is considered. Contrary to legal mandates, wild horses are, in reality, often managed in livestock grazing allotments rather than in herd areas. Not only do fences constructed to accommodate livestock impede wild horse movements within legal Herd Areas (HAs) or Herd Management Areas (HMAs), but the BLM establishes wild horse AMLs by grazing allotment, taking into consideration the carrying capacity of the habitat, the current level of livestock use and state wildlife population objectives. After these have been determined, the wild horse AML is calculated. The BLM repeatedly ignores its regulatory mandate that wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. CFR 4700.06 (b). Judging from most BLM land use plans, wild horses are an afterthought in the process. It appears that the Cowhead-Massacre MFP is just another example of a land use plan that not only discounted the interests of wild horses, but for all intents and purposes, didn't count them at all. There can be no other explanation for such a drastic reduction in public land habitat available to wild horses.

Because the BLM does not provide the public with any information about the rationale for reducing the amount of land available to the Carter Reservoir wild horses, it is impossible for the public to understand, much less assess, the appropriateness of the proposed AML. While the BLM kindly invites the public to review the Cowhead-Massacre MFP and other documents at its Surprise Field Office, I regret that The Fund for Animals, and I would assume most members of the public, simply do not have the resources available to visit remote field office locations to review documents. Pertinent

information should have been supplied in the Draft EA. However, most BLM land use plans barely mention wild horses. We suspect that this is no less true for the 23 year-old Cowhead-Massacre MFP.

The Fund has repeatedly expressed its concern about the integrity of the NEPA process. The BLM frequently prepares NEPA documents that do not sufficiently analyze the environmental and cumulative impacts of specific proposed actions; nor does the agency offer an analysis of a reasonable range of alternative actions. More pointedly, this Draft EA cursorily analyzes only four alternatives, including the Proposed Action and the "No Action" Alternative, the latter of which the BLM readily admits is unacceptable to the agency - hardly a reasonable range of alternatives. Although the Draft EA purports to establish AML for the Carter Reservoir HMA, all the alternatives except the "No Action" alternative set the AML at the same number of 25-35 wild horses. Presumably, the No Action alternative does not establish AML. If anything, one would expect that the Draft EA would analyze a range of alternatives with different AMLs and strategies for achieving and maintaining them.

At a minimum, the Draft EA must analyze a reasonable range of alternatives, including but not limited to, a variation in initial AML numbers, the use of fertility control, natural controls and a combination thereof to achieve and maintain AML for each variation, various round-up schedules to maximize the efficacy of fertility control, reduction and/or elimination of livestock numbers, changes in livestock grazing seasons and duration, development of water sources to address the concerns about water availability for wild horses, redrawing the HMA boundaries to encompass the original HA acreage and relocation of wild horses to other appropriate areas.

In fact, given agency directives, it is inexplicable why the Draft EA fails to analyze such alternatives. For example, the action plan within the 1992 Strategic Plan calls for fertility control to be exercised on 50% of all females age four through nine years of age and for each BLM state office to identify at least one area where unadoptable animals can be returned to the land. Two of many assumptions within the 1992 Strategic Plan are that only adoptable animals will be removed from public lands and fertility control will be an available management tool beginning in FY 1994. Moreover, one of the specific goals of the Strategic Plan is to integrate and incorporate research, science and technical developments into the overall wild horse and burro program. Under this goal is the objective to begin research in the area of the effects of

fertility control and to facilitate practical application of research results. The BLM has been conducting research in fertility control now for years and is implementing the technology in other herds. An EIS must provide a comprehensive analysis of the use of fertility control as an alternative or as an alternative to be combined with removals and/or natural controls to reduce population size if reduction is warranted.

The BLM has quite frankly failed to analyze a reasonable range of alternatives. Furthermore, given that the Carter Reservoir HMA has already been scheduled for removal of 210 wild horses for August 3-9, 2003 according to the BLM's 2003 Gather Schedule, it would appear that the outcome of the Draft EA has been illegally pre-determined, thereby making the comment period a make-work exercise.

The Draft EA must be withdrawn, and in its place, the BLM must prepare an Environmental Impact Statement (EIS) that comprehensively analyzes the following issues and any others that may be identified during a formal scoping process.

1. Alternatives such as those previously mentioned for the purpose of increasing the initial Appropriate Management Levels (AMLs) for wild horses. Given the intent and letter of the WFHBA, it is outrageous that the BLM would reduce the habitat available to wild horses by more than 90% for more than 23 years. Such a decision is biologically, ethically and legally unjustifiable.

2. The Draft EA claims that wild horses have been shown to be capable of 16 to 25% increase in numbers annually (Draft EA, p. 2). Is this the growth rate in the Carter Reservoir HMA? Is this the typical growth rate? What is the average growth rate? How many foals survive past one year of age? What are the factors contributing to foal mortality? Do removals trigger reproduction? How do environmental factors, such as drought, affect reproductive potential? How have they affected reproductive potential in the Carter Reservoir HMA? It is our understanding that there have been several herds where populations weren't nearly as high as the BLM had estimated. Have these occurrences been thoroughly analyzed and factored into the population modeling? Any population model is only as good as the data entered. There is relatively little explanation of the population model developed by Dr. Stephen Jenkins - most importantly, whether the estimates generated by the model correlate with ground-truthing. These questions must be answered in an EIS. In addition, the EIS must analyze the census methodology currently being used by the BLM and evaluate alternative methodologies.

3. The EIS must analyze how past age-based removals have affected the age structure of the herd and/or the wild horses' reproductive potential. It must further analyze the appropriate population and gender and age breakdown to ensure the long-term genetic viability of wild horse herd. Despite claims made in the Draft EA, 25-35 wild horses is not a sufficient number to maintain the long-term genetic viability of the herd.

4. There is no analysis of what criteria the BLM will use to determine which wild horses will be returned to the range. The Draft EA mentions certain factors for consideration such as existing and past population characteristics and post-gather data for age, sex ratio, historical characteristics, genetic viability and physical condition. The EIS must provide a detailed explanation of the criteria to be used in making such decisions. The results of these decisions could have profound impacts on the long-term health and genetic variability and viability of the herds.

5. Considering that the Carter Reservoir herd is isolated, thereby precluding the possibility of genetic exchange with other herds, the BLM admits that there may be a need to augment the genetic pool through the introduction of horses from other herds -- a blatant violation of the BLM's legal mandate to manage for "self-sustaining" herds (Draft EA, p. 5). Despite this legal violation, the BLM is increasingly relying on introductions as a quick fix for what can only be described as reckless management - the establishment of AMLs that, based upon the agency's own information, are far too low to maintain the genetic health and viability of wild horse herds. According to the Draft EA, any introduced horses would meet the general characteristics (color, size, type, etc.) as those in the existing population (Draft EA, p. 6). At the same time, the BLM describes an unexplained phenomenon in the Carter Reservoir herd. The herd has historically been made up of mostly dun or buckskin colored horses along with other characteristics such as barred or striped legs and prominent dorsal stripes. However, in the last 10 years the incidence of other colors, including appaloosa and palomino, has become pronounced. (Appendix III, p. 5) So which colors are characteristic of the herd? Without genetic baseline data, the BLM is managing the Carter Reservoir wild horses blindly. The fact of the matter is the BLM has collected no genetic data for this herd, and until such time as genetic data are collected, it is incumbent upon the BLM to manage this herd with extreme caution. Instead, the BLM has thrown caution to the wind by proposing an AML of 25-35 wild horses (entailing the removal of approximately 210 wild horses), violating federal law. The EIS must analyze alternatives that will not necessitate introductions.

6. The BLM repeatedly ignores its regulatory mandate that wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. CFR 4700.06 (b). There certainly is no balance of forage allocation between livestock and wild horses in the Carter Reservoir HMA. The BLM has allocated 3,647 Animal Unit Months (AUMs) for livestock during a six-month season of use (April 1 to September 30) while the Proposed Action to set the AML at 25-35 wild horses allocates only a maximum of 405 AUMs for wild horses for twelve months, and this after removing wild horses from 90% of their original Herd Area (Appendix iii, pp. 3, 10). The EIS must analyze the appropriate allocation of range resources between wild horses and other range users, especially livestock, in the context of the statutory mandate to engage in only "minimum feasible level" of management activities necessary for wild horses and the impact of those allocations on removal decisions. Furthermore, the BLM must acknowledge that federal grazing permits are revocable and amendable. Despite the BLM's effort to hide behind its highly touted multiple use management approach, current federal statutes such as the Federal Land Policy and Management Act and Clean Water Act when properly administered may require less or even no private livestock grazing on public lands. The EIS must comprehensively analyze these issues.

7. Grazing on grasses and other vegetation during the growing season (precisely the time livestock are turned out in the Sand Creek allotment) can be quite harmful causing energy from the plants' roots to be translocated to the growing tips for photosynthesis. While these new tips may be more succulent and nutritious, livestock are concentrated on grazing allotments at a much higher density than you would find under natural conditions and are far less mobile than wild horses and wildlife. Livestock tend to re-graze the same plant. When a plant is repeatedly grazed frequently, its roots and seed production suffer. In drought conditions, which occur often in California and Nevada, such plants may die as a consequence or may not produce enough seeds to replace the plant. Furthermore, sometimes cows concentrate on particularly important habitat that remains green throughout the summer. These plants are very important to the nutrition of wild horses and other wildlife species. Certain plants are so sensitive to grazing pressure that they may require two to ten years for recovery from a heavy grazing event. Even with rest/rotation livestock grazing schemes as occurs in the Sand Creek allotment, the plants, particularly in drought conditions, don't get enough rest. Yet each or every other year, the livestock return in large numbers, gobbling up the most nutritious vegetation at the expense of wild horses, other wildlife and the

overall health of the habitat. Wild horses should not be made to suffer as a result of the historical failure of the BLM to sufficiently restrict/prohibit livestock grazing. The EIS must analyze the reduction and or elimination of livestock from the Carter Reservoir HMA in order to adjust the AML for wild horses. A comprehensive analysis of how livestock grazing impacts wild horses must be included in the EIS.

8. The EIS must further analyze how so-called range improvements for livestock management (such as fences) prevent wild horses from accessing water sources. The EIS must provide information regarding predator control actions occurring within and surrounding the Carter Reservoir HMA including the numbers and species of target and nontarget animals killed, methods of control utilized, locations of control actions (i.e., the grazing allotments overlapping the Carter Reservoir HMA) and the timing and duration of control actions. Are predator control activities being conducted in the Carter Reservoir HMA expressly to benefit livestock and/or to artificially inflate wild "game" populations, thereby eliminating a natural control mechanism? This information must be provided in the EIS.

9. The BLM ignores the WFHBA's reference to natural controls as one option for managing populations. While natural controls (predation, disease, parasites, starvation and dehydration, etc.) are allowed to operate on other wildlife species, the BLM has historically treated wild horses and burros more like domestic livestock than as "an integral part of the natural system of the public lands" as required by the WFHBA. Not only does the Draft EA fail to analyze natural controls, but it also fails to analyze how constant removals may trigger increased reproduction in wild horses left in the wild. The 16 to 25% increase in numbers of wild horses annually, described although not substantiated in the Draft EA, may be a direct result of BLM management actions.

10. The EIS must assess the appropriate time of year and conditions under which removals should take place. Is late summer the optimal time of the year for removals, especially, for example, for maximum efficacy of fertility control application? Furthermore, there will be several young foals on the ground in August. What impacts will an August removal have on them and can these impacts be minimized if the removal were to occur at a different time of year? The EIS must analyze the timing of removals.

11. The EIS must evaluate the best methods to ensure the long-term humane treatment of those animals removed from the range and placed into the BLM's adoption program. According

to the Draft EA, selective removal objectives target "excess" animals based upon specific segments of a given wild horse population and availability of space in BLM processing and long term holding facilities. However, the Draft EA does not offer any information pertaining to the projected availability of space in processing and holding facilities. How many wild horses and burros will be in those facilities at the time of the proposed removal? What measures are in place to guarantee that wild horses removed will be adopted by "qualified" adopters who will ensure the humane treatment of the animals for the remainder of their lives? Has the BLM considered a change in policy or the possibility of promulgating new regulations to address the issue of wild horses still going to slaughter both in the United States and Canada? The EIS must thoroughly analyze these issues in order to afford these animals the protections to which they are legally entitled.

The Fund is convinced that the Draft EA is entirely insufficient. It has made assumptions on all these issues, rather than analyzing them pursuant to NEPA. It further fails to provide critical information necessary for the public to offer informed comments and also fails to analyze a reasonable range of alternatives. Moreover, the environmental and cumulative impacts of even the proposed action are not properly identified, much less thoroughly evaluated.

The BLM recently announced that in an effort to conserve and restore public lands (including watersheds) under its jurisdiction, it has initiated the process of preparing a vegetation EIS for the purpose of evaluating the variables impacting rangelands and the extent of those impacts. It appears that until such time as the BLM has determined precisely what is responsible for habitat conditions and trends, a so-called overabundance of wild horses cannot be blamed as "one of the major threats to watershed health" as alleged in the new comprehensive strategy. The BLM has failed to meet the burden of proof that an overabundance of wild horses exists, that their numbers cannot be controlled without removals, that their removal will result in recovery of vegetative resources including riparian areas and that the AML of 25-35 wild horses is biologically and legally defensible.

Finally, the BLM cannot simply assert that its proposed action is consistent with federal laws and regulations to the maximum extent possible (Draft EA, p. 3). It is incumbent upon the BLM to comply with federal law. For these reasons and others, The Fund urges the BLM to withdraw the current EA and prepare an EIS for the purpose of thoroughly analyzing the cumulative impacts of a range of alternative actions as is required by NEPA. Thank you for consideration of our comments. Please

keep us apprised of any developments on this matter.

Sincerely,

Andrea Lococo
Rocky Mountain Coordinator

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Cathy Barcomb

From: [REDACTED]
Sent: Thursday, October 23, 2003 4:29 PM
To: Cathy Barcomb
Subject: Funds Letter

*CARTER
Reservoir*

Cathy,

This is a very aggressive letter. Several things that they are unaware of:

AML's were established in the original land use plans. So were livestock AUMs. The livestock AUMs were to be reduced from 30 to 65 percent based on SWIN or range suitability studies. The courts threw out the reductions based upon a one time survey. BLM responded back with annual monitoring of rangeland to adjust numbers, if necessary. Therefore the AMLs were thrown out in the 1980's.

To argue over 23 year old AMLs will be moot.

Second, the AML for the Carter Res. Herd is exactly that in the land use plan. But, the critical portions of the HMA are privately owned. (Water, meadows, etc) BLM rationalized the AML at 25, based on the complaints or opinions, of the private landowners, not rangeland monitoring data or the land use plan numbers. The private landowners do not mind 25 head. They might be in control, due to ownership of waters.

Third, we agree that this number is below a genetic threshold. Augmentation of other horses is now the solution of BLM, and Funds claim its an illegal act. (So do we).

Funds needs to visit the court actions and multiple use decision processes of Nevada to do further surgery on Susanville.

If Susie thinks a RAC Sub-Team can start to digest this type of stuff, she'll have get below the surface. Too bad she likes to float rather than swim. It would have made a difference with us.

