

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THE CLOUD FOUNDATION, a nonprofit corporation, CENTRAL OREGON WILD HORSE COALITION, a nonprofit corporation, LISA FRIDAY, individually and on behalf of The Cloud Foundation, and GAYLE HUNT, individually and on behalf of The Central Oregon Wild Horse Coalition,

Plaintiffs,

vs.

BUREAU OF LAND MANAGEMENT, an agency of the United States Department of the Interior, JERRY DAVIS, in his official capacity as Acting State Director for the Bureau of Land Management, Montana/Dakotas State Office, UNITED STATES FOREST SERVICE, an agency of the United States Department of Agriculture, and MATTHEW JEDRA, in his official capacity as Forest Supervisor for the Custer Gallatin National Forest,

Defendants.

CV 26-100-BLG-WWM

ORDER DENYING MOTION
FOR INJUNCTIVE RELIEF
AND SCHEDULING ORDER
FOR EXPEDITED
CONSIDERATION OF THE
MERITS

Before the Court is Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction ("Motion"). (Doc. 3). Plaintiffs seek to enjoin the Defendants from implementing the August 10, 2026, Gather Decision and from administering fertility control to mares. (Doc. 3 at 34). Defendants filed a Response, arguing that Plaintiffs have failed to meet their burden under *Winter v.*

Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008). (Doc. 20). Plaintiffs filed a reply brief. (Doc. 30). The Court convened a hearing on October 13th. For the reasons outlined below, the Court denies the Motion.

I. Factual and Procedural Background

On September 30th, Plaintiffs filed a Verified Complaint for Declaratory and Injunctive Relief (“Complaint”). (Doc. 1). This dispute centers on the Bureau of Land Management’s (“BLM”) plan for managing the Pryor Mountain Horse Range (the “Range”). The Pryor Mountain Horse Herd (“Herd”) is actively managed by the BLM and has been the subject of litigation for the past decade. (Doc. 1 at 1). Plaintiffs contend that BLM’s policies will result in the unlawful removal of horses from the Range and will destroy the unique genealogy of the Herd.

Under the Wild Free Roaming Horses Act (“Horse Act”), 16 U.S.C. § 1331 *et seq.*, the Secretary of Interior (“Secretary”) is given the power to protect and manage horses and burros as part of public lands, and may designate specific ranges for their protection and preservation. 16 U.S.C. § 1333(a). The Secretary is required to manage these ranges “in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” *Id.* Management is to be maintained at a “minimal feasible level . . . in order to protect the natural ecological balance of all wildlife species . . . particularly endangered wildlife species.” *Id.*

As part of maintenance, the Secretary must conduct an inventory of horses and determine where overpopulation exists, set an appropriate management level, and make judgments whether excess animals should be removed, destroyed, or sterilized or whether other population controls should be introduced. 16 U.S.C. § 1333(b)(1). If an overpopulation exists, excess horses must be removed “immediately” by first humanely destroying the old, sick, or lame animals, then attempting to capture and remove animals for private care, before finally humanely destroying the rest until the population reaches a balance. 16 U.S.C. § 1333(b)(2). Horses transferred to private care must be maintained in humane conditions for a year before title transfers, until which they remain wild horses. 16 U.S.C. § 1333(c)-(d). Horses that are older than ten years or have failed the adoption process at least three times may be sold as normal livestock. 16 U.S.C. § 1333(e).

The Horse Act established the Range in September 1968. (Doc. 3-3 at 53). The Range encompasses roughly 39,994 acres in southeastern Carbon County and Northern Big Horn County, and is managed by BLM, the National Park Service, and the U.S. Forest Service. (Doc. 3-3 at 49). In 2009, BLM created a Herd Management Area Plan (“2009 HMAP”) for the Range. (Doc. 3-3 at 24). The 2009 HMAP set an Appropriate Management Level (“AML”) of 90-120 horses. (Doc. 3-3 at 24). The 2009 HMAP required BLM to recalculate the AML every five years. (Doc. 3-3 at 341). Under the 2009 HMAP, BLM conducted gathers in

2009, 2012, and 2015. (Doc. 3-3 at 25). Following two decisions by this Court enjoining gather operations, the BLM undertook a policy revision process. (Doc. 3-3 at 25).

The BLM began initial scoping for revision of its HMAP in April of 2020. (Doc. 3-3 at 99). In May 2026, the BLM, Forest Service, and National Park Service adopted the “Pryor Mountain Wild Horse Range [] Joint Herd Management Area Plan [], Revision Appropriate Management Level [], Wild Horse Gather Plan, and Proposed RMP Plan Amendment (MD WH-7)” Environmental Assessment (“Plan”). (Doc. 3-3 at 20, 96). The Plan contemplated four alternative management plans, all but one of which would result in the reduction of the current Herd population from roughly 200 horses to an AML of 107-120 horses.¹ (Doc. 3-3 at 20-69). Alternative 1 proposed the status quo, following removal criteria established by the 2009 HMAP, which conflicted with other guidance. (Doc. 3-3 at 35). Alternative 2 included new objectives for fertility and removal, focusing on ecosystem management and preventing inbreeding, while minimizing or eliminating the need to preserve unique phenotypes. (Doc. 3-3 at 35-36). Alternative 3 mirrored Alternative 2 but focused on maintaining specific lineages.

¹ Alternative 1, which maintained the 2009 HMAP, called for an AML of 90-120 horses. (Doc. 3-3 at 75). This Alternative was presented “both as a possible course of action and as a means to measure the other action alternatives against” because portions of Alternative 1 were incompatible with the objectives of the Plan. (BLM01262-01263).

(Doc. 3-3 at 36). Alternative 4 proposed that the BLM do nothing and allow the Herd to grow without intervention. *Id.* Alternative 2 and 3 were viewed as the preferred alternatives, but the difficulty of managing Alternative 3 due to the uncertainty in verifying lineages was well understood. (Doc. 3-3 at 42). BLM noted that it developed Alternative 3 in response to public comment. *Id.*

BLM's Plan noted that vegetation has suffered under current management and that the Range experiences recurrent drought. (Doc. 3-3 at 49-50). The deteriorating grazing conditions of the Range motivated the agency's prioritization of Alternatives 2 and 3. (Doc. 3-3 at 76-77). BLM predicted that implementation of these Alternatives would lead to improved desirable vegetation. *Id.*

BLM adopted Alternative 2 under the Plan. (Doc. 3-3 at 96). On July 29, 2026, BLM authorized a gather operation to begin in the Fall of 2026 to reduce the population to 150, making a Finding of No Significant Impact. (Docs. 1 at 3; 3-3 at 106-07). The gather will be conducted by bait and water traps. (Doc. 20 at 30). These traps are operated by placing portable panels to create a holding area. (Doc. 20 at 49). Horses are then regularly enticed into the enclosure over a period of weeks using bait or a water source to accustom the horses to the presence of the panels. (Doc. 20 at 30-31). Once the horses have become accustomed to the panels, BLM staff wait for sufficient horses to enter the enclosure and close the gate. (Doc. 20 at 31). Horses removed from the Range will be "transported to

approved BLM facilities for adoption, sale, off-range holding, or other disposition consistent with Federal law and policy.” (Doc. 3-3 at 107).

Plaintiffs appealed the decision to the Interior Board of Land Appeals and were denied a stay on August 19th. (Doc. 1 at 5). Gather operations are planned to commence on October 19th. (Doc. 1 at 9, 10, 40).

Plaintiffs allege that the Plan does not satisfy the requirements of the Horse Act, the Federal Land Policy and Management Act (“FLPMA”), the National Environmental Policy Act (“NEPA”), the National Forest Management Act (“NFMA”), or the Administrative Procedure Act (“APA”). (Doc. 1 at 3-4, 44-56). Because none of these acts contain a citizen-suit provision, Plaintiffs contend that review is proper under § 706 of the APA (5 U.S.C. § 706). (Doc. 1 at 21). On the same day that they filed the Complaint, Plaintiffs filed the Motion. The Motion seeks to prevent Defendants from undertaking any gather operation or doing any fertility control of the Herd. (Doc. 3 at 27). Plaintiffs contend that “[o]nce horses are removed from the Range, they cannot be returned, and the bloodlines they carry cannot be restored.” (Doc. 3 at 9).

Plaintiffs allege several deficiencies in the Plan and Alternative 2. Among other issues, Plaintiffs allege that BLM misapplies expected growth based on the actual number of horses and that the AML is too low under the BLM’s own handbook to maintain an effective breeding number for genetic diversity. (Doc. 3

at 11-12, 19). Plaintiffs also allege that genetic diversity will diminish rapidly under Alternative 2, which they contend would not occur under lineage-based approaches. (Doc. 3 at 13). Plaintiffs further argue that Range degradation determinations were made using cherry-picked dates from 2021, when there was extreme drought. (Doc. 3 at 20). Plaintiffs contend that BLM has erred in treating the Pryor horses as part of a larger metapopulation given their unique lineages. (Doc. 3 at 23-24).

Plaintiffs speculated that the planned gather would be undertaken by helicopter rather than traditional trapping. (Doc. 3 at 27). They believed that this process would result in unnecessary deaths within the Herd. (Doc. 3 at 28-29, 33-34). Plaintiffs represent that once a horse is removed, it loses its status as a wild horse and will no longer receive protection under the Horse Act. (Doc. 3 at 29-30).

Finally, Plaintiffs argue that the lack of clarity on whether BLM will treat mares with ZonaStat-H (“PZP”) or GonaCon-Equine (“GonaCon”) may lead to irreparable injury because GonaCon can lead to sterility in some mares. (Doc. 3 at 26).² Plaintiffs argue that some mares that will be treated are already pregnant. (Doc. 3 at 26).

² Plaintiffs allege in the Complaint that “BLM acknowledges that [GonaCon] may cause permanent sterility in some mares.” (Doc. 1 at ¶ 99).

On October 7th, BLM filed a brief in opposition to the Motion. (Doc. 20). BLM clarified that it only intends to gather roughly 37 horses in the first gather, bringing the Herd to 150 horses. (Doc. 20 at 13). BLM stated that helicopters will not be used in the gathering operations. (Doc. 20 at 14). BLM represents that the helicopter observed by Plaintiffs' affiant was due to a wildfire-related dispatch, not the upcoming gather. (Doc. 20 at 31). BLM contends that this litigation is unlike prior litigation because it engaged in a six-year review process, adopted a new Plan, independently reviewed the AML, analyzed genetic diversity, and issued the Gather Decision based on population numbers and a survey of the Range's conditions. (Doc. 20 at 15-16). BLM argues that it is required to "preserve and maintain" the Range rather than remedy the situation after significant further deterioration. (Doc. 20 at 19). BLM also states that a NEPA report was not required because the Gather Decision was pursuant to the Plan rather than an independent determination. (Doc. 20 at 26-27). BLM contends that the Court is not allowed to wade into scientific minutia to determine which evaluation methods are most sound, only determine that they are supported by policy using methods deemed reliable by BLM. (Doc. 20 at 27).

Plaintiffs filed a reply brief on October 9th, largely arguing that BLM had failed to grapple with the changes in the population of the Herd. Plaintiffs contend that the Plan was shambolic, and that BLM has simply done the same AML

recalculation that was invalidated by this Court under its previous decisions. (Doc. 30 at 3-4). Plaintiffs argue that conditions on the Range are better than the Plan describes. (Doc. 30 at 5, 11-14). Generally, Plaintiffs restate that the Herd is already experiencing population decline and that a gather will threaten the lineages of the Herd. BLM has produced the administrative record. (Doc. 21).

II. Standard

A party seeking a preliminary injunction must demonstrate: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and, (4) injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit has adopted the “‘serious questions’ test—a ‘sliding scale’ variant of the *Winter* test—under which a party is entitled to a preliminary injunction if it demonstrates (1) ‘serious questions going to the merits,’ (2) ‘a likelihood of irreparable injury,’ (3) ‘a balance of hardships that tips sharply towards the plaintiff,’ and (4) ‘the injunction is in the public interest.’” *Flathead-Lolo-Bitterroot Citizens Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)).

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 24. In each case, the Court must balance the competing

claims of injury and consider the effect that granting or withholding the requested relief will have on each party. *Id.* “It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should *not* issue; rather, a court must determine that an injunction *should* issue under the traditional four-factor test set out above.”

Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 158 (2010).

III. Analysis

Before addressing the *Winter* factors, the recent history of litigation involving the Range and Herd bears repeating. In 2015, Friends of Animals filed suit against BLM to prevent a gather, arguing that it violated the Horse Act and NEPA. *Friends of Animals v. Sparks*, 200 F.Supp.3d 1114, 1117 (D. Mont. 2016). In that case, Judge Watters determined that the BLM acted arbitrarily and capriciously because it relied on an outdated AML in making its decision to remove the excess horses. *Id.* at 1126.³ Notably, Friends of Animals raised issues related to Dr. Gus Cothran’s report (also invoked by Plaintiffs here),⁴ and Judge Watters found that the BLM had adequately considered the report and discounted it, granting summary judgment in BLM’s favor by finding it did not need to

³ The previous 2009 HMAP called for a reassessment of the AML every five years. 200 F.Supp.3d at 1120.

⁴ Docs. 3-3 at 28, 48, 54-55; 20 at 26-27.

consider a proposal that did not advance the goals of population management and did not need to consider the possibility of expanding the Range. *Id.* at 1127-29. The issue of range expansion has not been raised in pleadings but has been raised in submitted materials. (Doc. 3-7 at 31-32, 57-60).

In 2018, the Cloud Foundation sued BLM to prevent a renewed gather. *Kathrens v. Zinke*, 323 F.Supp.3d 1142, 1144-48 (D. Mont. 2018). In this instance, BLM had recalculated the maximum carrying capacity of the Range and determined that 121 adult horses was the maximum under which a thriving ecological balance could be achieved. *Id.* at 1146. At that time, there were 154 horses on the Range, and BLM expected that the Herd size would increase by 8% to 166 horses. *Id.* at 1146, 1154. BLM identified three alternatives: selective removal of 17 horses focusing on genetic diversity and inbreeding, incremental gathers of up to 20 horses under the 2009 HMAP, or no action. *Id.* at 1146-47. Raising many similar allegations to those in the case *sub judice*, the Cloud Foundation argued that BLM's data was inaccurate and could eliminate protected bloodlines. *Id.* at 1147.

Judge Watters found that there was a serious question whether BLM adequately considered the potential loss of patrilineal lines and whether a single descendant per mare was sufficient to carry on the matrilineal line. *Id.* at 1150-51. Part of this decision was based on the calculation of the AML under the 2009

HMAP, which BLM did not dispute. *Id.* at 1151-52. The 2009 HMAP required BLM to “prevent bloodlines from being eliminated.” *Id.* at 1151. Judge Watters found that irreparable injury would occur because the bloodlines could potentially go extinct. *Id.* at 1153. Finally, she held that BLM’s arguments that the Range would suffer were unavailing given the declining population, particularly when weighed against the loss of the bloodlines. *Id.* at 1154-55. Following issuance of the TRO, the parties stayed the proceedings and eventually dismissed the case. *Kathrens v. Zinke*, CV 18-125-BLG-SPW, Docs. 20, 21, 25.

BLM argues that this proceeding is unlike *Sparks* or *Kathrens* because it engaged in a significant new decision-making process rather than to take agency action pursuant to the 2009 HMAP. (Doc. 20 at 11). Specifically, BLM notes that it has amended the Billings Field Office’s Resource Management Plan, adopted a new HMAP and revised AML, and developed a phased gather plan that will proceed over the course of several years. *Id.* At the hearing, Defendants explained that the requirement in the 2009 HMAP to “prevent the elimination of bloodlines” and “to maintain rare or unusual colors to prevent any one color from becoming dominant or being eliminated,” *Kathrens*, 323 F.Supp.3d at 1145, relied upon by Judge Watters, no longer exists and does not bind the agency. Further, BLM contends that its EA considered the revised objectives, population control, genetic diversity, and resource management to achieve a thriving natural ecological

balance. *Id.* BLM contends that the Gather Decision was not made in isolation but was part of this comprehensive decision-making process. (Doc. 20 at 12).

A. Serious Question Going to the Merits

Plaintiffs seek to enjoin the Gather Decision under their fifth and sixth causes of action based on the Horse Act and NEPA, respectively. When a party shows that “the balance of hardships tips *sharply* in the plaintiff’s favor” against the government and irreparable injury is satisfied, the Ninth Circuit allows issuance of a preliminary injunction on less than likelihood of success on the merits. *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)); *Habibi v. Barr*, 445 F.Supp.3d 990, 995 (S.D. Cal. 2020) (noting that the balance of equities and public interest merger when the government is a party, requiring only irreparable injury). “Serious questions” are those that “cannot be resolved one way or the other at the hearing on the injunction because they require more deliberative investigation.” *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 497 (9th Cir. 2023) (internal citations omitted) (quoting *Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023)). A serious question does not exist when the claims are “merely plausible,” or the answer is not apparent from past precedent. *Id.* (quoting *Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 34 F.4th 852, 863 (9th Cir. 2022)).

Even if this Court adopts the serious questions standard that Plaintiffs urge, they cannot meet their burden. Plaintiffs allege that two questions for resolution on the merits warrant imposition of injunctive relief. At this stage, Plaintiffs only seek to enjoin the August 10, 2026, Gather Decision and fertility treatments. (Doc. 3-3 at 106-111). First, they argue that the BLM's Gather Decision violated the Horse Act. (Doc. 3 at 17). Second, they argue that the BLM's Gather Decision violated NEPA. (Doc. 3 at 23). This analysis will take them up in turn.

1. The Gather Decision did not violate the Horse Act

Plaintiffs allege that BLM's Gather Decision was arbitrary and capricious under the Horse Act because: (1) it wrongly assumed that the Herd would continue to grow, despite recent losses; (2) the removal decision was only based on the AML without consideration of whether removal was actually necessary; and (3) BLM failed to adequately consider genetic viability. (Doc. 3 at 17-22). BLM asserts in response that: (1) the growth rate was based on actual population data rather than an assumed growth rate; (2) the determination to remove a certain number of horses was deemed to be necessary to prevent further deterioration of conditions on the Range; and (3) the Plan and its revised AML are based upon an analysis of genetic viability, which determined that even under the worst-case scenarios it was substantially likely to exceed goals in 100 years. (Doc. 20 at 16-19).

When assessing an agency's decision, the court must determine whether the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action must "be reasonable and reasonably explained." *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The Court should ensure that the agency reviewed data and explained its decision but "a court is not to substitute its judgment for that of the agency and should uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 513-14 (2009) (cleaned up) (quoting *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) and *Bowman Transp. Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 286, 286 (1974)). Agencies should complete comprehensive reviews and "cannot simply ignore 'an important aspect of the problem.'" *Ohio v. EPA*, 603 U.S. 279, 293 (2024) (quoting *Motor Vehicle Mfrs.*, 463 U.S. at 43). Examples of arbitrary and capricious actions include *post hoc* justifications, lack of notice, and "change[] [of] position regarding scientific evidence." *FDA v. Wages and White Lion Invest., L.L.C.*, 604 U.S. 542, 567-68 (2025).

BLM utilized the actual population data for the Herd when adopting the new AML, considering the number of horses in the Herd at the time of the decision.

(Doc. 3-3 at 106-111). BLM explained the rationale for implementing the Gather Decision using these numbers:

The EA demonstrates that unmanaged population growth above AML contributes to increased grazing pressure, degradation of vegetation and riparian resources, impacts to soils and wildlife habitat, and reduced progress toward meeting the Standards for Rangeland Health. Maintaining the herd within AML supports long-term sustainability of both the wild horse population and the ecological resources upon which it depends. The selected action also provides the best balance between maintaining herd health and conserving public land resources. It incorporates selective removal criteria, continued fertility control, and longterm genetic monitoring to maintain desirable levels of genetic diversity, a balanced age structure, and appropriate herd demographics while providing sufficient flexibility to respond to changing environmental conditions and monitoring results throughout the ten-year life of the Gather Plan.

(Doc. 3-3 at 110). The Gather Decision in July 2026 also recognized the census of the horses at the time of its issuance: 187. (Doc. 3-3 at 107). Accordingly, Plaintiffs' contention that the growth rate was not properly considered is incorrect.

Plaintiffs also contend that BLM failed to show that removal was immediately necessary. The Horse Act requires BLM to remove excess horses from the range when overpopulation exists "so as to achieve appropriate management levels." 16 U.S.C. § 1333(b)(2). The removal must continue "until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation[.]" *Id.* The United States Court of Appeals for the Ninth Circuit has determined that the BLM does not need to find that the balance no longer

exists to remove excess horses; “[p]reservation efforts can hardly require prior destruction of what is to be preserved.” *In Def. of Animals v. U.S. Dep’t of Int.*, 751 F.3d 1054, 1063 (9th Cir. 2014). Further, the Ninth Circuit held that the BLM is entitled to rely on AMLs in deciding to remove wild horses. *Id.* at 1063-64.

The Plan documented the degradation of vegetation on the Range due to trampling and overgrazing. (Doc. 3-3 at 64, 69, 74, 85-88, 101). The Plan also documented that Alternative 1 (status quo) and Alternative 4 (do nothing) would not slow deterioration of the body condition of members of the Herd due to scarcity of forage. (Doc. 3-3 at 60-69). The Plan recognizes that samples were taken during drought conditions. (Doc. 3-3 at 69).⁵ The Plan and its AML are formulated on reasonable concerns regarding the statutory admonition to maintain “a thriving natural ecological balance.” 16 U.S.C. § 1333(b)(2). As recognized by the Ninth Circuit, the BLM is entitled to use a properly formulated AML when determining whether to remove excess horses.

Plaintiffs’ request for immediate relief is based, in part, on an assertion that removal is unnecessary because the population of the Herd is declining and Range conditions are already better than BLM disclosed. (Doc. 30 at 3-5). Plaintiffs

⁵ “The drought trends and the Production Explorer trends demonstrated large fluctuations in temperature, precipitation, and production. Record low precipitation combined with record high temperatures indicate unfavorable growing conditions in the Pryor Mountains and high drought stress is likely to adversely affect production and reproduction of herbaceous vegetation.”

support their arguments by showing photographs of areas of the Range in June, arguing that this refutes BLM's finding that the Range has insufficient forage to maintain the current population based on forage in September. (Doc. 30 at 12).

This argument is at odds with BLM's finding that the Herd will lack resources throughout the winter, resulting in significant deaths. (Doc. 20 at 34-37).

Plaintiffs contend that the population is declining due to "predation, injury, weather, and age." (Doc. 30 at 12).⁶ But the agency's decisions are based on the recurrent drought in the Range and the reported lack of forage, leading to a lack of sufficient food to maintain the current population of horses, which was 156% of the maximum of the AML.

Finally, Plaintiffs contend that BLM set the AML without considering genetic viability. Based upon a preliminary view at this stage of the litigation, the Court cannot reach this conclusion. The Plan specifically identified genetic diversity as an issue for the AML. (Doc. 3-3 at 31). Alternative 2 provided, "BLM would continue to collect genetic samples to monitor genetic diversity over time and would take specific management actions only if established thresholds indicate

⁶ This representation is based on the declaration of Phyllis Wray, a former director of the Cloud Foundation. (Doc. 3-9 at 2). Ms. Wray's declaration was at issue in the administrative appeal, where BLM argued that Ms. Wray lacked the qualifications to provide expert opinions, described that the data she relied on was inconsistent with any data in BLM's possession, and lacking in reasoned explanation. (Doc. 3-3 at 145-46). For purposes of this injunctive relief motion, the Court will treat Ms. Wray as though her declaration carries some scientific validity, but it is not clear whether the assertions will have any application to the resolution of the merits.

loss of genetic diversity is a management concern.” (Doc. 3-3 at 40-41). The Plan includes a section analyzing the different metrics of genetic diversity and considers the effects of each Alternative. (Doc. 3-3 at 52-60). The Gather Decision also addresses genetic diversity, “gather operations will follow the selective removal criteria analyzed under Alternative 2, in order to maintain genetic diversity, a balanced age structure, an appropriate sex ratio, and a healthy, self-sustaining population while supporting achievement and long-term maintenance of AML.” (Doc. 3-3 at 107; *see also* Doc. 3-3 at 40-41 (culling criteria)).

Plaintiffs’ primary argument is that BLM did not consider proper genetic diversity because it did not adopt the criteria of Alternative 3, particularly consideration of the paternal and maternal lines. (Doc. 3 at 22). Under 43 C.F.R. § 4700.0-6, “Wild horses and burros shall be managed as self-sustaining populations.” Plaintiffs argue that the Herd should not be considered in conjunction with other populations, and they claim that BLM has flouted the Court’s order in *Kathrens*, where Judge Watters held that the failure to respond to any arguments regarding patrilineal lines or create a planned management “suggests [that]. . . BLM may have arbitrarily and capriciously failed to consider the ramifications of the loss of the horses it has chosen to remove.” 323 F.Supp.3d at 1151.

BLM identified the issues with lineage genetic diversity, namely that extensive pedigrees are required to verify accuracy. (Doc. 3 at 46). BLM sought assistance from the Pryor Mountain Wild Mustang Center, but that organization declined to provide data. *Id.* BLM concluded that it, “does not have access to the necessary data, and results of [lineage] analysis are not available to inform herd management at this time.” (Doc. 3-3 at 46). Moreover, BLM has identified specific removal criteria it will consider in addition to its handbook. (Doc. 3-3 at 40-41). The requirements to maintain specific colors and bloodlines are no longer present in the Plan, unlike the 2009 HMAP, and are not required by regulations or statute. Unlike in *Kathrens*, BLM has developed entirely new guidance for managing the Range and Herd, resulting in a more informed decision.

While Plaintiffs may be dissatisfied with BLM’s measure of genetic diversity, BLM’s decision appears reasonable and reasonably explained. While the Herd may be a self-sustaining population, BLM is not required to prioritize the more aesthetically pleasing lineages for the benefit of Plaintiffs. “No matter the ultimate result of this proceeding, Plaintiff and its members will likely continue to enjoy ample ability to view and photograph wild horses in the [Range].” *Friends of Animals v. BLM*, 232 F.Supp.3d 53, 67 (D.D.C. 2017); *In Def. of Animals v. U.S. Dep’t of Int.*, 737 F.Supp.2d 1125, 1138 (C.D. Cal. 2010) (“The Court is unaware of any enforceable right to observe a particular number of animals, and it is sheer

speculation that any particular individual or family unit will be affected”). BLM has adequately demonstrated that the Herd will maintain adequate genetic diversity to prevent inbreeding and adverse health effects. Accordingly, Plaintiffs have not raised a serious question going to the merits.

2. The Gather Decision did not violate NEPA

Plaintiffs argue that NEPA required BLM to either supplement or issue an additional EA and take a hard look at genetic consequences and new information before issuing the Gather Decision. (Doc. 3 at 23-26). BLM responds that the Herd is similar to that of other geographically isolated herds, that it is not the role of the Court to wade into scientific debate, that it adequately accounted for the decline in the population between 2024 and 2026, and that Plaintiffs have not presented any new information. (Doc. 20 at 25-30).

When reviewing whether an agency action is arbitrary and capricious, “the reviewing court must account for the fact that NEPA is a *purely procedural statute*. . . . an agency’s only obligation is to prepare an adequate report. ‘NEPA requires no more.’” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 180 (2025) (emphasis in original) (quoting *Strycker’s Bay Neighborhood Council*, 444 U.S. 223, 228 (1980)). The Court should afford substantial deference on the question of whether to prepare supplementation of an EA and what level of detail

is required. *Id.* at 180-83. “The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.” *Id.* at 185.

“Whether new information requires supplemental analysis is a ‘classic example of a factual dispute the resolution of which implicates substantial agency expertise.’” *Tri-Valley CAREs v. U.S. Dep’t of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012) (quoting *Marsh v. Or. Nat. Res. Coun.*, 490 U.S. 360, 376 (1989)). The Plan identifies that the Herd has “higher than average levels of Spanish ancestry.” (Doc. 3-3 at 54). However, “a more recent analysis of available wild horse genetic data collected from 2001-2020 . . . also support[s] the conclusion that the Pryor Mountain herd is, genetically, relatively similar to a large number of other BLM-managed wild horse herds.” *Id.* BLM also considered the Plaintiffs’ preferred genetic diversity of alleles, finding that “the [number of alleles] for Pryor Mountain horses is not statistically distinguishable from the mean for this measure of genetic diversity in feral horse herds.” (Doc. 3-3 at 55). As discussed above, BLM did consider the decline in the population.

The Court must “engage in a deferential review of agencies’ decisions, and may not serve ‘as a panel of scientists that instructs the agencies, chooses among scientific studies, and orders the agencies to explain every possible scientific uncertainty.” *Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1051 (9th Cir. 2012) (quoting *Lands Council v. McNair*, 537 F.3d 981, 988 (9th Cir. 2008) (en

banc)). BLM considered the environmental and genetic impacts of the AML under the Plan. (Doc. 3-3 at 49-91). On March 14, 2025, BLM issued a Finding of No Significant Impact after determining that Alternative 2 would not affect the quality of the human environment. (BLM01534). BLM determined that Alternative 2 would not have adverse impacts on genetic diversity, that there would be greater forage, vegetation and soil health would improve, riparian function would improve, the habitat for the Pryor Mountain Bladderpod would improve, and the action had been undertaken after seeking input from various tribes. (BLM01535-01537). Based on this finding, no further environmental analysis is required.

Plaintiffs have not described any substantial change to the Plan based on the Gather Decision. While Plaintiffs have pointed to methodological disagreements with BLM's report, the Court will not weigh in to act as a scientific referee. Plaintiffs' only suggested factual change is that the size of the Herd has decreased from the 205 horses observed to 187. (Doc. 30 at 2).

In reviewing this question, the Court looked to a recent decision from the District of Idaho, *Wild Horse Education v. United States Department of Interior*, Case No. 4:26-cv-00555-DCN, Doc. 24. In that case, the plaintiffs sued to enjoin a gather, arguing that BLM had failed to comply with NEPA because the gather had been authorized without conducting a new EA. *Id.* at 6-7. Judge Nye noted that “[c]ourts have routinely held that an older EA may support a subsequent gather

where the proposed action and potential effects are similar and where the agency issues a determination of NEPA adequacy.” *Id.* at 8. As that court emphasized, an agency is not required to recreate or supplement an EA every time there is new information, only when that information “may result in significant environmental impacts in a manner not previously evaluated and considered.” *Id.* (quoting *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1157 (9th Cir. 2008)).

The Plan notes that under Alternative 2, “[t]he numbers and percentages . . . are goals, actual gather results are expected to vary based on logistics of trapping horses under field conditions. Wild populations regularly change due to births and deaths; gather and removal goals will be updated based on the best-available population information immediately prior to a gather.” (Doc. 3-3 at 65). As in *Wild Horse Education*, the Plan accounts for the “new information” presented by Plaintiffs, and BLM is not required to supplement the EA each time it implements the Plan via a gather. Accordingly, there is no serious question going to the merits.

B. Plaintiffs have not demonstrated irreparable harm

Unlike Plaintiffs in other cases dealing with the Horse Act, Plaintiffs here claim injury from the potential loss of specific lineages during the gather. *See Wild Horse Educ. v. U.S. Dep’t of Interior*, 2026 WL 2622796, at *4 (D. Idaho). To succeed on this prong, Plaintiffs must show that harm “is likely, not just possible.”

Cottrell, 632 F.3d at 1131. Plaintiffs' claim of injury is based on presumptions about the manner of the gather, i.e., the use of a helicopter, and that a removed horse will lose its status. (Doc. 3 at 26-31).

Plaintiffs' claim about the use of the helicopter is incorrect. (Doc. 20 at 30-31). They also claim that under 16 U.S.C. § 1333, the removal of a horse destroys its status as a free-roaming horse. (Doc. 3-3 at 29). They cite *Kathrens* to support this point. *Id.* In their Reply, Plaintiffs clarify that this harm only occurs once a horse is sold to a private party. (Doc. 30 at 9). However, under 16 U.S.C. § 1333(d)(1), a horse only loses its status once title has been transferred. This process requires that a qualified individual adopt and privately maintain a wild horse for a year, at which point the Secretary must authorize the transfer. 16 U.S.C. § 1333(c). Older horses or those that have failed to be adopted may be sold pursuant to a more expedited process. 16 U.S.C. § 1333(e)(1)-(4).

At the hearing, the parties agreed that a hearing on the merits could likely be held within the year. Given this expedited timeline, most horses will not lose their status. Further, BLM currently plans to remove roughly 37 horses to achieve a total Herd size of 150. (Doc. 20 at 36). The Court does not find that there is a significant probability that lineages will be lost given the limited scope of the gather, the culling criteria, and the possibility of repatriation to the Range. While the Court is cognizant of the risk that gathered horses will become domesticated,

the risk is limited by the short anticipated duration of this case. Based on the parameters established under the Plan, the Court finds it unlikely that this incremental gather will result in an imminent and irreparable loss of lineages.

In addressing the potential harm from continued administration of fertility treatment, the Court finds Plaintiffs' harms from administration of GonaCon speculative. At the hearing, BLM made no such concession that GonaCon regularly rendered some portion of mares infertile. BLM represented that GonaCon has been administered as a treatment for many years. Plaintiffs' only basis for this allegation is the Declaration of Ms. Wray, a former director of the Cloud Foundation and layperson, who declares that her review of her own records shows that some mares do not return to fertility and that treatment with GonaCon "may result in sterility." (Doc. 3-9 at ¶¶ 28, 68).

A review of other decisions in this Circuit shows that GonaCon has been used by BLM going back to at least 2018. *Am. Wild Horse Campaign v. Bernhardt*, 963 F.3d 1001, 1005 n.1 (9th Cir. 2020); *Am. Wild Horse Campaign v. Zinke*, 353 F.Supp.3d 971, 984-85 (D. Nev. 2018). Judge Hicks of the District of Nevada dealt extensively with BLM's findings in relation to GonaCon and noted that the National Academy of Sciences report utilized by BLM indicated GonaCon "'is a promising candidate as a female-directed fertility-control method' because it

‘preserves natural behavior patterns while effectively preventing reproduction.’”
353 F.Supp.3d at 985.

However, even were the Court to take this claim as facially true and find that GonaCon creates a high risk of infertility, it would still not find irreparable harm. The Plan calls for continued use of the PZP vaccine, which has already been administered by BLM since 2015. (Doc. 3-3 at 62). BLM reserves the use of GonaCon and other fertility treatments for mares who do “not respond to either of these [PZP] vaccine formulations and will instead continue to conceive and foal normally.” *Id.* Treatment by GonaCon is, therefore, reserved for only those mares who do not respond to PZP treatment. Given that BLM reports that PZP in its normal treatment form is 90% effective and its alternative form is 60-85% effective, the likelihood that any given mare will require treatment by GonaCon is negligible. *Id.* Even if a mare receives that treatment, Plaintiffs only contend there is some unknown probability of sterility. Accordingly, the Court does not find a likelihood of irreparable injury from the possibility that, of the mares composing the 37 gathered horses, some portion will be administered GonaCon, and some portion will be rendered sterile.

C. Public Interest and Balance of the Hardships favor neither party

When the government is a party, the last two factors merge. *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752

F.3d 755, 766 (9th Cir. 2014) (quoting *Drakes Bay Oyster Co v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The Court must consider which party would suffer greater harm if the preliminary injunction is imposed or denied. *Thakur v. Trump*, 176 F.4th 1187, 1205 (9th Cir. 2026).

Plaintiffs' harms are largely comprised of the potential loss of valuable horse lineages, while they contend that BLM should be afforded little consideration given its allegedly unlawful actions. (Doc. 3 at 31-32). BLM argues that conducting a delayed gather will be more expensive and difficult, but also that the Herd will suffer due to significant overpopulation with limited access to grazing throughout winter. (Doc. 20 at 34-37).

BLM's financial concerns are of the same nature as those rejected by Judge Watters in *Kathrens*. 323 F.Supp.3d at 1153-54. The question of herd health is more pressing. As noted by other courts, "fewer horses competing for limited resources will mean a healthier herd." *Cloud Foundation v. U.S. Bureau of Land Management*, 802 F.Supp.2d 1192, 1208 (D. Nev. 2011). However, while Plaintiffs' harms are speculative, they are final for horses that are sold or die during the gather.

While the financial concerns are not persuasive, the concerns of herd health weigh heavily. In considering those harms relative to the potential irretrievability of horses through sale or death, the Court finds that this factor is roughly even.

Accordingly, it does not weigh in favor of either side, let alone tip sharply in Plaintiffs' favor.

IV. Conclusion

In assessing the *Winter* and *Cottrell* factors, two of the four factors weigh against implementation of either a TRO or a preliminary injunction. Plaintiffs have failed to demonstrate a serious question under either the Horse Act or NEPA. Further, Plaintiffs have not demonstrated an actual imminent harm is likely to occur from a small removal of horses from the Range. The balance of equities and public interest weigh evenly. While obtaining a preliminary injunction would likely achieve Plaintiffs' ends given the course of prior litigation, this would defeat the purpose of the substantial deference given to agency decisions. No equitable relief will be granted pending a final decision in this matter. Accordingly,

IT IS HEREBY ORDERED that the Motion is DENIED.

IT IS FURTHER ORDERED that Plaintiffs shall file a Motion for Summary Judgment and a brief in support of the motion on or before November 23, 2026.

IT IS FURTHER ORDERED that Defendants shall file a Cross-Motion for Summary Judgment and a consolidated brief in support of the motion and in opposition to the Plaintiffs' motion on or before December 31, 2026.

Plaintiffs may file a reply brief in response to Defendants' briefing no later than January 22, 2027.

IT IS FURTHER ORDERED that a hearing shall be held on the motions on January 28, 2027, at 1:30 p.m. in the James F. Battin Courthouse in Billings.

The Clerk of Court is directed to notify the parties of the making of this Order.

DATED this 17th day of October, 2026.



WILLIAM W. MERCER
UNITED STATES DISTRICT JUDGE