

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN WILD HORSE CAMPAIGN)
338 G Street # B)
Davis, CA 95616,)
)
SKYDOG RANCH & SANCTUARY)
23823 Malibu Road, Suite 50, Box 498)
Malibu, CA 90265,)
)
CLARE STAPLES)
23823 Malibu Road, Suite 50, Box 498)
Malibu, CA 90265,)
)
EVANESCENT MUSTANG RESCUE)
AND SANCTUARY, INC.)
8370 US Hwy 82,)
Sherman, TX 75090,)
)
CAROL WALKER)
16500 Dakota Ridge Rd.)
Longmont, CO 80503)
)
Plaintiffs,)
)
v.)
)
DEBRA HAALAND, Secretary)
U.S. Department of Interior)
1849 C Street N.W.)
Washington, D.C. 20240)
)
U.S. BUREAU OF LAND MANAGEMENT,)
760 Horizon Drive)
Grand Junction, CO 81506,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This case challenges the highly controversial Adoption Incentive Program (“AIP” or “the Program”) created by the Department of Interior’s (“DOI”) Bureau of Land Management (“BLM”), under which BLM provides payments of up to \$1,000 in federal funds to individuals for each wild horse or burro adopted through the Program, and which BLM created with no public notice, no opportunity for comment, and no environmental analysis—despite the fact that the program would foreseeably lead to wild horses and burros being profoundly mistreated and sold for slaughter in contravention of Congress’s intent in enacting the Wild Free-Roaming Horses and Burros Act (“WHA”) and subsequent appropriations of agency funding that specifically forbid any expenditure of federal funds for the slaughter of healthy wild horses or burros.

2. BLM has repeatedly been subject to intense scrutiny and widespread public criticism for allowing wild horses to be sold or adopted in ways that have led to these federally protected animals being treated inhumanely or even sold for slaughter or processing into commercial products. Such scrutiny has included at least one investigation by the Department of Interior’s Office of the Inspector General, a federal grand jury investigation, numerous critical articles in major newspapers, and letters from members of Congress expressing concern that such practices violate federal law and the congressional intent to protect these animals. Notably, Congress has repeatedly and explicitly forbidden federal agencies, including BLM, from using any appropriated federal funds for the destruction of wild horses or burros, or for the sale of a wild horse or burro that results in the animal’s destruction for processing into a commercial product.

3. Nevertheless, despite abundant, clear evidence that the public is extremely interested in ensuring that BLM’s programs do not result in the slaughter or inhumane treatment

of wild horses or burros, and that neither Congress nor the American public condone federal agencies causing wild horses or burros to be slaughtered or treated inhumanely, BLM provided no public notice or opportunity for public comment when it created the AIP by promulgating an “Instruction Memorandum” (“IM”) known as Instruction Memorandum 2019-025 (“IM 2019-025”). Likewise, despite the AIP having significant adverse impacts on wild horses, and despite BLM’s own explicit intention for the AIP to free up federal funds for expenditure on agency operations on public lands that also have environmental impacts, BLM created the AIP without first undertaking any analysis of the likely environmental impacts of the Program, as required under the National Environmental Policy Act (“NEPA”). Additionally, BLM failed to adequately analyze the economic impacts of the AIP, as well as how such economic impacts may cause further environmental impacts by altering BLM’s other wild horse and burro operations across western public lands.

4. Since BLM created the AIP, Plaintiffs—a collection of non-profit organizations and individuals devoted to the welfare of wild horses and burros—have been forced to expend scarce resources investigating the fates of animals adopted through BLM’s Program and attempting to prevent dire outcomes for these animals. Plaintiffs’ investigations have revealed that numerous wild horses and burros adopted through the AIP have been subjected to severely inhumane treatment and have been sold at auctions that cater to the horse and burro slaughter industry. Plaintiffs compiled the results of their investigations into an extensive report that they submitted to DOI and BLM in order to demonstrate to the agencies that the AIP has caused inhumane—and unlawful—outcomes for federally protected animals, including the fact that the animals ended up at auctions that sell horses and burros for slaughter. Likewise, Plaintiffs submitted a formal petition to DOI and BLM explaining that the creation of the AIP violated

federal law in numerous ways and explicitly requesting that the agencies withdraw the AIP, or at the very least impose a moratorium on the AIP so that the agencies could take the necessary steps to come into compliance with federal law. However, DOI and BLM have not provided any final response to Plaintiffs' petition.

5. The actions of DOI and BLM associated with the AIP violate federal law. For example, because the AIP meets the definition of a "rule" under the Administrative Procedure Act ("APA"), BLM was obligated to undertake notice-and-comment rulemaking before creating the AIP, yet BLM unlawfully failed to do so. Likewise, because the AIP has substantial adverse impacts on wild horses and burros—which BLM is statutorily tasked to protect—and because BLM designed the AIP to free up funds for other activities that will cause further environmental and economic impacts to the lands and resources under BLM's management, BLM was obligated to prepare a NEPA analysis regarding the AIP's impacts, yet BLM unlawfully failed to undertake this legally required process as well. Further, because in creating the AIP, BLM significantly deviated from its prior policies, which featured a more rigorous system for ensuring that wild horses and burros would not go be sold to those who may send the animals to slaughter, without any recognition or explanation for why it was doing so, BLM violated the APA's mandates for reasoned decision-making. Moreover, by paying individuals to adopt wild horses and burros who then re-sell the animals for slaughter, the AIP constitutes an unlawful evasion of Congress's prohibition on the expenditure of federal funds for the slaughter of wild horses or burros.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because defendant DOI, the parent agency ultimately responsible for the decisions at issue, is located in Washington, D.C., and because the decision at issue has nationwide implications that make judicial review in this forum appropriate.

8. Venue is particularly appropriate in this Court because the AIP was created in Washington, D.C., as demonstrated by the fact that IM 2019-025, the mechanism establishing the AIP, bears the following caption:

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240-0036

Likewise, IM 2019-025 was signed by Kristin Bail, BLM’s Assistant Director for Resources and Planning, who, upon information and belief, was located in Washington, D.C. at the time she signed the IM. Furthermore, IM 2019-025 states that “[t]his policy was coordinated with the Washington Office WHB Program Staff.”

9. Venue is also appropriate in this Court because the AIP is a nationwide program. Wild horses and burros that are rounded up and removed from public lands in numerous states may be subject to adoption through the AIP. Likewise, individuals receiving animals through the AIP—and receiving payments from BLM—may be located in many different states. Further, Plaintiffs’ investigations have documented the fact that wild horses and burros adopted through the AIP have subsequently been sold at slaughter auctions throughout the country, which are known to sell, or identify themselves as selling, horses and burros for slaughter, including in

Kansas, Louisiana, Oklahoma, and Texas. Accordingly, the AIP affects wild horses and burros, agency operations, and individuals in numerous states throughout the country.¹

10. Venue is also appropriate in this Court because of the AIP's nationwide impacts on BLM's activities on the range that affect wild horses and burros. As BLM explained in IM 2019-025, BLM intended the AIP to create "cost savings" by increasing adoptions of wild horses and burros to reduce the long-term cost of feed and care for animals that have been permanently removed from the range. IM 2019-025 explains that BLM intends for these cost savings to "allow[] funding to be dedicated to other aspects of managing wild horses and burros," and that "[t]he budget impacts of this policy will reduce off-range holding costs and allow those savings to support critical on-range operations." On range operations refers to additional roundups and removals of wild horses and burros from the range, as BLM indicated when it told its Wild Horse and Burro Advisory Board that each incentivized adoption "is freeing up space . . . to remove more animals."² Accordingly, BLM explicitly intends for the AIP to free up money that the agency may spend in managing wild horse and burro populations in various states where wild horses and burros live on the range, such as California, Nevada, Oregon, Utah, and Wyoming. Likewise, the off-range holding areas from which BLM anticipates "cost savings" are also located in numerous different states, including Kansas, Oklahoma, and Wyoming.

¹ This Complaint uses the term "slaughter auction" to describe auctions that are known or often self-described to cater to the slaughter industry, as discussed in greater detail below. *See infra* ¶ 57.

² *See* Rough Caption Transcript, Wild Horse and Burro Advisory Board Meeting, October 10, 2018, at 40, available at <https://www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board>

PARTIES

11. Plaintiff American Wild Horse Campaign (“AWHC”) is a national 501(c)(3) nonprofit organization that is the nation’s leading voice on protecting and preserving wild horses and burros. AWHC’s mission is to defend America’s wild horses and burros, to protect their freedom, preserve their habitat, and promote humane standards of treatment. AWHC’s mission is endorsed by a broad-based coalition of public interest groups, environmentalists, humane organizations, and historical societies, representing over ten million supporters.

12. A major focus of AWHC’s mission is to ensure that wild horses and burros that are removed from public lands are never sold for slaughter or processed into commercial products. AWHC has been working on this effort for more than a decade. Because preventing the slaughter of wild horses and burros is a key aspect of AWHC’s mission, AWHC has engaged in numerous efforts to prevent wild horses or burros that are removed from public lands from being sold for slaughter or processed into commercial products. For example, AWHC has conducted polling showing that 80 percent of Americans oppose the slaughter of federally protected wild horses and burros, and has been successful in convincing Congress to maintain annual appropriations language that prohibits BLM from using any appropriated funds for the slaughter of healthy, unadopted wild horses or burros or the sale of wild horses or burros that results in the animals’ destruction for processing into a commercial product. Likewise, after the United States Forest Service decided to sell wild horses “without limitation,” which would have effectively approved the sale of such animals for slaughter, AWHC filed suit against the Forest Service and successfully prevented such sales from occurring during the pendency of the lawsuit. At the same time, AWHC also successfully convinced Congress to extend its prohibition on using appropriated funds for the slaughter of wild horses and burros so that the prohibition applies to

the United States Department of Agriculture and the Forest Service in addition to the Department of Interior and BLM.

13. Another key component of AWHC's mission is to promote the humane treatment of wild horses and burros on the range, during roundups and removals, and after the federal government has removed them from the range. AWHC has been actively engaged in this effort for more than a decade. For example, AWHC has an extensive history of observing and recording BLM's management of wild horse and burro populations to document how the agency's operations have caused inhumane outcomes for wild horses and burros, such as serious injuries and deaths associated with the agency's use of helicopters to round up horses for removal from the range. AWHC has used these observations and recordings to successfully promote more stringent standards for the humane treatment of wild horses during roundups. Likewise, AWHC routinely comments on BLM's wild horse and burro population management actions and advocates for the agency to select means of managing these animals that are more humane. The opportunity to provide input on BLM's management of wild horses and burros is, for this reason, essential to AWHC's mission of promoting more humane treatment of these animals by the federal government. AWHC has also requested information regarding the acquisition and disposition of horses in short-term holding facilities and has used that information to educate the public regarding the significant incidence of deaths that occur in holding pens in the days, weeks, and months after roundup operations. AWHC has also supported efforts to improve conditions at holding facilities by providing shelter from the elements and has facilitated the rescue of dozens of horses and burros from holding facilities.

14. The creation and implementation of the AIP has frustrated AWHC's core mission and caused AWHC to divert significant, and scarce, resources to mitigate the harms that the AIP

has caused to AWHC's mission and to federally protected wild horses and burros. For example, BLM's creation of the AIP without any public notice or opportunity for comment deprived AWHC of any opportunity to advise BLM prior to the implementation of this Program of the foreseeable adverse consequences for wild horses and burros or to advise the agency of reasonable means of ensuring more humane outcomes for adopted animals. Wrongly deprived of any opportunity to advise the government of the AIP's shortcomings or more protective and economically prudent alternatives, AWHC was forced instead to divert resources to educating the public about the AIP's foreseeable adverse consequences. For example, shortly after the AIP's creation, AWHC diverted staff resources to issuing a press release to educate the public about how the AIP would prove to be an economic boondoggle and "was a terrible idea from an animal welfare perspective" because "it will result in more federally-protected wild horses and burros entering the slaughter pipeline by incentivizing people without the necessary skills and resources to adopt wild horses."³ The deprivation of any opportunity for input into BLM's policy-making thus frustrated AWHC's mission of promoting more humane treatment of wild horses and burros by the federal government.

15. The creation and implementation of the AIP has also harmed AWHC's core mission of promoting the humane treatment of wild horses and burros, and of preventing the slaughter of wild horses and burros, by causing severely inhumane outcomes for wild horses and burros adopted through the Program. To counter the harms to AWHC's mission and to wild horses and burros, AWHC has been forced to divert resources to the investigation of the AIP's adverse outcomes and the subsequent dissemination of the resulting information to Congress,

³ See AWHC, *Feds Give Cash Incentive for Mustang Adoptions – Advocacy Group Calls Foul*, <https://americanwildhorsecampaign.org/media/feds-give-cash-incentive-mustang-adoptions-advocacy-group-calls-foul> (March 12, 2019).

agencies, and others with authority to halt this unlawful Program. In particular, AWHC has been forced to devote significant staff time to the submission of numerous Freedom of Information Act (“FOIA”) requests seeking information about animals adopted through the AIP that BLM does not make public. Likewise, AWHC has been forced to devote substantial staff time and resources to the investigation and preparation of a report documenting how wild horses and burros adopted through the AIP have in fact been treated inhumanely and have in numerous instances been sold at auctions that identify themselves as selling horses and burros for slaughter. As AWHC and its partner organizations have documented, wild horses and burros that have been adopted through the AIP have been subjected to a wide range of inhumane treatment, including but not limited to being provided inadequate feed, being housed in dangerously inadequate pens, and not being provided with adequate veterinary care. In at least one instance, a wild horse adopted through the AIP suffered abuse and/or neglect so extreme that the animal sustained a neck injury so severe that the animal was unable to stand and was “put out of her misery.” On information and belief, the AIP has resulted in a dramatic expansion of adoption of wild horses and burros, largely to individuals who are either unprepared and unequipped to care for these animals, or who have no sincere interest in caring for these animals and are instead motivated principally or exclusively by the cash payments that BLM provides as an adoption incentive through the AIP. The dramatic increase in the number of animals being adopted through the AIP has resulted in a far greater number of instances of inhumane treatment of wild horses and burros than occurred before the AIP was created and implemented. Hence, the AIP has harmed AWHC’s ability to accomplish its mission of promoting the humane care and treatment of wild horses and burros and forced AWHC to expend significant resources to counter this harm to its mission.

16. The creation and implementation of the AIP has also impaired AWHC's ability to accomplish its mission of preventing the slaughter of wild horses and burros. As AWHC and its partner organizations have documented, wild horses adopted through the AIP have frequently been sold at slaughter auctions, which are auction houses that describe themselves as "kill pens" or that Plaintiffs know to be frequented by kill buyers.⁴ (The term "kill buyer" refers to individuals who purchase horses and burros and sell them to horse slaughter plants in Canada or Mexico.) AWHC has documented nearly 240 instances—which is likely a fraction of the true number of instances—in which wild horses and burros that bear BLM freeze-brands have been sold at slaughter auctions since the creation of the AIP. On information and belief, the AIP has resulted in a dramatic expansion of adoption of wild horses and burros to individuals who have no interest in caring for the animals over the long term, but who instead retain the animals only for sufficient time to obtain payments of federal funds through the AIP and then sell them at slaughter auctions. Accordingly, on information and belief, the AIP has resulted in wild horses and burros being sold for slaughter. In this manner, the AIP has impaired AWHC's mission of preventing the slaughter of wild horses and burros. To counter this injury to its mission and to counteract this unlawful Program, AWHC has been forced to divert significant resources to investigating what has happened to wild horses and burros that are adopted through the AIP, to documenting in an extensive report how the AIP has effectively become a pipeline for wild horses and burros to be sent to slaughter, and to educating the public about the AIP's disastrous impacts for these federally protected animals.

⁴ See <https://stroudoklahomakillpen.com/about> ("Yes, we are a kill pen"); see also <https://fabriziuslivestock.com/> ("We are a kill pen that offer [sic] each horse a second chance before shipping to slaughter."); see also Exhibit 1, Appendix 1 (containing screenshots of the websites of these kill pens).

17. Due to BLM's creation and implementation of the AIP—which has created a serious risk of many horses ending up at slaughter auctions—AWHC has had to divert significant organizational resources and staff time to investigating, disseminating information, and promoting solutions to counteract BLM's unlawful Program, which otherwise would have been spent on AWHC's other organizational priorities, such as PZP administration to wild horses on the range. For example, AWHC has been forced to divert roughly \$20,000 to rescue wild horses and burros from slaughter auctions, prevent their slaughter, and to obtain title to these animals. AWHC has further been forced to divert significant staff resources to submitting dozens of FOIA requests for information regarding the implementation of the AIP and to comparing the information obtained through FOIA to the information on titles of rescued animals to verify that the wild horses and burros that AWHC and its partners have rescued were in fact adopted out through the AIP. Furthermore, AWHC has been forced to divert significant staff resources to the preparation and publication of an extensive report on the AIP's disastrous consequences in order to educate the public and elected officials about this program and to explain to DOI and BLM how the AIP has inhumane and unlawful impacts. By draining AWHC's limited resources and forcing the organization to substantially shift its money and staff time from other priorities, the AIP has significantly impaired AWHC's day-to-day operations and frustrated key aspects of its organizational mission.

18. Plaintiff Skydog Ranch and Sanctuary (“Skydog”) is a nonprofit organization that owns a 9,000-acre ranch near Bend, Oregon. Skydog's ranch is home to approximately 175 rescued horses and 50 rescued burros, some of which Skydog rescued at auctions before they could be purchased by kill buyers for slaughter or purchased from kill buyers when they had the animals in their feedlots waiting to ship to slaughter. Skydog's staff—including individual

Plaintiff Clare Staples—are regularly sent images of horses in need of rescue, often leading to such horses being saved hours or even minutes prior to them being shipped to Mexico or Canada for slaughter. Skydog's ranch provides a permanent home for rescued horses. Skydog's limited funding derives from fundraising events around specific trips to auctions to rescue a particular horse or group of horses based on the horses' needs for that particular year. Skydog's specific mission is to rescue as many wild horses from slaughter as possible, and to then provide humane, respectful care for the rest of their lives.

19. Prior to the AIP, Skydog operated in a much smoother fashion, deliberately planning its needs and capacity for horse rescue on an annual basis. For example, Skydog would determine through board meetings whether to target rescues of a particular type of horse (e.g., sale authority mustangs), and then would fundraise to support the execution of that year's rescue plan. After the AIP, and to counteract the significant onslaught of AIP horses showing up at slaughter auctions, a significant portion of Skydog's day-to-day operations and funding had to be diverted to bailing, hauling, and rescue costs associated with saving AIP horses from kill pens. Skydog's staff were forced repeatedly to travel to kill pens and auctions in various states, where they took title to many AIP horses—sometimes as many as twelve at one time. Skydog's staff were also forced to expend significant time, resources, and effort identifying third parties to haul the horses to Skydog's ranch in Oregon or to affiliate partner rescue organizations in the United States or abroad (sometimes with the assistance of TIP trainers). Each AIP horse required Skydog to expend funds on various activities before they could be placed, including veterinarian bills, quarantine expenses (including supplemental feed during quarantine), hauling costs, and trainer costs given that many of the young AIP horses needed gentling. In total, the average cost to Skydog for each AIP horse that it placed outside of Skydog's ranch amounted to roughly

\$5,000, with some costing more depending on the distance between the kill pen and the receiving horse rescue and whether or not the animal required veterinary care. The medical costs associated with veterinary care could also be considerable; for example, one rescued AIP horse required surgery to remove an eye at Colorado State University—an expenditure that Skydog would not have incurred but for the AIP. In 2020 and 2021 (to date), the AIP has forced Skydog to permanently take in roughly twice the number of new horses that Skydog had planned and budgeted for in setting its annual priorities for those years, all outside Skydog's targeted in-need groups for those years.

20. In total, Skydog has itself permanently rescued and relocated to its ranch approximately a dozen AIP horses that it had not planned or budgeted to rescue as part of its normal annual operations. This is a significant diversion of organizational resources that Skydog would not have expended but for the AIP, and which will continue to cost Skydog substantial sums of money throughout the lives of these animals, which could be up to thirty years given the young age of many of them. In addition, Skydog has rescued and helped place nearly 100 AIP horses at affiliate horse rescues all over the United States, as well as Germany, Bulgaria, and other countries (often with the assistance of TIP trainers). Because wild horses—including AIP horses—are not domesticated, Skydog has had to invest significant resources in identifying and hiring trainers to gentle AIP horses before they can be placed with Skydog or affiliate rescues in a manner that will harmonize with other animals on these ranches. Training of AIP horses alone has cost tens of thousands of dollars. Both because the AIP has forced Skydog to expend significant organizational resources rescuing and placing horses and because the AIP forced Skydog to divert those resources from other important organizational priorities, BLM's creation and implementation of the AIP has fundamentally compromised Skydog's day-to-day operations

and frustrated its core mission. In addition, because Skydog has not always been successful in rescuing all AIP horses from slaughter, the fact that some horses have likely been slaughtered or placed in severely inhumane situations further undermines Skydog's core mission to rescue all wild horses from horrific fates.

21. Plaintiff Clare Staples is the Founder and President of Plaintiff Skydog. She has been working on wild horse protection and rescue issues for more than a decade, and she oversees Skydog's management. Ms. Staples was heavily involved in Skydog's efforts in 2020 and 2021 (to date)—and will continue to be involved in those efforts—to rescue as many AIP horses as possible from kill pens and auctions before they are sent to Mexico or Canada for slaughter. After the creation of the AIP, Ms. Staples observed a noticeable difference in the people showing up at BLM corrals to adopt horses, many of them taking groups of very young horses. One year later, just after those same adopters would have received title, she received near-constant calls from individuals at kill pens and auctions that recognized wild horses there with BLM's freeze brands, thus requiring her to attempt to rescue these horses from horrific fates. The AIP—and its foreseeable result of AIP horses ending up at kill pens and auctions known to sell to kill buyers—forced Ms. Staples, when possible, to arrange for the rescue and transport of wild horses dozens of times in 2020 and 2021 (to date) before they were sold to third party kill buyers.

22. The last eighteen months—since AIP horses began showing up at slaughter auctions—have significantly affected Ms. Staples in many concrete ways. Financially, she has incurred tens of thousands of dollars of personal expenditures for training, hauling, transport, and other associated costs where Skydog had not yet conducted any fundraiser due to the urgent nature of these rescues of AIP horses. She has spent more than a thousand hours attempting to

rescue AIP horses from horrific fates, and then planning logistics for quarantine, veterinarians, trainers, and hauling to placement locations—time she would not have spent on these matters but for the AIP. Ms. Staples has also suffered significant mental anguish and emotional distress from having to be repeatedly subjected to observing AIP horses—often in extremely poor health—in kill pens only hours or minutes from shipment to Mexico or Canada for slaughter. In addition, the AIP has placed tremendous personal and professional pressure on Ms. Staples because if she cannot find a suitable placement at a horse rescue or sanctuary, this failure equates to that horse or group of horses going to slaughter or to an inhumane setting. Due to the immense stress imposed on Ms. Staples by BLM’s creation and implementation of the AIP, she is terribly exhausted and emotionally fragile because the AIP places her in the position of deciding the fate of AIP horses that BLM, as the agency charged with protecting them, should be safeguarding from slaughter and inhumane conditions. Especially now that Skydog’s ranch is nearing capacity much faster than otherwise would have been the case due to taking in so many unexpected AIP horses, the emotional toll of many horses being slaughtered or treated inhumanely as a result of the AIP severely affects Ms. Staples day-to-day emotional well-being and success both personally and professionally.

23. Plaintiff Evanescent Mustang Rescue and Sanctuary, Inc. (“Evanescent”) is a 501(c)(3) nonprofit organization that was created to prevent animal cruelty through educating the public about horse care and safety, and which is dedicated to the rescue and rehabilitation of wild horses and burros. Evanescent partners with known, reliable individuals and organizations that provide foster care for rescued horses and burros. Evanescent’s supporters and other mustang advocates attend slaughter auctions on behalf of Evanescent and purchase wild horses and burros before they can be sold to kill buyers. Evanescent and its partnering foster homes provide safe

and humane care for rescued wild horses and burros, and work to match rescued animals with good, permanent homes. Evanescent also works to provide training for rescued animals to promote better chances of matching the animals with a good home. To further its mission to rescue wild horses and burros, Evanescent's goal is to acquire additional land for its sanctuary so that it can rescue as many wild horses and burros from slaughter as possible and provide a safe and caring home for the remainder of the animals' lives.

24. The AIP has frustrated Evanescent's ability to achieve its mission of rescuing wild horses and burros and has required Evanescent to expend significant additional resources to counteract that harm. For example, since the AIP's creation, Evanescent has witnessed a dramatic expansion in the number of wild horses and burros bearing BLM freeze marks at slaughter auctions. Prior to the AIP's creation, wild horses and burros appeared at auctions relatively infrequently and in small numbers, and were generally trained animals that humans can handle. However, after the AIP's creation, wild horses and burros began appearing at auctions extremely frequently, in large numbers, and in a completely ungentled state that revealed that the animals had not received any meaningful training or care. To prevent this dramatically increased number of wild horses and burros from being sold into slaughter, Evanescent has been forced to rescue wild horses and burros at a far greater rate. Evanescent has thus been forced to expend a significant portion of its scarce resources purchasing as many of these animals as possible, arranging for their safe and humane transportation and care, and working with responsible foster organizations to provide safe homes for these animals. Evanescent has been further forced to divert resources away from other aspects of its mission, such as any expansion to Evanescent's own sanctuary. Before the AIP, Evanescent was able to raise and save funds toward the purchase of additional land for its sanctuary. However, in light of the amounts that Evanescent has been

forced to redirect to the rescue and care of numerous wild horses and burros from slaughter auctions, Evanescent no longer believes it will be possible to purchase additional land for its sanctuary in the foreseeable future.

25. The AIP has also made the logistics of rescuing wild horses and burros from slaughter auctions more difficult. Because wild horses and burros are appearing at auctions with much greater frequency since the AIP's creation, Evanescent has been forced to expend greater resources obtaining wild horses and burros from auctions than it expended prior to the AIP's creation. Further, because it has been forced to expend most of its scarce resources on the animals it has already rescued, Evanescent is dependent on fundraising to rescue additional animals. However, when Evanescent learns that wild horses or burros are for sale at a slaughter auction, Evanescent often has only a matter of hours to try to raise funds to rescue these animals, which it is not always possible to do. Additionally, the animals that Evanescent has been able to rescue have required costly veterinary care.

26. Likewise, because the wild horses and burros arriving at slaughter auctions since the AIP's creation are often entirely ungentled, Evanescent has been forced to expend significant resources to provide training for these animals that will allow humans to interact with them. The prevalence of such ungentled wild horses and burros at slaughter auctions has also made it significantly more difficult for Evanescent to locate suitable homes for these animals, because caring for and training ungentled animals requires specialized expertise. Because it has already been forced to rescue so many ungentled animals, which are costly to train and difficult to match with good homes, Evanescent does not have the capacity to continue adopting such ungentled animals at the rate the AIP has made necessary, and will not be able to do so unless it is able to identify additional suitable foster homes, which is increasingly difficult. In these ways, the AIP

has frustrated and impaired Evanescent's central mission to protect wild horses and burros from slaughter.

27. Plaintiff Carol Walker is a photographer with significant professional and personal interests in wild horse herds in Wyoming. She has spent her career photographing wild horses, particularly horses exhibiting wild and natural behaviors on the range. She sells fine art prints, calendars, and books of her photographs of wild horses engaging in their natural behaviors. Ms. Walker has visited wild horses in the wild all across Wyoming several times a year since 2004, and most recently visited the Red Desert Complex June 26-27, 2021. She has also visited the Rock Springs Corrals—where BLM is holding wild horses removed from Wyoming HMAs—both before and after the implementation of the AIP, and as recently as February 19, 2021. She has concrete plans to regularly return to observe the wild horses in Wyoming HMAs and the corrals, both for her personal aesthetic interests in observing the wild horses in the wild and in holding and to pursue her professional and economic interests in photographing these animals. Given her long-standing familiarity with these herds, Ms. Walker can easily identify many of these horses and has named some of them based on repeated interactions. She has especially deep connections with certain horses, and she seeks those horses out each time she returns to a particular management area. A book of Ms. Walker's photographs was published in France in 2014, titled *Mustang: The Heart of an American Legend*. She is also the author of the books *Wild Hoofbeats: America's Vanishing Wild Horses* and *Galloping to Freedom: Saving the Adobe Town Appaloosas*. BLM has expressed that her photography has helped wild horses be adopted in the past.

28. Ms. Walker has attended numerous Wyoming BLM wild horse adoption events since 2010. She always brings her camera to photograph the individual horses she knew in the

wild and later share the images with the public online. When Ms. Walker attended adoption events in the past, before implementation of the AIP, she found the events low stress and casual. In her experience, having adopted two BLM mustangs herself, at a normal, pre-AIP adoption event, potential adopters would arrive, look at the horses and burros available, choose the animal they want, and then fill out the paperwork with BLM to adopt that particular animal. In her experience at past adoption events, Ms. Walker was also able to walk around the corrals to check on and photograph the horses she once saw in the wild. However, at the February 19, 2021 adoption event, Ms. Walker found that the AIP created a more hostile and competitive environment at the corrals. She arrived at 5:00 AM, in 20-degree weather, and well before the corrals opened, to stand in line, something Ms. Walker has never had to do before. Potential adopters came with trailers, lined up down the road, all prepared to take whatever horses they could get. She found that potential adopters and Trainer Incentive Program (“TIP”) trainers were competitive, aggressive, and rude to each other, and that BLM employees were rude and threatening to Ms. Walker. Ms. Walker was the only person who went to look at the horses first, while other attendees instead headed straight to filling out adoption paperwork to take horses randomly and sight unseen, with little care for what they looked like or who they once were in the wild. Even Ms. Walker’s professional ability to photograph the horses in the corrals has changed since the AIP. While she was viewing the horses at the event on February 19, 2021, BLM employees threatened to throw Ms. Walker out of the event. For Ms. Walker, it was emotionally exhausting both personally and professionally to walk around the corrals alone, while being closely watched and threatened by BLM personnel, to witness as the horses she had observed for years, some who she had known since birth, await their fates. The emotional toll of watching people simply file paperwork to adopt many of the horses she had photographed for

years, without even looking at them beforehand, was heart wrenching for Ms. Walker. Beyond the emotional toll, Ms. Walker expended her own personal funds to travel over five hours to the Rock Springs Corral, and stay in a hotel, in order to attend the event.

29. Further, BLM has made it incredibly difficult for Ms. Walker to adopt the yearling she is interested in from the Canon City Corrals, which is among a group of horses that BLM has held at that facility for eight months. Ms. Walker knew both of the horse's parents for years in the wild and affectionately refers to him as Helios. She was there soon after his birth and has hundreds of photographs of the family in the wild. Before the pandemic, the corrals had events at least twice a month, but even with the re-openings nationwide the Canon City Corrals is still refusing entry from the public. Due to the extremely high attendance at the Rock Springs event, it has become clear to Ms. Walker that she will have to expend much more than the usual \$25 adoption fee to adopt Helios due to increased adoption interest created by the AIP. Despite BLM's attempt to artificially manufacture demand for these wild horses, Ms. Walker has spent a large portion of her time repeatedly contacting local BLM officials, Deputy Director Nada Culver, Secretary of the Interior Haaland, and elected officials about her struggle to adopt from the Canon City Corrals. Despite all her time and effort, BLM continues to refuse to adopt Helios to Ms. Walker at this time, instead opting to house him, at taxpayer expense, for roughly eight months since his removal. Aside from her frustration, Ms. Walker is concerned for Helios' well-being. The horses who were available for adoption in Rock Springs in June had lost hundreds of pounds since Ms. Walker last photographed them in the wild. Ms. Walker has serious concerns that the horses are not being properly cared for by the BLM while the animals await adoption events. Thus, Ms. Walker has not only suffered emotional distress over the idea of people taking horses she knows well and dumping them in kill pens for slaughter, but she is also deeply

concerned for the fate of her beloved Helios. If he manages to survive holding, and the gelding procedure, it would be devastating for Ms. Walker if another individual adopted him strictly for the AIP payment alone. Yet, BLM has said that each horse—including Helios—must be placed before the adopting public so that every adopter has a fair chance to adopt each individual horse, thereby significantly increasing the chances that someone else adopts Helios. Prior to the AIP, Ms. Walker would have had no complications in securing the horse of her choice for adoption; that aspect of the adoption process has changed dramatically as a result of the AIP.

30. Defendant Debra Haaland is the Secretary of the United States Department of the Interior, the parent agency of BLM, and accordingly is ultimately responsible for the actions challenged here.

31. Defendant United States Bureau of Land Management is an agency within the United States Department of Interior, which created and administers the Adoption Incentive Program and is responsible for the actions challenged here.

FACTS GIVING RISE TO PLAINTIFFS' COMPLAINT

I. STATUTORY AND REGULATORY FRAMEWORK

A. The Wild Free-Roaming Horses and Burros Act

32. Finding that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West,” and that “they contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress enacted the WHA in 1971 to ensure that “wild free-roaming horses and burros shall be protected from capture, branding, harassment, [and] death,” and that they are “considered in the area where presently found, as an integral part of the natural system of the public lands.” 16 U.S.C. § 1331.

33. The WHA mandates that the Secretary of the Interior “shall manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” *Id.* § 1333(a). To that end, the WHA further directs the Secretary to “maintain a current inventory” of wild horses and burros and to use that inventory to “determine appropriate management levels” in various areas of public lands, and “make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals.” *Id.* § 1333(b)(1). The statute defines “excess animals” as those “which have been removed” from public lands or “which must be removed” to preserve and maintain a thriving natural ecological balance. *Id.* § 1332. The WHA further provides discretion for BLM to determine “whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options” *Id.* § 1333(b)(1).

34. Where BLM determines both that “an overpopulation exists and that action is necessary to remove excess animals” the WHA provides that the agency “shall immediately remove excess animals from the range so as to achieve appropriate management levels.” *Id.* § 1333(b)(2). As the Tenth Circuit Court of Appeals has explained, the plain text of the WHA “quite clearly affords BLM with discretion to decide whether or not to remove excess animals.” *Wyoming v. U.S. Dep’t of Interior*, 839 F.3d 938, 944 (10th Cir. 2016).

35. If BLM decides to remove wild horses, the WHA authorizes the BLM to allow the public to adopt wild horses “for private maintenance and care,” provided that the agency “determines an adoption demand exists by qualified individuals” and that certain other conditions are met. 16 U.S.C. § 1333(b)(2)(B). In particular, the agency must determine that any adopter “can assure humane treatment and care (including proper transportation, feeding, and

handling).” *Id.* Likewise, the statute restricts any individual from adopting more than four animals in a year “unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party.” *Id.* In this manner, Congress sought to accommodate the public’s interest in adopting wild horses while also ensuring that any horses so adopted would be cared for humanely.

36. Although the WHA contemplates that unadoptable wild horses may be “destroyed in the most humane and cost efficient manner possible,” *id.* § 1333(b)(2)(C), Congress has routinely and specifically forbidden the Department of Interior and BLM from using federal funds for the slaughter of healthy, unadopted wild horses. *See, e.g., In Defense of Animals v. U.S. Dep’t of Interior*, 751 F.3d 1054, 1059 n.3 (9th Cir. 2014) (noting that “Congress has never appropriated funds for extermination, as opposed to ongoing maintenance, of excess horses even if not adopted”) (citing Pub.L. 111-88, 123 Stat. 2904, 2907 (2009)). Most recently, the Consolidated Appropriations Act, 2021, specifically provided that federal funds “shall not be available for . . . the destruction of any healthy, unadopted, and wild horse or burro” or “the sale of a wild horse or burro that results in the destruction of the wild horse or burro for processing into a commercial product.” Pub. L. 116-260 § 419(e).

37. BLM’s regulations implementing the WHA specify that the agency “shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.” 43 C.F.R. § 4750.1.

38. BLM must ensure that any wild horses or burros made available for adoption “shall be individually identified . . . with a permanent freeze mark of alpha numeric symbols on

the left side of its neck.” These freeze marks “identif[y] the animal as Federal property subject to the protections of the [WHA].” *Id.* § 4750.2-1(c).

39. BLM’s regulations also specify the “[q]ualification standards” for an adopter of a wild horse or burro. For example, an adopter must be 18 years of age or older, have no prior conviction for inhumane treatment of animals or for violation of the WHA or its implementing regulations. *Id.* § 4750.3-2(a). Adopters must also “[h]ave adequate feed, water, and facilities to provide humane care to the number of animals” adopted. *Id.* An adopter’s facilities “shall be in safe condition and of sufficient strength and design to contain the animals,” and specifically must provide “minimum space of 144 square feet” per animal if exercised daily or otherwise “a minimum of 400 square feet.” *Id.* Until animals are “fence broken,” wild horse enclosures must be “at least 6 feet high” and burro enclosures must be “at least 4 ½ feet high,” and enclosures must “be protrusion free and shall not include large-mesh woven or barbed wire.” *Id.* Shelter must “mitigate the effects of inclement weather and temperature extremes,” and “[f]eed and water shall be adequate to meet the nutritional requirements of the animals.” *Id.*

40. BLM’s regulations further specify that an adopter must “[h]ave obtained no more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing” by BLM. *Id.*

41. Any individual who wishes to adopt more than 4 wild horses or burros within a 12-month period, “or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location,” must “provide a written report” prepared by a BLM official, “a local humane official, veterinarian, cooperative extension agent, or similarly qualified person” approved by BLM, “verifying that the applicant’s facilities have been inspected, appear adequate to care for the number of animals requested, and satisfy the requirements” in BLM’s

regulations. *Id.* § 4750.3-3(a). The report must “include a description of the facilities, including corral sizes, pasture size, and shelter, barn, or stall dimensions, and shall note any discrepancies between the facilities inspected and representations made in the application form.” *Id.* If any individual “requests 25 or more animals or when 25 or more animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer prior to approving the application.” *Id.*

42. BLM must “determine an individual’s qualifications” to adopt wild horses and burros based on information provided on a BLM-designed application form and BLM must maintain “records of any previous private maintenance by the individual under the Act.” *Id.* § 4750.3-2(b).

43. After a wild horse or burro is adopted, BLM must retain title to the animal for “at least 1 year,” during which time the adopter must abide by a “Private Maintenance and Care Agreement.” 43 C.F.R. § 4750.1(a). During this time, the adopter may not transfer the animal to another location or to another individual without BLM’s prior approval. *Id.* § 4750.1(b). Adopters must make adopted animals “available for physical inspection within 7 days of a written request” by BLM, *id.* § 4750.1(b), and must notify BLM within 7 days of the death, theft, or escape of an adopted animal, *id.* § 4750.1(c).

44. An adopter must also “apply for title” to an adopted wild horse or burro. 43 C.F.R. § 4750.5(a). BLM “shall issue a Certificate of Title after 12 months” from the date of adoption only “if the adopter has complied with the terms and conditions of the [adoption] agreement” and BLM “determines, based either on a field inspection or a statement provided by the adopter from a veterinarian, extension agency, local humane official, or other individual acceptable to the [agency], that the animal or animals covered by the [adoption] Agreement have

received proper care and humane treatment.” *Id.* § 4750.5(b). “An adopter may not obtain title to more than 4 animals per 12-month period of private maintenance.” *Id.* § 4750.5(c). Once BLM issues a Certificate of Title to the adopter, “Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act.” *Id.* § 4750.5(c).

45. Through a series of Instruction Memoranda, BLM has also created policies that govern the sale of wild horses and burros. The agency’s policies for sales of wild horses and burros are described in IM 2014-132.⁵ That IM’s intent “is to provide guidance on selling animals to individuals and organizations that will provide good homes and humane care.” To that end, the policy requires BLM to “look up the purchaser’s name” in the agency’s records “to determine if there are any documented notes” about the purchaser in BLM’s possession, and “[w]hen there is evidence that may indicate a purchaser does not intend to provide a good home . . . deny the sale and document the reasons for their decision.” In such instances, the policy also requires local BLM officials to “notify the Washington office . . . so that other Facility Managers can be advised of the situation and prevent such buyers from shopping from facility to facility.” Additionally, any individual or group wishing to purchase more than four animals within a six-month period must receive approval from a high-level agency official, “the Assistant Director, Resources and Planning,” and in order to obtain such approval must “submit a proposal detailing where animals will be kept, plans to provide humane care including adequate forage, water, hoof and veterinary care, fencing, and the intended use for the animals.” The sale of the animal is

⁵ Although BLM briefly superseded IM 2014-132 by promulgating another such memorandum, IM 2018-066, the agency then issued a third memorandum, IM 2019-026, that superseded IM 2018-066 and reinstated IM 2014-132 as the agency’s governing policy. *See* IM 2019-026, <https://www.blm.gov/policy/im-2019-026> (directing that BLM will “comply with the policies, procedures, guidance set forth in IM 2014-132”).

completed with a Bill of Sale that “indicates that the animal has become private property and is no longer under the protection of the [WHA].” Through these provisions, BLM’s policies regarding the sale of wild horses and burros attempt to guarantee that the animals may only be sold to individuals or organizations that will provide good homes and humane care, and specifically include mechanisms designed to prevent purchases by individuals who do not actually intend to provide good homes and humane care for these federally protected animals.

B. The National Environmental Policy Act

46. Congress enacted the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4347, to ensure that federal agencies fully consider the environmental impacts of their actions before taking them, consider alternatives to proposed actions that may have less adverse environmental impacts, and make information publicly available with sufficient detail to promote fully informed public participation in agency decision-making.

47. To meet these objectives, all agencies must prepare an Environmental Impact Statement (“EIS”) for any major federal action that may “significantly affect[]” the environment. 42 U.S.C. § 4332(C). The Council on Environmental Quality (“CEQ”)—an agency within the Executive Office of the President—has promulgated regulations implementing NEPA that are “binding on all Federal agencies.” 40 C.F.R. § 1500.3. These regulations provide that in determining whether an EIS is required with respect to a particular proposed action, an agency must prepare an Environmental Assessment (“EA”) that analyzes the environmental impacts of the proposed action as well as alternatives. *Id.* §§ 1501.4(c), 1509.9.⁶

⁶ CEQ amended its regulations in 2020. See 85 Fed. Reg. 43,304 (July 16, 2020). However, those new regulations have an effective date of September 14, 2020. Because BLM created the AIP in 2019, well before the new CEQ regulations became effective, the new regulations do not apply to this case. Instead, this case is governed by the version of CEQ’s regulations that was in place at the time the AIP was created.

48. In determining whether an EIS is required, the agency must consider whether the proposed action may have a “significant” effect on the human environment. 40 C.F.R. § 1508.27. The “significance” determination is based on factors such as the degree to which the effects on the environment “are likely to be highly controversial” or “are highly uncertain”; the degree to which the action “may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration,” or “may cause loss or destruction of significant scientific, cultural, or historical resources”; and whether the action “threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” *Id.*

49. A significant effect, requiring an EIS, may exist “even if the Federal agency believes that on balance the effect will be beneficial.” 40 C.F.R. § 1508.27(b)(1). The existence of any one of the CEQ significance criteria usually requires the preparation of an EIS.

50. If an agency decides that an EIS is not required, it issues a Finding of No Significant Impact (“FONSI”), which must present the reasons why the agency has determined its proposed action “will not have a significant impact” on the environment.” 40 C.F.R. § 1508.13.

51. NEPA requires agencies to consider a range of reasonable alternatives to its proposed action. See 40 C.F.R. § 1502.14. An agency may not artificially constrain its analysis of reasonable alternatives by framing its purpose and need statement for a proposed action in an excessively narrow manner.

C. The Administrative Procedure Act

52. The Administrative Procedure Act (“APA”) mandates that courts “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law . . . in excess of statutory jurisdiction, authority or limitations,” or adopted “without observance of procedure required by law.” 5 U.S.C. § 706(2).

53. Agency action is arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

54. The APA also provides the “basic procedural requirement” that “an agency must give adequate reasons for its decisions.” *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2125 (2016). “Agencies are free to change their existing policies so long as they provide a reasoned explanation for the change.” *Id.* In doing so, “the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy.” *Id.* at 2126. Likewise, agencies “must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Id.* In such circumstances, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* For these reasons, “an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Id.*

55. The APA requires agencies to provide notice and an opportunity for public comment before promulgating any rule. 5 U.S.C. § 553. The APA defines a “rule” as “the whole or part of an agency statement of general applicability and future effect designed to implement,

interpret, or prescribe law or policy.” *Id.* § 551(4). The definition of a “rule” also “includes the approval or prescription for the future of . . . financial structures . . . prices . . . services or allowances . . . or practices bearing on any of the foregoing.” *Id.*

II. FACTUAL BACKGROUND

A. **Prior BLM Actions Caused, or Failed to Prevent, Slaughter of Wild Horses and Burros, and BLM Has Repeatedly Asked Congress for the Authority to Conduct Slaughter**

56. BLM has previously endured intense public scrutiny, federal investigations, and congressional inquiries regarding its actions that have caused or failed to prevent wild horses and burros from being slaughtered.

57. The slaughter of wild horses and burros generally occurs in Canada or Mexico, because no slaughterhouses in the United States are authorized to slaughter horses or burros for human consumption. Accordingly, individuals and organizations that seek to profit from the slaughter of American horses and burros generally purchase these animals at auctions in the United States and then (potentially after fattening the animals to be sold to slaughterhouses by the pound) transport them to Canada or Mexico and sell them to slaughterhouses. This Complaint uses the term “slaughter auction” to refer to auctions in the United States that cater to this industry, meaning auctions at which many or most of the purchasers will eventually resell the animals for slaughter.⁷ Such facilities may also refer to themselves as “kill pens,” state that

⁷ The term “slaughter auction” is not unique to this Complaint. *See, e.g.*, Letter from Dianne Feinstein, U.S. Senator to the Honorable Deb Haaland, Secretary of Interior, May 27, 2021, available at <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=02C96A16-6B68-4039-82BE-73F47AB8B4B0> (objecting to how the AIP has led to the sale of wild horses at “slaughter auctions”); Dave Philipps, *New York Times*, *Wild Horses Adopted Under a Federal Program Are Going to Slaughter*, May 15, 2021, available at <https://www.nytimes.com/2021/05/15/us/wild-horses-adoptions-slaughter.html> (describing how “instead of going to good homes, truckloads of horses were dumped at slaughter auctions”).

animals at auction are “in the slaughter pipeline,” or acknowledge that horses that are not rescued from the facility will instead be shipped to slaughter.⁸

58. Although slaughterhouses are a typical final destination for horses and burros purchased at slaughter auctions, BLM has a history of turning a blind eye to the outcomes from slaughter auctions. For example, BLM recently informed Plaintiffs that it “does not and cannot assume that any or every titled or sold wild horse or burro that arrives at a sale barn is destined for slaughter.” The consequences of BLM’s unwillingness to meaningfully investigate or oversee slaughter auctions at which wild horses and burros are sold has previously led to instances in which BLM allowed or failed to prevent the slaughter of wild horses and burros.

59. For example, as documented in an article in the Los Angeles Times, a federal grand jury investigation in 1997 revealed that BLM “allowed the slaughter of hundreds of wild horses taken from federal lands, falsified records and tried to prevent investigators from uncovering the truth.”⁹

60. In 2015, DOI’s Office of the Inspector General issued an *Investigative Report of Bureau of Land Management Wild Horse Buyer*, which found that “BLM did not follow current law while managing [wild horses and burros]” and instead sold 1,700 wild horses to a buyer that “wrongfully sent them to slaughter.”¹⁰

61. Although BLM has put in place policies that nominally aim to prevent wild horses or burros from being slaughtered or sold for processing into commercial products, the agency has

⁸ See Exhibit 1, Appendix 1 and June 16 Addendum.

⁹ See Martha Mendoza, Los Angeles Times, March 23, 1997, <https://www.latimes.com/archives/la-xpm-1997-03-23-mn-41176-story.html>

¹⁰ This report is available at https://www.doioig.gov/sites/doioig.gov/files/WildHorseBuyer_Public.pdf

also asked Congress to allow it to slaughter wild horses and burros as a population control measure. For example, in a 2018 Report to Congress titled *Management Options for a Sustainable Wild Horse and Burro Program*, BLM stated that “BLM has previously requested authority . . . to sell without limitation [i.e. for slaughter] all excess wild horses and burros and euthanize horses for which an adoption demand does not exist.” In that same report, BLM proposed that “[e]uthanasia of healthy excess wild horses for which an adoption demand does not exist” should be “categorically excluded from detailed NEPA analysis,” despite the fact that such an action would result in the death of at least 50,000 federally protected animals. Likewise, BLM’s fiscal year 2019 budget proposal asked Congress to remove appropriations language prohibiting the use of federal funds for the slaughter of wild horses and burros.

62. Despite BLM’s repeated requests for authority to slaughter wild horses and burros, Congress has never authorized the use of federal funds for this purpose. Rather, Congress has explicitly and continually prohibited the use of any federal funds for this purpose.

63. The American public overwhelmingly opposes the slaughter of healthy wild horses and burros.

B. The Adoption Incentive Program Created a Genuine Risk that Wild Horses and Burros Will Be Slaughtered

64. BLM created the AIP on January 30, 2019 by issuing IM 2019-025, which states that the AIP aims “to increase the number of adoptions of untrained wild horses and burros placed into private care through offering financial incentives.”

65. Under the AIP, an adopter becomes eligible for incentive payments after paying an adoption fee of \$25 per animal and completing an Adoption Incentive Agreement and an Adoption Application. At that point, as IM 2019-025 notes, “[t]he AIP offers a financial incentive in the amount of \$500 within 60 days from the adoption date [of a wild horse or burro]

and an additional \$500 within 60 days from the title date,” which occurs one year from the date of adoption. Thus, an adopter who houses a wild horse or burro for one year may obtain title to the animal, and a total payment of up to \$1,000 for each wild horse or burro adopted through the Program. Once an adopter takes title, ownership of the animal passes to the adopter, and the animal enjoys no further protections under the WHA.

66. Although it offers direct payments to adopters of wild horses, the overarching purpose of the AIP is to save money for BLM. As BLM explained when creating the AIP, “[i]ncreasing the placement of animals into private care is a critical priority of the [wild horse and burro] program and of utmost interest to the BLM due to the costs associated with caring for unadopted animals in BLM managed or contracted corrals and pastures.” BLM noted that because the number of wild horses and burros the agency removes from public lands significantly exceeds the rate at which the public adopts wild horses and burros, “the feed and care of the animals removed from the range continue to consume over 50 percent of the WHB program’s budget.” BLM further explained that “this policy will reduce off-range holding costs and allow those savings to support critical on-range operations,” and that “[i]ncreasing adoptions reduces holding costs, creating a cost savings that allows funding to be dedicated to other aspects of managing wild horses and burros.”

67. The AIP nominally allows “each adopter participating in AIP to adopt and maintain a maximum of four untitled animals annually,” but the Program actually allows individuals to obtain more than four horses in a year so long as they have “up to a maximum of four untitled animals at any one time.” As an adopter gains title to an animal, that adopter becomes eligible to adopt another animal through the AIP.

68. Although the AIP contains some provisions that address the need for humane care and treatment of adopted animals, these provisions are significantly weaker than in prior BLM policies. BLM's prior policy governing sales of wild horses and burros, IM 2014-132, specifies that "where there is evidence that *may* indicate that a purchaser does not intend to provide a good home," the agency "*will* deny the sale" and inform BLM's Washington Office so that other facilities can also "prevent such buyers from shopping from facility to facility." In this manner, BLM's prior policy was to proactively disqualify purchasers from obtaining any wild horse or burro where any evidence "may" indicate that the purchaser would not provide a good home for the animal. The AIP contains no such proactive disqualification policy and is thus a significant, and unexplained, departure from BLM's prior policy.

69. Moreover, although the AIP does contain a provision specifying that BLM may eventually disqualify an adopter from further receipt of incentive payments, such disqualification only occurs *after* BLM proves a violation of a Private Maintenance and Care Agreement, an Adoption Incentive Agreement, or the commission of a prohibited act specified in BLM's regulations. This difference is important. For example, under BLM's prior policy governing sales, an individual who sells a horse at a slaughter auction should be disqualified from ever purchasing a wild horse again, because such an action at least "may indicate" that the purchaser "does not intend to provide a good home" for the animal. In sharp contrast, under the AIP BLM has expressed the position that the sale of a wild horse or burro at a slaughter auction does not constitute a violation of the AIP so long as the adopter first received title to the animal. As such, those who receive federal incentives to adopt wild horses or burros, receive title to the animals, then sell those animals at slaughter auctions, will not only be allowed to adopt more animals, but will still be entitled to receive federal taxpayer dollars to do so.

70. The AIP also makes agency oversight of adopters discretionary rather than mandatory. For example, IM 2019-025 merely states that BLM “*should* ensure that adopters participating in the AIP adhere to the terms of the Adoption Incentive Agreement,” and “*should* ensure that all adopters meet applicable adoption requirements.” Likewise, the IM states that BLM “*should* conduct compliance inspections on adopted animals participating in the AIP.” Further, the IM states that “BLM *should* remove eligibility to participate in the AIP from any adopter that relinquishes [i.e. returns to BLM] two or more animals within a 12 month period.” However, the AIP does not contain any provision specifying that adoptions, or payments of federal funds, *must* be denied based on a history of inhumane treatment of adopted animals, a history of animal abuse, or even evidence that an adopter actually sent an adopted animal to slaughter.

71. These discrepancies between the AIP and prior BLM policy, which the agency has never explained, highlight how BLM established more lax standards for individuals whom the agency pays to adopt wild horses or burros than the agency previously established for those who pay to purchase a wild horse or burro.

72. Because the AIP, according to the plain language of IM 2019-025, “offers a financial incentive in the amount of \$500 within 60 days from the adoption date and an additional \$500 within 60 days from the date of title,” the AIP constitutes “the approval or prescription for the future of rates . . . prices . . . services or allowances . . . or practices bearing on any of the foregoing” within the APA’s definition of a “rule.” 5 U.S.C. § 551(4).

73. Because the AIP directs BLM to deliver payments of federal funds to adopters of wild horses or burros, the AIP constitutes a “statement of general or particular applicability and

future effect designed to implement, interpret, or prescribe law or policy” within the APA’s definition of a “rule.” 5 U.S.C. § 551(4).

74. Before creating the AIP through the issuance of IM 2019-025, BLM did not provide the public with any notice or opportunity for comment.

75. BLM’s creation of the Adoption Incentive *Program* meets the definition of a “Federal action” subject to mandatory NEPA review, which includes the “adoption of *programs*, such as a group of actions to implement a specific policy or plan.” 40 C.F.R. § 1508.18(b)(3) (emphasis added).

76. The AIP has environmental and economic impacts, including impacts on federally protected wild horses and burros that are adopted through the program, as well as impacts associated with federal on-range management actions for which BLM explicitly intends the AIP to free up federal funds.

77. Before creating the AIP through the issuance of IM 2019-025, BLM did not conduct any NEPA analysis to consider the Program’s impacts.

78. Before creating the AIP through the issuance of IM 2019-025, BLM did not engage in any public process under NEPA to consider alternatives to the Program. However, BLM was aware that alternative approaches could exist. For example, BLM previously discussed with its Wild Horse and Burro Advisory Board a program under which it would provide financial incentives for the adoption of only older horses and burros, which are less likely to be adopted absent an incentive than young animals, as opposed to providing an incentive for adopting animals of any age as occurs under the AIP. Likewise, BLM previously discussed with its Advisory Board the possibility that adopters could only earn financial incentives if they were able to demonstrate that they had trained adopted animals to a certain level during the year of

private care that occurs before titling. BLM also discussed with the Advisory Board various possible levels of incentive payments, including such options as paying up to \$10,000 per animal adopted or using a sliding scale to pay higher incentives for the adoption of multiple animals at once. Additionally, BLM and the Advisory Board discussed whether there should be greater clarity regarding what the consequences might be for those who violate the terms of the AIP or violate the WHA itself. Finally, BLM and the Advisory Board discussed the need for adequate procedures to ensure that adopted horses would not be abused or neglected, or sold once the adopter received incentive payments. Accordingly, BLM's history of discussions with its own Advisory Board make clear that the agency was aware that alternative approaches to the AIP could exist and could make the Program more protective of wild horses and burros. Recently, the Advisory Board also recommended another specific alternative of non-cash incentives that might be put toward veterinary care or training of adopted horses. Nevertheless, despite the clear existence of numerous alternatives to the AIP, BLM failed to examine any alternatives to the Program as part of any NEPA process.

79. Before creating the AIP through the issuance of IM 2019-025, BLM did not engage in any public process under NEPA or the APA to consider whether the AIP would contravene Congress's intent to forbid the use of appropriated funds in a manner that results in the slaughter of wild horses or burros.

80. The AIP has roughly doubled the rate of adoption of wild horses and burros. In a press release dated May 14, 2020, the BLM stated that there had been "an increase of 91%" in the number of adoptions "[i]n the first 12 months of the AIP." BLM further noted that in the

AIP's first year (2019 to 2020), the agency saw "substantial increases" in the number of first-time adopters, repeat adopters, and "multiple-animal adoptions."¹¹

81. In another press release, BLM stated that "[i]n the first 12 months of the Adoption Incentive Program, the agency adopted out more than 6,000 animals, helping the agency to achieve a 15-year record for total adoptions and sales in Fiscal Year 2019."¹²

82. As reflected in records obtained by Plaintiffs through FOIA, roughly six months after the AIP's creation, a BLM official shared his "thoughts on the Adoption Incentive Program." That official noted that the agency had seen a "pretty good boost in adoption numbers," mostly to "new adopters," but raised significant "concerns focus[ed] on the welfare of the animal after they are adopted." The BLM official further noted that the agency could see "a surge in compliance issues with AIP animals as a result of people only seeing the initial cash payment and not thinking about the lifetime costs associated with owning a horse and the adoption of animals to people who have no business owning a horse!"

83. Because it was entirely foreseeable that offering payments of \$1,000 per animal could attract individuals who are more interested in cash payments than the welfare of adopted animals, Plaintiffs would have raised this concern had BLM provided any opportunity for public input prior to establishing the AIP. Likewise, Plaintiffs would have raised the concern that BLM was unreasonably departing from its prior policies, without any explanation, by making it easier

¹¹ See BLM, *Cash Incentives Help Agency Adopt More Wild Horses and Burros*, <https://www.blm.gov/press-release/cash-incentives-help-agency-adopt-more-wild-horses-and-burros>

¹² See BLM, *ICYMI: BLM's Adoption Incentive Program A Success At the One Year Mark As Agency Takes Steps to Address Wild Horse and Burro Overpopulation*, <https://www.blm.gov/press-release/BLM-Adoption-Incentive-Program-a-Success-at-the-One-Year-Mark-as-Agency-Takes-Steps-to-Address-Wild-Horse-and-Burro-Overpopulation>

to get paid to adopt a wild horse or burro than to pay to purchase one. However, BLM's failure to provide any opportunity for public comment deprived Plaintiffs of any opportunity to raise any such concerns.

C. Plaintiffs' Investigation of the AIP Revealed the Harm BLM Has Caused to Wild Horses and Burros

84. Because the AIP was created in January 2019, and because adopters receive \$500 upon the date of adoption and another \$500 within 60 days of the transfer of title one year later, the first set of final AIP payments was issued in or around March 2020.

85. Plaintiffs include equine rescue groups whose missions are to prevent wild horses and burros from being slaughtered or subjected to inhumane treatment. To accomplish that mission, these rescue groups monitor online advertisements by slaughter auctions and attend auctions at which unhandled horses and burros that have been removed from federal public lands are sold to kill buyers, who are private purchasers who then resell such animals to slaughterhouses in Canada or Mexico (where, unlike in the United States, slaughter of horses and burros for conversion into commercial products is permitted). Some of these slaughter auctions are self-described "kill pens." If possible, Plaintiffs purchase wild horses and burros at such auctions to prevent them from being slaughtered and instead, at the rescue organizations' expense, house the wild horses and burros humanely on the organizations' lands.

86. Beginning in the summer of 2020, shortly after individuals who adopted the first wild horses or burros available through the AIP were receiving their second cash payment from BLM, the rescue groups began witnessing an increase in the number of horses and burros bearing BLM freeze marks—i.e., wild horses and burros that had been removed from public lands—at slaughter auctions catering to kill buyers. In total, Plaintiffs have documented at least 240

instances in which wild horses or burros—i.e., animals bearing BLM freeze-marks—appeared in slaughter auctions’ online promotions and/or in the auctions themselves.

87. To accomplish their mission of preventing wild horses from being slaughtered or subjected to inhumane treatment, which is a common outcome for animals sold at slaughter auctions, Plaintiffs were forced to investigate the cause of the sudden influx of wild horses and burros at such slaughter auctions. As part of that investigation, and consistent with their missions and to the extent they were able, the Plaintiff rescue organizations purchased horses and burros bearing BLM freeze marks to prevent them from being slaughtered and/or treated inhumanely. Such a purchase is the only way to ensure that the animals will not be slaughtered and to obtain the title to the animals, which is essential to verifying whether the animals were adopted through the AIP. Hence Plaintiffs were forced to expend substantial resources purchasing wild horses and burros at auction, which is the only way to obtain the title to the animals, and conducting further investigations based on the information on the animals’ titles and information obtained through numerous FOIA requests to verify that wild horses and burros arriving at slaughter auctions were first adopted through the Program. Plaintiffs have successfully rescued 110 wild horses and burros from slaughter auctions, but know of at least 130 additional wild horses and burros that they were not able to rescue from such slaughter auctions. The likely fate of those 130 additional wild horses and burros is slaughter.

88. When the Plaintiff rescue organizations purchased horses and burros bearing BLM freeze marks, they generally received the title to such animals. Those titles revealed that the animals were in fact sold at auction within 1 to 4 months of their adopters initially receiving title to the animals, a time frame which is consistent with the timing of AIP participants receiving their second \$500 payment under the Program. Likewise, the titles revealed that

multiple individuals within families had simultaneously adopted the maximum number of wild horses or burros and then sent them to a slaughter auction within a few months of receiving title to those animals, indicating that families were adopting as many wild horses and burros as possible, pocketing the AIP payments, and then quickly flipping these animals for sale at slaughter auctions, which netted sale funds in addition to the \$1,000 payments supplied by BLM.¹³

89. Many of the horses and burros that Plaintiffs rescued from slaughter auctions were still ungentled animals with no evidence that they had been handled or trained to any significant degree by their adopters. In fact, at least one of these animals still bore the tags that BLM had placed around their neck prior to their adoption more than a year previously. These observations indicate that adopters merely held these animals for a year without any serious effort to care for the animals, took payment through the AIP, then sold the animals at auction as quickly as possible.

90. To confirm that the AIP caused an influx of wild horses and burros at auctions catering to the slaughter industry, Plaintiffs were forced to expend significant resources to obtain information about BLM's administration of the Program. These expenditures included spending tens of thousands of dollars, either in direct purchases or in grants to rescue groups, to rescue horses and burros from slaughter and obtain their titles to verify whether they went through the AIP, devoting significant staff time to submitting numerous FOIA requests to various BLM offices around the country (many of which BLM has still not fulfilled), reviewing records obtained through FOIA, and comparing them to titles received through rescue, as well as

¹³ One adopter described this process in an interview in the *New York Times* by stating that "it's economics," because "I can make about \$800 putting a calf on my land for a year," but "[w]ith the horses, I made \$1,000, then turned around and sold them for \$500."

devoting significant staff time to communications with BLM officials in pursuit of information about the administration of the AIP. For example, Plaintiffs utilized FOIA requests to obtain records of compliance inspections conducted by BLM under the AIP. By comparing information in the AIP compliance inspections obtained through FOIA against the information in titles of horses and burros, Plaintiffs were able to verify that numerous horses appearing at auctions catering to the slaughter industry were, in fact, wild horses and burros that BLM had removed from the range and then adopted out through the AIP. These included animals being sold at self-described “kill pens.”

91. Plaintiffs have been forced to continually expend resources seeking further information from BLM about its administration of the AIP in order to document and educate the public regarding how the Program is causing wild horses and burros to be sold at auctions that regularly lead to slaughter. For example, Plaintiff AWHC has submitted at least thirty FOIA requests for information about BLM’s administration of the AIP, many of which remain unfulfilled as the agency has not yet released all responsive information. Likewise, Plaintiff AWHC has been forced to expend hundreds of hours of staff time reviewing information obtained through FOIA, following up on overdue FOIA requests, and communicating with BLM in an effort to obtain information about the administration of the AIP and the fates of the animals adopted through this Program. Moreover, because BLM has failed to respond to some of Plaintiff AWHC’s FOIA requests for over seven months, Plaintiff AWHC has also been forced to divert staff time and resources to filing a FOIA lawsuit in order to compel the agency to produce information regarding its implementation of the AIP. *See American Wild Horse Campaign v. Bureau of Land Management*, No. 1:21-cv-01746 (D.D.C. filed June 30, 2021).

92. To counteract the harms from the AIP to their missions of preventing the slaughter and inhumane treatment of wild horses, Plaintiffs have been forced to devote significant resources to the preparation of an investigative report and subsequent addenda to that report documenting how the AIP has had the practical consequence of leading wild horses and burros to be sold for slaughter and otherwise treated inhumanely. Plaintiffs' report is titled *BLM's Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros*. Plaintiffs have used this report and its addenda to further their mission of preventing the slaughter and/or inhumane treatment of wild horses by delivering proof to BLM and DOI that the AIP has in numerous instances led to the abuse and/or neglect of wild horses and burros and has led to these animals being sold at auctions that cater to the slaughter industry. Likewise, Plaintiffs have used the report and addenda, and the information contained therein, to educate the public about the AIP's disastrous outcomes for wild horses and burros, such as through media outreach and direct engagement with Plaintiffs' followers, agency staff, and members of Congress. Plaintiffs' investigative work is ongoing; Plaintiffs continue to be forced to expend resources rescuing horses, obtaining and reviewing records through FOIA and other avenues, and compiling this evidence in further addenda to their original report.

93. On May 15, 2021, the *New York Times* published an article, "Wild Horses adopted under a federal program are going to slaughter," which was based in large part on information about the AIP that Plaintiffs had obtained through the investigations described above, as well as on the *New York Times*' own research. The article documented how the AIP's results were "that instead of going to good homes, truckloads of horses were dumped at slaughter auctions as soon as their adopters got the federal money." The *New York Times*' article includes interviews with an individual who candidly admitted that he and his family adopted wild horses

through the AIP in order to accept the payments and then sell the horses despite the fact that “they would probably go to kill buyers.” The *New York Times* quoted that individual as describing how BLM officials told him that his conduct was lawful because “Once you get title, they told me, there is no limitation — you can do whatever you want with them.”

94. On May 17, 2021, Plaintiff AWHC sent a letter to the Secretary of Interior with an urgent request for the Department of Interior to suspend and investigate the AIP. AWHC has not received any response to this letter.

95. On May 19, 2021, Plaintiff AWHC sent another letter to the Secretary of Interior and the Acting Director of BLM, attaching the report, *BLM’s Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros*, noting that the “report and the *New York Times* article provide compelling evidence that the AIP is defrauding the American public” and “resulting in abuse, neglect and slaughter in contravention of a Congressional ban on the practice.” Plaintiff AWHC thus requested “that the AIP be suspended” and requested “an immediate inquiry into the issues raised in [the] report.” AWHC has not received any response to this letter.

96. On May 27, 2021, Senator Dianne Feinstein sent a letter to the Secretary of the Interior asking that the agency “immediately suspend” the AIP because it “has provided federal incentive payments to adopters who abandoned these animals at slaughter auctions.” Senator Feinstein further noted that “BLM has failed to use all appropriate tools” to “prevent adopters who previously sold their wild horses to slaughter auctions from adopting again.” Noting that BLM “[s]ubsidizing the slaughter of wild horses and burros with taxpayer dollars violates Congressional intent,” Senator Feinstein urged BLM to “immediately halt the [AIP] and ensure a

proper investigation is conducted to prevent future wild horses and burros from suffering abuse or slaughter.”

97. On June 2, 2021, a bipartisan coalition of 31 members of Congress wrote to the Secretary of the Interior to “urge [the AIP’s] immediate suspension” until “a full and transparent investigation has been conducted into the fate of the horses and burros that have passed through this program.” The members of Congress noted that under the AIP “adopted horses and burros still end up in slaughterhouses” despite the meager protections that BLM included in the AIP to prevent such outcomes. Accordingly, the members of Congress urged the Department of Interior to “immediately suspend the [AIP] to conduct a full and transparent investigation into the prevalence of federally protected wild horses and burros being sent to slaughter once placed in private ownership.” Likewise, the members of Congress urged the Department “to strengthen existing protections against slaughter and clarify the Department’s authority to enforce violations through penalties and other measures.”

98. On June 3, 2021, counsel for Plaintiff AWHC submitted to the Secretary of Interior and the Deputy Director of BLM a formal petition, pursuant to 5 U.S.C. §§ 553(e), 555(e), notifying the agencies of significant violations of federal law associated with BLM’s creation and implementation of the AIP and requesting that the agencies either withdraw the AIP in its entirety or, if the agencies insist on retaining the AIP in some form, to impose a moratorium on any further payments under the AIP while the agencies engage in a formal notice-and-comment rulemaking consistent with the APA and other federal laws. Plaintiff AWHC’s petition included a copy of AWHC’s report and addenda on the AIP’s terrible outcomes for wild horses and burros. In light of the fact that Plaintiffs’ investigations continue to reveal wild horses and burros arriving at auctions catering to the slaughter industry, Plaintiff AWHC’s petition

noted that the situation required the agencies' urgent attention and respectfully requested a response by June 30, 2021. A copy of AWHC's petition, along with Plaintiffs' report, and a second addendum prepared since the petition's submission, are attached to this Complaint.

99. Plaintiffs' report and addenda document 110 known instances in which wild horses and burros have been rescued from slaughter auctions. Plaintiffs have separately documented another 130 wild horses and burros that have appeared at slaughter auctions but which Plaintiffs were not able to rescue.

100. Plaintiffs' report also documents how in several instances, members of the same family simultaneously adopted several horses at once and then simultaneously sold them at such auctions. For example, the report documents how a family of four adopted 13 horses, received title to the animals in June and July of 2020, and then delivered the horses to auction in early October 2020—just after the 60-day period for receiving the second AIP payment elapsed. In total, this family could have received \$13,000 in federal taxpayer dollars in addition to whatever proceeds they obtained by selling these federally protected animals at a slaughter auction.

101. Plaintiffs' report further documents how individuals who should have been disqualified from owning a wild horse or burro were nonetheless able to receive federal taxpayer dollars to adopt horses through the AIP. For example, the report describes how an individual who was previously arrested for "kidnapping and assault in a horse deal gone wrong" was nonetheless able to receive federal taxpayer dollars to adopt a wild horse, which the individual then sent to auction at a self-described "kill pen." Likewise, the report describes how individuals whom BLM identified as no longer eligible to participate in the AIP due to returning two wild horses to BLM in a single year were nonetheless able to receive title to three wild horses—and

thus could potentially receive up to \$3,000 in federal taxpayer funds for the adoption of those animals—which they then sent to a slaughter auction.

102. Of the 110 wild horses or burros that Plaintiffs' report documents identifying at auctions catering to the slaughter industry, Plaintiffs have obtained information through FOIA that proves that 49 animals were adopted through the AIP. Plaintiffs have numerous FOIA requests still pending for information that will reveal whether the remaining identified animals were adopted through the Program as well. Even if all 110 horses described in the report (and its addenda) were AIP horses, this is likely a fraction of the true number of AIP horses that have been placed for sale at kill pens or otherwise sold for slaughter. For Plaintiffs to definitively identify horses and burros as having been adopted through the AIP, Plaintiffs must rescue the animal from an auction, obtain its title, and compare that title against records of the AIP's implementation obtained through FOIA.

103. Plaintiffs' report also documents instances in which wild horses and burros adopted through the AIP have suffered extreme neglect and abuse. For example, the report documents a wild mare that sustained a neck injury after adoption that was so severe as to prevent the horse from standing; the report cites a BLM record, obtained through FOIA, that notes that one mare had an injury so severe that she had to be "put [] out of her misery." The report also documents instances in which wild horses or burros were provided with insufficient food, water, or shelter, or which had not received even basic veterinary care, including one horse in poor body condition with numerous sores on its body, and another horse that was reported to be housed in a dog pen.

104. On June 17, 2021, BLM's Washington Office sent counsel for Plaintiffs an email in response to AWHC's June 3, 2021 petition. In that response, BLM neither stated that it would

undertake any of the actions requested in AWHC's petition nor responded to any of the copious evidence that AWHC had provided regarding the legal violations associated with the creation and implementation of the AIP or regarding the AIP's adverse practical outcomes for wild horses and burros. Instead, BLM disavowed any responsibility for the fates of wild horses and burros once they pass into private ownership. For example, despite clear evidence that wild horses and burros adopted through the AIP were being sold at auctions that cater to the slaughter industry, BLM stated that "BLM does not and cannot assume that any or every titled or sold wild horse or burro that arrives at a sale barn is destined for slaughter." Likewise, disavowing any accountability for the fates of wild horses and burros adopted through the Program, BLM stated that "BLM does not have the means or legal authority to track or direct the disposition of wild horses or burros once they pass into private ownership (i.e. once an animal is sold by BLM or an adopter receives title)."

105. On June 22, 2021, counsel for Plaintiffs sent a response to BLM's June 17 email, explaining that AWHC construed BLM's June 17 email as a denial of AWHC's June 3 petition, because BLM and DOI did not agree to take any of the action that AWHC's petition requested. Plaintiff AWHC requested a clarification of BLM's position by no later than June 30, 2021.

106. On June 24, 2021, David Jenkins, BLM's Assistant Director for Resources and Planning, sent counsel for Plaintiffs an email stating that "BLM's Wild Horse and Burro Program appears to have mistakenly sent you an email on June 17, 2021" in response to AWHC's petition and stating that BLM's "email should not be construed as formal response to [AWHC's] prior correspondence." Mr. Jenkins stated that the Department of Interior and BLM "continue to review" AWHC's petition and "expect to send [] a response in writing soon."

107. On June 30, 2021, BLM's Deputy Director announced to the agency's Wild Horse and Burro Advisory Board that BLM is conducting an internal investigation into the AIP. Additionally, the Deputy Director suggested that BLM could add measures to better protect wild horses and burros from slaughter. However, the Deputy Director did not indicate that BLM would impose any moratorium on adoptions through the AIP, even to individuals who Plaintiffs' report proves have sold adopted horses at slaughter auctions. Nor did the Deputy Director provide any timeline for the completion of the agency's investigation or any details about what additional measures, if any, the agency might impose to prevent wild horses and burros from being slaughtered. As such, the Deputy Director's announcement, while perhaps a first step toward better protecting wild horses and burros, does not cure any of the harms to Plaintiffs' interests from the AIP described in this Complaint.

PLAINTIFFS' CLAIMS FOR RELIEF

I. CLAIMS UNDER THE WHA AND APA

108. By issuing IM 2019-025, which is a "statement of general or particular applicability and future effect designed to implement, interpret, or prescribe" BLM's policy for administering adoption of wild horses and burros under the WHA and which for that reason constitutes a "rule" within the meaning of the APA, without first providing notice or an opportunity for public comment, Defendants acted in a manner that is unlawful, arbitrary and capricious, and without observance of procedure required by law, in violation of the APA.

109. By issuing IM 2019-025, which is an "approval or prescription for the future of rates . . . financial structures . . . prices . . . services or allowances" associated with the adoption of wild horses and burros protected under the WHA and which for that reason constitutes a "rule" within the meaning of the APA, without first providing public notice or an opportunity for

public comment, Defendants acted in a manner that is unlawful, arbitrary and capricious, and without observance of procedure required by law, in violation of the APA.

110. By issuing IM 2019-025 without considering how the AIP would expend federal funds in a manner that would foreseeably lead to wild horses and burros being sold for slaughter, which is a practice that Congress has explicitly and repeatedly forbidden, Defendants entirely failed to consider an important aspect of the problem before the agencies and thus acted in a manner that is arbitrary and capricious and unlawful within the meaning of the APA.

111. By issuing IM 2019-025, which establishes significantly laxer requirements for disqualifying individuals whom BLM pays to adopt wild horses and burros than the agency previously established for those who purchase wild horses and burros, without any explanation for the deviation from prior policy or any announcement of any good reasons for the more relaxed and less protective policies in the AIP, Defendants engaged in an unexplained reversal of position that is arbitrary and capricious and unlawful under the APA.

112. By significantly modifying BLM's adoption policies—and doing so in a manner that is fundamentally worse for wild horses—without acknowledging that change or its legal or practical import (let alone supplying a coherent rationale for it), Defendants acted arbitrary, capriciously, and not in accordance with law under the APA.

113. By expending federal funds through a Program that would foreseeably result in wild horses being slaughtered in a manner expressly prohibited by Congress, BLM has circumvented the congressional intent behind the express statutory prohibition against using federal funds in any manner that leads to wild horse slaughter, and thus has violated the WHA, federal appropriations legislation that funds WHA activities, and the APA.

114. Defendants' actions harm Plaintiffs in the manner described in ¶¶ 11–29, 86–92.

II. CLAIMS UNDER NEPA

115. By issuing IM 2019-025 without preparing any analysis of the AIP's environmental or economic impacts, including impacts on wild horses and burros adopted through the Program and impacts associated with on-range agency activities enabled by the cost-savings that BLM anticipates the AIP will yield, Defendants violated NEPA and its implementing regulations.

116. By issuing IM-2019-025 without considering viable (and far less damaging) alternatives to the AIP—including, but not limited to, continuing the pre-existing policy of adopting horses without providing any financial incentive, or creating a modified adoption program with far stricter requirements for ensuring the eligibility of adopters and then imposing mandatory oversight and enforcement mechanisms for adopters that violate the terms of the program—BLM acted arbitrary and capriciously, and violated NEPA and its implementing regulations.

117. Defendants' actions harm Plaintiffs in the manner described in ¶¶ 11–29, 86–92.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

1. Declaring that Defendants' creation and implementation of the AIP through the issuance and implementation of IM 2019-025 is arbitrary and capricious and in ongoing violation of the APA;
2. Declaring that Defendants' creation and implementation of the AIP through the issuance of IM 2019-025 violated the WHA and NEPA;
3. Setting aside IM 2019-025;
4. Enjoining Defendants from taking any further action to implement the AIP;

5. Enjoining Defendants from transferring wild horses and burros under the AIP to individuals who intend to transfer them to kill pens as explained above;
6. Awarding Plaintiffs their reasonable attorneys' fees and costs in this action; and
7. Providing any other relief that the Court deems proper.

Respectfully submitted,

/s/ William N. Lawton
William N. Lawton
D.C. Bar No. 1046604

/s/ William S. Eubanks
William S. Eubanks II
D.C. Bar No. 987036

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Counsel for Plaintiff AWHC

EXHIBIT 1:

**Plaintiffs' Petition to DOI and BLM,
Plaintiffs' Report on AIP and Addenda**

Eubanks & Associates, PLLC

LAW FOR THE PUBLIC INTEREST

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June 3, 2021

VIA E-MAIL

Deb Haaland, Secretary
United States Department of Interior
1849 C Street N.W.
Washington, D.C. 20240
doiexecsec@ios.doi.gov

Nada Culver, Deputy Director
United States Bureau of Land Management
760 Horizon Drive
Grand Junction, CO 81506
Nculver@blm.gov

Re: The Bureau of Land Management’s Unlawful Adoption Incentive Program

Dear Secretary Haaland and Deputy Director Culver:

On behalf of our client the American Wild Horse Campaign (“AWHC”), we are writing to inform the United States Department of Interior (“DOI”) and the United States Bureau of Land Management (“BLM”) of significant violations of federal law associated with BLM’s creation and implementation of its wild horse and burro Adoption Incentive Program (“AIP”). This letter also serves as a formal petition, pursuant to 5 U.S.C. § 553(e), to either withdraw the AIP in its entirety or, if the agency insists on retaining the AIP in some form, to impose a moratorium on any further payments under the AIP while the agencies engage in formal notice-and-comment rulemaking to provide interested parties with an opportunity for input and design a program that comports with federal law. **Pursuant to 5 U.S.C. § 555(e), AWHC respectfully requests a timely response to this petition; given the urgency involved, we request an response no later than June 30, 2021.**

As described in AWHC’s attached report, the AIP has led to, and if allowed to persist will continue to lead to, extremely bad outcomes for federally protected wild horses that are fundamentally inconsistent with Congress’s goals in enacting the Wild Free-Roaming Horses and Burros Act (“WHA”), 16 U.S.C. §§ 1331–1340. Indeed, despite the fact that Congress has repeatedly and specifically forbidden DOI and BLM from expending federal funds for the slaughter of healthy wild horses, the AIP has exactly that effect. Specifically, the AIP provides nominal adopters of wild horses with payments—federal expenditures coming directly from BLM’s budget—of up to \$1,000 per wild horse; once these nominal adopters receive title to the animal, they are then free to sell it for slaughter. In this manner, the AIP effectuates an ongoing end-run around Congress’s prohibition on expending federal funds to slaughter wild horses. The practical outcomes for wild horses are profoundly inhumane and contrary to Congress’s goals of

protecting these animals. Additionally, as detailed below, the creation of the AIP violated federal law in several critical ways. Accordingly, we respectfully request, and formally petition, DOI and BLM to end this unlawful program, or at minimum to immediately suspend the AIP until and unless DOI and BLM conduct and complete a lawful decision-making process to authorize the AIP.

BACKGROUND

I. The Wild Free-Roaming Horses and Burros Act

Finding that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West,” and that “they contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress enacted the WHA in 1971 to ensure that “wild free-roaming horses and burros shall be protected from capture, branding, harassment, [and] death,” and that they are “considered in the area where presently found, as an integral part of the natural system of the public lands.” 16 U.S.C. § 1331.

The WHA mandates that the Secretary of the Interior “shall manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” *Id.* § 1333(a). To that end, the WHA further directs the Secretary to “maintain a current inventory” of wild horses and burros and to use that inventory to “determine appropriate management levels” in various areas of public lands, and “make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals.” *Id.* § 1333(b)(1). The statute defines “excess animals” as those “which have been removed” from public lands or “which must be removed” to preserve and maintain a thriving natural ecological balance. *Id.* § 1332. The WHA further provides discretion for BLM to determine “whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options” *Id.* § 1333(b)(1).

Where BLM determines both that “an overpopulation exists and that action is necessary to remove excess animals” the WHA provides that the agency “shall immediately remove excess animals from the range so as to achieve appropriate management levels.” *Id.* § 1333(b)(2). As the Tenth Circuit Court of Appeals has explained, the plain text of the WHA “quite clearly affords BLM with discretion to decide whether or not to remove excess animals.” *Wyoming v. U.S. Dep’t of Interior*, 839 F.3d 938, 944 (10th Cir. 2016).

If BLM decides to remove wild horses, the WHA authorizes the BLM to allow the public to adopt wild horses “for private maintenance and care,” provided that the agency “determines an adoption demand exists by qualified individuals” and that certain other conditions are met. 16 U.S.C. § 1333(b)(2)(B). In particular, the agency must determine that any adopter “can assure humane treatment and care (including proper transportation, feeding, and handling).” *Id.* Likewise, the statute restricts any individual from adopting more than four animals in a year “unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party.”

Id. In this manner, Congress sought to accommodate the public’s interest in adopting wild horses while also ensuring that any horses so adopted would be cared for humanely.

Although the WHA contemplates that unadoptable wild horses may be “destroyed in the most humane and cost efficient manner possible,” *id.* § 1333(b)(2)(C), Congress has routinely and specifically forbidden DOI and BLM from using federal funds for the slaughter of healthy, unadopted wild horses. *See, e.g., In Defense of Animals v. U.S. Dep’t of Interior*, 751 F.3d 1054, 1059 n.3 (9th Cir. 2014) (noting that “Congress has never appropriated funds for extermination, as opposed to ongoing maintenance, of excess horses even if not adopted”) (citing Pub.L. 111-88, 123 Stat. 2904, 2907 (2009)). Most recently, the Consolidated Appropriations Act, 2021, specifically provided that federal funds “shall not be available for . . . the destruction of any healthy, unadopted, and wild horse or burro” or “the sale of a wild horse or burro that results in the destruction of the wild horse or burro for processing into a commercial product.” Pub. L. 116-260 § 419(e).

II. The National Environmental Policy Act

Congress enacted the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4347, to ensure that federal agencies fully consider the environmental impacts of their actions before taking them, consider alternatives to proposed actions that may have less adverse environmental impacts, and make information publicly available with sufficient detail to promote fully informed public participation in agency decision-making.

To meet these objectives, all agencies must prepare an Environmental Impact Statement (“EIS”) for any major federal action that may “significantly affect[]” the environment. 42 U.S.C. § 4332(C). The Council on Environmental Quality (“CEQ”)—an agency within the Executive Office of the President—has promulgated regulations implementing NEPA that are “binding on all Federal agencies.” 40 C.F.R. § 1500.3. These regulations provide that in determining whether an EIS is required with respect to a particular proposed action, an agency must prepare an Environmental Assessment (“EA”) that analyzes the environmental impacts of the proposed action as well as alternatives. *Id.* §§ 1501.4(c), 1509.9.¹

In determining whether an EIS is required, the agency must consider whether the proposed action may have a “significant” effect on the human environment. 40 C.F.R. § 1508.27. The “significance” determination is based on factors such as the degree to which the effects on the environment “are likely to be highly controversial” or “are highly uncertain”; the degree to which the action “may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration,” or “may cause loss or destruction of significant scientific, cultural, or historical resources”; and whether the action “threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” *Id.*

¹ CEQ amended its regulations in 2020. *See* 85 Fed. Reg. 43,304 (July 16, 2020). However, because BLM created the AIP before that date, the new regulations do not apply here.

A significant effect, requiring an EIS, may exist “even if the Federal agency believes that on balance the effect will be beneficial.” 40 C.F.R. § 1508.27(b)(1). The existence of any one of the CEQ significance criteria usually requires the preparation of an EIS.

If an agency decides that an EIS is not required, it issues a Finding of No Significant Impact (“FONSI”), which must present the reasons why the agency has determined its proposed action “will not have a significant impact” on the environment.” 40 C.F.R. § 1508.13.

NEPA requires agencies to consider a range of reasonable alternatives to its proposed action. *See* 40 C.F.R. § 1502.14. An agency may not artificially constrain its analysis of reasonable alternatives by framing its purpose and need statement for a proposed action in an excessively narrow manner.

III. The Administrative Procedure Act

The Administrative Procedure Act (“APA”) mandates that courts “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . in excess of statutory jurisdiction, authority or limitations,” or adopted “without observance of procedure required by law.” 5 U.S.C. § 706(2). Agency action is arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The APA also provides the “basic procedural requirement” that “an agency must give adequate reasons for its decisions.” *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2125 (2016). “Agencies are free to change their existing policies so long as they provide a reasoned explanation for the change.” *Id.* In doing so, “the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy.” *Id.* at 2126. Likewise, agencies “must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Id.* In such circumstances, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* For these reasons, “an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Id.*

The APA also mandates that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e). If an agency denies such a petition, “[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding”; “the notice shall be accompanied by a brief statement of the grounds for denial.” *Id.* § 555(e). Courts will “set aside an agency’s decision to deny a petition for rulemaking only if it is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Homeland Sec.*, 653 F.3d 1, 5 (D.C. Cir. 2011). “In other

words, [courts] look to see whether the agency employed reasoned decisionmaking in rejecting the petition.” *Defenders of Wildlife v. Gutierrez*, 532 F.3d 913, 919 (D.C. Cir. 2008).

IV. The Adoption Incentive Program

Under the Trump Administration, BLM implemented the AIP in January 2019 through Instruction Memorandum No. 2019-025 (“IM 2019-025”).² The AIP aims “to increase the number of adoptions of untrained wild horses and burros placed into private care through offering financial incentives.” IM 2019-025 at 1. “The AIP offers a financial incentive in the amount of \$500 within 60 days from the adoption date [of a wild horse or burro] and an additional \$500 within 60 days from the title date” *Id.* In adopting the AIP, BLM stated that “[i]ncreasing the placement of animals into private care is a critical priority of the [wild horse and burro] program and of utmost interest to the BLM due to the costs associated with caring for unadopted animals in BLM managed or contracted corrals and pastures.” *Id.* BLM noted that because the number of wild horses and burros the agency removes from public lands significantly exceeds the rate at which the public adopts wild horses and burros, “the feed and care of the animals removed from the range continue to consume over 50 percent of the WHB program’s budget.” *Id.* at 3. BLM further explained that “this policy will reduce off-range holding costs and allow those savings to support critical on-range operations,” and that “[i]ncreasing adoptions reduces holding costs, creating a cost savings that allows funding to be dedicated to other aspects of managing wild horses and burros.” *Id.*

Although the AIP nominally allows “each adopter participating in AIP to adopt and maintain a maximum of four untitled animals annually,” the program actually allows individuals to adopt more than four horses in a year so long as they have “up to a maximum of four untitled animals at any one time.” *Id.* at 2. As an adopted gains title to an animal, that adopter becomes eligible to adopt another animal through the AIP.

Although the AIP requires adopters to sign an “Adoption Incentive Agreement,” *id.* at 1, which requires adopters to “certify that [they] will provide humane care for any animals [they] adopt and will not sell or transfer ownership of them to any person or organization that intends to resell, trade, or give away any such animals for slaughter or processing into commercial products,” Form 4710-25, AWHC’s attached report documents how BLM has in fact failed to adequately ensure the humane treatment of adopted animals or prevent their sale for slaughter. Moreover, the AIP’s plain language contains troubling indications that BLM views any ongoing oversight of adopted horses to be discretionary rather than mandatory. For example, it states that “BLM employees or other BLM approved individuals *should* conduct compliance inspections on adopted animals,” and that “BLM *should* remove eligibility to participate in the AIP from any adopter that relinquishes two or more animals within a 12 month period or does not adhere to the terms and conditions of the Adoption Incentive Agreement.” *Id.* at 2 (emphases added). Likewise, the AIP’s instruction memorandum states that “BLM employees *should* issue an Adoption Incentive Ineligibility Letter . . . to adopters who are no longer eligible to participate in the AIP.” *Id.* (emphasis added). By using the discretionary word “should” instead of any mandatory word such as “shall” or “must,” BLM fails to provide the public with any guarantee

² IM 2019-025 is available at <https://www.blm.gov/policy/im-2019-025>

that the agency will in fact ensure humane outcomes for wild horses. Likewise, the AIP fails to provide any meaningful guidelines for how the agency may attempt to verify the humane treatment of adopted horses; for example, there is no mandatory timeline for “compliance inspections” and no description of how the agency will determine whether an adopter passes or fails a compliance inspection.

The AIP has roughly doubled the rate at which BLM adopts wild horses. In a press release dated May 14, 2020, the BLM stated that there had been “an increase of 91%” in the number of adoptions “[i]n the first 12 months of the AIP.” BLM further noted that in the AIP’s first year (2019 to 2020), the agency saw “substantial increases” in the number of first-time adopters, repeat adopters, and “multiple-animal adoptions.”³

However, as extensively documented in the attached report by AWHC, the AIP has in fact led to profoundly inhumane outcomes that are inconsistent with Congress’s objectives in enacting the WHA and its repeated prohibition on using any federal funds directly or indirectly for the slaughter of wild horses and burros. As AWHC’s report describes, AWHC and cooperating animal rescue organizations have discovered at least 180 BLM-branded wild horses and burros at livestock auctions that are known to, and in some instances principally aim to, sell horses for slaughter. As the report notes, the horses documented in that report constitute only a subset of all the horses that meet this fate, because AWHC and its partner organizations continue to find wild horses and burros at these auctions. The report further explains that “[m]any of these horses were young, unhandled animals, some with their BLM tags still around their necks more than a year after their adoption from BLM holding corrals, suggesting that adopters simply held the animals for a year without care in order to collect the \$1,000 incentive” and then sold the horses at auctions where slaughter is the most common outcome.

Troublingly, BLM has expressed the view, as documented in AWHC’s report, that so long as an adopter takes title to a wild horse before selling it for slaughter, no violation of the WHA or the adoption agreement has occurred, and the adopter *would still be eligible to receive AIP funds and continue to adopt wild horses*. AWHC’s report also cites a New York Times article that documents BLM telling adopters that once the horses are titled, “there is no limitation — you can do whatever you want with them.”⁴ Accordingly, BLM has made clear that its priority is simply having members of the public take title to wild horses, without regard to any practical consequences for the wild horses once they are titled. By taking this position, BLM has created a system in which federal expenditures in the form of AIP payments lead to the slaughter of federally protected wild horses—which Congress has specifically forbidden the agency from doing.

Nor is the sale of wild horses for slaughter the only type of inhumane outcome documented in AWHC’s report. To the contrary, AWHC’s report documented numerous

³ See BLM, *Cash Incentives Help Agency Adopt More Wild Horses and Burros*, <https://www.blm.gov/press-release/cash-incentives-help-agency-adopt-more-wild-horses-and-burros>

⁴ See <https://www.nytimes.com/2021/05/15/us/wild-horses-adoptions-slaughter.html>

instances in which BLM’s compliance inspections revealed that—far from providing good homes and humane care—adopters were neglecting or abusing the wild horses they had adopted. For example, AWHC’s report documents instances in which BLM’s inspector “put [a horse] out of her misery” due to “a severe neck injury,” as well as instances in which horses were neglected or housed in unsafe or otherwise inadequate facilities.

DISCUSSION

I. BLM Violated Federal Law When Creating the AIP

As discussed below, BLM’s creation of the AIP violated federal law in several critical ways, any one of which would be a sufficient basis for a reviewing court to find the program unlawful and set it aside.

A. The AIP is final agency action subject to judicial review

As an initial matter, it is beyond any reasonable dispute that IM 2019-025 constitutes “final agency action” within the meaning of the APA and is thus subject to judicial review. The APA authorizes judicial review of “final agency action for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Agency action is “final” where: (1) the action “mark[s] the consummation of the agency’s decision-making process,” and is not “merely tentative or interlocutory [in] nature”; and (2) “the action [is] one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

The AIP “marks the consummation of [BLM’s] decision-making process” with regard to the creation of this new program and is not “merely tentative or interlocutory.” *Id.* One clear signal of the finality of an agency action is the fact that “immediate compliance with its terms is expected.” *Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1094–95 (9th Cir. 2014). Here, BLM clearly stated that the IM creating the AIP “is effective immediately.” IM 2019-025 at 3. The fact that the IM was “effective immediately . . . lets the air out of any argument that [an IM] operates only as provisional guidance,” and is instead a powerful indication that the agency action was indeed final. *W. Watersheds Proj. v. Zinke*, 441 F. Supp. 3d 1042, 1062 (D. Idaho 2020). Likewise, IM 2019-025 uses no language that suggests an ongoing deliberative process with regard to the creation of the AIP. Moreover, confirming that the AIP constituted the consummation of BLM’s decision-making process, BLM has in fact followed the terms of IM 2019-025 in issuing numerous payments to adopters of wild horses. *See, e.g.*, BLM, *Cash Incentives Help Agency Adopt More Wild Horses and Burros*, <https://www.blm.gov/press-release/cash-incentives-help-agency-adopt-more-wild-horses-and-burros> (noting that BLM had in fact issued numerous payments under the AIP).

Likewise, IM 2019-025 determined “rights or obligations,” and “legal consequences” flowed from the IM. IM 2019-025 created a new right for members of the public to obtain up to \$1,000 of federal funds in association with the adoption of a wild horse or burro, and conversely imposed an obligation on BLM to confer payment of up to \$1,000 in federal funds. By providing a new right for individuals to obtain federal funding associated with the adoption of a wild horse

or burro, IM 2019-025 determined “rights,” and by obligating BLM to issue payments of federal funding to adopters of wild horses, the IM created both “obligations” for the agency and determined “legal consequences.” Accordingly, there can be no legitimate dispute that IM 2019-025 constitutes final agency action subject to judicial review. *See W. Watersheds Proj.*, 441 F. Supp. 3d at 1060–66 (concluding that another IM issued by BLM constituted final agency action).

B. BLM failed to undertake required notice-and-comment procedures when creating the AIP

“As a general matter, the APA requires an agency to use notice-and-comment procedures to make any “rule.” *Id.* at 1067. The APA broadly defines a “rule” to mean “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4). The definition of a “rule” specifically includes any “approval or prescription for the future of . . . rates . . . financial structures . . . prices . . . services . . . or . . . valuations, costs, or accounting, or practices bearing on” any agency practice. *Id.* “[T]he hallmark of a substantive agency rule is that it carries the force and effect of law via the creation of new rights or duties.” *W. Watersheds Proj.*, 441 F. Supp. 3d at 1067.

IM 2019-025 falls squarely within the definition of a “rule” under the APA. As described above, the IM establishes a set of procedures under which BLM must issue payments of federal funds to adopters of wild horses or burros who meet certain criteria. In doing so, the IM both establishes a new right for adopters of wild horses—namely the right to receive up to \$1,000 in federal funds per animal adopted—and establishes new obligations for BLM, including the obligation to issue payments to adopters, as well as certain (albeit minimal) obligations associated with oversight of the program. In doing so, the IM “prescribe[s] law or policy” within the definition of a “rule” under the APA.

Nonetheless, when BLM established IM 2019-025, it entirely failed to undertake any notice-and-comment procedures, in clear violation of the requirements of the APA. *See* 5 U.S.C. § 553(b)–(c). The agency’s failure to provide any notice or opportunity for comment was not only a flagrant violation of the APA in its own right, but also led the agency to ignore critical input that wild horse advocates such as AWHC would have provided. For example, had the agency followed proper procedures and allowed for public comment, wild horse advocates would have had the opportunity to explain how the AIP is vulnerable to exactly the kind of manipulation that AWHC has now documented in its attached report—namely, the abuse of the system by individuals who have no sincere interest in providing a good home to an adopted animal but are instead interested principally in the receipt of \$1,000 per wild horse plus the amount they can obtain by subsequently selling the animal—regardless of the fate it will eventually meet once sold. Likewise, wild horse advocates could have explained that common-sense safeguards could have at least mitigated the disastrous consequences that the AIP has wrought for wild horses, including for example terms restricting the payment of federal funds to any adopter that has previously sold an adopted animal in circumstances that will likely lead to the animal being slaughtered. However, because BLM unlawfully ignored its obligation to

provide the public with any notice or opportunity for comment, the public was deprived of any chance to provide valuable input on this new program.

C. BLM failed to consider highly relevant factors when creating the AIP

In part due to BLM's unlawful promulgation of IM 2019-025 without any notice or opportunity for public comment, BLM failed to consider numerous relevant factors when creating the AIP. For example, IM 2019-025 reflects no consideration of the obvious ways in which the system of federal payments that it established is easily prone to abuse—as AWHC has now documented has in fact occurred. Likewise, BLM failed to consider that a system that provides cash payment for those that adopt a wild horse would predictably attract—and has in fact attracted—individuals who are interested principally in a cash payment rather than the welfare of the animal being adopted. Notably, as AWHC's report documents, BLM's own officials raised such concerns after the AIP had been adopted, specifically warning that the program could attract “people only seeing the initial cash payment and not thinking about the lifetime costs associated with owning a horse” or lead to “the adoption of animals to people who have no business owning a horse.” However, despite the clear ways in which the AIP's design was prone to abuse, to our knowledge, BLM's sole contemplation of such issues occurred *after* the agency issued IM 2019-025—thus confirming that BLM failed to consider highly relevant issues before taking this action as the APA requires.

Critically, the agency failed to consider how the structure of the AIP creates a *de facto* pipeline that allows wild horses and burros to be sold for slaughter or conversion into commercial products in violation of Congress's explicit and repeated bans on this practice. Although the AIP requires adopters to sign a statement that they “will not sell or transfer ownership” of adopted animals “to any person or organization that intends to resell, trade, or give away such animals for slaughter or processing into commercial products,” Form 4710-25, AWHC's report documents how that statement has not served as a practical deterrent to wild horses in fact being sold for slaughter. Moreover, AWHC's report also documents how—as a matter of the AIP's design—the program is highly vulnerable to this practice. Because BLM has taken the position that even where an adopter has in fact sold a wild horse at auctions where the most common outcome is slaughter, no violation of the AIP has occurred so long as the adopter took title to the animal before sale, BLM's own design of the AIP reveals that it is highly vulnerable to abuse by those who merely hold an animal for the required period to obtain title, gain their \$1,000 payment, and then turn around to sell the animal for slaughter. Moreover, BLM's position as documented in AWHC's report is that even if BLM knows that an adopter has in fact sold adopted animals for slaughter, that individual remains eligible for future adoptions and future payments of federal funds. Accordingly, the AIP's design serves as a mechanism for BLM to expend federal funds in a way that results in wild horses being sold for slaughter—exactly the practice that Congress has routinely forbidden. BLM's failure to consider or guard against this abuse of federally protected wild horses in any rigorous manner renders BLM's adoption of the AIP arbitrary and capricious.

D. The AIP reflects an unexplained reversal of position

Although IM 2019-025 misleadingly states that “[n]othing in this IM is intended to effect a substantive regulatory change,” IM 2019-025 at 1, in fact the IM does exactly that. Prior to the IM’s issuance, nothing in BLM’s regulations entitled any adopter of a wild horse or burro to the receipt of any federal funds; however, in a “substantive regulatory change,” IM 2019-025 for the first time established a program that allows adopters of wild horses to receive up to \$1,000 per animal adopted. IM 2019-025 thus created a significant new federal payment that was never before contemplated in BLM’s regulations, and which served as a financial incentive to bring new adopters to the agency focused principally (if not exclusively) on obtaining federal funds and then offloading horses to the highest bidder.

Moreover, at the same time that it created a significant new federal benefit, IM 2019-025 also created a far laxer system for oversight of adoptions than the BLM previously applied to the sales of wild horses or burros. Since 2014, the sale of wild horses and burros has been governed by BLM IM 2014-132; under that prior IM, before selling a wild horse or burro BLM was obligated to “look up the purchasers name,” “determine if there are any documented notes” about the purchaser in BLM’s possession, and “[w]hen there is evidence that may indicate a purchaser does not intend to provide a good home . . . deny the sale and document the reasons for their decision.” IM 2014-132, att. 1 at 4. In sharp contrast, IM 2019-025 includes no such requirements. Indeed, as documented in AWHC’s report, under IM 2019-025, BLM has taken the position that even where the has actual proof that an adopter under the AIP has failed to provide humane care of an adopted animal or has sold the animal for slaughter, so long as such violations occurred after the adopter took title to the animal BLM believes no violation has occurred and that the adopter will continue to be eligible to adopt horses through the AIP.

BLM’s creation of a less stringent program for the payment of adoption incentives than it previously created for the sale of wild horses constitutes an unexplained change in the agency’s policy. To pass muster under the APA, an agency that changes its policy “must at least display awareness that it is changing position.” *Encino Motorcars*, 136 S.Ct. at 2126. However, IM 2019-025 does not even to acknowledge that BLM previously imposed a more stringent set of requirements on those who purchase wild horses than the agency now provides for those whom it pays to adopt wild horses. By failing to even “display awareness” that it was changing its policy regarding the circumstances under which it would allow individuals to take possession of wild horses, the agency violated the APA in a fundamental way.

Likewise, BLM also ran afoul of the APA’s requirement that an agency changing policy must “show that there are good reasons for the new policy.” *Id.* at 2126. Although BLM stressed that increasing adoptions could reduce “costs associated with caring for unadopted animals in BLM managed or contracted corrals and pastures,” IM 2019-025 at 1, the agency provided no reason why such cost-savings could not, or should not, be balanced against the need to ensure that adopters actually provide good homes for wild horses rather than merely taking federal payments and then promptly selling the horses for slaughter. Particularly in light of Congress’s repeated prohibitions on the use of federal funds for slaughter of healthy wild horses, BLM provided no good reason for the relaxation of its standards for who could be trusted to take

possession of a wild horse. In this manner as well, BLM's promulgation of IM 2019-025 was arbitrary and capricious.

E. The AIP required NEPA analysis

As described above, NEPA requires the preparation of an EIS for any major federal action with significant environmental effects and, where an agency is uncertain whether an action will have significant effects, requires the preparation of an EA. With particular relevance to BLM's creation of the Adoption Incentive *Program*, NEPA's implementing regulations define "Federal actions" broadly to include the "adoption of *programs*, such as a group of actions to implement a specific policy or plan." 40 C.F.R. § 1508.18(b)(3) (emphasis added).

The need for NEPA analysis of the AIP is clear. To begin with, the AIP itself clearly has environmental impacts because it has effects on wild horses themselves. Indeed, as AWHC's report documents, the impacts to wild horses have proven to be extremely severe. Moreover, BLM explicitly intended the AIP to free up federal funding for activities with environmental impacts. As BLM noted, the AIP's "[c]ost savings may be utilized for other management operations," including "allow[ing] those savings to support critical on-range operations." IM 2019-025 at 1, 3. Because the AIP was intended to allow additional "on-range operations," NEPA obligated BLM to consider the environmental impacts of such operations—as well as alternatives to the AIP that could potentially address the concerns raised by BLM in adopting the AIP without subjecting wild horses and burros to slaughter.

Nevertheless, BLM adopted IM 2019-025 without any environmental analysis whatsoever. Indeed, BLM did not even make any effort to discuss NEPA or even assert that the AIP was somehow exempt from NEPA's requirements (which it is not). The result is that BLM adopted this new program in clear violation of the nation's bedrock environmental law.

II. BLM Must End the AIP

For the reasons described above, BLM's creation of the AIP violated federal law in numerous important ways. In such circumstances, a reviewing court "shall hold unlawful and set aside" the AIP, 5 U.S.C. § 706(2), resulting in the vacatur of the program in its entirety. However, in light of the now amply documented ways in which the AIP has resulted in disastrous outcomes for federally protected wild horses that are entirely inconsistent with the congressional intent behind the WHA and behind Congress's routine prohibitions on BLM expending federal funds for the slaughter of healthy wild horses, AWHC hopes that it will not be necessary to have a federal court terminate the AIP. Instead, AWHC hopes that now that it has been confronted with the awful outcomes of the AIP, as well as having been apprised of the numerous ways in which the AIP's creation violated federal law, BLM will itself immediately withdraw IM 2019-025 and end this disastrous program.

III. BLM Must Immediately Investigate How the AIP Has Led to the Slaughter and/or Inhumane Treatment of Wild Horses

As AWHC's report has extensively documented, numerous wild horses and burros adopted through the AIP have encountered inhumane treatment while in the charge of their adopters, and/or have been quickly sold in auctions that cater to slaughter facilities shortly after their adopter taking title to the wild horses. However, to AWHC's knowledge, BLM has not conducted any comprehensive investigation of the outcomes from the AIP. Instead, BLM has touted the AIP's success while apparently turning a blind eye to the extremely dire consequences the AIP has caused for wild horses and burros. Consequently, AWHC has been forced to utilize Freedom of Information Act ("FOIA") requests to obtain information about BLM's administration of the AIP. Although BLM has not complied with FOIA's statutory mandate to promptly release information, the agency has provided some information that has extremely troubling implications for how the AIP is continuing to subject wild horses to inhumane outcomes. For example, AWHC has obtained records through FOIA that show that many individuals are adopting the 4-horse maximum at any given time. Moreover, these records also demonstrate that in many instances, several members of a single family simultaneously each adopt 4 horses at once, resulting in families that adopt 12, 16, or 20 horses at a time to the same location—all without any apparent effort by BLM to ensure that these individuals can care for so many horses and burros at once. AWHC believes that this pattern of behavior—adopting the maximum number of horses at once—constitutes a red flag that suggests that an adopter is more interested in a cash payment than in the welfare of the adopted animal, and that such adopters are highly likely to sell adopted animals as soon as they take title—without regard to whether the animals suffer slaughter as a consequence.

The time has come for BLM itself to meaningfully assess the outcomes from the AIP. To that end, AWHC respectfully requests, and formally petitions pursuant to 5 U.S.C. § 553(e), that BLM immediately undertake a thorough investigation of what fates have befallen wild horses and burros adopted through the AIP. In addition to verifying that adopters provide humane care of wild horses and burros prior to taking title, BLM must investigate what happens to the animals after the adopters take title. Those who have taken title to wild horses or burros through the AIP should prove that the animals have been treated humanely by showing the animals to agency inspectors and demonstrating what kind of care and treatment the adopted animals endure. If an adopter no longer has possession of an animal adopted through the AIP, BLM should make every effort to determine what has happened to that animal—and in particular should conduct a thorough investigation to determine whether these animals have been sold for slaughter or the conversion into commercial products. In that event, BLM should not allow an adopter that has sold an adopted animal in such a manner to adopt (or purchase) a wild horse in the future. Moreover, BLM should make the results of such an investigation open to the public.

Additionally, DOI and BLM should request that the U.S. Department of Justice and the Department of Interior's Office of Inspector General immediately commence investigations into the fates of wild horses adopted through the AIP, and to what extent the creation and implementation of the AIP has involved violations of federal law by the agencies or by adopters. Notably, the AIP is not the first time that DOI and BLM have allowed wild horses to be sent to slaughter, and ample precedent exists for inquiries by the Inspector General and/or the

Department of Justice. For example, in 2015, DOI’s Office of the Inspector General issued an *Investigative Report of Bureau of Land Management Wild Horse Buyer*, which found that “BLM did not follow current law while managing [wild horses and burros]” and instead sold 1,700 wild horses to a buyer that “wrongfully sent them to slaughter.”⁵ Although BLM’s response to that report was ostensible to “strengthen[] its policies for adoption and sale” of wild horses and to a high-level official’s approval for the sale or adoption of more than four wild horses to any individual, the AIP reflects a weakening of exactly this type of restriction, as described above. As another example, in 1997, the Los Angeles Times reported that a federal grand jury investigation showing that BLM “allowed the slaughter of hundreds of wild horses taken from federal lands, falsified records and tried to prevent investigators from uncovering the truth.”⁶

These prior instances in which independent federal investigations revealed negligent oversight of the adoption or sale of wild horses, or outright wrongdoing by BLM itself, which led to the slaughter of wild horses in contravention of congressional intent—as is currently occurring under the AIP—reinforces the need for a truly independent investigation into BLM’s creation and implementation of the AIP. If DOI and BLM wish to recover the public’s trust that the agencies are faithfully protecting wild horses, it is important that the agencies request—and do not obstruct—a truly independent investigation of the AIP. If DOI and BLM do not immediately request that the Department of Justice and DOI’s Office of Inspector General commence independent investigations of the AIP, AWHC will have no choice but to explore all options for ensuring that the public receives an accurate and unbiased account of the agencies’ creation and implementation of this program, such as requesting that Congress direct that such an independent investigation be conducted and made public.

IV. Any Ongoing Implementation of the Adoption Incentive Program Will Require Notice-and-Comment Rulemaking

As described above, because the AIP clearly meets the APA’s definition of a “rule,” prior to the implementation of any similar action—and prior to any ongoing implementation of the AIP in its current form—BLM must undertake notice-and-comment rulemaking. Accordingly, this letter serves as a formal petition under the APA, 5 U.S.C. § 553(e), for BLM to (1) withdraw IM 2019-025 and permanently end the AIP; and (2) to the extent the agency wishes to provide incentives for the adoption of wild horses in the future, to provide the public with clear notice of what specific incentives the agency intends to provide and allow a meaningful opportunity for public comment.

CONCLUSION

BLM’s creation of the Adoption Incentive Program violated federal law in numerous ways and continues to have extremely negative outcomes for federally protected wild horses. To come into compliance with federal law, BLM must withdraw IM 2019-025 and end the AIP immediately.

⁵ This report is available at https://www.doiioig.gov/sites/doiioig.gov/files/WildHorseBuyer_Public.pdf

⁶ See Martha Mendoza, Los Angeles Times, March 23, 1997, <https://www.latimes.com/archives/la-xpm-1997-03-23-mn-41176-story.html>

Although AWHC hopes that it will not be necessary to resort to litigation in order to bring BLM into compliance with its duty to protect wild horses, unless BLM immediately withdraws IM 2019-025 and terminates the AIP, AWHC will have no choice but to contemplate all options to bring the agency into compliance with federal law, including litigation.

Please provide a response to this letter no later than June 30, 2021. Thank you for your time and attention to this critically important matter.

Respectfully,

William N. Lawton
Senior Associate

William S. Eubanks II
Owner & Managing Attorney

Attachments



May 19, 2021

The Honorable Secretary Deb Haaland
U.S. Department of Interior
Email: doiexecsec@ios.doi.gov

CC: Laura Daniel Davis, Principal Deputy Assistant Secretary
U.S. Department of the Interior
Land and Minerals Management
Email: ldavis@blm.gov

Nada Culver, Acting Director
U.S. Bureau of Land Management
Email: nculver@blm.gov

Dear Secretary Haaland:

This letter and the enclosed report are sent to you as a follow up to my letter of May 17 regarding the urgent need to suspend and investigate the Bureau of Land Management Adoption Incentive Program.

The report entitled *The BLM's Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros*, is respectfully submitted on behalf of the American Wild Horse Campaign ("AWHC"), Skydog Sanctuary, Black Hills Wild Horse Sanctuary, and Evanescent Mustang Rescue.

The report adds detail and evidence to the [New York Times report](#) "Wild horses adopted under a federal program are going to slaughter" May 15, 2021 about the Bureau of Land Management ("BLM") Wild Horse and Burro Program's Adoption Incentive Program ("AIP"). The program pays individuals \$1,000 to adopt a wild, untamed horse or burro, and the article detailed numerous instances of adopters collecting the payments, then immediately sending the horses to slaughter auctions.

Our report provides additional evidence of this link to slaughter, as well as documentation indicating an additional problem: the AIP is incentivizing adopters who lack

skills, resources or interest to properly care for and manage wild, unhandled horses or burros, resulting in severe neglect and abuse.

This report and the *New York Times* article provide compelling evidence that the AIP is defrauding the American public and sending federally protected wild horses and burros, resulting in abuse, neglect and slaughter in contravention of a Congressional ban on the practice. As a result, we respectfully request that the AIP be suspended and an immediate inquiry into the issues raised in this report. Thank you for your consideration, and should you have any questions we can be available by conference call to discuss this matter.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Roy". The signature is written in black ink and is positioned to the left of the typed name.

Suzanne Roy
Executive Director
American Wild Horse Campaign



BLM's Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros

A Request for Termination & Investigation

**American Wild Horse Campaign
P.O. Box 1733
Davis, CA 95617**

&

Skydog Sanctuary

Evanescent Mustang Rescue

The Institute of Range and the American Mustang's Black Hills Wild Horse Sanctuary

In the last six months, the American Wild Horse Campaign (“AWHC”) and several rescue organizations have discovered more than 80 titled Bureau of Land Management (“BLM”) wild horses and burros, and over 100 BLM-branded wild horses and burros for whom titles could not be obtained and whose status is unknown, unidentifiable animals, at eight different livestock auctions known to sell horses to kill buyers across five different states. These ungentled, BLM wild horses and burros arrived at those auctions within 1–4 months after their adopters received title, a timeframe that strongly suggested their adopters opted into the agency’s Adoption Incentive Program (“AIP”) as explained below. Below is a summary of the AIP, followed by a detailed description of each case identified by our coalition.

Additional BLM wild horses and burros are continually found at auctions like the ones listed below; as a result, the 79 individual BLM wild horses and one BLM wild burro herein described represent an initial subset of the total cases. Information regarding additional cases can be provided upon request.

1. Organizations

A. American Wild Horse Campaign

AWHC is a national nonprofit organization dedicated to preserving the American wild horse in viable, free-roaming herds for generations to come, as part of our national heritage. Our grassroots efforts are supported by a coalition of over 60 historic preservation, conservation, horse advocacy, and animal welfare organizations. AWHC is working with rescue organizations to investigate the BLM’s AIP with the goal of bringing an end to government subsidized slaughter of our wild horses and burros.

B. Skydog Sanctuary

Skydog Sanctuary is a forever home for wild mustangs and burros who have ended up in horrible and dangerous situations—in kill pens, at auctions, and in unloving homes where they have often been starved and neglected. As a “boots on the ground” organization, Skydog Sanctuary closely monitors and documents mustangs landing in kill pens and auctions throughout the year, saving many of them and working with other organizations to coordinate rescues. Skydog Sanctuary also educates and raises awareness of these issues, and has worked hard on their “Pass the SAFE Act” initiative to eliminate kill pens once and for all.

Skydog Sanctuary has rescued many of the horses and the burro documented in this report, and provided their titles and other support for this investigation.

C. Evanescent Mustang Rescue and Sanctuary

Evanescent Mustang Rescue and Sanctuary was created for the prevention of animal cruelty through educating the public about horse care and safety as well as rescuing equines (specifically mustangs and burros) from slaughter. Evanescent Mustang Rescue and Sanctuary has rescued many of the horses documented in this report, and provided their titles and other support for this investigation.

D. The Institute of Range and American Mustang/ Black Hills Wild Horse Sanctuary

The Institute of Range and American Mustang’s (IRAM) Black Hills Wild Horse Sanctuary has been providing a forever home for America’s Wild Horses for over 33 years. This 12,000 acres of privately owned non-profit sanctuary is a home to all wildlife and hundreds of wild mustangs. The IRAM/ Black Hills Wild Horse Sanctuary has rescued many of the horses documented in this report, and provided their titles and other support for this investigation.

2. Background on the BLM's Adoption Incentive Program

On January 30, 2019, the BLM published Instruction Memorandum (“IM”) [IM 2019-025](#), *Adoption Incentive Program for Wild Horses and Burros*. The policy summary stated that the AIP was developed in order to increase the number of adoptions of untrained wild horses and burros by offering financial incentives: two payments of \$500. The first incentive payment is made within 60 days from the adoption date and the second \$500 payment is made within 60 days from the title date. (Under the Wild Free-Roaming Horses and Burros Act, title transfers from the BLM to qualified adopters one year from the adoption date. 16 U.S.C. § 1333(c)). Compliance inspections are a requirement of the AIP where BLM personnel, or other BLM approved individuals, *should* conduct compliance inspections on adopted animals participating in the AIP. These inspections are completed for title transfer and eligibility. BLM then tracks these inspections in the agency’s Wild Horse and Burro Program System, report titled “*Required Inspections for Incentive Animals.*”

Adopters pay a minimum adoption fee of \$25 per wild horse. Each adopter is allowed to take a maximum of four wild horses or burros annually, but as each animal is titled the BLM may allow the adopter to adopt additional animals, up to four at one time. An adopter is removed from AIP eligibility if they relinquish two or more animals within a 12-month period or do not adhere to the terms of the Agreement (4710-25).

The purpose of this program was to increase the placement of as many wild horses and burros into private care as possible, a proclaimed critical priority for the agency’s Wild Horse and Burro Program because of the long-term costs associated with caring for unadopted animals, but also in order to free up more space for animals to be removed from public lands en masse. It

was presumed (but not required) that the AIP money would be used for training and initial care of these ungentled wild horses and burros.

The program was implemented in March of 2019 and the BLM has sung its praises ever since. As recently as November 19, 2020, the agency touted the success of the AIP: “The BLM continued to offer the [AIP] in Fiscal Year 2020, which is believed to have bolstered performance.” In May 2020, the BLM reported that “[i]n the first 12 months of the AIP, the agency adopted out more than 6,000 animals.” This represents a more than 100 percent increase over the BLM’s 2,900 per year adoption average in the five years preceding the AIP program. According to Paul McGuire, Outreach Specialist, BLM National Wild Horse & Burro Program, “most but not all of the 6,026 animals adopted during the first 12 months of the AIP received or were eligible for the incentive.” (personal email communication, December 7, 2020).

Adopters participating in the AIP are required to sign the BLM’s adoption and sale forms which require certification that each adopter has “no intent to sell this wild horse or burro for slaughter or bucking stock, or for processing into commercial products, within the meaning of the Wild and Free-Roaming Horse and Burro Act, 16 U.S.C. 1331 et seq., and regulations 43 CFR 4700.0-5(c).” Consistent with Congress’ mandate in the Interior Department’s annual appropriations bills, BLM may only sell horses “with limitations,” thereby requiring *anyone adopting or purchasing* a wild horse to certify at the time of adoption or purchase that they do not intend to kill or sell the horse for commercial slaughter, *nor would they transfer ownership to any person or organization who they knew or had reason to believe would “resell, trade or give away the animal(s) for slaughter or commercial processing.”* The appropriations language prohibiting sale for slaughter specifically applies to BLM.

3. 2020 Influx of Wild Horses in Kill Pens

March 2020 marked the end of the first year of the AIP, meaning that participants would begin to receive title and subsequently the second \$500 incentive payment on all their eligible adopted wild horses and burros. The IM noted that the second payment would be issued within 60 days of titling, meaning that the adopter of a horse or burro adopted through the program on, for example March 30, 2019, would potentially not receive the second incentive payment until May 30, 2020.

By August 2020, rescue groups began to see an increase in BLM branded wild horses and burros at auctions known to sell the animals to kill buyers (individuals who purchase horses and burros and sell them to horse slaughter plants in Canada or Mexico). Titles available from the auctions revealed ungentled wild horses arriving within 1–4 months of their adopters receiving title, a timeframe during which program participants would receive their second AIP payment. Many of these horses were young, unhandled animals, some with their BLM tags still around their necks more than a year after their adoption from BLM holding corrals, suggesting that adopters simply held the animals for a year without care in order to collect the \$1,000 incentive. Even more concerning, the titles showed that several families had adopted horses and sent them to kill pens together within 3–4 months of receiving title to the animals. Each individual adopter can adopt up to four horses in a year, meaning a family of four could each take four horses and flip all 16 to a kill pen together.

Rescues worked with AWHC to uncover a total of 80 cases of identified individual horses and burros who arrived in kill pens and were put up for auction in a timeframe that strongly suggested their adopters opted in to the AIP. The following are examples of BLM adoption horses who were “flipped” to kill pens months after adopters received title to the animals:

A. Peabody Horse Pen

The Peabody Horse Pen in Peabody, Kansas, is run in partnership with a 501c(3) organization that has an agreement with a well-known kill buyer to try to sell horses before the kill buyer ships them to slaughter. (Appendix 1, 1A).

- **Case Number 1:** Thirteen BLM wild horses were titled to a family of four: Lacey Cumin, Nathan Cumin, Cole Cumin, and Jessica Cumin. Each member of the family adopted between 3–4 horses and those horses were later relinquished to the Peabody auction. Of the 13 horses, 10 were titled to the same address. The other three titled under Lacey Cumin listed a different address. The horses were titled to the Cumin family in three batches: three were titled on June 30, 2020, eight were titled on July 7, 2020, and two were titled on July 15, 2020. All 13 horses were sent to Peabody on October 1, 2020, after the 60-day window for receipt of the second \$500 AIP payment. All were later rescued with assistance from Skydog Sanctuary from the Peabody Horse Pen in Kansas. Two of these animals were confirmed as being adopted through the AIP by records received through Freedom of Information Act (“FOIA”) requests. Compliance inspections on the other horses are pending. See Appendix 2, section 1 A-E for in-depth information on the titles.

Of note: According to an internal BLM email dated June 14, 2019 and obtained in response to a FOIA request, both Nathan and Lacey Cumin were designated as “no longer eligible for the Adoption Incentive Program due to returning 2 or more animals within a 12 month period.” Nevertheless, they received titles for three adopted horses each in June and July 2020 and flipped the horses to the kill pen on October 1, 2020.

- **Case Number 2:** Three BLM wild horses were titled to David A. Wilkie on October 5, 2020. All three horses were posted to Peabody Horse Pen's Facebook page for sale on January 1, 2021, after the 60-day window for receipt of the second AIP installment of \$500. It is confirmed that all three of these horses were adopted through the AIP from compliance inspections obtained via FOIA requests. See Appendix 2, section 2 A-C for in depth information on the titles.
- **Case Number 3:** Staci S. Jacques adopted two BLM wild horses who were titled to her on July 15, 2020 and were later rescued from Peabody Horse Pen in September 2020 within the 60-day period when adopters would receive the second AIP installment of \$500. See Appendix 2, section 3A and 3B for in depth information on the titles.
- **Case Number 4:** Sandy K. Tiede adopted one BLM horse. The title date was obscured by kill pen officials. The animal was found in the Peabody Horse Pen on April 14, 2021. See Appendix 2, section 4A for in depth information on title.
- **Case Number 5:** Kurt W. Fast adopted one BLM burro who was later found in the Peabody Horse Pen in September 2020. While the title date is unknown, compliance inspections obtained through FOIA requests confirm this burro was adopted through the AIP. The animal was adopted on July 9, 2019 and the compliance inspection was conducted on April 13, 2020. See Appendix 2, section 5A for in depth information on title.

B. Stroud Oklahoma Kill Pen

Stroud Oklahoma Kill Pen is a livestock auction in Stroud, Oklahoma. It is a self-proclaimed kill pen. At this particular auction, owners selling horses can designate whether or not their horse(s) can be sold to slaughter. None of the horses listed below were designated as NOT to be sold for slaughter. See Appendix 1, 3A and 3B for proof of slaughter auction status.

- **Case Number 1:** John L. Massingale adopted four BLM wild horses, the maximum number of horses allowed under BLM policy. All four were titled to Massingale on September 21, 2020 and were later sent to Stroud Kill Pen in early November, within the 60-day period when adopters were to receive the second AIP installment of \$500. All were later rescued from Stroud Kill Pen in Oklahoma. See Appendix 2, section 6A-D for in-depth information on the titles.
- **Case Number 2:** Edward L. Chauncey adopted two BLM wild horses. Both were titled on September 21, 2020 and were sent to Stroud Kill Pen in early November 2020, within the 60-day period when adopters were to receive the second AIP installment of \$500. All were later rescued from Stroud Kill Pen in Oklahoma. See Appendix 2, section 7A and 7B for in-depth information on the titles.
- **Case Number 3:** Clint L. Couch adopted one BLM wild horse who was titled to Couch on August 10, 2020 and was later sent to Stroud Kill Pen in early November 2020. The horse was later rescued from Stroud Kill Pen in Oklahoma. The animal was confirmed as being adopted through the AIP by compliance inspection records obtained through FOIA requests. Clint L. Couch was convicted of kidnapping and assault in a horse deal gone wrong. Act See Appendix 2, section 8A and 8B for in-depth information on the title and assault charges
- **Case Number 4:** Kaeli Seay adopted one BLM wild horse who was titled to Seay on August 18, 2020. The horse was sent to Stroud Kill Pen in early November 2020. The horse was later rescued from Stroud Kill Pen in Oklahoma. This animal was confirmed as being adopted through the AIP by compliance inspection records obtained through FOIA requests. See Appendix 2, section 9A for in-depth information on the title.

- **Case Number 5:** Ben A. Baugh received the title of one BLM wild horse on April 22, 2020. The horse was later rescued in early November 2020 by Black Hills Wild Horse Sanctuary and still had a BLM identification tag around her neck. See Appendix 2, section 10A for in-depth information on the title.
- **Case Number 6:** Julie Auld (also listed as Auld Julie in official records) adopted one wild horse on June 11, 2019. She received the title of one BLM wild horse on August 27, 2020. The animal was later found in the Stroud Kill Pen in December 2020 and was rescued by Black Hills Wild Horse Sanctuary. BLM compliance inspections, received through FOIA requests, confirmed this horse was adopted through the AIP. FOIA records also indicate that she adopted an additional wild horse. See Appendix 2, section 11A and 11B for in-depth information on the title.
- **Case Number 7:** The Castagno family, consisting of Tracy Castagno, Nicki Castagno and Steve Castagno, adopted a minimum of 3 wild horses. Compliance inspections obtained through FOIA requests confirm all three animals were adopted through the AIP. The animals were adopted on May 31, 2019 and were titled on or around June 15, 2020. The animals were found in Stroud Kill Pen in September 2020. See Appendix 2 Section 12 A-C for in-depth information on the titles.
- **Case Number 8:** Wayne A. Nicho received the titles to two wild horses on February 9, 2021. Both animals were found in Stroud Kill Pen on April 10, 2021, within the 60-day period when adopters were to receive the second AIP installment of \$500. See Appendix 2 section 13A and 13B for in depth information on the titles.

C. Cleburne Horse Sale

According to an Animal's Angels undercover investigation, sellers at the Cleburne Horse Sale in Texas *must acknowledge* that their horse may end up sold to a slaughter auction (Appendix 1, 3A). According to that same investigation, well known kill buyer Mike McBarron, who runs the Kaufman Kill Pen (Appendix 1, 3B), often frequents Cleburne Horse Sale (Appendix 1, 3B). This is further supported by a *Weatherford Democrat* article that details the tragic journey of a veterinarian who relinquished horses to the Cleburne Horse Sale and later found them at McBarron's Kaufman Kill Pen (Appendix 1, 3B).

- **Case:** Twenty-one BLM wild horses together arrived at Cleburne Horse Sale on November 11, 2020. All names on the titles were either redacted or there was an attempt to redact the information. Per the auction, these horses were all from the same location. The horses were titled in four batches, the earliest being on September 14, 2020 and the latest on October 5, 2020. The mustangs arrived at the auction house a little over a month after the last batch of titles was awarded, within the 60-day window for receipt of the second \$500 AIP installment. Despite attempts to redact information on the titles, three names and addresses were legible. Brenda J. Kidd adopted at least two mustangs titled on September 14, 2020, Gary Kidd adopted at least one mustang titled on September 14, 2020, and Dustin Banks adopted four mustangs titled on October 5, 2020. The address for the Kidd's and Banks's horses were the same, affirming the auction house's claim the horses arrived from the same location. All 21 wild horses were rescued by Evanescent Mustang Rescue and Sanctuary. One of these horses was confirmed to be adopted through the AIP by compliance inspections obtained through FOIA requests. There are pending FOIAs on the other 20 animals. Gary Kidd, was included in the recent *New York Times* exposé, the interview shows Kidd lied about the status of his horses and was

confronted with records that showed all 21 animals went to a kill pen. See Appendix 2, section 14A-D for in-depth information on the titles.

D. Fabrizio Livestock Auction

Fabrizius Livestock Auction is a self-proclaimed kill pen (Appendix 1, section 5A) located in Eaton, CO. It is run by Jason Fabrizio, who according to a 2018 article in the Denver Channel, stated that, “I buy them, and I buy them by the truckloads. And we send them to Mexico.” In the same article, he claims to regularly send 34 horses a week to Mexico. (Appendix 1, 5B).

- **Case Number 1:** Lonnie D. Krause adopted three BLM wild horses who were sent to the Fabrizio Livestock Auction. The horses were titled on September 14, 2020 and sent to Fabrizio on September 25, 2020, well within the 60-day period when adopters were to receive the second AIP installment of \$500. All were later rescued from the Fabrizio Livestock Auction in Colorado. Lonnie Krause admitted in an interview for the *New York Times* that he and his grandson (Conner Palmer) adopted the maximum number of horses each as a more profitable venture than raising cattle. He saw no issue with this, as BLM officials stated “once you get title, there is no limitation on slaughter.” See Appendix 2, section 15A-C for in-depth information on the titles.
- **Case Number 2:** Conner A. Palmer adopted two BLM wild horses and received their titles in his name on September 14, 2020. They were later sent to Fabrizio around September 25, 2020, well within the 60-day period when adopters were to receive the second AIP installment of \$500. All were later rescued from the Fabrizio Livestock Auction in Colorado. See Appendix 2, section 16A and 16B for in-depth information on the titles.

Special Note: These horses were flipped to the kill pen quicker than we've seen in the previous cases, but once the BLM conducts their second compliance inspection and issues the title, the owner is under no obligation to keep the horse in their care. The BLM would **not** know if the horse(s) remained with the adopter(s) or not and yet would still issue the second incentive payment of \$500 since the title had already been transferred.

E. Bowie Auction House

Bowie Auction is a self-proclaimed kill pen (Appendix 1, 5A) located in Bowie, TX.

- **Case:** Dennis M. Schwitzer adopted one BLM wild horse and received the title in August 2020. The horse was later rescued from Bowie Auction House by a private individual on September 9, 2020, arriving at the auction well within the 60-day period when adopters were to receive the second AIP installment of \$500. See Appendix 2, section 17A for in-depth information on the title.

Special Note: Compliance Inspection records note that four BLM animals, adopted through the AIP, were flipped to Bowie before titles were transferred to the adopter. The BLM was notified and all four horses were repossessed. See Appendix 2, section 17B for freeze brand information.

F. Kaufman Kill Pen:

Kaufman Kill Pen is a self-proclaimed kill pen (Appendix 1, section 6) located in Forney Texas. According to an Animal's Angels investigation, this kill pen is owned and operated by Mike McBarron (Appendix 1, 3B).

- **Case Number 1:** Myra N. Sander adopted one BLM wild horse on August 3, 2019. The horse was titled to her on August 8, 2020 and was flipped to Kaufman Kill Pen within the 60–90 day timeframe. This horse was confirmed to be adopted through the AIP by BLM compliance inspection records obtained by FOIA requests. See Appendix 2, 18A for in-depth information on the title.
- **Case Number 2:** Henry D. Jump adopted one wild horse on August 3, 2019. The horse was titled to him in 2020. While the month of titling is obscured, the horse was inspected for title eligibility by BLM officials on January 1, 2020. The date of actual titling is unknown. The horse was found in Kaufman Kill Pen February 1, 2021 and was one of seven BLM horses found in the kill pen on that day. FOIA records confirm this animal was adopted through the AIP. Records also note Henry Jump adopted two horses. See Appendix 2, 19A and 19B for in-depth information on the title and FOIA information.

G. North Louisiana Equine Transport and Feedlot

North Louisiana Equine Transport and Feedlot is a feedlot located in Bastrop, LA. According to a 2021 article, this feedlot is run by brothers Gregory and Mitchell Stanley. The Stanley brothers are considered some of the most notorious kill buyers in the country and have been the subjects of multiple investigations including animal cruelty, inauthentic transport paperwork, and assault allegations. See Appendix 1 section 7.1 and 7.2 for more information.

- **Case:** Hugh C. Hession adopted two BLM wild horses. Both were titled on November 18, 2020 and both were found in the North Louisiana kill pen in early February 2021. Appendix 2, sections 20A and 20B for in-depth information on the titles.

H. Centennial Livestock Auction:

The Centennial Livestock Auction is a slaughter auction in Fort Collins, Colorado. While not explicitly stated on their website, the weekly market report published on their website clearly shows they sell horses, by the pound, to slaughter. See Appendix 1 section 8 for more information.

- **Case:** Debra J. Harris received title for three wild horses on November 19, 2020.

The three horses were found at the Centennial Livestock Auction in early May 2021. See Appendix 2 Section 21 A-C.

Special note: These horses were flipped to the kill pen outside of the typical 60–90 days after titling, but it is highly probable that they are AIP animals as the 60–90 day window for titling and payment is just an estimate.

I. Miscellaneous

- **Case Number 1** Tarrah L. Hern adopted one BLM wild horse who was titled to her on March 24, 2020. According to information obtained through FOIA requests, Hern adopted the horse through the AIP. The horse was later rescued from a livestock auction in August 2020. See Appendix 2, section 22A for in-depth information on the title.
- **Case Number 2:** Joni R. Flemming adopted four horses on August 13, 2019. One horse, who was rescued from an undisclosed kill pen by a private individual, was titled October 9, 2020. Compliance inspection records indicate all four animals were adopted through the AIP. The status of the other three animals is unknown. See appendix 2 section 23 A-D for in-depth information on titles.
- **Case Number 3:** Joe A. Anderson adopted three wild horses and received titles for all four on March 31 2021. All four horses were discovered in an undisclosed kill pen in Texas on April 11 2021. See appendix 2 section 24A-C for in-depth information on titles.

- **Case Number 4:** Dymiti Anderson adopted one wild horse and received the title on March 31 2021. The one horse was discovered in an undisclosed kill pen in Texas on April 11 2021. See appendix 2 section 25A for in-depth information on the title.

This information is based on evidence that AWHC has been able to gather working with various rescues such as our partners, Skydog Wild Horse Sanctuary, Black Hills Wild Horse Sanctuary, and Evanescent Mustang Rescue. Some of the individuals named above may have adopted more than the horses listed here, but those potential horses were likely sold to various individuals or, in the worst case, to a kill buyer who shipped them across the border without being detected by rescue groups.

4. Compliance Inspections Show AIP Wild Horses and Burros Are Suffering Severe Cruelty After Being “Adopted”

AWHC’s concerns about the AIP expand further than federally protected horses and burros being funneled to kill pens. Through the records received on BLM compliance inspections for AIP animals, it is obvious many adopters using this incentive program either have nefarious intent, or lack the basic ability and knowledge to care for unhandled wild animals. AWHC has documented many cases of abuse and neglect of AIP animals. Additionally, in several instances, when the time came for compliance inspections BLM officials were not able to locate or get in contact with numerous adopters in Texas and Oklahoma. Many cases were turned over to law enforcement and the status of those AIP animals is unknown. Examples from the documents are as follows:

Abuse cases (animal is identified by freeze brand number):

- **19025517:** “Found 19025517 Sorrel horse upside down with her head folded back with a severe neck injury. The neck injury prevented her from standing and being able to lay upright. We tried to assist her to stand but she was unable to do so. We then called every vet in the valley. None returned our phone calls due to the Veterans Day Holiday. After no calls she was laboring to breath [sic] so I put her out of her misery.”
- **16861637:** “We received a complaint about this horse being underweight [sic] and in a dog pen. We contacted the adopter and found that she had moved the horse a second time and she gave the new location to us. Upon arrival at the location we found this horse with a body score of 2 and in a 10x10 area with a peice [sic] of plywood on top standing in 5 inches of mud. We repossessed the animal that day.”

Neglect cases (animal is identified by freeze brand number):

- **18869274:** “Body Score is a 2.5. Had numerous [sic] sores on body. Sent out a correction letter in regards to the weight of the animal. We are requesting for the vet to come out to make a nutritional plan and to do another inspection in 4 weeks.”
- **18869242:** “We arrived at this facility to inspect (b) REDACTED animals that had just moved there and found this yearling. The animal was very thin on rating on the scale at a 2. He was eating moldy hay and the adopter admitted that last week he had eaten a fly trap. The water also had thick algae [sic] in it. The animal was repossessed that day.”
- **16025230:** "body condition: very poor, score of 2, ribs and spine apparent. Hoof condition: long, overgrown hooves. Comments: horse was obviously malnourished and did not receive [sic] basic care." "with a brief look at facility there was not an adequate shelter with attached safe turn out"

- **17632030 and 17632043:** “On 1/15/2020 received pictures of thin horses and a complaint that they were not being fed [sic]. Called REDACTED at 2:21 pm and left a message [sic]. Called back at 3:08 pm. Mr. Seals was told about a complaint [sic] and the BLM would be there tomorrow. He said that he called and left a message last week about his job and to move the horses. There was not a message sent to my knowledge. He was told that he needed to be there. He was told that he would get a telephone call 30 miles out. 1/16/2020 8:33am Telephone call was made, no answer, left message that the BLM will be there. 9:14 am Dan & I arrived at the REDACTED place and was not home. FM 17632043 & FM 17632030 Body condition was 2 1/2-3. Talked to the next door neighbors and said that the horses had not been fed [sic] in a couple of days [sic] and that they have been feeding them. Said that their [sic] was another mustang down the road that sold. FM 18632317 was verified and it is a sold animal, but the animal was at 1 1/2 body condition. called back and I told him that I was giving him a warning and that I would check on the animals. Said that he needed to turn the horses back because he needed [sic] to move closer to work.voluntarily relinquished the horses. Horses were picked up.”
- **12188414:** “Grant received information from SB FICC Dispatch regarding burros escaping from their adopter. I conducted the compliance inspection on Tuesday, March 3, at 1 PM. The holding pen design described on the application which met the qualifications to adopt was not how the actual pen design was, where the two burros escaped after two days after being brought home. The two burros could have either escaped by climbing over a 10 foot high dirt mound that was in the first pen that was not fenced or over a 2 -4 foot rock/earth barrier next to the shelter in the lower pen. See pictures at: \\blm.doi.net\dfs\ca\ri\pub\Photos\aneiberg\2020 WHB Compliance The pen

design where the burros were kept, did not meet the BLM requirements for adoption.

After inspection of the facility, went with Janey to scout the area where reports from the public had either seen them or seen signs [sic] indicating they were in the area. Animals missing in the desert.”

These are the most egregious cases, but there are many more instances of negligence by adopters such as falsifying government documents and failing to provide care for these animals.

5. **BLM Washes Hands of Situation Despite Internal Concerns**

At least one BLM employee accurately predicted the outcome of the AIP. In records received by AWHC under FOIA, Rob Sharp, Supervisory Wild Horse & Burro Specialist for BLM Oregon, stated on June 25, 2019:

[H]ere's some thoughts on the Adoption Incentive Program:

Since its inception we've seen a pretty good boost in adoption numbers. Some are repeat adopters but the majority have been new adopters. My concerns focus on the welfare of the animal after they are adopted. For many first time adopters, getting a gentled horse from a TIP trainer or other gentled horse program is a great segway into wild horses. However, since the AIP isn't applicable to gentled animals, this removes that option. Time will tell if we see a surge in compliance issues with AIP animals as a result of people only seeing the initial cash payment and not thinking about the lifetime costs associated with owning a horse and the adoption of animals to people who have no business owning a horse!... And personally I don't agree with the government providing cash incentives to a product (horses) which has an existing private market... I have spoken with... trainers who can offset the cost of care for a year and resell their horses after they are titled and make some money.

Mr. Sharp's concerns have been borne out, however, the agency he works for has turned a blind eye to the fate of the horses and burros adopted under this program. On October 6, 2020, AWHC contacted Acting Off-Range Branch Chief Paul McGuire via email regarding the 13 BLM wild horses sent to Peabody Horse Pen. Mr. McGuire responded that because the adopters of the horses had fulfilled their obligations under the adoption agreement and received title for the horses before sending them to auction, *the BLM had no cause to issue a violation*. Mr. McGuire answered affirmatively when asked if these adopters would still be eligible to participate in adopting horses in the future from BLM. See the email chain [here](#). Mr. McGuire is conveying the BLM apparent policy of taking no responsibility for wild horses and burros once title is transferred (including whether the adopters adhere to the enforceable no-slaughter provision of their adoption contracts).

Additionally, the *NY Times* reported that according to one AIP adopter, the agency tells AIP participants "Once you get a title, they told me, there is no limitation — you can do whatever you want with them." Additionally, the BLM told the *NY Times* that it had no authority to enforce adoption contracts and their anti-slaughter provision that is signed under penalty of perjury.

The actions of the BLM with regard to the AIP are similar to the agency's behavior a decade ago when it sold truckloads of horses to a known kill buyer, turning a blind eye to the implausible explanations about what the buyer intended to do with the horses, such as using truckloads of horses for "use in movies" in Mexico. (The buyer also told the BLM that he didn't care what kind of horses (male/female) he purchased, as long as they were big.)

6. Conclusion: An Immediate Termination of AIP and Full Investigation of the Program is Required

AWHC has submitted several FOIA requests¹ seeking to obtain further evidence of the connection between these incidents and the BLM's AIP, including records related to AIP payments. We also continue to collect data from rescue organizations and sanctuaries in order to document all BLM wild horses and burros adopted via BLM internet adoptions as well as BLM horses and burros being sold at kill pens across the country.

However, the incidents listed above provide compelling evidence that the BLM has created, a government subsidized slaughter pipeline and is defrauding U.S. taxpayers by providing payments of \$1,000 per a BLM wild horse or burros adopted through AIP while turning a blind eye when those same animals are immediately flipped to known slaughter auctions after the adopters receive full incentive payments. In light of this report and the *NY Times* expose', the Interior Department and Congress must investigate the extent of the problem, agency complicity in the illegal sale of wild horses and burros at slaughter auction in violation of the spirit and the letter of federal law.

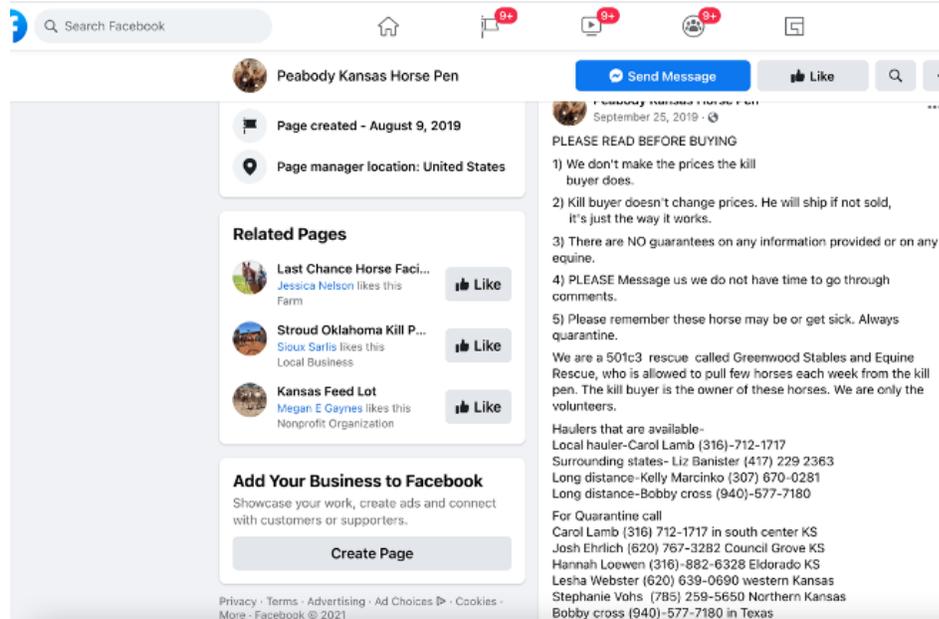
Additionally, the Interior Department must identify all wild horses and burros adopted under the AIP who remain at risk of slaughter and abuse, as well as refer adopters who sold horses to slaughter auctions in violation of their adoption contracts, signed under penalty of perjury, for criminal prosecution. Due to the length of time it will take to receive responses to AWHC's FOIA requests, and the urgency of the threat that the AIP is driving the sale of BLM wild horses and burros for slaughter in contravention of federal law, we officially request a suspension of the AIP pending an immediate inquiry into the issues raised in this report.

¹ AWHC's requests include: DOI-BLM-2021-000789, 2021-000803, 2021-000825, 2021-001001, DOI-BLM-2021-002679, DOI-BLM-2021-002681, DOI-BLM-2021-002683, DOI-BLM-2021-002685, DOI-BLM-2021-003104, DOI-BLM-2021-003106, DOI-BLM-2021-003112, DOI-BLM-2021-003110, DOI-BLM-2021-003107, DOI-BLM-2021-003109, DOI-BLM-2021-003111, DOI-BLM-2021-003175, DOI-BLM-2021-003134, DOI-BLM-2021-003331, 2020-00726, and DOI-BLM-2021-004024 which are still outstanding.

Appendix 1: Proof of Auction Houses as Kill pens

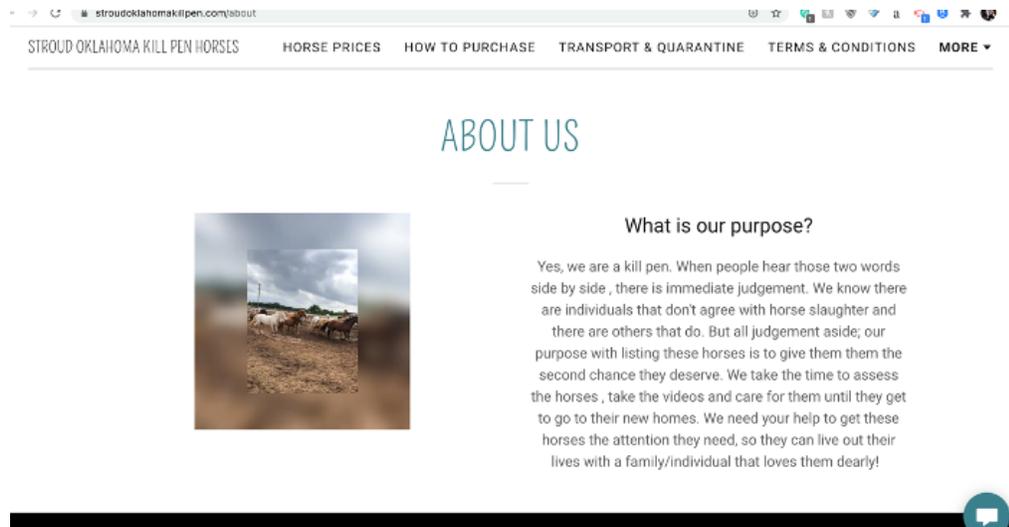
1. [Peabody Horse Pen](#)

1. Screenshot of Peabody Horse Pen Facebook page



2. [Stroud Kill Pen](#)

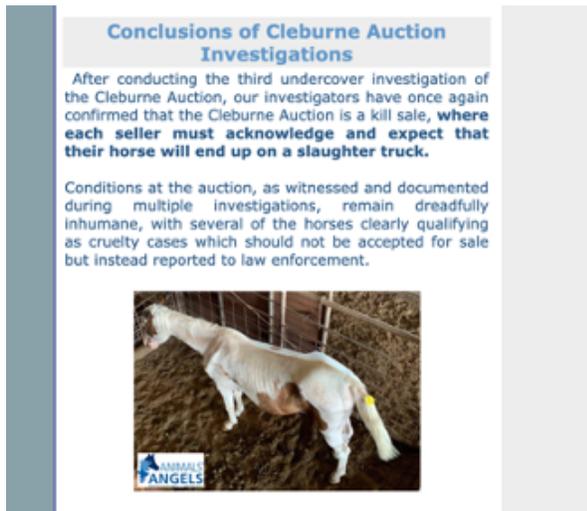
1. Screenshot of Stroud Kill Pen's website



2. Horse marked as a non-slaughter horse

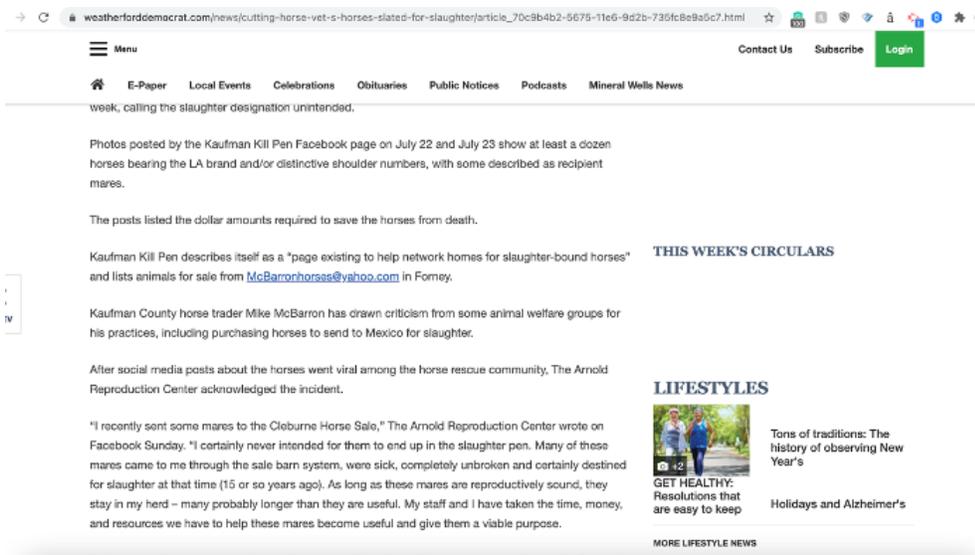


3. Cleburne Horse Sale



1.

<https://myemail.constantcontact.com/Animals--Angels-Investigators-Call-Strike-Three-on-Trent-Ward-s-Cleburne-Auction-in-Texas.html?soid=1101655399670&aid=temyncmaGeA>

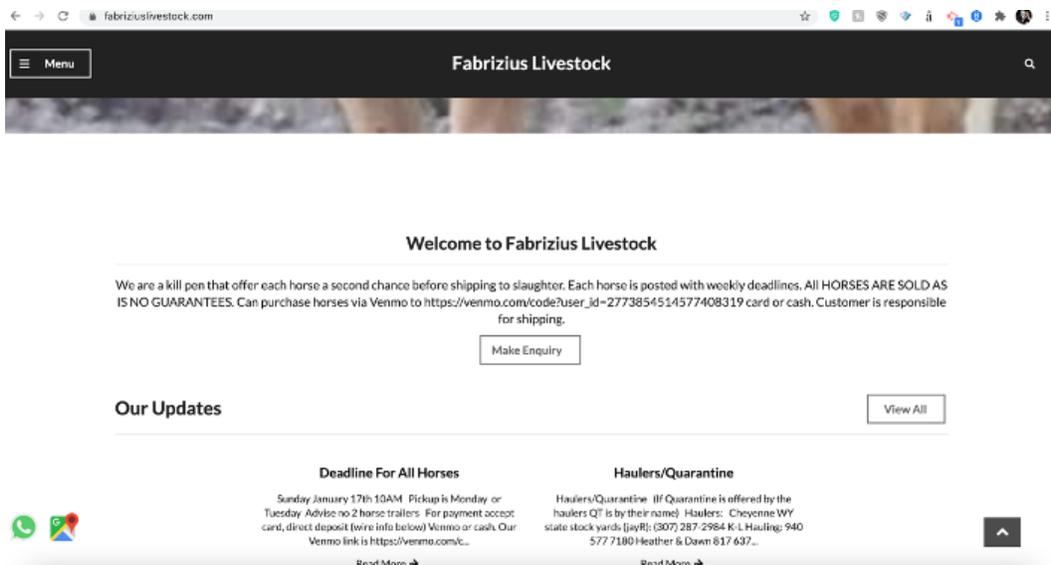


2.

https://www.weatherforddemocrat.com/news/cutting-horse-vet-s-horses-slated-for-slaughter/article_70c9b4b2-5675-11e6-9d2b-735fc8e9a5c7.html

4. [Fabrizius Livestock Auction](#)

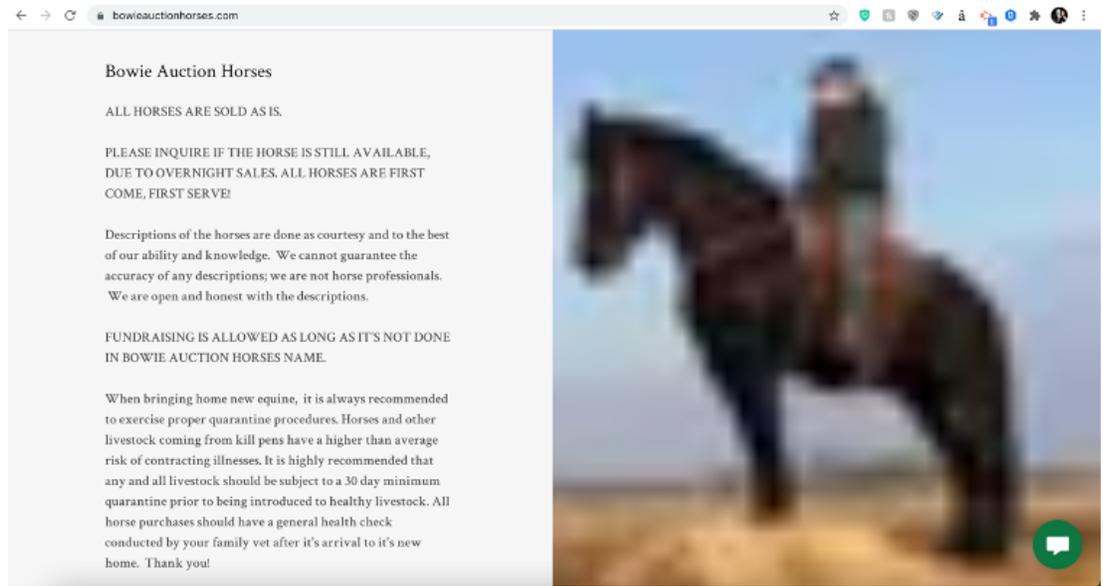
1. Screenshot of Fabrizious's website affirming slaughter auction status.



2. <https://www.thedenverchannel.com/news/360/colorado-horses-sold-for-slaughter-even-when-rescues-want-to-help>

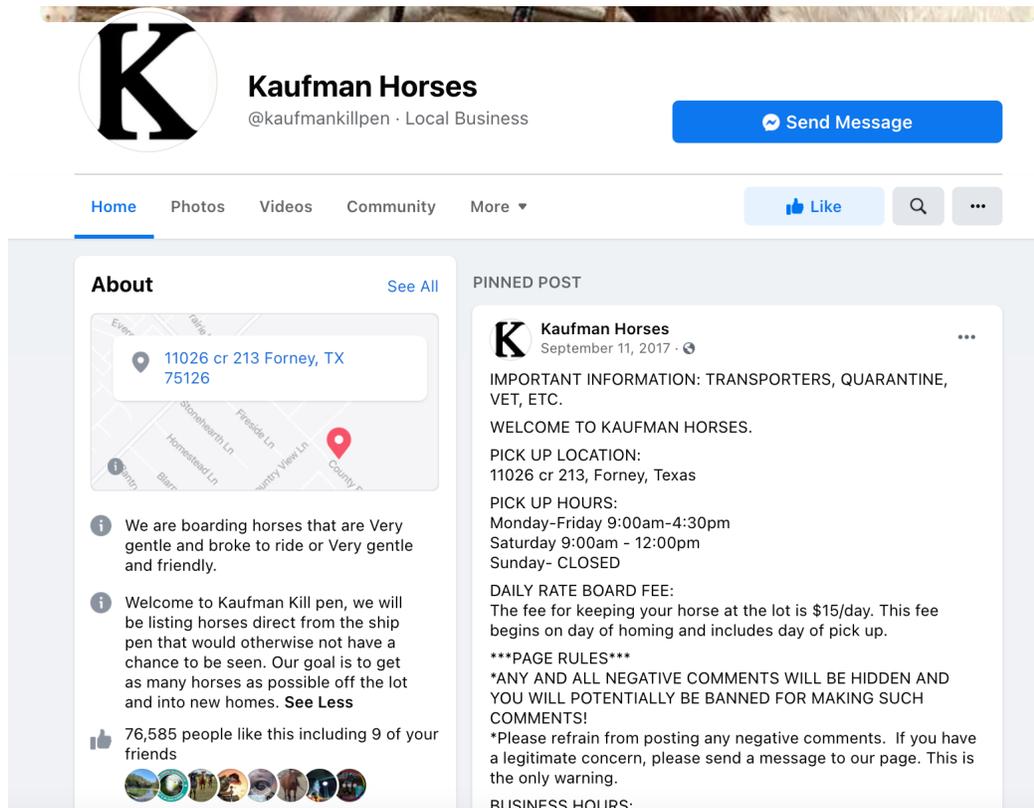
5. [Bowie Auction House](#)

1. Screenshot of Bowie Auction House’s website



6. [Kaufman Kill Pen](#)

1. Screenshot of Kaufman Kill Pen’s Facebook page affirming its kill pen status



7. [North Louisiana Transport and Feedlot](#)

1. Screenshot from a 2021 [article](#) stating the Stanley's own the North Louisiana Transport and Feedlot.

The Louisiana Second Circuit Court of appeal determined that three men who worked at a horse kill pen in Bastrop are liable and must pay damages caused by a videoed attack.

Gregory, Mitchell and Michael Stanley reportedly attacked Andrew Payne in September of 2016. The trio will pay \$136,000, and 4th Judicial District Court Judge Robert C. Johnson will have to apportion fault to determine how the payment is split.

Gregory and Mitchell Stanley were co-owners of Stanley Brothers Livestock Inc and Stanley Brothers Farm LLC. At the time of the incident, the business was known as the Bastrop Kill Pen (BKP). Michael Stanley is the son of Mitchell and was employed by the business.

The business offered rescue horses for sale, but the bulk of the business lies in exporting horses to Mexico for slaughter, processing and human consumption. BKP now operates under the name North Louisiana Equine Transport & Feed Lot.

2016 animal cruelty case

In August 2016, BKP gained national attention after Gregory Stanley's son Boots Stanley uploaded a graphic video of Stephen Sailer cutting a brown and white dog's throat on Snapchat.

Footage of the dog before it's death was also uploaded to Boots Stanley's Snapchat, including video of the dog on the back of a horse Stanley was riding. The dog struggled to stay on, and laughter could be heard off-screen.

Ultimately, Sailer cut the dog's throat multiple times.

Animal rights activists from across the nation took interest in the case, and several protested at the Morehouse Parish Courthouse and attended court dates, calling for retribution for the canine they called Justice.

In 2018, 4th Judicial District Judge Carl Sharp sentenced each to: three years in prison, a \$5,000 fine and 480 hours of community service. The jail time was suspended; they were to remain on probation for three years. A \$5,000 donation to the Morehouse Parish Humane Society gave the option to reduce their community service requirements to 240 hours.

2018: No jail time for Snapchat dog killers

Research leads to dead end, attack

Andrew F. Payne, a 65-year-old retiree, was among the people who came to the courthouse to learn more about the case.

2. Further information on investigations into the Stanley brothers can be found [here](#) and [here](#)

8. [Centennial Livestock Auctions](#)

1. Screenshot from CLA's website showing the price per pound of horses going through their auction. CWT is the livestock abbreviation of hundredweight, which is the price per 100 lbs of any given animal.

Horses							
	1	brwn	mule	245	lbs	385.00 hd	Eaton
	1	blrn	stud	735	lbs	215.00 cwt	Rawlins
	1	bksk	stud	885	lbs	150.00 cwt	Rawlins
	1	pnt	stud	790	lbs	115.00 cwt	Rawlins
	1	bksk	hors	880	lbs	175.00 cwt	Chugwater
	1	grey	hors	895	lbs	150.00 cwt	Carbondale
	1	palo	hors	665	lbs	145.00 cwt	Rawlins
	1	pnt	hors	1045	lbs	120.00 cwt	Carbondale
	1	palo	hors	1125	lbs	100.00 cwt	Carbondale
	1	blrn	hors	1100	lbs		cwt Rawlins
						95.00	
	1	palo	hors	1070	lbs		cwt Rawlins
						92.50	
	1	pnt	hors	1035	lbs		cwt Carbondale
						82.50	
	1	palo	hors	1005	lbs		cwt Rawlins
						80.00	
	1	sorr	hors	970	lbs		cwt Carbondale
						80.00	
	1	sorr	hors	910	lbs		cwt Carbondale
						80.00	
	1	grey	hors	745	lbs		cwt Rawlins
						65.00	

Appendix 2: In-depth information on adopters and BLM wild horses:

1. Cumin Family: (All horses were later rescued with assistance from Skydog from the Peabody Horse Pen in Kansas.)
 - a. Lacey N. Cumin: (Note: Lacey Cumin is banned from adopting any more AIP horses as of June 14, 2019 per compliance inspection FOIA received by AWHC. However, she received three titles in 2020.)
 - i. 12978012: Titled on June 30, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - ii. 12978020: Titled on June 30, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - iii. 14862300: Titled on June 30, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - b. Nathan H. Cumin: (Note: Nathan Cumin is banned from adopting any more AIP horses as of June 14, 2019 per compliance inspection FOIA received by AWHC. However, he received three titles in 2020.)
 - i. 12978046: Titled on July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - ii. 13978036: Titled on July 15, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - iii. 13978059: Titled on July 15, 2020. Found in Peabody Horse Pen on October 1, 2020.
 - c. Cole T. Cumin:
 - i. 17632360: Titled July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

ii. 18631903: Titled July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

iii. 18632325: Titled July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

d. Jessica S. Cumin:

i. 18629609: Titled on July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

ii. 18631914: Titled on July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

iii. 18631993: Titled on July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

e. Unknown member of the Cumin Family:

i. 18631953: Titled on July 7, 2020. Found in Peabody Horse Pen on October 1, 2020.

2. David A. Wilkie:

a. 17632598: Titled on October 5, 2020. Arrived at auction around January 5, 2021.

b. 17632608: Titled on October 5, 2020. Arrived at auction around January 5, 2021.

c. 16631881: Titled on October 5, 2020. Arrived at auction around January 5, 2021.

3. Staci S. Jaques: (Both were later rescued from Peabody Horse Pen in September 2020.)

a. 14732785: Titled July 15, 2020. Arrived at Peabody Horse Pen in September, 2020.

b. 17628969: Titled July 15, 2020. Arrived at Peabody Horse Pen in September, 2020.

4. Sandy K. Tiede:

- a. 14224743: Title date unknown. Arrive at Peabody Horse Pen in April 2021.
5. Kurt W. Fast
 - a. 11145215: Title date unknown. Arrived at Peabody horse pen in September 2020.

Compliance inspections obtained through AWHC's FOIA requests confirm this burro was adopted through the AIP. The animal was adopted on July 9, 2019 and the compliance inspection was conducted on April 13, 2020.
6. John L. Massingale: (Adopted the following four BLM wild horses who were later rescued from Stroud Kill Pen in Oklahoma.)
 - a. 15626752: Titled on September 21, 2020. Found in a slaughter auction early November, 2020
 - b. 15730345: Titled on September 21, 2020. Found in a slaughter auction on approximately November 5, 2020.
 - c. 15731037: Titled on September 21, 2020. Found in a slaughter auction on approximately November 5, 2020. Adopted from KS Correctional in 2019.
 - d. 16626723: Titled on September 21, 2020. Found in a slaughter auction on approximately November 5, 2020.
7. Edward L. Chauncey: (Adopted the following two BLM wild horses which were later rescued from Stroud Kill Pen in Oklahoma.)
 - a. 14733288: Titled on September 21, 2020. Found in a slaughter auction early November 2020.
 - b. 15861728: Titled on September 21, 2020. Found in a slaughter auction early November, 2020.
8. Clint L. Couch: (Adopted the following one BLM wild horse who was later rescued from Stroud Kill Pen in Oklahoma.)

- a. 12625474: Titled on August 10, 2020. Found in a slaughter auction on approximately November 5, 2020.
 - b. [Article detail Clint Couch's arrest](#)
9. Kaeli Seay: (Adopted the following one BLM wild horse who was later rescued from Stroud Kill Pen in Oklahoma.)
 - a. 16862192: Titled August 18, 2020. Found in a slaughter auction early November, 2020.
10. Ben A. Baugh: (Adopted the following one BLM wild horse who was later rescued from Stroud Kill Pen in Oklahoma.)
 - a. 15730993: Titled April 22, 2020. Rescued by Black Hills. Still had a BLM tag around her neck.
11. Auld Julie (Adopted the following two BLM wild horses, one of which was later rescued from Stroud Kill Pen in Oklahoma.)
 - a. 18628990: Adopted on June 11, 2019. Titled on August 27th, 2020. Found in the kill pen in December 2020.
 - b. 18628955: Adopted on June 11, 2019. Title date and the status date of this horse is unknown.
12. The Castango Family (Adopted the following three BLM wild horses, which were later rescued from Stroud Kill Pen in Oklahoma.)
 - a. Steve Castango:
 - i. 18862753: Adopted on May 31, 2019. Titled on June 15, 2020. The horse was found in a kill pen in September 2020.
 - b. Tracy Castango:

i. 18862329: Adopted on May 31, 2019. Titled on June 15, 2020. The horse was found in a kill pen in September 2020.

c. Unknown Castango:

i. 18862743: Adopted on May 31, 2019. Titled on June 15, 2020. The horse was found in a kill pen in September 2020.

13. Wayne A. Nichol:

a. 18862430: Titled on February 9, 2021. The horse was found in a kill pen on April 10th, 2021. Status of this horse is unknown.

b. 18862611: Titled on February 9, 2021. The horse was found in a kill pen on April 10th, 2021. Status of this horse is unknown.

14. The Cleburne 21:

a. Titles with names redacted: (All later rescued by Evanescent Mustang Rescue from Cleburne Horse Sale in Texas.)

i. 13646627: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.

ii. 14623671: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.

iii. 15626070: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.

iv. 15632314: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.

v. 16632238: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.

- vi. 16632261: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - vii. 16632313: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - viii. 16632483: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020. This BLM wild horse arrived at the auction trained, unlike the others we have seen. However, this trained horse may have still been adopted through AIP as an unhandled BLM wild horse at the time of adoption.
 - ix. 17632268: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - x. 17632299: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - xi. 17632453: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - xii. 18629272: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.
 - xiii. 18629290: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.
 - xiv. 18633484: Titled on September 29, 2020. Arrived at Cleburne on November 11, 2020.
- b. Brenda J. Kidd: (Adopter's name was legible through attempted redaction. Horses were later rescued from Cleburne Horse Sale in Texas.)

- i. 14629187: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.
 - ii. 18629053: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.
 - c. Gary Kidd: (Adopter's name was legible through attempted redaction. Horse was later rescued from Cleburne Horse Sale in Texas.)
 - i. 15766749: Titled on September 14, 2020. Arrived at Cleburne on November 11, 2020.
 - d. Dustin Banks: (Adopter's name was legible through attempted redaction. Horses were later rescued from Cleburne Horse Sale in Texas.)
 - i. 16632343: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - ii. 18625966: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - iii. 18628912: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
 - iv. 18629276: Titled on October 5, 2020. Arrived at Cleburne on November 11, 2020.
- 15. Lonnie D. Krause: (All horses were later rescued from Fabrizio Livestock Auction in Colorado.)
 - a. 12024193: Titled September 14, 2020. Found in Fabrizio Livestock auction around September 25th, 2020.
 - b. 157334818: Titled September 14, 2020. Found in Fabrizio Livestock auction around September 25th, 2020.

- c. 15862383: Titled September 14, 2020. Found in Fabrizio Livestock Auction.
Rescued by a private individual from the auction house on November 3, 2020.

16. Conner A. Palmer: (All horses were later rescued from Fabrizio Livestock Auction in Colorado.)

- a. 147311725: Titled on September 14, 2020. Found in Fabrizio Livestock Auction on September 25, 2020.
- b. 15733657: Titled on September 14, 2020. Found in Fabrizio Livestock Auction on September 25, 2020.

17. Dennis M. Schwitzer:

- a. 18631933: Titled in August 2020. Rescued from Bowie Auction House on September 9, 2020. Rescued by a private individual.
- b. Freeze Brands of horses repossessed by the BLM:
 - i. 17627871
 - ii. 16628049
 - iii. 16627991
 - iv. 13628044

18. Myra N. Sanders:

- a. 15633342: Adopted on August 3 2019 and titled on August 8 2020. Later found in Kaufman Kill pen.

19. Henry D. Jump

- a. 18629097: Adopted on August 3, 2019 and titled in 2020. Later found in Kaufman Kill Pen.
- b. 18629282: This horse was discovered through a Freedom of Information Act request for BLM Compliance inspection data. Adopted on August 3, 2019 and

was inspected on January 7, 2020 by a BLM employee. The Compliance inspection noted “horse in pasture 240 acers did not see Mr. Jump said horse is doing good comes in about every three days.” The status of this horse is unknown.

20. Hugh C. Hession:

- a. 18627042: Titled on November 18, 2020 and was found in a kill pen in February 2021
- b. 18627153: Titled on November 18, 2020 and was found in a kill pen in February 2021

21. Debra J. Harris:

- a. 18862516: Titled on November 19 2020 and was found in the CLA slaughter auction in early May 2021
- b. 18862473: Titled on November 19 2020 and was found in the CLA slaughter auction in early May 2021
- c. 18862467: Titled on November 19 2020 and was found in the CLA slaughter auction in early May 2021

22. Tarrah L. Hern:

- a. 18025303: Titled on March 24, 2020. Rescued from an auction house in August 2020 by a rescue organization and reported to AWHC by the new owner. Records received from BLM in response to a FOIA request submitted by AWHC for compliance inspection records on all horses that went through Nevada under the AIP, confirmed that this horse was adopted through the AIP.

23. Joni R. Flemming:

- a. 17632207: Adopted August 13, 2019. Titled October 9, 2020. Was found in a kill pen early 2021. Compliance inspection records indicate that BLM officials completed the compliance inspection on April 24, 2020.
- b. 18628904: Adopted August 13, 2019. The title date is unknown, but compliance inspection records indicate that BLM officials completed the compliance inspection on April 24, 2020.
- c. 18629335: Adopted August 13, 2019. The title date is unknown, but compliance inspection records indicate that BLM officials completed the compliance inspection on April 24, 2020.
- d. 18631927: Adopted August 13, 2019. The title date is unknown, but compliance inspection records indicate that BLM officials completed the compliance inspection on April 24, 2020.

24. Joe A. Anderson:

- a. 13628079: Titled on March 3, 2021. This animal was found in a kill pen April 4, 2021.
- b. 16628229: Titled on March 3, 2021. This animal was found in a kill pen April 4, 2021.
- c. 17628141: Titled on March 3, 2021. This animal was found in a kill pen April 4, 2021.

25. Dymiti Anderson:

- a. 16628531: Titled on March 3, 2021. This animal was found in a kill pen April 4, 2021.



**Addendum to “BLM’s Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros” Report
June 2, 2021**

1. Additional Confirmed Adoption Incentive Program (AIP) Animals Sold at Kill Pens

- **Case Number 1:** A minimum of nine BLM Burros were rescued from Cleburne Horse Sale. The animals were titled in two batches, five were titled on June 2, 2020 and four were titled on May 19th, 2020. Records obtained by AWHC’s Freedom of Information Act (FOIA) request prove all nine were adopted through the AIP. See Appendix section 1A-1I.
- **Case Number 2:** Chad W. Lessert adopted a minimum of three BLM burros. The animals were titled on the same date, June 17, 2020. The animals were titled in Blackwell OK. The animals were later rescued from an undisclosed kill pen. Records obtained by AWHC’s FOIA request prove all three were adopted through the AIP. Further, records noted that cursory compliance inspections were conducted via email and with five photos.
- **Case Number 3:** Sherry Lessert adopted a minimum of one BLM burro, titled in Blackwell OK. The animal was titled in July 2021 and later rescued from an undisclosed kill pen. Records obtained by AWHC’s FOIA request prove this animal was adopted through the AIP. Further, records noted that cursory compliance inspections were conducted via email and with five photos.
- **Case Number 4:** Randy L. Davis adopted a minimum of two BLM burros, both titled in Blanchard OK. One of the animals was titled on July 15 2020. The second animal was titled in 2020, but the date is redacted. Both burros were rescued from an undisclosed kill pen. Records obtained by AWHC’s FOIA request prove the two burros were adopted through the AIP.
- **Case Number 5:** An owner of a burro rescued from a kill pen sent AWHC the identifying freeze brand number of the animal. While no title was obtained, the freeze brand matched FOIA records obtained by AWHC confirming this burro was adopted through the AIP. The burro was adopted May 14, 2019 and was inspected by a private vet on April 23, 2020 in Paoli OK.

- **Case number 6:** Frank R. Myers adopted a minimum of two horses who were rescued from Strouds Oklahoma Kill Pen on January 19, 2021. The two horses were titled on the same date, August 24, 2020. Records obtained by AWHC's FOIA request prove these animals were adopted through the AIP. The horses were adopted on August 3, 2019 and were inspected by a BLM employee on December 3, 2020 in Binger, OK.

2. Potential Idaho Burro Slaughter Ring

In a recent Freedom of Information Act Request (FOIA), records from the Bureau of Land Management's Idaho Field office indicate 14 families who have adopted four burros each (the maximum number allowed per adoption). Of concern:

- Shelly, Rodney, Robert and Leeann Harrop all adopted four burros each
- Heath, Bobbie Jo, Alicia, Marian, and Wendy Marley all adopted four burros each.
- Upon further investigation into the families, it was uncovered that they are connected through marriage. Bobbie Jo's maiden name is Harrop and she is married to Heath Marley.
- Included in this group was Dawn Erickson, a woman from the same town as the Harrop family. Her Facebook account shows she is connected to Rodney Harrop.
- Included in the group are Coti and Cody Weeks. Each of them adopted four burros. Cody Weeks Facebook account shows he is connected to Rodney Harrop as well.
- Included in this group is Floyd Fife. He adopted four BLM burros. Adoption records show he has the same address as Marian Marley.
- This brings the total number of burros adopted to one family to 52 animals, meaning one family received a total of \$52,000 taxpayer funds.
- One family member, Heath Marley, either works or worked at Skaar Livestock Auction, a large and controversial livestock auction yard.

The FOIA release also contained photos of burros in a [folder](#) called "Marley Burros" indicating they were housed at the Marley property. These images showed approximately 40 burros

housed in one pasture together. An immediate investigation is required to determine whether these individuals are still in possession of these burros.

3. Alleged BLM Employee Consigning or Transporting Burros to Slaughter Auction

- Evanescent Mustang Rescue recently sent AWHC the titles for 16 burros the group rescued from kill pens.
- We also received Coggins paperwork for 9 of the 16 burros. The names of the adopters were redacted on the title paperwork.
- The bloodwork for the Coggins was drawn on 7/1/2020 for the 2 of the 9 burros, and on 7/8/2020 for the remaining 7. The location of the blood draw is recorded as “Cleburne Horse Sale.” Each coggins was matched to its corresponding title through the tube number (section 9 on the Coggins), which was also handwritten on the title.
- We have confirmed from the brand numbers on the titles that the 9 burros for whom we obtained Coggins paperwork were adopted through the AIP, and all were located in Paoli, OK, which has a population of 691 people.
- The Coggins paperwork records a “Jimmy Galloway” as the owner of the 9 burros.
- Candace Ray of Evanescent informed AWHC that Jimmy Galloway is an employee of the Bureau of Land Management, specifically at Pauls Valley Off Range Holding Facility, located just 10 minutes away from Paoli, Oklahoma. Candace also told us that Jimmy frequents the Clerburne auction, allegedly to “run brands.” Candace believes that individuals who transport horses to kill pens are able to sign as the owner on required paperwork.
- Two [NY Times articles](#) ([here](#) and [here](#)) indicate that a James D. Galloway was an employee of the Texas Bureau of Land Management who investigated in the 1990’s for planning to sell wild horses he adopted to slaughter. The article notes “... *Mr. Galloway saying he planned to get horses from the adoption program, fatten them and sell them for slaughter.*” The article also states that Galloway lost his job as a result of the incident.
- Further investigation shows that in 2014, a Jimmy Galloway [was part of a BLM crew](#) that moved 1,493 wild horses out of the Teterville Long-Term Holding Facility in Oklahoma after 196 horses perished there. This may be James D. Galloway, the BLM employee

found to be preparing to send wild horses he adopted to slaughter, or it may be his son. [A comment left on a 2011](#) Associated Press article indicates that the former Galloway had a son working at the BLM at the time.

- In either case, it appears that an individual associated with or employed by the BLM is signing paperwork for BLM wild horses and burros sent to livestock auctions and an immediate investigation into this individual is warranted. **The titles and coggins can be found [in this Dropbox](#).**

Appendix:

1. Nine burros were sent to Cleburne Horse Sale by an individual, or individuals, whose name(s) are redacted on the titles. All animals were inspected by a private veterinarian.
 - a. 07730058: Burro titled on June 3, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.
 - b. 11144297: Burro titled on May 19, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.
 - c. 14144226: Burro titled on May 19, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.
 - d. 14732935: Burro titled on May 19, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli OK
 - e. 16732988: Burro titled on May 19, 2020. The animal was confirmed to be adopted through the AIP by FOIA records obtained by AWHC. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli OK
 - f. 14733071: Burro titled on June 3, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.
 - g. 16144289: Burro titled on June 3, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.
 - h. 18646708: Burro titled on June 3, 2020. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 in Paoli, OK.

- a. 1614427: Title date is unknown. The burro was adopted on May 14, 2019 and was inspected on April 23, 2020 by a private vet in PAOLI OK
6. Two BLM horses were titled to Frank R. Myers
 - a. 17629141: The horse titled on August 24, 2020 and rescued from Strouds Ok Kill Pen on January 19, 2021. The horse was adopted on August 3, 2019 and was inspected by a BLM employee on December 3, 2020 in Binger OK.
 - b. 17629194: The horse titled on August 24, 2020 and rescued from Strouds Ok Kill Pen on January 19, 2021. The horse was adopted on August 3, 2019 and was inspected by a BLM employee on December 3, 2020 in Binger OK.
7. Four BLM burros were titled to Marian Marley
 - a. 12145104: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - b. 12733168: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - c. 12733267: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - d. 13730738: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
8. Four BLM burros were titled to Alicia Marley:
 - a. 08730145: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - b. 05185047: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - c. 1573134: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - d. 16733128: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
9. Four BLM burros were titled to Wendy Marley
 - a. 06733219: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - b. 16144361: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

- c. 08184411: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - d. 08184627: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
10. Four BLM burros were titled to Heath Marley
- a. 09185075: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - b. 07184428: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - c. 09185149: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - d. 09185471: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
11. Four BLM burros were titled to Bobbie Jo Marley
- a. 09730256: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - b. 09733167: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - c. 09733274: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
 - d. 09799424: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
12. Four BLM burros were titled to Shelly Harrop
- a. 12732966: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
 - b. 13732954: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
 - c. 13733035: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
 - d. 14732930: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
13. Four BLM burros were titled to Robert Harrop
- a. 10184782: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

- b. 10185133: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- c. 10186524: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- d. 10730222: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

14. Four BLM burros were titled to Leeann Harrop

- a. 10733218: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- b. 10733241: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- c. 11185978: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- d. 11733247: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

15. Four BLM burros were titled to Rodney Harrop:

- a. 14732936: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- b. 15732976: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- c. 16144366: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- d. 06730247: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.

16. Four BLM burros were titled to Cody D Weeks

- a. 12145204: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- b. 12186532: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- c. 12733224: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- d. 12733236: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.

17. Four BLM burros were titled to Coti B Weeks

- a. 05733136: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.

- b. 08733135: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- c. 09733253: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.
- d. 107300546: The burro was adopted on June 20, 2019 and was titled on July 6, 2020.

18. Four BLM burros were titled to Dawn Erickson

- a. 12143838: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- b. 09143773: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- c. 05185617: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- d. 12733063: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

19. Four BLM burros were titled to Floyd Fife

- a. 13733208: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- b. 14733187: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- c. 14773195: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.
- d. 15730794: The burro was adopted on June 17, 2019 and was titled on July 6, 2020.

20. [Images of the "Marley Burros"](#)



**Addendum to “BLM’s Adoption Incentive Program: Pipeline to Slaughter for Federally-Protected Wild Horses and Burros” Report
June 16, 2021**

1. Additional Confirmed Adoption Incentive Program (AIP) Animals Sold at Kill Pens

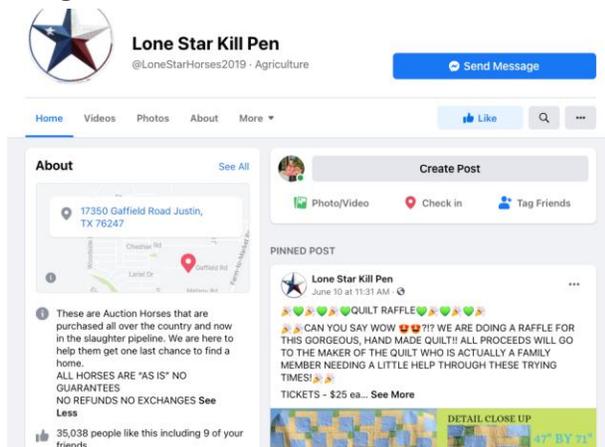
- **Case Number 1:** The American Wild Horse Campaign (AWHC) in partnership with Evanescent Mustang Rescue (EMRS) rescued a group of 12 branded Bureau of Land Management (BLM) burros out of Stroud Oklahoma Kill Pen. Out of the 12, EMRS was able to obtain 10 titles and the remaining two were untitled. All burros were adopted to the Patterson family. Through FOIA records AWHC obtained, it was confirmed that all 10 were adopted through the Adoption Incentive Program. The 10 burros were titled on March 22, 2021 and were found in the kill pen in May 2021, within the 60-90 day window for the second AIP payment. See appendix 2.1 for information on adoptions.

*special note: Out of the group of 12, only 10 were titled. According to EMRS, who has been in contact with the Oklahoma BLM, two burros were repossessed as they were not titled. The BLM official also stated that the Patterson family had a group of 20-24 burros and the second 12 burros were to be titled in July.

- **Case Number 2:** AWHC and Montgomery Creek Ranch (MCR) completed a rescue of one BLM branded mare from Lone Star Kill Pen in Justin, Texas (see appendix 1.1 for proof of slaughter status). FOIA records confirm this mare was adopted through the AIP. She was titled on February 8, 2021 and was found in the kill pen in April, 2021 within the 60-90 day window for the second AIP payment. See appendix 2.2 for information on adoptions.
- **Case Number 3:** EMRS rescued one BLM branded mare from Stroud Oklahoma Kill Pen. FOIA records confirm the mare was adopted through the AIP. See appendix 2.3 for information on adoptions.

Appendix One: Proof of kill pen status

1. Screenshot of [Lone Star Kill Pen's Facebook page](#) affirming their status as a slaughter auction.



Appendix Two:

1. Ten BLM burros were confirmed as adopted through the AIP
 - a. 18733938: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021. This burro was rescued from Stroud OK Kill pen in May 2021.
 - b. 17145359: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021. This burro was rescued from Stroud OK Kill pen in May 2021.
 - c. 15734349: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma. This burro was rescued from Stroud OK Kill pen in May 2021.
 - d. 14734421: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma. This burro was rescued from Stroud OK Kill pen in May 2021.
 - e. 13145574: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma. This burro was rescued from Stroud OK Kill pen in May 2021.

- f. 10734358: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma. This burro was rescued from Stroud OK Kill pen in May 2021.
 - g. 06732977: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma and was titled to Lee Patterson. This burro was rescued from Stroud OK Kill pen in May 2021.
 - h. 09145567: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma and was titled to Lee Patterson. This burro was rescued from Stroud OK Kill pen in May 2021.
 - i. 15145757: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma and was titled to Lee Patterson. This burro was rescued from Stroud OK Kill pen in May 2021.
 - j. 09734398: The BLM burro was adopted on March 10, 2020 and was inspected on March 22, 2021 in Marlow Oklahoma and was titled to Terry L Patterson. This burro was rescued from Stroud OK Kill pen in May 2021.
2. One BLM mare was confirmed as adopted through the AIP
- a. 19646741: The BLM mare was adopted on February 11, 2020. She was inspected on February 8, 2021 and was rescued from the Lone Star Kill Pen on April 7, 2021.
3. One BLM mare was confirmed as adopted through the AIP
- a. 19646726: The BLM mare was adopted on February 11, 2020. She was inspected on February 8, 2021 and was rescued from Stroud OK Kill Pen in June 2021.