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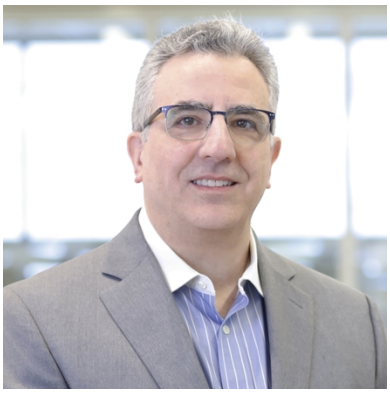

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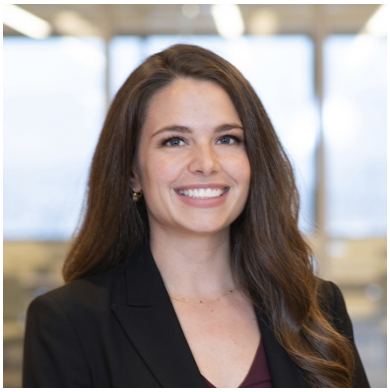

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Tenth Circuit Rejects BLM Plan to Manage Wild Horse Populations as Arbitrary and Capricious

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In *American Wild Horse Campaign v. Raby*, 2025 U.S. App. LEXIS 17410, __ F.4th. __ (10th Cir. July 15, 2025), the Tenth Circuit reversed and remanded a Bureau of Land Management (BLM) plan to manage southern Wyoming wild horse populations by reducing some horse populations to zero as arbitrary and capricious for failing to discuss the plan's ecological balance.

Statutory Background

In 1971, Congress passed the Wild Free-Roaming Horses and Burros Act (Wild Horses Act). 16 U.S.C. Sections 1331–40. The Wild Horses Act places wild horses—symbols of the West's pioneer spirit—under federal protection and management. In southern Wyoming though, these herds largely live on “checkerboard land,” in other words, lands that alternate between public and private ownership, creating a checkerboard effect. After its enactment, wild horse populations exploded, leading to damaged habitats. In response, Congress amended the act and vested BLM with the authority to remove “excess” horses if necessary to “preserve and maintain a thriving ecological balance and multiple-use relationship in that area.” 16 U.S.C. Section 1332(f).

The amended Wild Horses Act still required BLM to protect and maintain wild horse populations, but it could do so while balancing competing land concerns. The amendment's changes are reflected in Sections 3 and 4. Section 3 instructs that the “Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on public lands.” 16 U.S.C. Section 1333(a). Section 4 states that if “wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest federal marshal or agent of the secretary, who shall arrange to have the animals removed.” Section 1334.

Relatedly, in 1976, Congress also passed the Federal Land Policy and Management Act (FLPMA). Here, Congress established a general policy that the secretary of the interior shall “manage the public lands under principles of multiple use and sustained yield.” 43 U.S.C. Section 1732(a). BLM balances these priorities in regional management plans (RMPs), a preliminary guide to future management actions. In fulfilling its FLPMA

duties, BLM balances all potential land uses.

Factual and Procedural Background

To manage the southern Wyoming wild horse population, BLM created two land designations: herd areas (HAs) and herd management areas (HMAs). HAs are areas the wild horses or burros used as habitat in 1971, the year Congress passed the Wild Horses Act. Wild horses may roam these areas, but BLM does not actively manage the land for that use. HMAs, by contrast, are areas where BLM has set a management level, i.e., the target population range informed by available forage and water. In an HA, the target population level is zero. This case involved three HMAs with checkerboard land: the Great Divide Basin, Salt Wells Creek, and Adobe Town.

Originally, BLM managed the HMA wild horse population with landowner consent. This allowed the wild horses, which range up to 117 square miles, to roam on private land. BLM found this cooperation critical because on checkerboard land, wild horses wander on and off private land continuously. Without cooperation, landowners could invoke Section 4 and require BLM to constantly be removing wild horses from their land.

The region's largest landowner is the Rock Springs Grazing Association. Though it allowed wild horses to roam its lands, the Grazing Association had conflicts with BLM. In 1979, the Grazing Association sued BLM when wild horse populations greatly exceeded agreed upon levels. In 1985, it again sued BLM to enforce the judgment from the 1979 litigation. In 2003, the State of Wyoming sued BLM to address overpopulation. As a result, BLM entered a consent decree to gather and remove horses. But it failed to adequately do so.

Accordingly, in 2010 the Grazing Association revoked its consent to allow the wild horse population to roam its lands. Because of the checkerboard pattern and the Section 4 requirements, BLM found itself in an untenable position. Eventually the Grazing Association again sued BLM, resulting in another consent decree. This consent decree required BLM to remove all wild horses from private lands but permitted a smaller number of horses to remain on the HMAs. In 2013 and 2014, BLM gathered and removed horses to bring populations to appropriate levels and remove them from private lands.

Wild-horse advocates then sued BLM claiming that the gathering violated the Wild Horses Act, among other legislation. On appeal in that litigation, the Tenth Circuit suggested that BLM amend the RMPs to redesignate which land qualified as an HMA. BLM followed this advice and proposed RMP amendments to address the checkerboard land management issues. Ultimately, BLM issued an Environmental Impact Statement (EIS) with four alternative plans. BLM then selected Alternative D which would revert several HMAs to HAs and set appropriate management levels to zero horses. The third HMA would be split in two, with the northern section containing checkerboard land reverting to HA status while the southern section, containing mostly public lands, would remain an HMA, which BLM would manage for a 259–536 wild horse population. In the EIS, BLM

pointed to the plan's feasibility and balance of multiple uses while still maintaining a wild horse population.

Three groups of petitioners generally protective of wild horse populations then sued BLM. They challenged the RMP amendments under the Wild Horses Act, NEPA, and the FLPMA. The district court ruled in BLM's favor holding that the challenge was unripe and that BLM had not acted arbitrarily or capriciously in reverting the HMAs to HAs. The three groups then appealed to the Tenth Circuit.

BLM Violated the Administrative Procedure Act

Because none of the statutes at issue provides a cause of action, the Tenth Circuit considered BLM's EIS under the Administrative Procedure Act's arbitrary and capricious standard. The Tenth Circuit began its analysis by considering whether the Wild Horses Act authorized BLM's actions in amending the RMPs as it did. The parties offered competing views. Petitioners argued that the Wild Horses Act required BLM to preserve horse populations so long as BLM could maintain a thriving ecological balance. Put differently, the impossibility of maintaining a thriving ecological balance was the only permissible reason that BLM could reduce targeted horse populations. BLM advocated for a limited management duty. It claimed that the Wild Horses Act, read in conjunction with the FLPMA, required it only to maintain wild horses as one component of public land management. Because the FLPMA does not mandate BLM to accommodate every possible use of public lands, BLM must balance various considerations. Thus, BLM argued, the first decision it makes is whether it will manage wild horses on a public piece of land at all, and only if it decides in the affirmative does it then determine population goals considering the ecological balance.

The Tenth Circuit agreed with the narrower reading. The Wild Horses Act and FLPMA require balancing of various uses rather than providing an absolute mandate to manage wild horses. Indeed, the Tenth Circuit noted that Section 3 obligates BLM to manage wild horses *as a component of public lands* with the guiding principles of multiple use and sustained yield. Congress did not intend to elevate horse management above other public land use goals.

But the Tenth Circuit still found BLM's actions wanting. It clarified that BLM could not use the resource management process to avoid its Wild Horses Act obligations. Indeed, though Congress mandated only a balance, the Wild Horses Act nevertheless compelled BLM to engage in ecological balancing when it determined which lands should include managed wild horse populations. Congress gave BLM a non-negotiable duty: to consider whether, under multiple use principles, it can manage wild horses on given public lands in a manner that achieves and maintains a thriving ecological balance. Here, BLM admitted that it did not engage in ecological balancing because it believed it did not have to at this stage, *i.e.*, deciding whether horses would be managed on a piece of land. Because BLM ignored a critical component of the Wild Horses Act—ecological balancing—its proposed RMPs were arbitrary and capricious under the APA.

Petitioners also alleged that BLM's decision violated the NEPA. The Tenth Circuit, however, rejected these arguments, finding BLM followed the required statutory process, appropriately considered alternative proposals, and properly considered the environmental impacts of potential increased grazing.

Next, one petitioner challenged BLM's actions under the FLPMA. The petitioner argued that (1) BLM's EIS was inconsistent with its multiple use mandate and (2) removal of the wild horse populations was an undue degradation. The Tenth Circuit rejected both arguments, finding that BLM considered a balance of multiple uses and that given BLM's multiple purpose mission, removing wild horses itself cannot be considered an undue degradation.

Finally, the Tenth Circuit considered the appropriate remedy. Noting that the APA typically requires courts to “set aside” unlawful agency actions but also recognizing that vacatur is only supported under *Dine Citizens Against Ruining Our Environment v. Haaland's* two-factor, fact-specific test, the Tenth Circuit remanded the case to the district court to apply the relevant factors and determine the appropriate remedy.

Stephen Masciocchi and Adrianne Rosenbluth are attorneys at Holland & Hart, specializing in appellate and business litigation. Masciocchi is a partner who co-leads the appellate team and assists clients with high-stakes federal and state appeals. Rosenbluth is an associate who helps clients navigate complex commercial disputes at the trial and appellate level.

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