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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the ) Case No.  
ANIMAL WELFARE INSTITUTE, a ) CV-05-2754-PHX-FJM  
non-profit organization; and )  
the INTERNATIONAL SOCIETY )  
FOR THE PROTECTION OF )  
MUSTANGS and BURROS, a )  
non-profit organization; )  
PATRICIA HAIGHT, an )  
individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

UNITED STATES GOVERNMENT, )  
DEPARTMENT OF AGRICULTURE, )  
ANN M. VENEMAN as acting )  
UNITED STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

DEPOSITION OF ELAINE JUNE ZIEROTH

Phoenix, Arizona  
September 25, 2006  
11:07 a.m.

(COPY)  
PREPARED FOR: CHRISTINE E. BROUCEK  
ATTORNEY AT LAW  
REPORTED BY: KERRY FREMERMAN, CCR  
Certified Court eporter  
CCR No. 50754

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I N D E X

Examination By:	Page
Ms. Broucek	4

E X H I B I T S

EXHIBIT	DESCRIPTION	INITIAL REFERENCE
1	Administrative file	57

1 THE DEPOSITION OF ELAINE JUNE ZIEROTH,  
2 taken at 11:07 a.m., on September 25, 2006 at BRYAN  
3 CAVE, LLP, Two North Central Avenue, Suite 2200,  
4 Phoenix, Arizona 85004-4406, before Kerry  
5 Fremerman, RPR, Certified Court Reporter, pursuant  
6 to the Rules of Civil Procedure.

7

8 COUNSEL APPEARING:

9 For the Plaintiffs:

10 BRYAN CAVE, LLP  
11 By: Christine E. Broucek, Esq.  
12 Two North Central Avenue, Suite 2200  
13 Phoenix, Arizona 85004-4406

12

13 For the Defendants:

14 UNITED STATES ATTORNEY'S OFFICE  
15 By: Richard G. Patrick, Esq.  
16 Assistant United States Attorney  
17 Two Renaissance Square  
18 40 North Central Avenue, Suite 1200  
19 Phoenix, Arizona 85004-4408

17

Also present:

18

Tiffany Andersen

19

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Phoenix, Arizona  
September 25, 2006  
11:07 a.m.

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4 MR. PATRICK: Christine, if I might, let  
5 me note that while the Court has ruled thus far  
6 that the Plaintiffs can engage in discovery above  
7 and beyond the administrative record in the matter,  
8 let the record note our continuing objection to  
9 discovery in this action so that we won't be deemed  
10 to have waived that objection.

11 MS. BROUCEK: Your objection is noted.

12  
13 ELAINE JUNE ZIEROTH,  
14 called as a witness herein, having been previously  
15 duly sworn, was examined and testified as follows:

16  
17 EXAMINATION

18 BY MS. BROUCEK:

19 Q. Elaine, my name is Christine Broucek and  
20 I'm here on behalf of In Defense of Animals.

21 Will you please state your name for the  
22 record.

23 A. Elaine June Zieroth.

24 Q. Will you spell your last name for the  
25 court reporter.

1 A. Z, as in zebra, i-e-r-o-t-h.

2 Q. Before we get started today, is there any  
3 medication you might be taking that would inhibit  
4 your ability to give clear and honest testimony  
5 this morning?

6 A. No.

7 Q. Have you ever had your deposition taken  
8 before?

9 A. I have.

10 Q. Great. Well, then, as you know, we need  
11 audible responses, yeses and nos. If you need a  
12 break at any point, just let me know, we can take a  
13 break. And the restroom, something to drink,  
14 something along those lines.

15 Also, for the record, I will assume that  
16 if you answer my question, you understood it. So  
17 make sure you stop me if I become unclear or you're  
18 not sure what I'm trying to ask.

19 A. I will.

20 Q. Have me ask a better question.

21 Elaine -- is it okay if I call you  
22 Elaine?

23 A. Yes.

24 Q. Can you just give me a little bit of  
25 information about your background, currently where

1 you're employed.

2 A. Okay. I'm employed on the  
3 Apache-Sitgreaves National Forest in eastern  
4 Arizona as a forest supervisor. And I've been  
5 there for about three and a half years. I've been  
6 with the U.S. Forest Service for almost 35 years.

7 Q. And so prior to the three years up in the  
8 Apache-Sitgreaves, what was your position?

9 A. I was forest supervisor of the  
10 Manti/LaSal National Forest in Utah.

11 Q. And how long did you do that?

12 A. I was there for three years.

13 Q. And prior to that?

14 A. I was district ranger in Bonners Ferry,  
15 Idaho for about four and a half years.

16 Q. Okay. And before that?

17 A. Before that I was district ranger at  
18 Tonasket, Washington for seven and a half years.

19 Q. Is generally the progression district  
20 ranger up to forest supervisor?

21 A. That would be correct.

22 Q. Okay. And as forest supervisor currently  
23 in the Apache-Sitgreaves Forest, can you just  
24 describe for us generally your responsibilities.

25 A. I'm responsible for administration of the

1 two million acres of the Forest, including making  
2 decisions on the Forest and supervising the  
3 employees.

4 Q. How many employees do you currently  
5 supervise?

6 A. It's about 300 permanent employees;  
7 another 200 temporaries.

8 Q. And are they all located within the  
9 Forest or throughout Arizona? Tell me the --

10 A. The Forest ranges from Clifton all the  
11 way over through Heber Overgaard. So they're all  
12 situated someplace within that.

13 Q. And they serve in different capacities,  
14 whether -- describe some of the different  
15 capacities.

16 A. Right. It's mainly natural resource  
17 management, which would be wildlife, timber,  
18 rangeland management, law enforcement, fire, some  
19 of the main resource areas. And then I have five  
20 districts, each that have a district ranger that I  
21 supervise that are within that forest.

22 Q. Do you have a staff that you work with?

23 A. I do. I have four primary staff and  
24 then, as I said, five districts rangers that report  
25 directly to me.



1 Q. With your staff, can I just have their  
2 names?

3 A. Deb Bumpus is the staff for range,  
4 wildlife and watershed. And then we have Robert  
5 Taylor who's the staff for timber, recreation,  
6 heritage resources and engineering. And we have  
7 Deryl Jevons is the staff for planning and  
8 administration. And Bill VanBruggen is the staff  
9 for fire and safety.

10 Q. And then you have a number of folks out  
11 on the range?

12 A. Right. We have five district rangers and  
13 each one of them have a sub-unit of the forest that  
14 they administer.

15 Q. Okay, and I'm going to bother you again  
16 for names.

17 A. Okay. Kate Klein is the ranger at Heber.  
18 Ed Collins is the ranger at Lakeside. Randall  
19 Chavez is currently the acting ranger at  
20 Springerville. Frank Hayes is the ranger at  
21 Clifton. And Richard Davalos is the ranger at  
22 Alpine.

23 Q. What's the distinction between an acting  
24 ranger versus --

25 A. The ranger at Springerville retired in

1 August and so we have somebody in there temporarily  
2 until we fill it.

3 Q. Give me just a little bit of information  
4 about your educational background from high school  
5 forward.

6 A. Okay. Graduated from high school in  
7 Fresno, California and have a bachelor's degree in  
8 zoology from the University of California at Davis.  
9 And a master's degree in wildlife management from  
10 California State University in Fresno. And I have  
11 some postgraduate work at the University of Iowa in  
12 genetics.

13 Q. Do you hold any particular certificates  
14 or specialized, I guess, designations?

15 A. I'm certified as a professional wildlife  
16 biologist. I guess that would be the main.

17 Q. What does that certification allow you to  
18 do?

19 A. To be an expert witness in court or to  
20 consult or give expert opinion in wildlife  
21 management.

22 Q. Okay. Excellent.

23 Do you have any particular specialized  
24 knowledge or skills with regard to wild horses?

25 A. Not specifically to wild horses. I do

1 have an undergraduate degree in rangeland  
2 management. And so between range and wildlife,  
3 most of my career has been centered on animals, but  
4 I have not dealt specifically with wild horses.

5 Q. Okay. Are you familiar with the Wild  
6 Horse -- Wild Free-Roaming Horse and Burro Act of  
7 1971?

8 A. Yes. Yes, I am. It was part of my  
9 education and training in the Forest Service. That  
10 was one of the acts that we were familiar with,  
11 became familiar with.

12 Q. I didn't ask, but what year did you go to  
13 school, did you get your degree?

14 A. I got my undergraduate degree in 1974 and  
15 my master's degree in 1977. And then I was in a  
16 postgraduate program for another year.

17 Q. So the '71 Act was very current as you  
18 were receiving your education?

19 A. Yes.

20 Q. In enacting the Wild Free-Roaming Horse  
21 and Burro Act, Congress intended to protect and  
22 manage wild horses -- wild free-roaming horses,  
23 rather, and burros on public lands, is that  
24 correct?

25 MR. PATRICK: Objection, form and

1 foundation.

2 Q. (BY MS. BROUCEK) And just so you know,  
3 you're free to answer, even if Counsel objects.

4 A. I don't have the Act in front of me, but  
5 to the best of my knowledge, that summarizes, yes.

6 Q. Under the Act, the wild free-roaming  
7 horses and burros means all unbranded and unclaimed  
8 horses and burros and their progeny that have used  
9 lands of the National Forest System from on or  
10 after December 15th, 1971, or do hereinafter use  
11 these lands as part -- as all or part of their  
12 habitat, is that correct?

13 MR. PATRICK: Objection, form and  
14 foundation.

15 A. Again, I don't have the Act in front of  
16 me. That sounds correct, but I don't have it in  
17 front of me.

18 MS. BROUCEK: And, for the record, that's  
19 cited as 36, Code of Federal Regulations, 222.20,  
20 Section 13.

21 Q. (BY MS. BROUCEK) Unbranded claimed  
22 horses and burros for which the claim is found to  
23 be erroneous or incorrect are also considered to be  
24 wild and free-roaming horses if they meet that  
25 particular definition. Would you agree with that

1 statement?

2 MR. PATRICK: Form and foundation.

3 A. Again, I don't have the Act in front of  
4 me. That sounds correct.

5 Q. (BY MS. BROUCEK) Based on your  
6 experience with the Act?

7 A. Right.

8 Q. Would it also, therefore, be true that  
9 any horse or burro not meeting that definition of  
10 the Wild Horse and -- Free-Roaming Horses and  
11 Burros Act that is introduced onto National Forest  
12 System lands, on or after December 15th, 1971,  
13 through accident, negligence, or willful disregard  
14 of private ownership, but which may become  
15 intermingled with the wild free-roaming horses  
16 receive the same protection under the Act? Would  
17 you agree with that statement?

18 MR. PATRICK: Form and foundation.

19 A. Again, not having the Act in front of me,  
20 that sounds correct.

21 Q. (BY MS. BROUCEK) Okay. Would you agree  
22 that under the Act, wild free-roaming horses are  
23 protected even if they move to lands of other  
24 ownership or jurisdiction?

25 A. Again, I don't have the Act in front of

1 me, but that sounds accurate.

2 Q. To your knowledge, based on your study of  
3 the Act, do wild horse and -- wild free-roaming  
4 horses under the Act, are they restricted by any  
5 kind of date as far as when they become designated  
6 as wild horses?

7 MR. PATRICK: Object to the form of the  
8 question.

9 A. I don't understand the question.

10 Q. (BY MS. BROUCEK) To your knowledge, is  
11 there any restrictive date associated with when a  
12 horse may or may not be designated a wild horse  
13 under the Act?

14 MR. PATRICK: Objection, form.

15 Q. (BY MS. BROUCEK) Not a very good  
16 question. I'll see if I can find a better way to  
17 ask you.

18 In some of your correspondence with folks  
19 that have been involved in the issue that we're  
20 here with, as far as the roundup of the wild  
21 horses, there's been a couple comments made. One  
22 was that the distinction is that the wild horses  
23 have spent generations in an area before 1971 in an  
24 untamed state. And that generally tame horses  
25 whose owners have allowed them -- those are

1 generally tame horses which help horses -- have  
2 roamed on the Forest land.

3 That was stated in the letter to Joe  
4 Wager on July 6, 2005. Do you have any  
5 recollection of making a statement --

6 A. I remember sending -- I remember sending  
7 a letter to Joe Wager about the distinction of the  
8 horses in the case that we're talking about here.

9 Q. Okay. I'll see if I can find the exact  
10 letter, just so we can focus in on --

11 Is it your understanding, based on the  
12 time frame of the Act, that a horse would only be  
13 considered a wild horse if it was introduced into  
14 the Forest Service after 1971?

15 A. No. If there was a horse -- a wild  
16 horse -- a horse that was considered a wild horse  
17 in a wild horse territory prior to 1971 when the  
18 territory was designated, that would be -- continue  
19 to be a wild horse.

20 Q. Would, therefore, its progeny also be  
21 considered a wild horse?

22 A. The progeny of a wild horse would be a  
23 wild horse.

24 Q. And then any horses which might become  
25 intermingled and progeny of those horses, would

1 those two then become -- fall under the definition  
2 of a wild horse?

3 MR. PATRICK: Form and foundation.

4 A. Okay. According to the Act, if there are  
5 horses that intermingle with wild horses in or near  
6 the wild horse territory, their progeny could be  
7 considered wild horses.

8 Q. (BY MS. BROUCEK) And, therefore, they  
9 would -- is it correct that they would be entitled  
10 to the same protections under the Act, the wild  
11 horses?

12 A. The progeny?

13 Q. The progeny intermingled with those free  
14 wild horses.

15 A. If they intermingled with wild horses in  
16 or near a wild horse territory, the progeny would  
17 be given the protection of the Wild Horse Act as  
18 wild horses in the future.

19 Q. We'll get to the letter. I'll find it  
20 here in a moment.

21 Under the Act, public lands are defined  
22 as any lands administered by the secretary of the  
23 interior through the Bureau of Land Management and  
24 the secretary of agricultural -- agriculture  
25 through the Forest Service. Would you agree that



1 that is correct?

2 A. That's correct.

3 Q. Based on that definition of public lands,  
4 would you agree that the Apache-Sitgreaves National  
5 Forest, including the Wild Horse Territory and --  
6 sorry -- the Wild Horse and Bureau Territory is  
7 included within that Act?

8 A. Apache-Sitgreaves National Forest is  
9 public land under that definition, including the  
10 Heber Horse Territory.

11 Q. Under your position as supervisor of the  
12 Forest Service and your knowledge again of the  
13 Act -- and when I refer to the Act, I'm going to  
14 take the mouthful and just refer to the Act versus  
15 the Wild Horse and Burro Act.

16 Under the Act, the secretary is directed  
17 to protect and manage wild free-roaming horses and  
18 burros as components of those public hands. Would  
19 you agree that that's correct?

20 A. I don't have the Act in front of me, but  
21 that sounds correct.

22 Q. Isn't it true then that the Act requires  
23 the secretary to manage wild free-roaming horses  
24 and burros in a manner that is designed to achieve  
25 and maintain a thriving natural ecological balance

1 on the public lands?

2 A. The best of my recollection, that is  
3 included in the Act.

4 Q. To your knowledge, is there currently a  
5 management plan in place in the Apache-Sitgreaves  
6 National Forest or the Heber Wild Horse Territory?

7 A. I have not been able to find a management  
8 plan per se for the Heber Horse Territory.

9 Q. So your answer would be no, there  
10 currently is one and you just can't find it?

11 A. I'm not aware of any that's available so  
12 as far as I know, there's no plan available.

13 Q. To your knowledge, what is the last  
14 fiscal year that a management plan was developed  
15 for the area?

16 A. To my knowledge, there has never been a  
17 plan developed -- a management plan developed for  
18 the Heber Wild Horse Territory.

19 Q. Do you have any knowledge as to why no  
20 plan -- there has not been a plan currently for the  
21 management of the Apache-Sitgreaves Forest?

22 A. Just based on my analysis of the record,  
23 it appeared that there were only seven horses in  
24 that territory and there were notes written in on  
25 some of the census information that was sent in

1 saying that the -- they were just letting that  
2 population dwindle down to zero; that there  
3 appeared to be no reproduction in that population  
4 and they were just letting them die out of old age.

5 Q. Was there ever any -- and, again, to your  
6 knowledge -- was there ever any directive or  
7 decision made that no management plan needed to be  
8 put in place because of the small numbers of  
9 horses?

10 A. I haven't found any documentation that  
11 says that a decision was made not to.

12 Q. And currently in your position, with the  
13 obvious increased number of horses, why has  
14 there -- or what decision has gone into not putting  
15 together a management plan for those horses?

16 A. Currently we have initiated the  
17 preparation of a management plan for the Heber  
18 Horse Territory.

19 Q. When was that initiated?

20 A. We had an internal interdisciplinary team  
21 that started meeting in August of this year. So  
22 approximately a month ago.

23 Q. And what was the decision-making process  
24 as far as why to go ahead and start making a plan  
25 now?

1           A.    Looking through the record, over ten  
2    years ago the Forest supervisor that preceded me  
3    thought that he had dissolved that territory  
4    through a letter, talking to our regional office in  
5    Albuquerque.  They said that that wasn't a proper  
6    mechanism for dissolving of a territory, and  
7    that -- they advised us that the next step would be  
8    to write a management plan for the Heber Horse  
9    Territory stating what our objectives were for any  
10   horses in that territory.

11           Q.    Have you developed those objectives yet?

12           A.    Not at this point.

13           Q.    Did you have any preliminary discussions  
14   with regard to what the objectives will be for the  
15   management of the wild horses?

16           A.    No, we're just in the very early stages.

17           Q.    Is it possible that one of those plans  
18   will be to eliminate the Heber Wild Horse Territory  
19   altogether?

20           A.    Talking to our counsel, we're not sure  
21   what the mechanism is for getting rid of the  
22   territory.  So I don't know if that is a good  
23   objective or not at this point.

24           Q.    Would you agree that up until now,  
25   obviously, you have indicated you're initiating a

1 management plan, in the past ten years, considering  
2 no plan has been enacted or undertaken, would you  
3 consider that a violation of the Act?

4 MR. PATRICK: Object, form and  
5 foundation.

6 A. I don't necessarily consider that a  
7 violation of the Act.

8 Q. (BY MS. BROUCEK) Why not?

9 A. I'm not sure that the Act specifically  
10 says that you have to write a management plan. You  
11 have to have management objectives for the herd,  
12 which were stated when the annual census reports  
13 came out, which were basically to manage the  
14 population eventually down to zero due to old age  
15 of the horses that were in there and lack of  
16 reproduction.

17 Q. Can you describe for me what your  
18 definition of a feral is.

19 A. A feral animal is an animal that at one  
20 point was domesticated and had an owner and has  
21 sort of been allowed to run loose and is no longer  
22 held captive within a fence or under the control of  
23 the owner.

24 Q. Would you consider -- and when I say you,  
25 Forest Service -- is a feral horse considered a

1 claimed horse?

2 A. Not necessarily. But we consider feral  
3 animals ones that are -- may be running free on the  
4 National Forest, and at one point had an owner,  
5 whether it's a dog, a cat, a horse or a pig.

6 Q. Specifically referring to a feral horse,  
7 how do you make the determination that these were  
8 once domesticated animals?

9 A. One of the indications was in my  
10 conversations with the White Mountain Apache tribe.  
11 Both the tribal rangeland managers and the Bureau  
12 of Indian Affairs that helped manage the  
13 reservation lands with the tribe, they indicated  
14 that they have hundreds of horses running free on  
15 the tribal land that the owners let loose and run  
16 free.

17 And that at the time of the -- right  
18 after the Rodeo-Chediski fire when the fence was  
19 down along our borders, that they had gathered up  
20 about 200 horses on their side of the border and  
21 they said that they had observed a lot of horses  
22 running across the border onto the National Forest  
23 land. And so that was good evidence on my part  
24 that we had just acquired many of the tribal horses  
25 onto the National Forest land.

1           And then they built the fence back,  
2       which, in effect, trapped them on the National  
3       Forest land. So that was good evidence that we had  
4       horses coming across from the tribe.

5           Q.    Was there anything at the time that that  
6       occurred that documented the fact that horses were  
7       escaping onto the Forest Service from the Apache  
8       lands?

9           A.    This was a verbal conversation I had with  
10      the Bureau of Indian Affairs on tribal members in  
11      July of 2005. I don't believe that there was any  
12      documentation to that effect. Just that they  
13      were -- observed the horses going across to the  
14      National Forest.

15          Q.    Who did you speak with at that point in  
16      time?

17          A.    Robert LaCapa, who is with the Bureau of  
18      Indian affairs, and Paul DeClay, who was with  
19      Tribal Forestry.

20          Q.    Are these folks that the Forest Service  
21      works with on a regular basis?

22          A.    Uh-huh, right. We have a quarterly  
23      meeting with them. This is at one of our regular  
24      quarterly meetings.

25          Q.    How was it that this was brought to their

1 attention that the discussion occurred with regard  
2 to the horses being feral, possibly being  
3 domesticated and on Forest Service land?

4 A. I'm not sure what you mean by brought to  
5 their attention.

6 Q. Well, you indicated you had a verbal  
7 conversation in July of 2005. How did that come  
8 about?

9 A. We were having a quarterly tribal meeting  
10 and we actually went out to look at portions of the  
11 fence that was along the border. And one of the  
12 topics on the agenda was fire restoration,  
13 restoring the land after the fire, and the impacts  
14 of the horses on that restoration effort on both  
15 sides of the fence, Forest Service and reservation  
16 land, that was on the agenda.

17 Q. You indicated that the fence was rebuilt?

18 A. Correct.

19 Q. Describe for me just generally your  
20 knowledge of what fence borders the two  
21 territories.

22 A. Actually, the fence borders the  
23 reservation land and the National Forest. It  
24 doesn't border the Heber Wild Horse Territory,  
25 which is actually quite a distance north of the



1 fence. But it's just the boundary fence that's the  
2 property of the White Mountain Apache tribe.

3 Q. And at one point this fence was intact?

4 A. It was intact, although we've always had  
5 some problems with breaches in the fence, due to  
6 trees falling down or other problems over the  
7 years. But during the Rodeo-Chediski fire, the  
8 fence posts were burned and so many miles of the  
9 fence were down at one time.

10 Q. And is it at that point that this large  
11 influx of, as you described, feral, or defined  
12 them, feral horses came across onto the forest  
13 lands?

14 A. Correct. When the White Mountain Apache  
15 tribe wanted to start the restoration on their  
16 tribal land, planting grass and trees, they wanted  
17 to gather up the horses that were running free on  
18 the tribal land because they were afraid that the  
19 horses would damage the restoration work.

20 And they said at that time they observed  
21 that a large number of the horses probably -- well,  
22 they observed large numbers of the horses going  
23 across what had been the fence before. It was  
24 damaged by the fire. They had gathered, I think,  
25 approximately 200 horses on their side of the

1 border, but they said some of them got across on  
2 the National Forest for sure.

3 Q. And then at some point the fence was  
4 rebuilt or --

5 A. Right. The tribe owns the fence and they  
6 actually rebuilt it after the fire.

7 Q. Do you have any idea of the time frame  
8 the fence was rebuilt?

9 A. I wasn't on the Forest at the time, but  
10 it would have been sometime between July of 2002  
11 and August of 2003, during that year.

12 Q. To your knowledge -- and again it  
13 appears -- tell me again the year you started with  
14 the Forest Service up in Apache-Sitgreaves.

15 A. I started with Apache-Sitgreaves in March  
16 of 2003.

17 Q. From the time you started working with  
18 the Apache-Sitgreaves, was anything brought to your  
19 attention by the Apaches with regard to, Look,  
20 we've got a bunch of horses on your land, we need  
21 to get them back?

22 A. Not at that time. Not until -- the first  
23 time I had the conversation with anyone from the  
24 tribe was in 2005.

25 Q. So to your knowledge, was there any

1 correspondence or documentation coming back and  
2 forth between the Forest Service and the Apache  
3 tribe discussing the issue of horses that belonged  
4 to the tribe being on Forest Service land?

5 A. I saw no written correspondence to that  
6 effect. We had -- over the history of the  
7 Apache-Sitgreaves National Forest, we'd had  
8 occasions with horses coming over from both the  
9 White Mountain Apache and the San Carlos Apache  
10 tribes. So there wasn't any special documentation  
11 for this occurrence.

12 Q. Was there ever a time that these breaches  
13 with the horses coming across -- you indicated that  
14 you guys had quarterly meetings?

15 A. Uh-huh.

16 Q. To your knowledge, were these breaches  
17 ever discussed and addressed during these meetings?

18 A. My understanding is before I even started  
19 with the Apache-Sitgreaves Forest, they had had  
20 discussions about problems with maintenance of the  
21 fence along the border with both the tribes, both  
22 San Carlos and White Mountain Apache tribe. And  
23 the Forest Service had attempted to enter into a  
24 memorandum of understanding with the tribes to help  
25 assign the fence maintenance to different cattle

1 permittees that shared the fence. To date we have  
2 not been able to get that agreement signed.

3 So that was at least one of the issues  
4 with the tribe for years, is both cattle and horses  
5 crossing both ways across that fence line at times  
6 when the fence was down or gates were open and some  
7 other problem.

8 Q. Prior to you beginning your position then  
9 at the Apache-Sitgreaves, have you seen any  
10 documentation that would have noted any discussions  
11 of the horses and the issue of the horses roaming  
12 back and forth after the 2002 fire?

13 A. Documentation from an outside source?

14 Q. No. Again, the quarterly meetings that  
15 that would have been a discussion point.

16 A. We don't keep any written minutes from  
17 the quarterly meetings and so they would all have  
18 been verbal discussions.

19 Q. Why is no documentation kept of the  
20 meetings?

21 A. It's part of the relationship we have  
22 with the tribes, that they prefer to do things  
23 verbally. And it was agreed long before my time  
24 that we wouldn't have an official note-taker, that  
25 it would be just our verbal agreement. It's part

1 of their culture.

2 Q. Who was your predecessor in the position  
3 your currently serve in?

4 A. John Bedell. He's retired now.

5 Q. Do you know whether or not he is still in  
6 the area?

7 A. He lives at Camp Verde.

8 Q. So in his position, much like yours, he  
9 would have participated in the quarterly meetings  
10 after the 2002 fire?

11 A. He was there for about nine months after  
12 the fire and for about twelve years before the  
13 fire.

14 Q. Okay. Getting back to my agenda here.

15 As far as inventorying the horses and  
16 what is required under the Act, in addition to  
17 managing the horses that may be on the Forest  
18 Service public lands, isn't the secretary also  
19 required to maintain a current inventory of wild  
20 free-roaming horses and burros on these public  
21 lands? Would you agree with that?

22 A. I agree with that.

23 Q. Is there a current inventory of the  
24 horses on the Apache-Sitgreaves public lands?

25 MR. PATRICK: Objection to form.

1           A.    The last inventory that I have seen in  
2   the records that mention the Heber Horse Territory  
3   was in the early 1990s.  I believe it was around  
4   1992.

5                   And at that time the district ranger had  
6   noted that there were still two old mares that were  
7   within the Heber Horse Territory and that they had  
8   not had any reproductions in the young horses in  
9   there and so that it appeared that the population  
10  was dying out at that time.  That's the last  
11  inventory I've seen.  And since that time, none of  
12  our employees have observed any of those horses --  
13  those original horses still being in the territory.

14           Q.    (BY MS. BROUCEK)  Based on that, with  
15  there being two mares in, say, the early 1990s, you  
16  indicated earlier that it's always been an ongoing  
17  issue with horses crossing back and forth between  
18  the Indian territories and the Forest lands.

19                   Was there any -- you indicated there was  
20  only the last inventory was in the early 1990s.  Do  
21  you know why another inventory was not done to see,  
22  if nothing else, what horses were traveling over  
23  onto Forest Service lands?

24           A.    I don't know whether any inventories were  
25  done.  I could find no documentation that

1 documented that they were done; just anecdotal  
2 observations from employees that said that they had  
3 not seen any horses out there since that time.  
4 Whether they just felt that they didn't need to  
5 document that because they felt the population had  
6 basically died out or what, I have not seen any  
7 documentation since that time.

8 Q. To your knowledge, have you seen any  
9 documentation that would have given a reason or a  
10 decision as to why no future -- or no inventories  
11 took place after, say, 1992 or 1993?

12 A. The only document was the letter by my  
13 predecessor John Bedell saying that they felt that  
14 that -- there were only two horses left, and that  
15 they were old. And at that point they wanted to  
16 dissolve the territory because they didn't feel  
17 that it was functioning as a wild horse territory  
18 anymore. And so at that point, I think -- I  
19 believe that the Forest felt that that was the end  
20 of the wild horse territory, as far as their  
21 responsibility for maintaining it.

22 Q. Is there any kind of separate budget that  
23 the Forest Service works with to manage the wild  
24 horse territory?

25 A. We have not received any money, to my

1 knowledge, for managing wild horses. I don't know  
2 if there is a budget on the Forest or not.

3 Q. Okay. Just, again, based on your  
4 recollection of documents you've reviewed, do you  
5 remember the years that the last inventories were  
6 done? Can you be any more specific other than the  
7 early 1990s?

8 A. I believe that -- and, again, this is  
9 just -- based on my recollection, it was 1992 and  
10 that the letter stating that the wild horse  
11 territory was null and void basically was, I  
12 believe, 1993.

13 Q. Okay.

14 A. I don't have those in front of me.

15 Q. With regard to keeping a current  
16 inventory of horses that may or may not be on the  
17 Forest Service public lands, would you agree that  
18 it is a violation of the Act to not keep a current  
19 inventory?

20 MR. PATRICK: Objection, form and  
21 foundation.

22 A. I don't necessarily agree with that  
23 statement.

24 Q. (BY MS. BROUCEK) Why not?

25 A. For one, we were under the -- I



1 believe -- I shouldn't say we. The Forest -- at  
2 that time, the Forest supervisor at that time was  
3 under the belief that he had nullified that  
4 territory and they no longer had responsibility  
5 under the Wild Horse and Burro Act for that  
6 territory after 1993.

7 Q. What was your understanding, when you  
8 came on board in 2003, as to whether or not there  
9 was a protected horse territory?

10 A. I was not even aware that there ever had  
11 been a wild horse territory on the Forest.

12 Q. So with regard to the Act, did that even  
13 come into play as you dealt with these some 400  
14 horses roaming in the Forest?

15 A. No. I was not aware that there ever had  
16 been any wild horse territory in the Forest. So  
17 when we started getting reports of several hundred  
18 horses being on the Forest, it never even occurred  
19 to me that wild horses would be ever brought up as  
20 an issue.

21 Q. Had you known, hypothetically, that there  
22 was a wild horse protected area in the  
23 Apache-Sitgreaves National Forest, how would that  
24 have changed your dealings last year as far as  
25 putting out a bid to round up these horses?

1 MR. PATRICK: Objection, form and  
2 foundation.

3 A. That's a lot of hypothetical here. But  
4 if I had been aware that there was -- had been  
5 historically a wild horse territory, would have at  
6 least researched the situation to see what  
7 information there was about the territory and the  
8 current status of it. It would be pure speculation  
9 to see how that would have changed a decision I  
10 made at the time.

11 Q. (BY MS. BROUCEK) Based on what you know  
12 now, that there is a wild horse territory and it's  
13 protected by the Act, how is that impacting your  
14 decisions going forward with regard to managing  
15 these horses?

16 A. Well, now that I'm aware that there's a  
17 wild horse territory, and also aware that the  
18 letter by John Bedell in, I believe, 1993, saying  
19 that he's nullifying that territory was not an  
20 effective way of nullifying that, then I have asked  
21 the district ranger to put together a team and work  
22 on a management plan for that territory. And also  
23 I need the document to document that decision.

24 Q. Who is involved now with your team to  
25 work on this issue?

1           A.     Kate Klein is the district ranger that's  
2     the lead on putting together that management plan.  
3     And she has several folks on her district that are  
4     a part of that team, but I don't know all the  
5     members.

6           Q.     Okay.  How often do you interact with  
7     this team?

8           A.     The district ranger's taking the lead on  
9     it so I have not interacted with the team  
10    personally.  She's had, I believe, one or two  
11    meetings with the team and I believe they're ready  
12    to start getting public involvement as a first  
13    step.

14          Q.     As part of her responsibilities, is she  
15    directed to report to you on a regular basis as to  
16    what's going on with the management team?

17          A.     She would when we're having performance  
18    reviews or discussion.  I talked to her actually  
19    last week just to see where she was, and she said  
20    that they were going to have another team meeting  
21    within the next two weeks.

22          Q.     And then you said the next step is to  
23    open that up to the public?

24          A.     Right.  Get public comment, public  
25    involvement.

1           Q.    How is her activities with this  
2 management team now -- to your knowledge, how is it  
3 being documented?

4           A.    They would, of course, have notes that  
5 they take throughout the process, but the  
6 documentation may be a written herd management plan  
7 for the Heber Horse Territory. It would give goals  
8 for the management of the territory and the  
9 population, if there is still a population there.  
10 And then an environmental -- probably an  
11 environmental assessment. Some kind of a NEPA  
12 document that would document that decision.

13          Q.    So plans are under way to conduct a NEPA  
14 or an environmental impact statement, if necessary?

15          A.    Some sort of NEPA document, whether it's  
16 a categorical exclusion, environmental assessment  
17 or EIS, there would be a NEPA document that would  
18 document the decision made in the plan.

19          Q.    And, again, just tell me in stages. You  
20 said in August it started of this year?

21          A.    I believe it was August. It could have  
22 been July, but it at least was a month ago.

23                   And the first stage is to bring the team  
24 together and define the issues. And then, as I  
25 said, soon they will be going out for public

1 comment.

2 Q. Based on your knowledge then with the  
3 horses that currently are located in the National  
4 Forest -- and, again, that's Apache-Sitgreaves --  
5 when -- at what point -- and I'm going to back us  
6 up to last year, about 2005, May, June, July time  
7 frame when you guys were discussing putting out a  
8 bid to round up these horses -- at what point in  
9 that decision-making process did you determine that  
10 this 3- or 400 number of horses were not wild or  
11 free-roaming?

12 A. As I said, that early in the process it  
13 never even occurred to me that there was an issue  
14 that anyone would bring up on wild horses. Based  
15 on all the information that I had, led me to  
16 believe that these were feral horses that came  
17 across the border from the White Mountain tribe and  
18 that we dealt with them as trespass or estray  
19 livestock on the National Forest, which is a law  
20 enforcement situation.

21 Q. And I believe I've seen in some of the  
22 documentation that if it was outside of  
23 circumstances, then the Act doesn't apply and  
24 there's different methods that you can follow?

25 A. Correct. If they're feral horses, then

1 we follow the estray livestock regulation.

2 Q. If no inventory or census had been  
3 conducted since maybe the early 1990s, how did you  
4 guys know how many horses were up there?

5 A. We did not have a census of the horses  
6 that had come over from the tribal lands so we were  
7 just estimating based on observations, both on the  
8 ground from our employees, or other people out in  
9 the Forest or from aerial information we got from  
10 Arizona Game and Fish who were doing aerial surveys  
11 of wildlife and also have recorded that they saw  
12 groups of horses. So we didn't have an exact  
13 number. We just knew that they were -- appeared to  
14 be hundreds of horses on the Forest.

15 Q. So it's possible that the Game and Fish  
16 Department might also have inventory information  
17 with regard to how many horses have been up in that  
18 area for any given time?

19 A. They -- just my understanding is in 2005  
20 they just started recording other wildlife --  
21 excuse me -- other animal observations besides just  
22 wildlife when they did their survey. So prior to  
23 2005, they didn't necessarily record if they saw  
24 cows or horses or whatever on the Forest. But in  
25 2005 they started writing in their notes if they

1 saw horses. And so we have some aerial  
2 observations from them about seeing groups of  
3 horses.

4 Q. With regard to the horses that have been  
5 observed through the variety of personnel or Game  
6 and Fish information maybe that you've gotten  
7 recently, have you been able to determine whether  
8 any of these horses have any indication of  
9 ownership, whether it be branding or notching or --

10 A. We haven't captured any of the animals,  
11 and there have been again anecdotal stories of  
12 animals coming up to people, campers or some of our  
13 livestock permittees that have permits out there,  
14 some of the animals coming up to them. Early on  
15 some observations of shoes on some of the horses.  
16 But we haven't actually captured them and handled  
17 the horses.

18 Q. Have you been able to send anyone up to  
19 maybe photograph them or just observe them in their  
20 natural state to see if you can make any  
21 determination of domestication?

22 A. At one point in the spring, I think --  
23 don't remember the exact month -- but the tribal  
24 range manager came over and went out with one of  
25 our range managers, and they spent a couple of days

1 out trying to locate the horses, but they didn't  
2 have a lot of success because the horses are still  
3 moving around quite a bit. They may not have  
4 established territories and so they weren't really  
5 able to find a lot of horses when they were out  
6 there. So they didn't -- I don't know if they took  
7 any pictures or not. I haven't seen any.

8 Q. Would that have been in the spring of  
9 2006?

10 A. Correct.

11 Q. Do you know who it was that went and  
12 tried to observe the horses?

13 A. I don't remember the name right offhand  
14 of the tribal range specialist. And I'm not sure  
15 if it was Randall Chavez from Lakeside or the range  
16 specialist from Black Mesa whose name just went  
17 right out of my head. It will come back in a  
18 minute.

19 Q. Okay, you can let me know if you  
20 remember.

21 So based on that again, it appears that  
22 most of the information you've gotten is maybe  
23 through verbal --

24 A. Correct.

25 Q. -- observations?



1           Is there anything that might document,  
2     since the fire 2002 to current, what the Forest  
3     Service has done to determine what potential  
4     ownership claims are at stake right now with the  
5     horses?

6           A.     We have talked to the White Mountain  
7     Apache tribal attorney and he has had conversations  
8     with the tribal chairman and the tribal council.  
9     And I was not asked to be present at those  
10    discussions, but the tribe, according to him, has  
11    claimed ownership of the animals. They say that  
12    they feel that they are tribal horses that have  
13    gone across onto the National Forest land.

14           And, again, based on the verbal  
15    descriptions of the horses being rounded up near  
16    the boundary and going across the boundary, that  
17    was good evidence for me that they are owned by the  
18    tribal members of the White Mountain Apache tribe.

19           Q.     What steps, if any, has the tribe taken  
20    to attempt to reclaim their horses?

21           A.     We actually had a conversation, through  
22    their tribal attorney, about whether they would  
23    like to come get their horses, take their property  
24    back. And he said that it's pretty expensive to  
25    round horses up and that they have experience with

1 that on tribal lands of rounding horses up and that  
2 they just don't have the money or resources to  
3 travel that far and round the horses up and take  
4 them home.

5 They did indicate that if we would help  
6 them financially, that they would like to come get  
7 their horses, but they just don't have the  
8 resources to do it themselves.

9 Q. Are those recent conversations or can you  
10 give me the time frame of when those discussions  
11 were had?

12 A. We started having those discussions last  
13 fall. I'm trying to remember. It would have been  
14 around September, October. I know that the tribal  
15 council has met over the winter a couple of times,  
16 according to verbal information I have gotten that  
17 they have discussed the issue with the tribal  
18 council and the tribal range specialist. But,  
19 again, I don't have their documentation.

20 Q. So to date, is there any plan in place  
21 for the Apaches to work with the Forest Service to  
22 reclaim any property that might be theirs as far as  
23 the horses go?

24 A. They indicated that if there is a  
25 gathering of the horses where we gather them up,

1 that they would like to be present to identify  
2 their own marks and brands that they use on the  
3 horses to try to sort out the horses that they feel  
4 are owned by -- have proof of ownership by the  
5 tribal member. But they also acknowledge that some  
6 of the horses have been running loose on the tribal  
7 lands and that younger horses may not have marks or  
8 brands on them because they're -- you know, they're  
9 reproduction of animals that have been running  
10 loose on their land.

11 Q. Well, that leads me then to the -- I  
12 guess naturally flows, is have you been able to  
13 determine how many offspring have -- since 2002  
14 when this migration of horses came onto the Forest  
15 Service land allegedly, what kind of population  
16 increase there has been due to, you know, birth and  
17 reproduction?

18 A. Strictly anecdotal. That some of the  
19 groups of horses had colts with them, but we don't  
20 have any strict numbers or census of that.

21 Q. So based on that, would it seem to make  
22 sense that there would be a generation of horses  
23 that would have markings of some kind as belonging  
24 to tribal -- the Apache tribe and then there would  
25 be younger horses that would not have any markings

1     whatsoever?

2             A.     That's what I'm led to believe.  Having  
3     talked with the tribal range managers, is that when  
4     they gather up the horses on the Apache lands that,  
5     you know, 50 percent or less would have a marker or  
6     Apache brand on it, and that there'd be, you know,  
7     may be a generation or two since then that they  
8     were marked or branded that may not have any kind  
9     of mark.

10            And the way they determine ownership then  
11     is if they have a group of horses and they find  
12     horses that are banded together with a mare,  
13     younger horses, they assume that that's her  
14     reproduction and that that's part of the same  
15     person's horse herd.

16            Q.     Assuming again that some of these horses  
17     arrived after the fire, migrated from the Apache  
18     lands, would you agree that it's possible that some  
19     of these horses have intermingled with horses that  
20     have lived on the Forest Service lands that were  
21     just unaccounted for because no inventory or census  
22     had gone on for so long?

23            A.     Just have no way of knowing.

24            Q.     To your knowledge, after the presumed --  
25     the wild horse territory was presumably disbanded,

1 it was eradicated, is there any documentation or  
2 any evidence that you have come across that would  
3 show that those last -- those two remaining mares  
4 had been disposed of or had died?

5 A. In the letter that Kate Klein, the  
6 district ranger, wrote to the Forest supervisor,  
7 John Bedell, in, I believe it was -- it was either  
8 1992 or 1993 -- she was asking for permission to  
9 gather up those two horses for disposal. Just  
10 conversations I've had with her indicate that they  
11 never did go out and do anything with those two  
12 mares.

13 Q. So as far as anyone would know, those  
14 horses could -- I don't know the lifespan of a  
15 horse, but --

16 A. That was over ten years ago.

17 Q. -- how old the horses were at the time --

18 A. That was 13 years ago, and all  
19 indications are that they were the same mares that  
20 were there when the territory was set up in the  
21 '70s, that would be probably much too old for a  
22 horse. That would be over 30 years old and that  
23 would be a very, very old horse.

24 Q. So the two mares that were observed in  
25 the early 1990s, those are believed to be two mares

1 that were originally on the horse territory in the  
2 1970s?

3 A. To the best of their knowledge, those  
4 were two remaining mares from that group and  
5 they -- all indications were that the male that was  
6 in that group of horses was either a gelding or  
7 sterile, and they never found any reproduction  
8 based on it.

9 So they were just -- they believed in  
10 1992 that they were older mares that were still  
11 remnants of that group, but that was 13 years ago  
12 and they would more than likely be dead by now.

13 Q. So based on that, was there ever a  
14 determination made within the documentation, the  
15 administrative record, that we'll take a look at in  
16 a moment, that the 3- or 400 horses currently  
17 potentially roaming the National Forest public  
18 lands, that those are connected in any way to that  
19 original herd that may have existed back in the  
20 '70s?

21 A. We believe that they're not connected  
22 because, again, we felt that all of those original  
23 horses died of old age and did not reproduce. So  
24 there would be no reason for us to believe that  
25 there were any horses left in that territory in

1 that regional group to be connected to.

2 Q. Have you reviewed or seen any of the  
3 statements given by witnesses in the area, the  
4 Heber area, that have seen horses roaming in the  
5 1990s for periods of time?

6 A. I have not. I have spoken to, I think,  
7 two individuals verbally, but I have not seen their  
8 statements.

9 Q. Has anyone indicated to you, verbally or  
10 otherwise, that there were horses on the territory  
11 in the 1990s?

12 A. I have heard some individuals say that  
13 they have seen horses on the National Forest. I  
14 didn't necessarily hear them say that they were in  
15 the Heber Horse Territory area, but that they had  
16 seen horses on the National Forest, you know, off  
17 and on for years.

18 And we -- as I said, we have always had  
19 some horses that have come across the boundary  
20 fence when it was broken or there was a gate left  
21 open. So we've always had some horses coming  
22 across anyway. So I wouldn't doubt that they  
23 either saw some of the horses that have come across  
24 from the tribal lands over the years, or we also  
25 have some of our grazing permittees that have

1 horses that are part of their grazing allotment  
2 that are part of their permit to allow those horses  
3 to be grazing on the Forest.

4 And then just sometimes when somebody  
5 just gets an old horse in their home, they just  
6 open the gate and let them go on the National  
7 Forest. So, again, I would not be surprised that  
8 somebody had seen a feral horse on the National  
9 Forest at one time or another.

10 Q. And under that definition of a feral  
11 horse, there would be some indication of these  
12 horses being domesticated at some point, would you  
13 agree with that?

14 A. It just depends on how long they had been  
15 there, whether they're a reproduction of a horse  
16 that had originally been, you know, somebody's  
17 close -- ownership close enough that they would  
18 brand them. In Arizona a lot of people don't brand  
19 their horses. It's just not real common practice  
20 the way they brand cows. So you can have feral  
21 horses that don't necessarily have, you know, a  
22 brand or a mark on them.

23 Q. Would they have shoes?

24 A. Within the first year or so they would,  
25 but after that the shoes would slough off.



1 Q. Over this period of time, have you seen  
2 any documentation or had any conversations with  
3 anyone that would have discussed how they managed  
4 the issue of horses coming onto Forest Service land  
5 that didn't belong there?

6 A. I have talked to two range permittees  
7 that talked about historically -- and I'm talking  
8 in the 1940s and '50s -- that -- for instance, one  
9 permittee said that her father, back in the 1950s,  
10 would just round up any of the feral horses. And,  
11 again, her belief was that they were horses that  
12 came across the boundary from the reservation  
13 lands.

14 And back in the '40s and '50s the  
15 permittees would just take care of it. Otherwise,  
16 they would domesticate them and use them themselves  
17 or they would shoot them or run them over a cliff.  
18 There were a lot of ways that they would dispose of  
19 the animals. And it was fairly common practice  
20 back then.

21 Talking to one of my district rangers  
22 that had retired a couple of years ago, he said  
23 that they occasionally would pay somebody to round  
24 up horses and then they turn them over to the state  
25 and the state then would determine ownership and

1 dispose of the animals through their regulations.  
2 And that so -- but, again, I haven't found any  
3 documentation, any written documentation to that  
4 effect.

5 Q. And specifically within the time frame of  
6 the -- say 1993 to 2005, when the decision was made  
7 to round up the horses, was there any discussion  
8 within the Forest Service or any documentation that  
9 would -- that brought this to the attention that  
10 there were horses coming back and forth and  
11 something needs to be done to stop the inflow?

12 A. I'm not aware of documentation per se  
13 talking about the horse issue. Again, we were  
14 pursuing an agreement with the tribe to try to deal  
15 with problems caused by the fence and the lack of  
16 repair of the fence. And one of the issues there  
17 was horses coming back and forth and one was cows.  
18 But we didn't really have money, you know, to go  
19 out and do censuses over two million acres. And  
20 so, again, it was more observations that our  
21 employees had that they saw horses in different  
22 places on the Forest. But we didn't do any, you  
23 know, Forest-wide census or documentation.

24 Q. Is it expensive to do census work and  
25 inventory work?

1           A.    It can be, especially if you have to do  
2    it from an airplane.  Because if you do it on the  
3    ground, again, they may be hiding behind bushes or  
4    trees and so it would be kind of haphazard to do it  
5    by ground.

6           Q.    Is it more effective to do it by plane?

7           A.    It can be, but again they can hide.  
8    We've got a lot of heavy forest cover and so it  
9    would be easy to hide under trees or shrubs.  And  
10   then the animals move around quite a bit, too.

11          Q.    To your knowledge, is there any -- I know  
12   we talked about money a little earlier as far as  
13   budgets.  Is there a budget that is given if you  
14   have a wild horse territory that you are supposed  
15   to manage within the Forest Service?  Is there any  
16   allotment or budgetary funds that come your way to  
17   manage that if you have an area designated so?

18          A.    I am not aware that there's any money  
19   that's given to us specifically for managing a wild  
20   horse territory.  If there are times that they need  
21   to manage that territory, then they can make a  
22   special budget request.  We have not done anything  
23   like that that I'm aware of on the  
24   Apache-Sitgreaves National Forest, as far as asking  
25   for any money specifically for managing the wild

1 horse territory.

2 Q. Tell me if I'm correct or not to assume,  
3 is that because you assumed you had no wild horse  
4 territory?

5 A. Correct. And that we assumed that we  
6 had -- all the animals in that initial territory  
7 had died of old age.

8 Q. But you could ask for a budget if had you  
9 a territory to manage with a population to manage?

10 A. We could. I'm not sure that our chances  
11 would be that great of getting money for it.

12 Q. Based on your experience working in other  
13 forests, have you ever experienced wild horse  
14 management issues before coming to  
15 Apache-Sitgreaves?

16 A. To the best of my knowledge, I haven't  
17 worked on a unit that had a wild horse territory so  
18 I have not had any direct dealings with the wild  
19 horse territory.

20 Q. And budgetary constraints and so on and  
21 so forth, you wouldn't have direct knowledge of  
22 that?

23 A. Correct.

24 Q. I noticed on your -- I have a little bio  
25 sheet that I was able to find on some of your

1 background. It indicated that you're a member --  
2 or you were a member of the Interior Columbia Basin  
3 Ecosystem Management Project, E-I-S.

4 A. Correct.

5 Q. What is an E-I-S?

6 A. Environmental Impact Statement.

7 Q. And that is connected with NEPA?

8 A. Correct.

9 Q. Can you just describe for me what an EIS  
10 statement is.

11 A. Environmental Impact Statement is an  
12 environmental document that we use to document a  
13 decision. And an Environmental Impact Statement is  
14 the highest level of environmental document that we  
15 do when we determine that there is a significant  
16 impact or potentially a significant impact on the  
17 human environment.

18 Q. Can you give an example of -- well, first  
19 of all, have you helped create an EIS?

20 A. I have. We had an Environmental Impact  
21 Statement that we prepared after the Rodeo-Chediski  
22 fire to salvage some of the dead trees that were  
23 killed by the fire. That was one of our more  
24 recent ones that we did. In most cases we do a  
25 lesser document, environmental assessment or a

1 categorical exclusion.

2 Q. Okay. What would be the distinction?  
3 Why you would go up to the full statement?

4 A. If through our analysis and our dealing  
5 with the public that we feel that there are some  
6 substantial environmental issues that we need to  
7 analyze as part of the document, then we'll use the  
8 full Environmental Impact Statement.

9 Q. Is it possible that the impact of  
10 removing 3- or 400 horses from an area would impact  
11 the public?

12 A. I don't know.

13 Q. Are there recreation concerns within the  
14 Forest Service as you presently manage and  
15 supervise?

16 A. We have a recreation program in  
17 Apache-Sitgreaves National Forest. It includes  
18 developed camping and dispersed camping, motorized  
19 recreation, water sports, a variety of things.

20 Q. And are there grazing concerns within the  
21 Forest Service?

22 A. Correct. We have grazing allotments  
23 for -- mainly for cattle and sheep throughout the  
24 Apache-Sitgreaves National Forest.

25 Q. And would you agree or is it -- can I

1 assume that a decision made that might impact, say,  
2 recreation would also maybe impact grazing? Do you  
3 see much overlap?

4 A. Just depends on the decision, what the  
5 action is that we were taking.

6 Q. How do you determine -- so let's back up  
7 and actually focus on what went on last summer with  
8 trying to put out for bid to round up the horses.

9 What kind of decisions go into, How is  
10 this going to impact the Forest itself as far as  
11 the environment and the public?

12 A. When we were aware that we had several  
13 hundred horses -- and we really don't have a good  
14 number on it -- but several hundred horses that had  
15 come across from the tribal lands onto the National  
16 Forest, that was determined to be a law enforcement  
17 situation where we had personal property that was  
18 abandoned on the Forest, the same way it would be  
19 if you had a car that somebody had left after a  
20 weekend and we had to remove it.

21 So it was deemed a law enforcement  
22 situation where we round up that property, and at  
23 that point the State Department of Agriculture  
24 would have jurisdiction for disposing of that  
25 property through their regulation. So it was a law

1 enforcement situation that didn't necessarily  
2 require any kind of environmental documentation.

3 Q. And, again, can I assume that at that  
4 point in time, last summer 2005, you didn't -- you  
5 were under the mistaken belief, unfortunately, that  
6 there was no protected horse territory?

7 A. At that point I was not aware that there  
8 was a Heber Horse Territory in existence. And so  
9 we -- I made the decision that we would round the  
10 horses up in as humane a way as possible and go  
11 through our regulations to dispose of estray  
12 livestock.

13 Q. What was involved in that actual  
14 decision, if you can give me just kind of an  
15 overview of where it started and how you ended up  
16 with that decision?

17 A. Okay. Part of the decision was talking  
18 to members of the White Mountain Apache tribe and  
19 the Bureau of Indian Affairs to establish that  
20 these horses that -- were tribal horses that had  
21 come across. And that this was a fairly recent  
22 event that suddenly we had this large number of  
23 horses on the Forest.

24 Talked with our office in Albuquerque,  
25 which is our regional office. Discussed it with



1 both law enforcement officials there and rangeland  
2 management officials, as far as what procedures we  
3 would follow to deal with stray feral animals on  
4 the Forest.

5 And we also wrote a letter to the State  
6 Department of Agriculture informing them that we  
7 had a large number of stray horses on the Forest,  
8 and just alerting them that as soon as we gathered  
9 the horses, we would need them to take jurisdiction  
10 of the animals and determine the ownership and use  
11 their regulations to deal with the horses once we  
12 had rounded them up.

13 Q. When did that process begin?

14 A. Sometime during the winter of 2004, 2005.  
15 I don't remember the exact date.

16 Q. Do you recall when your first discussions  
17 were had with the Apaches with regard to, We're  
18 going to do this and we need you to get involved  
19 because these could be your horses?

20 A. Again, I don't recall the exact date.  
21 Probably the spring of 2005.

22 Q. Would those have been documented in any  
23 way or, again, were those just verbal  
24 conversations?

25 A. The only document was that I did send a

1 letter to the tribal chairman indicating that it  
2 appeared that many of their feral horses from the  
3 tribal lands had gotten over on the National Forest  
4 and asking their assistance to remove the horses.

5 Q. This gives me a good junction here to go  
6 ahead and we'll bring in the administrative record.

7 I'm going to have you just take a look at  
8 what we'll call Exhibit 1. We'll mark it in just a  
9 few minutes, after you've had a chance to review  
10 it.

11 I want you to look at it. One, tell me  
12 if you're familiar with it -- you can have counsel  
13 look at it with you because I made just one copy of  
14 it to save on cost -- and, two, if it does in fact  
15 appear to be the entire administrative record you  
16 have produced to us. So I'll give you a few  
17 minutes.

18 (Pause in the proceedings.)

19 Q. (BY MS. BROUCEK) Would you agree that  
20 that is the administrative record?

21 A. It appears to be a complete  
22 administrative record through November of 2005.

23 Q. Would you know whether or not there are  
24 additional documents that we need to ask for that  
25 would supplement this that would bring us through

1 today's date?

2 A. I'm not aware of any that we have  
3 discovered since then or that would contribute to  
4 the file.

5 Q. Okay. Again, we'll refer to this as  
6 Exhibit 1. We'll just look at a few things  
7 throughout it.

8 Are you able to find for me in the record  
9 the document that you were discussing that you  
10 believe when they tried to eliminate the Heber Wild  
11 Horse Territory, when that might have occurred?

12 A. Okay. There were two letters. One was  
13 June 21st of 1993 where Kate Klein sent a letter to  
14 her supervisor John Bedell asking -- making a  
15 recommendation for withdrawal of the Heber Wild  
16 Horse Territory. And then a July 12th, 1993  
17 letter, signed by John Bedell where he, based on  
18 the wording, believed that he was removing Heber  
19 Horse Territory from the Wild Horse and Burro Act.

20 Q. Do you have any knowledge as to whether  
21 or not as a Forest supervisor you would have the  
22 authority to eliminate a territory?

23 A. Having researched this since then and  
24 talking to our office of general counsel, they say  
25 that they are not aware of any mechanism for

1 removing a territory.

2 Q. In general or by a Forest supervisor?

3 A. In general, but they are -- in general.

4 Q. Is there any documentation within the  
5 administrative record that -- so he sent the letter  
6 off or sent the approval this was going to happen.  
7 Was there any other group that needed to be  
8 involved if a decision like that could be made, to  
9 your knowledge?

10 MR. PATRICK: Objection, form and  
11 foundation.

12 A. I find nothing in the record that he  
13 notified anyone else.

14 Q. (BY MS. BROUCEK) Okay. Is there any  
15 other divisions of the Forest Service that you work  
16 with that are supervising what goes on in the  
17 Apache-Sitgreaves Forest?

18 A. We have oversight by our regional office  
19 in Albuquerque and they have oversight by our  
20 Washington office in Washington, DC.

21 Q. Is it fair to assume that if any  
22 substantial decision like, say, the removal of a --  
23 or the elimination of a protected area occurs in  
24 the Forest Service, that that would involve those  
25 higher levels of oversight?

1           A.     Sometimes it does, sometimes it doesn't.  
2     Just depends on the decision and who has authority  
3     to make the decision.

4           Q.     Okay. Referring to tab No. 13 of  
5     Exhibit 1 -- and I'm not looking at the index, but  
6     I'll look at that so I get the right description.  
7     It appears to be -- it begins with an e-mail of  
8     June of '03 from Kendell Hughes. And I note that's  
9     2003. You said the fire occurred in 2002?

10          A.     Correct.

11          Q.     Who is Gene Onken?

12          A.     Gene Onken was in our range program in  
13     Albuquerque at the time. He's since retired.

14          Q.     And Kendell Hughes, tell me again his  
15     title.

16          A.     Kendell Hughes is the rangeland  
17     specialist for the Black Mesa Ranger District.

18          Q.     There's some information here where it  
19     appears that maybe Gene has asked a question and  
20     Kendell is responding. They're talking about a  
21     population being at zero and why is it being  
22     managed at zero population. This would have been a  
23     year after the fire. So allegedly at this point  
24     there's 200-plus horses roaming around.

25                     I'm just wondering what you might know --

1 first of all, were you working with the Forest  
2 Service in Apache-Sitgreaves in June of '03?

3 A. Correct. I got there in -- end of March  
4 of '03. However, I did not get a copy of this memo  
5 at that time.

6 Q. Will you just take a moment to review it.  
7 Let me know when you're familiar with the document.

8 (Pause in the proceedings.)

9 Q. (BY MS. BROUCEK) About midstream in the  
10 paragraph there's an indication that natural  
11 attrition will eliminate what was seen as possibly  
12 two or a couple of horses left on the -- they  
13 indicate five feral horses. Then he goes on to  
14 say, Elimination of incidental feral horses and  
15 burros from formal management considerations to  
16 reduce the impacts on management resources,  
17 personnel and time.

18 Based on your knowledge of being a Forest  
19 supervisor, what kind of impact -- if there were  
20 two to five horses in maybe the 1993 time frame,  
21 what kind of impact was that having on budgetary  
22 consideration or personnel management issues?

23 A. Well, I wasn't on the Forest in 1993, but  
24 five probably weren't causing a lot of problems for  
25 us.

1 Q. Do you have any -- I hate to say the word  
2 guess, but I'm just going to say, based on your  
3 experience in doing this for the past, you know,  
4 30-some years, why do you suppose the  
5 recommendation was made to just eliminate the  
6 territory?

7 A. Well, all I have to go on is the letter  
8 that John Bedell wrote at the time, just feeling  
9 that the horses were dying out of old age and that  
10 those particular horses were the reason that that  
11 territory was originally set up. And so with the  
12 original horses all dying off and there were no  
13 signs of reproduction, that there really wasn't a  
14 wild horse that needed territory on the Forest.

15 Q. Would that have eliminated then a  
16 responsibility as far as management goes? Would  
17 there have been ongoing management issues with the  
18 territory remaining intact?

19 A. I'm not quite sure.

20 Q. By eliminating the territory, was he  
21 thereby reducing management oversight of a  
22 particular responsibility?

23 A. Just based on reading his letter, it  
24 appears that he felt that the territory was no  
25 longer meeting the intent because the original

1 population of horses was either gone or dying out  
2 of old age and so there was no need to maintain  
3 that on the books anymore because it wasn't serving  
4 its purpose.

5 Q. Okay. I want to just focus for a few  
6 minutes on your knowledge of the fence issues that  
7 were going on.

8 You indicate the -- there was a boundary  
9 fence running along the Apache Indian Territory and  
10 the Forest Service?

11 A. Right. Their reservation land and the  
12 National Forest boundary fence.

13 Q. Who owns the fence?

14 A. Our understanding is that the Apache  
15 tribe claims ownership of the fence itself.

16 Q. And do you have any idea how long -- what  
17 the parameters of this fence are? And an estimate  
18 is fine.

19 A. A guess, it's probably at least 75 miles  
20 long.

21 Q. And based on what you've been told since  
22 you were not with the Apache-Sitgreaves in 2002,  
23 how much of that fence was burnt down?

24 A. I don't have an exact number, but it's  
25 got to be at least 20 miles, just based on what



1 I've seen from the fire photos.

2 Q. Do you know how long -- how much time  
3 passed before the fences was reconstructed?

4 A. When I got there it was about nine months  
5 after the fire and most of the fence had been  
6 reconstructed already.

7 Q. Did you have any conversations, after  
8 joining the Apache-Sitgreaves Forest, with regard  
9 to, Okay, the fence is reconstructed, but we have  
10 horses stuck on this side of the fence? Do you  
11 recall any conversations with the Apaches with  
12 regard to that issue?

13 A. It would have been in 2004 and 2005 when  
14 we became more aware of the numbers of horses that  
15 had come across. And as part of that conversation,  
16 some of the folks in the Apache tribe said they  
17 even observed horses jumping over the fence,  
18 because there was good forage that was created by  
19 the fire, it was very attractive to the horses.  
20 And then other places they were coming through were  
21 breaks in the fence. But that -- the first time I  
22 recollect was probably -- would have been either --  
23 probably in the winter of 2004.

24 Q. Let me see if I can ask this without  
25 making it too complicated.

1           So the fire occurs in June of 2002. At  
2 what point after the fire did the Apaches attempt  
3 to round up the horses and we saw this influx of  
4 horses trapped on the Forest Service property? Do  
5 you have an idea of that?

6           A. I don't have an exact date. The time  
7 that I had the conversation with the folks from the  
8 tribe in the BIA was July of 2005. They had  
9 indicated that when they started their fire  
10 reclamation work, it was probably the spring of  
11 2003 that they rounded up horses on their side of  
12 the fence because they were afraid the horses were  
13 going to damage the restoration work. And most of  
14 their restoration work occurred in the 2003 year.

15          Q. Why is it that from, let's say, mid 2003  
16 until very late 2004 or maybe early 2005 -- why did  
17 so much time pass before the horses -- the issue of  
18 the number of horses got on your radar?

19          A. Well, we had a lot of other bigger issues  
20 after the fire. We had fire salvage of dead trees,  
21 roads that we had to reopen, a lot of safety  
22 concerns. We had a lawsuit on the fire salvage.  
23 So although we were aware that we had horses, they  
24 just weren't the highest priority initially.

25          Q. You had stated earlier you were able to

1 work on and complete an Environmental Impact  
2 Statement on trees?

3 A. On removing the dead trees.

4 Q. What time frame was that?

5 A. We completed the Environmental Impact  
6 Statement -- it would have been in 2004. I don't  
7 remember the exact date. I thought it was early  
8 summer 2004, but I don't remember exactly.

9 Q. Was that one of your first tasks when you  
10 came on board in 2003?

11 A. It had been started before I got there,  
12 but it was an important task to bring that to  
13 completion.

14 Q. So would you say it took well over a year  
15 to complete?

16 A. Right, because during that time we also  
17 had the lawsuit on the categorical exclusions that  
18 were done right after the fire on some of the  
19 salvage, so that ended up taking precedent for a  
20 while.

21 Q. Sure.

22 Based on your experience in working on  
23 the Environmental Impact Statement, what's  
24 involved? What kind of things did you have to do?

25 A. I have to gather a lot of data on the

1 different resources; vegetation, soil, water,  
2 wildlife. A lot of public involvement during  
3 different stages of it. And then we have a team  
4 that does an analysis of that data and analyzes  
5 several alternatives for action. And they  
6 generally take at least a year, sometimes several  
7 years.

8 Q. In gathering the data that you needed,  
9 was there an actual team that worked in the Forest  
10 and gathered that data for you or where did the  
11 data come from that you relied on?

12 A. It was mainly Forest Service employees  
13 and we had a few contract employees that went out  
14 and gathered the information on the ground.

15 Q. During that process, was there any  
16 information provided to you within this impact  
17 statement done on the trees, removing the trees, of  
18 how it was being impacted by or how the horses were  
19 impacting what you were trying to do with the  
20 trees?

21 A. I don't recollect any discussions of the  
22 horses as part of that process.

23 Q. Do you recall any discussions whatsoever  
24 of, you know, Well, we're having trouble out here  
25 because we've got all these horses and --

1           A.    We did have some discussions when we met  
2   with a different team that was working on fire  
3   rehabilitation.

4           Q.    Do you recall what those discussions  
5   were?

6           A.    During 2003 and 2004, we were identifying  
7   one of the highest priority actions for  
8   rehabilitating the Forest after the fire.  And  
9   discussions we had with the team working on that  
10  identified the horses as a concern, but early on we  
11  didn't have any money to deal with that.  And we  
12  had more immediate concerns of erosion and seeding  
13  plants and things.

14          Q.    The fire rehabilitation team, were they  
15  tasked with creating an impact statement as well or  
16  what was their task?

17          A.    They were supposed to come up with a  
18  long-range plan for rehabilitating the Forest.  We  
19  ran out of money so they never completed the plan.

20          Q.    And do you recall what the concerns with  
21  the horses in that fire rehabilitation team -- what  
22  those concerns were?

23          A.    There were several concerns.  One concern  
24  was that the horses were eating some of the plants  
25  that we had just re-seeded.  So there was a concern

1 that the horses would damage the grass, the trees  
2 that were either coming up naturally or being  
3 planted.

4 And that, also, we had excluded the  
5 cattle that were permitted to graze on the National  
6 Forest from going back out and grazing until we  
7 felt that the Forest had regenerated -- had  
8 rehabilitated after the fire. We didn't have many  
9 of our interior fences rebuilt that were burned by  
10 the fire and so the permittees were concerned that  
11 they were not allowed to graze, but the horses were  
12 grazing and potentially damaging some of the plants  
13 that they would need later to graze with the  
14 cattle.

15 Q. Was there any comment or discussion had  
16 between the permittees for grazing and what they  
17 were witnessing with the horses kind of taking  
18 over?

19 A. I believe that there were, but that would  
20 have been conducted between our range specialist,  
21 like Kendell, and the permittees, and not  
22 necessarily at my level.

23 Q. What is the current status of the fence,  
24 to your knowledge, between the Apache land and the  
25 Forest land?

1           A.    I've looked at several sections of the  
2 fence and the Apache tribe actually did a complete  
3 inventory of the fence condition this summer.  And  
4 because they didn't remove a lot of the dead trees  
5 along the fence, that many of those have blown down  
6 after the fire and damaged the fence.  And so we  
7 have entered into an agreement with the tribe to  
8 help either cut some of the dead trees or repair  
9 damages to the fence.

10           Q.    Which side of the fence have the trees  
11 fallen from, the Apache side?

12           A.    Both sides, but since the winds come from  
13 their direction, probably the majority from their  
14 side.

15           Q.    Is that different from the agreement you  
16 spoke about earlier as far as managing the fence?

17           A.    Correct.  Correct.  The agreement that we  
18 have been trying to enter into for years, which  
19 would have been an MOU, would have been for  
20 long-term maintenance of that fence, plus the fence  
21 that borders the San Carlos Apache tribe, and allow  
22 us to fix the fence if we see problems with it.  
23 And what we're doing now on the fence is just a  
24 one-time effort to get it in good shape and repair  
25 any damage that's been done to it.

1 Q. Considering that you had many pressing  
2 areas of concern after the 2002 fire, why was it  
3 that the issue of the horses came to the forefront  
4 in 2005?

5 A. We had talked to our office in  
6 Albuquerque about the concern with the horses. And  
7 in 2005 they gave us some additional fire  
8 rehabilitation money that they said we could use to  
9 gather up horses. And so we -- for the first time,  
10 we had some money to deal with the issue.

11 Q. You indicated that the fire  
12 rehabilitation team ran out of money and couldn't  
13 finish their task as far as figuring out -- again,  
14 tell me what they were tasked to do.

15 A. They were going to write a long-term plan  
16 to plan some actions for taking care of any  
17 problems that were created after the fire, and in  
18 the 2004 budget we ran out of money to complete  
19 that plan. And then it became -- we became aware  
20 that they would need more money than we would ever  
21 be able to get for fire rehabilitation to implement  
22 that plan. And so we just -- at that point, we  
23 just didn't finish it.

24 Q. So when you were able to obtain further  
25 funding, why was that funding put towards removal



1 of horses versus continuing the long-term  
2 management plan?

3 A. Well, the estimates that we had for  
4 implementing the long-range management plan I  
5 believe at the time was \$23 million. We knew we  
6 just weren't going to get that kind of money two or  
7 three years after the fire. And so at that point  
8 we decided, What are some of our highest priority  
9 actions that would do the most good. And when we  
10 got some additional money in 2005 for fire  
11 rehabilitation, we just acted on those things that  
12 we felt were more immediate problems.

13 Q. And, again, how it did come that the  
14 horses became the immediate issue?

15 A. At that point we were just more concerned  
16 about the numbers of horses that people were  
17 reporting and what we felt was damaged by the  
18 horses grazing on the Forest. And we had taken  
19 care of some of the other priority items and so  
20 this was sort of the next priority in the list to  
21 deal with.

22 Q. At one point you indicated that the  
23 grazing was actually restricted for the cattle --

24 A. Correct.

25 Q. -- after the fire. At what point were

1 they allowed back on the Forest to graze or are  
2 they currently able to graze?

3 A. We have been able to rebuild some of the  
4 interior fences, and so some of the permittees have  
5 been able to go back on as of this year. Some have  
6 not where we're still in the process of rebuilding  
7 the fences.

8 Q. So did the restrictions on the grazing  
9 have more to do with having proper boundary fencing  
10 or did it have to do with there being a time period  
11 to allow regrowth?

12 A. It was both. We were concerned that  
13 without boundary fences that they wouldn't be able  
14 to control the movement of the cattle. But also in  
15 our Forest plan it states that after a fire, we  
16 need to evaluate the capability of the Forest -- of  
17 the forage to be grazed again. And they recommend,  
18 you know, two or three years' rest to allow the  
19 grass to become strong enough to be grazed.

20 Q. In rebuilding fences for grazing,  
21 purposes of grazing and allowing the livestock back  
22 onto the Forest lands, do the permittees -- are  
23 they required to participate financially in  
24 rebuilding those fences so they can use the land?

25 A. After a big event like a fire, that's a

1 very expensive thing to go out and rebuild the  
2 fences. And it's beyond the control of the  
3 permittees so we usually try to get fire  
4 rehabilitation money to pay for that. And we are  
5 rebuilding those fences with contractors based on  
6 some of the fire rehab money. And in some small  
7 areas the permittees are rebuilding them, but the  
8 majority of it's built by the Forest Service.

9 Q. Are those fences complete now?

10 A. Not complete. Some of the contractors  
11 still haven't completed.

12 Q. Was consideration given to use the  
13 funding that you received that was initially going  
14 to go to removing the horses -- was it ever  
15 considered to use that funding to help build fences  
16 instead and maybe even restrict the flow of where  
17 these horses were moving?

18 A. Well, we were doing both at the time. So  
19 we were spending some money on rebuilding the  
20 fences and had set aside some money for the  
21 gathering of the horses. We also had a Resource  
22 Advisory Committee grant to help with the gathering  
23 of the horses. That was a \$25,000 grant. And so  
24 that was money that was separate from the fire  
25 rehabilitation money.

1 Q. Was that the money that expired that you  
2 ended up not being able to use that money because  
3 it had to be used for a specific purpose?

4 A. The money that was from the fire  
5 rehabilitation fund expired at the end of 2005.  
6 The Resource Advisory Committee money didn't  
7 necessarily expire, but we went back to that  
8 committee and asked if we could move that money  
9 over into fixing the border fence with the tribe  
10 instead because we were under a restraining order  
11 on gathering the horses, and they said that they  
12 didn't want to do that. So we lost that money as  
13 well.

14 Q. And the money again that initially had  
15 been given through the rehabilitation, that money  
16 was not reapportioned to something else?

17 A. We put that under a contract. I believe  
18 it was put into some additional fence repairs at  
19 that time.

20 Q. So you were able to use it?

21 A. Right.

22 Q. Had there always been a fence between the  
23 Apache territory and the Forest Service land?

24 A. It's been there for many decades. I  
25 don't know exactly how many decades.

1 Q. All right. Going back to communications  
2 that you had with the Forest Service -- or not the  
3 Forest Service -- with the Apaches, you stated that  
4 maybe it was in early 2005 that you first began  
5 communicating with them maybe verbally about --

6 A. Right.

7 Q. -- they were going to remove these  
8 horses?

9 What is the earliest date, if you could  
10 just give me a month, that the discussions -- you  
11 started to have discussions with your staff, your  
12 folks, about, We need to now address the horses?

13 A. Probably the first discussions that --  
14 well, back up here. I know that the two district  
15 rangers out there had brought up concerns that they  
16 were starting to see groups of horses probably late  
17 in 2003. And then I had discussion with the team  
18 that was doing the rehabilitation plan -- would  
19 have been the winter of 2003 to 2004 -- where we  
20 started talking about some of the problems with  
21 having that many horses roaming the Forest.

22 Does that answer your question?

23 Q. Yes. What were some of the problems?

24 A. Well, again, concerns that they didn't  
25 belong there, that they were stray animals that

1 weren't under permit. And under our regulations  
2 livestock that are on the National Forest need to  
3 be permitted by a grazing permit.

4 And so these were animals that didn't  
5 belong there and they were using grass and we had  
6 no way of controlling where they were grazing. And  
7 they could potentially damage the range, especially  
8 where we had new grass growing up after the fire.

9 Q. Were there any other concerns?

10 A. Again, concerns that the legitimate  
11 livestock permits use that had cattle permits were  
12 not allowed to go back and graze. And that the  
13 forage that we had was allocated either to wildlife  
14 or to the permitted cattle. And that the forage  
15 used by the horses was competing with those  
16 interests.

17 Q. Did you have any safety issues?

18 A. Eventually there were some safety issues.  
19 Not initially, but since -- well, probably more in  
20 2005 some of those horses started moving north and  
21 they were getting into Pinetop and Lakeside. There  
22 have been a couple of vehicle accidents that were  
23 contributed to the feral horses getting out on the  
24 highway. Had some calls from the golf course at  
25 Pinetop that they were doing a lot of damage out

1     there.  So there were, you know, concerns that they  
2     were now getting into more populated areas and  
3     creating some conflicts.

4           Q.     In your experience working in the Forest,  
5     have you also had experience with reports from the  
6     public of elk or deer being near the roads or --

7           A.     Sure.

8           Q.     -- migrating to human populated --

9           A.     Common problem area as well, but those  
10    are native animals that belong on the Forest and so  
11    we have to find ways of adapting to that.

12          Q.     Tell me the process then from the time  
13    that you determined this is something we need to  
14    address.  What did you do?  What did you go  
15    through?

16          A.     After we've had discussions with the  
17    rehabilitation team about some of our priorities,  
18    after we were able to fund some of the initial  
19    priorities, like erosion control and fixing fences,  
20    then it appeared that dealing with the horses  
21    before they became established and started  
22    reproducing was a high priority.  And we requested  
23    some additional rehabilitation money in 2005  
24    specifically to deal with gathering up the horses.

25                   And, again, we had discussions with our

1 office in Albuquerque about the procedures for  
2 impounding estray animals. And then notified the  
3 tribe and notified the State Department of  
4 Agriculture that we had intentions to impound  
5 estray livestock.

6 Q. Would any of those discussions primarily  
7 with your supervisors in Albuquerque -- would that  
8 have been documented somehow?

9 A. I think you have a few e-mails going back  
10 and forth, either from some of the sub-staff or  
11 myself.

12 I don't -- I didn't specifically have any  
13 documentation. That is more calling on the phone  
14 and asking what our procedures are. We were also  
15 doing a cattle impoundment and so we had more  
16 formal discussions about the estray livestock  
17 requirements and regulations through that. So we  
18 were using the same information that we were with  
19 the cattle impoundment.

20 Q. What was going on with the cattle?

21 A. We had a permittee out of the Clifton  
22 district that was grazing cows without a permit.  
23 And so at some point we had to notify them and  
24 impound the cows and have the state help us take  
25 them to auction.



1 Q. So it was a similar process as far as  
2 rounding them up and taking them off the Forest  
3 land?

4 A. It was the same regulations for  
5 impounding of estray livestock.

6 Q. Was this occurring at the same time that  
7 you were dealing with the horses?

8 A. Yeah, planning of the process was about  
9 the same time.

10 Q. When did the removal of the estray cattle  
11 occur?

12 A. Let's see. We completed that last fall.  
13 So it would have been almost a year ago.

14 Q. Would the two projects have been  
15 completed together?

16 A. No. They've been separate because of the  
17 distance involved.

18 Q. Okay. Would you have used any of the  
19 same resources as far as vendors or contractors?

20 A. We actually were looking for different  
21 contractors to impound the horses because there's  
22 some different techniques there, and so it was a  
23 separate contract by separate -- different bidders  
24 on the two.

25 Q. Did you have separate funding for each

1 project?

2 A. We did.

3 Q. Most of the documentation in my review of  
4 the administrative record when it comes to the  
5 actual removal plan seems to have occurred in the  
6 June 2005 time frame throughout the summer.

7 A. Right. That's where we had the formal  
8 notifications of impoundment.

9 Q. To your knowledge, is there any  
10 documentation prior to June of 2005 that would have  
11 recorded the decision-making process leading up to  
12 that bid process?

13 A. Nothing comes to mind right now.

14 Q. Were there any meetings that would have  
15 occurred between you and your staff or others with  
16 regard to planning the planning stages of the  
17 removal bid?

18 A. We did. We did have two meetings where  
19 the two district rangers involved and their range  
20 staff and I discussed the procedures for  
21 notification for impoundment, for soliciting  
22 contractors. We also discussed funding sources.  
23 And one of the districts submitted a grant  
24 application through the Resource Advisory Committee  
25 to get some additional funding. So we had at least

1 a couple of meetings where we discussed how we were  
2 going to do this.

3 Q. Would those meetings have been  
4 documented?

5 A. We didn't take any notes or minutes.

6 Q. Do you have any recollection of who would  
7 have been at those meetings?

8 A. I know that Kate Klein and Ed Collins,  
9 the two district rangers, were involved. Kendell  
10 Hughes and Randall Chavez were the range  
11 specialists involved. And I believe that we also  
12 involved the law enforcement officer, who's now  
13 retired. We had a lot retirements. But Tom  
14 Lister, I believe, was the law enforcement officer  
15 we were working with at the time.

16 Q. Tell me his name again?

17 A. Tom Lister out of Payson.

18 Q. That name sounds familiar for some  
19 reason.

20 A. Yeah. He's retired now, but he was  
21 advising us as far as the regulations and the  
22 procedures, too.

23 Q. Okay. And what is the reason that no  
24 minutes were kept of these meetings?

25 A. We don't document all of our meetings.

1 Q. Is there any requirement that you take  
2 notes of decisions that are being made?

3 A. Well, again, we were just talking about,  
4 you know, procedures we're going to follow, but  
5 there's no requirement that we document.

6 Q. And prior to the 2005 time frame, am I  
7 correct in, I guess, shortening, the reason that  
8 the horses were not addressed were because of  
9 competing priorities after the fire?

10 A. Correct, not having enough money and  
11 having other higher priorities to deal with.

12 Q. Was there concern ever expressed early on  
13 that, These horses are here, they're going to  
14 start, you know, reproducing, we're going to have  
15 more horses to deal with down the line, we should  
16 address this now and get these horses back over to  
17 the Apaches?

18 A. We had those discussions. But, again, we  
19 had many important concerns after the fire and it  
20 just didn't come out quite as high in the  
21 priorities.

22 Q. Are you currently working on a 2006  
23 Forest revision plan?

24 A. We just started our Forest plan revision  
25 process. It's a three-year process.

1 Q. How does that relate to the management  
2 plan that you indicated earlier that you started in  
3 August of 2006, looking at the horse issue?

4 A. In our Forest plan revision we will  
5 acknowledge that management plan and discuss any of  
6 the implications for the ten-year management of the  
7 Forest that would be documented in that plan  
8 revision.

9 Q. Is there a time frame then that the horse  
10 plan needs to be reviewed so that it can be  
11 incorporated into this Forest -- overall Forest  
12 plan?

13 A. The Forest planning process is going to  
14 take three years, and we anticipate that the  
15 management plan will be completed well before the  
16 end of that planning process.

17 Q. So you'd have all the information you  
18 need?

19 A. We should have all the information.

20 Q. Tell me, if you can, the steps that are  
21 going to be taken with this horse management plan  
22 that you're working on.

23 A. Well, the first step is to have the team  
24 meet and talk about some of the -- the scope of the  
25 analysis of the things that they're going to be

1 gathering information on or data on. And then they  
2 would ask for public comment. And that will be in  
3 the newspaper. It will be sent out to anyone  
4 that's expressed interest in the horses, including  
5 the Plaintiffs, since they have letters on file.  
6 And then we would gather the public comments and  
7 use those as issues to also help us design  
8 alternatives. And the management plan and the  
9 environmental document would go in a parallel  
10 process.

11 So the environmental document would  
12 analyze different alternatives for management. And  
13 then when one alternative was selected, that would  
14 be documented in the management plan. That would  
15 also have additional implementation information and  
16 mitigation.

17 Q. Then along those lines, is it -- it  
18 sounds almost like it's an Environmental Impact  
19 Statement. Is that similar to what is being done  
20 now?

21 A. We haven't determined what environmental  
22 document -- likely would be an environmental  
23 assessment.

24 Q. An assessment, which you said is the  
25 lesser of the two?

1           A.     Right.  It's sort of a mid-range document  
2     to document the environmental effects.  But as part  
3     of the analysis we would make that determination of  
4     the proper document.

5           Q.     So it's possible you could get to a point  
6     in the analysis and say we need to do a full-blown  
7     Environmental Impact Statement?

8           A.     Possible, depending on the issues that  
9     are raised and the significance of those issues.

10          Q.     What are some of the -- as far as the  
11     Forest plan itself, the larger three-year plan that  
12     you're looking at, what are some of the competing  
13     interests that you have to address?

14          A.     This is a revision of an existing plan,  
15     so it's not a whole new plan.  And right now we're  
16     just finishing up our public meetings where we're  
17     trying to determine those things that we need to  
18     focus in on.  And so there's things like motorized  
19     access where it's appropriate to drive motorized  
20     vehicles on the Forest.  We will look at grazing  
21     suitability.  A variety of different environmental  
22     issues.

23          Q.     And, again, I'm being a little redundant,  
24     but I want to make sure that I'm clear.  The wild  
25     horses or the wild horse issue will then somehow

1 fold into that three-year plan, as far as the  
2 information you get from the assessment of the  
3 horses will impact your larger three-year plan as  
4 far as the information?

5 A. Right. We'll at least acknowledge that  
6 there's a management plan and what that means as  
7 far as the ten-year management of the Forest as a  
8 whole.

9 Q. Under the management plan for the horses,  
10 are you addressing the Act now?

11 A. Right. In the Wild Horse Management Plan  
12 there's some direction in the Act itself, as far as  
13 some of the things you would need to analyze, as  
14 far as herd objectives. And there's a series of  
15 things the Act specifies that you would need to put  
16 into the management plan.

17 Q. To conduct the plan, the management plan,  
18 does that require additional funding?

19 A. It does.

20 Q. Have you been able to obtain the funding  
21 you need?

22 A. We have requested that in our 2007  
23 budget, but we don't have a final budget yet so we  
24 don't know if we're going to get it.

25 Q. Have you been able to approach any of the



1 Plaintiffs with regard to assisting with funding?

2 A. We have not asked for assistance.

3 Q. And as part of that management plan there  
4 will be a public comment period?

5 A. Correct.

6 Q. And you assume that it will be somewhat  
7 less than three years to get through with that  
8 management plan?

9 A. Right. We -- our goal is to complete the  
10 management plan, the environmental document, within  
11 12 months. It's going to be somewhat dependent on  
12 funding and staff.

13 Q. As part of that management plan, will a  
14 census be conducted of the horses that are  
15 currently on the Forest land?

16 A. I don't anticipate a complete census of  
17 the whole Forest. There would be some information  
18 gathered in and near the Heber Horse Territory, but  
19 not across the whole Forest necessarily.

20 Q. And does that have to do with funding?

21 A. Correct. We've got a two-million-acre  
22 forest so -- and the horse territory is 14,000  
23 acres. So we would focus our efforts in and around  
24 the horse territory.

25 Q. Let's take a look at the administrative

1 record.

2 As far as public comment goes with regard  
3 to the management plan, does that happen at a  
4 couple of different junctures within the plan? Do  
5 you open it up for comment to just, what, get  
6 people's opinions who are interested in what's  
7 happening with the horses?

8 A. Right. The initial public involvement  
9 would be to ask two things. One is any comments  
10 that you have on the management of the horse  
11 territory. And the second would be whether the  
12 person commenting would like to stay involved in  
13 the process. And if they request to stay involved  
14 with the process or make a comment, they would be  
15 retained on a mailing list. And so then they would  
16 get a copy of the draft environmental document when  
17 it was ready and they could make a comment on that  
18 and review it. And then they also have appeal  
19 rights when the decision is made.

20 Q. As far as proposed action, whatever may  
21 come of it?

22 A. Right.

23 Q. So anyone who wants to be involved in  
24 that process has the ability to become involved?

25 A. Sure. Correct.

1 Q. Would it be your opinion then, based on  
2 the fact that in 2005 you didn't believe the Act  
3 applied, that there would be any obligation to also  
4 do any kind of Environmental Impact Statement under  
5 NEPA?

6 MR. PATRICK: Objection, form and  
7 foundation. Go ahead.

8 A. At the time I made the decision to gather  
9 the horses -- this was a gathering of the estray  
10 livestock, which is a law enforcement action, which  
11 does not require a NEPA decision -- I was not aware  
12 of a Heber Wild Horse Territory at that time.

13 Q. (BY MS. BROUCEK) Okay. If you had known  
14 that you had a wild horse territory that was  
15 protected, and the decision was made, would you --  
16 and, again, this is hypothetical -- would it be  
17 fair to say that some sort of environmental study  
18 would have been required to make the decision to  
19 remove that many horses?

20 MR. PATRICK: Objection to form and  
21 foundation. Go ahead.

22 A. It's speculation. I don't know because I  
23 would have to go back and analyze the issues at  
24 that time. I wasn't aware of it so it's mere  
25 speculation.

1 Q. (BY MS. BROUCEK) Do you have any direct  
2 personal knowledge of whether or not any of the  
3 horses currently located on the Forest lands are  
4 branded or marked in any way to show ownership?

5 A. I don't have any personal knowledge.

6 Q. Have you been on the Forest to take a  
7 look, see who's there?

8 A. I've seen some of the horses, but from a  
9 distance. So I haven't been close enough to tell  
10 if there's any brand or mark on them.

11 Q. Have you had anyone communicate to you,  
12 verbally or through a written document, that they  
13 have seen any kind of marking, branding, notching  
14 on these horses currently located on the Forest?

15 A. I've had some verbal communication with  
16 private individuals, citizens that were out on the  
17 Forest, that said that initially they had seen  
18 shoes on a few horses. That horses came right up  
19 to them that seemed to be fairly tame.

20 And just discussing the issue with the  
21 State Department of Agriculture, they said that in  
22 Arizona not that many people brand horses. And  
23 that a lot of the Apache marks that they use aren't  
24 visible until you get fairly close to the animal.

25 Q. Did they indicate where they put their

1 mark?

2 A. Sometimes an ear notching. Sometimes  
3 it's a mark just under the main -- they gave us,  
4 actually, a book that shows -- or a Xerox of some  
5 papers that shows they have different ways that  
6 they tend to mark them. But some of them aren't as  
7 visible as, like, a chemical brand.

8 Q. But to do that you'd have to be pretty  
9 close to the horse?

10 A. That's my understanding.

11 Q. Do you know whether or not as part of the  
12 management plan if one of the alternatives is to  
13 gather horses again and reduce or eliminate  
14 numbers, how -- any recommendation on how they go  
15 about identifying whether these animals belong to  
16 anyone?

17 A. Again, if we gather horses, the State  
18 Department of Agriculture would be involved because  
19 they have the legal jurisdiction for establishing  
20 the ownership. Again, the tribal rangeland  
21 specialists have volunteered to come over and  
22 assist them with identifying any marks that are  
23 tribal brands that the state doesn't necessarily  
24 recognize. And that was the process we had planned  
25 to use, use the state and the tribe to help

1 identify marked animals.

2 Q. And how will that interplay with the Act  
3 as far as potential for any wild horses that may be  
4 remaining within this population?

5 A. I don't know that we have gotten that far  
6 in the management plan yet to have a plan for that.

7 MS. BROUCEK: Okay. That's all I've got  
8 right now. Been helpful. Thank you.

9 MR. PATRICK: I have no questions.  
10 You have an opportunity to review a  
11 transcribed version of your testimony here today to  
12 ensure that the tape recorder worked properly, or  
13 you can assume that they do a professional job and  
14 do what is called a waive signature.

15 THE WITNESS: Okay.

16 MR. PATRICK: I think under the  
17 circumstances, we probably ought to read and sign.

18 THE WITNESS: Okay. Does that come later  
19 or --

20 MR. PATRICK: Yes.

21 THE WITNESS: Because some of them are  
22 technical terms that may have been --

23 MR. PATRICK: If you can provide that to  
24 me, then I'll mail it to the witness.

25 (The deposition concluded at 1:07 p.m.)

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ELAINE JUNE ZIEROTH

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) ss.

3 BE IT KNOWN that the foregoing deposition  
4 was taken before me, Kerry Fremerman, a Certified  
5 Court Reporter, CCR No. 50754, State of Arizona;  
6 that the witness before testifying was duly sworn  
7 by me to testify to the whole truth; that the  
8 questions propounded by to the witness and the  
9 answers of the witness thereto were reduced to  
10 typewriting under my direction; that the witness  
11 elected to read and sign the deposition transcript;  
12 that the foregoing 94 pages constitute a true and  
13 accurate transcript of all proceedings had upon the  
14 taking of said deposition, all done to the best of  
15 my skill and ability.

16 I FURTHER CERTIFY that I am in no way  
17 related to nor employed by any of the parties  
18 hereto, nor am I in any way interested in the  
19 outcome hereof.

20 DATED at Chandler, Arizona, this 10th day  
21 of October 2006.

22  
23  
24  
25

Kerry Fremerman, RPR  
Certified Court Reporter  
Certificate No. 50754



H

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the )  
ANIMAL WELFARE INSTITUTE, a )  
non-profit organization; and )  
the INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS and )  
BURROS, a non-profit )  
organization; PATRICIA HAIGHT, )  
an individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

Case No. CV-05-2754-PHX-FJM

UNITED STATES GOVERNMENT, )  
DEPARTMENT OF AGRICULTURE, ANN )  
M. VENEMAN as acting UNITED )  
STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

DEPOSITION OF KENDELL L. HUGHES

October 5, 2006

10:30 a.m.

Phoenix, Arizona

REPORTED BY:

Jodie Guhr, RPR

Arizona Certified Reporter

No. 50191

Page 2

1 INDEX TO EXAMINATIONS

2 WITNESS PAGE

3 KENDELL L. HUGHES

4 Examination by Ms. Klein ..... 4

5

6 INDEX TO EXHIBIT REFERRED TO HEREIN

7 No. Description Page

8 1 Administrative Record (Exhibit 1 to deposition

9 transcript of Elaine J. Zieroth) ..... 34

10

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Page 4

1 KENDELL L. HUGHES,

2 having been first duly sworn by the Certified Reporter to tell

3 the truth, the whole truth and nothing but the truth,

4 testified as follows:

5

6 EXAMINATION

7

8 Q. (BY MS. KLEIN) My name is Maribeth Klein. I'm

9 representing the plaintiffs, In Defense of Animals, the

10 Society for the Protection of Mustangs and Burros,

11 Dr. Patricia Haight and Richard Potts.

12 Have you ever had your deposition taken before?

13 A. No, ma'am.

14 Q. Okay. Well, it's fairly a painless process. I'm

15 going to be asking you a series of questions. Just do the

16 best to your ability to answer the questions based on your own

17 personal knowledge. There's no need to speculate or guess.

18 You understand that you've just been sworn in by the

19 court reporter and that you are under oath so your testimony

20 is treated as if it was in a court of law? Do you understand

21 that?

22 A. Yeah.

23 Q. Okay. If, at any time, you don't understand the

24 question, if you would like it rephrased or you would like me

25 to clarify it, just let me know and I'd be happy to do that.

Page 3

1 THE DEPOSITION OF KENDELL L. HUGHES

2 was taken on October 5, 2006, commencing at 10:32 a.m., at Two

3 North Central Avenue, Suite 2000, Phoenix, Arizona, before

4 JODIE GUHR, a Certified Reporter in and for the State of

5 Arizona.

6

7 COUNSEL APPEARING

8 For the Plaintiffs:

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10 By Ms. Maribeth M. Klein and Ms. Christine E. Broucek

11 Two North Central Avenue, Suite 2200

12 Phoenix, Arizona 85004

13

14 For the Defendant:

15 UNITED STATES ATTORNEY'S OFFICE

16 By Mr. Richard G. Patrick

17 40 North Central Avenue, Suite 1200

18 Phoenix, Arizona 85004

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Page 5

1 A. Okay.

2 Q. And because the court reporter is transcribing your

3 testimony today, I'll need you to give yes and no answers.

4 It's hard for her to take down uh-huhs and huh-uhs and things

5 of that sort, or shakes and nods of the head. I will also do

6 my best not to interrupt you or speak over the top of you, and

7 I would ask that you do the same just for her sake.

8 If, at any time, you need a break, just let me know.

9 We're happy to stop if you need water or anything like that.

10 Are you on any medication that would prevent you from

11 testifying clearly today?

12 A. No.

13 Q. Do you have any medical condition that would prevent

14 you from testifying today?

15 A. No.

16 Q. Okay. And just for the record, U.S. Attorney Richard

17 Patrick is your counsel? Is that correct?

18 A. Yeah.

19 Q. Okay.

20 A. Yes.

21 Q. Are you originally from Arizona, Mr. Hughes?

22 A. No.

23 Q. Where are you from?

24 A. I was raised in Missouri.

25 Q. Okay. When did you arrive in Arizona?

Page 6

1 A. Probably in '91.  
 2 Q. Okay. About that time?  
 3 Can you just briefly describe your educational  
 4 background for me? Where did you go to high school? What  
 5 kind of higher education have you had?  
 6 A. I went to high school at California R1, which is a  
 7 little town in Missouri.  
 8 Q. Okay.  
 9 A. California, Missouri. I went to college at Lincoln  
 10 University, which is in Jefferson City, Missouri. Graduated  
 11 in '92. Bachelor in science. Majored in agriculture.  
 12 Q. With your major in agriculture, do you have any  
 13 specific emphasis in forest management?  
 14 A. It was natural resources.  
 15 Q. Okay. So you graduated in 1992, and you said you  
 16 came out here in approximately 1991, '92, some point at that  
 17 time?  
 18 A. Yeah. I worked on a co-op. So --  
 19 Q. Oh, okay. And who was your co-op with?  
 20 A. Forest Service.  
 21 Q. Okay. What did you do when you were at co-op?  
 22 A. Worked in range management --  
 23 Q. Okay.  
 24 A. -- at Springerville Ranger District, which is on the  
 25 Apache-Sitgreaves.

Page 8

1 A. Oh. I'm still in range conservation --  
 2 Q. Okay.  
 3 A. -- right now. So, since it started.  
 4 Q. Okay. Do you have the same title or have you  
 5 switched different levels within the Forest Service?  
 6 A. Yeah, different levels.  
 7 Q. Okay.  
 8 A. Started out as a GS5.  
 9 Q. Okay.  
 10 A. GS7, then a GS9, and I'm currently a GS11 range  
 11 management specialist, range staff on the Black Mesa Ranger  
 12 District.  
 13 Q. As a GS5, were your duties similar to what your  
 14 duties were as a GS7? I'm trying just to understand, as you  
 15 progressed through your career, how your duties have changed,  
 16 if they have.  
 17 A. Yeah. As a GS5, typically you're an introductory to  
 18 the Forest Service.  
 19 Q. Uh-huh.  
 20 A. And so, you have your basic college skills, so you  
 21 take them out on the ground. As you move up the GS levels,  
 22 you added more duties on to your -- such as grazing permit  
 23 administration, range analysis, different -- different --  
 24 different levels of management.  
 25 Q. Okay. Do you have any specialized education or

Page 7

1 Q. And after you finished your college degree, then did  
 2 you start full-time with the Forest Service?  
 3 A. Yeah.  
 4 Q. And what position --  
 5 A. Yes.  
 6 Q. -- did you hold?  
 7 A. Range management specialist. I think it was range  
 8 conservationist at the time, but it's basically the same.  
 9 Q. Okay. And what does a range conservationist or range  
 10 management person do for the Forest Service?  
 11 A. We administer grazing permits.  
 12 Q. Okay.  
 13 A. We deal mainly a lot with the understory vegetation  
 14 on the forest, like grasses and the non-tree stuff.  
 15 Q. Okay. Is there anything else that falls within the  
 16 duties of range management?  
 17 A. Right now? What I have right now or --  
 18 Q. Let's talk about in the past, and then we'll talk  
 19 about your --  
 20 A. Mainly that was in the past, was when it --  
 21 Q. Okay.  
 22 A. -- dealt with.  
 23 Q. And how long did you hold that position?  
 24 A. The position?  
 25 Q. In range management or range conversation.

Page 9

1 certification or training in resource management other than  
 2 your undergraduate degree?  
 3 A. Meaning a major?  
 4 Q. Just any kind of training. Is there any kind of  
 5 certification that you can have? Have you completed certain  
 6 training programs, either within the Forest Service?  
 7 A. Completed a noxious weed, herbicide spraying.  
 8 Doesn't really deal with this.  
 9 Q. Okay.  
 10 A. But --  
 11 Q. Have you had any specialized training in management  
 12 of wildlife populations?  
 13 A. No.  
 14 Q. Anything to do -- any specialized training with wild  
 15 horses?  
 16 A. No.  
 17 Q. Okay. And when you started with the Forest Service,  
 18 were you always with the Black Mesa District?  
 19 A. Well, as I mentioned earlier, I started at the  
 20 Springerville Ranger District.  
 21 Q. Okay.  
 22 A. And then when I finished my co-op, they put me at  
 23 the -- or, I moved to the Heber Ranger District. In, I  
 24 believe, '96, the Heber Ranger District combined with the  
 25 Chevelon Ranger District.

Page 10

1 Q. Okay.

2 A. And so, it was called the Heber-Chevelon or

3 Chevelon-Heber District for a while. And then we combined

4 names, or we renamed the district to Black Mesa Ranger

5 District.

6 Q. Okay.

7 A. So, it progressed from the Heber to Chevelon-Heber

8 and then the Black Mesa District.

9 Q. Okay.

10 A. And all of those are, I guess, one district now.

11 Q. The Heber, the Chevron --

12 A. Chevelon.

13 Q. -- Chevelon and the Black -- was there originally a

14 Black Mesa?

15 A. No.

16 Q. So those two --

17 A. Yeah. Correct.

18 Q. -- Heber and Chevelon, became Black Mesa?

19 Can you describe the location of the Black Mesa

20 District for me? And we can refer to the map if that helps

21 you. I just need to get a sense of where you work.

22 A. The Black Mesa on the east side is bounded by Clay

23 Springs. It's a small community. The west side is bounded by

24 Leonard Canyon. The south side is bounded by the Fort Apache

25 Indian Reservation, and the north side just runs north of

Page 11

1 Heber-Overgaard, Clay Springs, Forest Lakes. I don't know.

2 It varies on mileage, but --

3 Q. Okay.

4 A. -- it's north of there probably five to 10 miles,

5 depending on where you're at.

6 Q. What is the approximate size of the area?

7 A. Our district is about, I believe, 650,000 acres.

8 Q. Who do you report to?

9 A. Kate Klein is my direct supervisor.

10 Q. Okay. And do you know what her title is or what she

11 does?

12 A. She is a district ranger for the Black Mesa Ranger

13 District.

14 Q. And, we talked a little bit about your job

15 responsibilities, administering grazing permits. We talked a

16 little bit about understory permits, if I understand you

17 correctly.

18 A. Understory vegetation.

19 Q. Understory vegetation.

20 Is there anything else that falls within your

21 responsibilities?

22 A. Oh, the major things are noxious weeds, watershed and

23 soils on the district.

24 Q. On a daily basis, do you have any sort of management

25 responsibility for the horses that might be in the Black Mesa

Page 12

1 District, if there are any?

2 A. Under the management of the -- could you repeat that?

3 Q. I can repeat the question.

4 Do you have any responsibility for management of the

5 horses that might be in the Black Mesa District?

6 A. Yeah. Most of the -- anything dealing with that

7 would fall under my shop.

8 Q. Okay. As part of your job responsibilities, have you

9 ever had to respond to a Freedom of Information Act request?

10 A. Yes.

11 Q. And what sort of requests have they been? Have there

12 been many? I can rephrase that if --

13 A. Yes.

14 Q. Let's start over.

15 With respect to the presence of wild and free roaming

16 horses or other horses within the Black Mesa District or the

17 Heber Territory, have you ever had to respond to a Freedom of

18 Information Act request with respect to those horses?

19 A. Not that I'm aware of.

20 Q. Okay.

21 A. Me personally, I haven't.

22 Q. Okay. That's fine.

23 What is your understanding of the meaning of a wild,

24 free roaming horse?

25 MR. PATRICK: I'm going to object to form and

Page 13

1 foundation.

2 Go ahead.

3 Q. (BY MS. KLEIN) You can go ahead and answer the

4 question.

5 A. Could you repeat it?

6 Q. Sure. In this litigation, wild and free roaming

7 horses are at issue.

8 What do you understand the definition of wild and

9 free roaming horses to be?

10 A. I guess a wild horse would be something that legally

11 was established, you know. The territories were established

12 in, you know, the '70s.

13 Q. Okay.

14 A. And anything from there were -- that would be the

15 basis of a wild horse, I guess. That would be my response.

16 Q. Do you mean to say that if the horse was present or

17 the heritage of the horse was present since the 1970s, that

18 then it would be considered a wild and free roaming horse?

19 A. Not necessarily. I would -- there's -- I think

20 there's a distinction between feral horses and wild and free

21 roaming horses.

22 Q. Okay. What do you understand that distinction to be?

23 A. A feral horse would be a horse owned by someone --

24 Q. Okay.

25 A. -- that was set loose or not taken care of anymore.

Page 14

1 Q. And do you make a distinction between a feral horse  
 2 and what is a stray horse or are those the same, in your mind?  
 3 A. I guess I'd have to be even more specific on the  
 4 question. I mean --  
 5 Q. I'll give you just a little background.  
 6 A. Okay.  
 7 Q. There are four terms that frequently come up. One is  
 8 wild and free roaming horses, one is feral, one is a stray  
 9 horse and the other is a trespass horse. And I'm just trying  
 10 to understand, from your perspective, as a member of the  
 11 Forest Service, when you use those terms, do you -- you  
 12 know -- do you make a distinction in the terms? What  
 13 distinction is that? So, I'm not looking, necessarily, for  
 14 the proper legal answer. I'm just looking for -- to  
 15 understand, when you talk about those terms, what does that  
 16 mean?  
 17 A. You could probably lump, as a general rule, three of  
 18 those, the stray, the feral and the trespass, I believe.  
 19 Q. Okay. And are you familiar with the Heber Wild Horse  
 20 Territory? Am I saying that correctly? Is it Heber or  
 21 Herber?  
 22 A. Heber.  
 23 Q. Heber?  
 24 A. Yes. Yes.  
 25 Q. And can you describe what the Heber Wild Horse

Page 16

1 Wild Horse Territory interchangeably.  
 2 Have you ever seen any horses in the Heber Territory?  
 3 A. Could you be specific on the day? I mean, are you --  
 4 have I ever seen a horse in there?  
 5 Q. Yes.  
 6 A. Yes.  
 7 Q. And what's the earliest date that you remember seeing  
 8 horses in the Heber Territory?  
 9 A. I'm going to say 2005 or six.  
 10 Q. Okay. And approximately how many horses did you see?  
 11 A. I'm going to say two or three.  
 12 Q. And since that time when you first saw the horses,  
 13 have you -- since that time, have you seen more horses or the  
 14 same horses? Have you gone back and seen horses in that  
 15 territory?  
 16 A. No.  
 17 Q. So since the first time that you've --  
 18 A. Have I seen any more horses?  
 19 Q. Yes.  
 20 A. More than two or three? No.  
 21 Q. Okay. I'm not expecting you to know if they're the  
 22 same two or --  
 23 A. Yeah.  
 24 Q. -- the same three.  
 25 A. Okay.

Page 15

1 Territory is?  
 2 A. It's designated there on the map that I brought. It  
 3 was established in, you know, like I said, the '70s, I  
 4 believe.  
 5 Q. Okay. Do you know the general size, location, of the  
 6 territory?  
 7 A. Yes.  
 8 Q. Can you describe that for me?  
 9 A. Well, this -- this portion of it is bounded by State  
 10 Highway 260. From here it's the 300 Road, what we call Forest  
 11 Road 300, to about Gentry lookout.  
 12 Q. Okay.  
 13 A. Then we go kind of northeast to the private land, go  
 14 east from there, and then mainly north up -- back up to town,  
 15 the town of Heber.  
 16 Q. Do you know, roughly, how many acres that is?  
 17 A. Originally, in some of the documents I've seen,  
 18 14,000 acres.  
 19 Q. Okay. And is the Heber Wild Horse Territory, is it  
 20 within the Black Mesa District? Does it abut the Black Mesa  
 21 District? Where is it in relation to the Black Mesa District?  
 22 A. It sits on the southern -- kind of the southern  
 23 central part of it.  
 24 Q. Okay. Have you ever seen any horses in the Heber  
 25 Territory? And I'll use the term Heber Territory and Heber

Page 17

1 Q. Okay. I want to talk a little bit about the boundary  
 2 fence for the Heber Territory.  
 3 Can you describe the boundary fence's location for  
 4 the Heber Territory prior to the 2002 Rodeo-Chediski Fire?  
 5 A. Boundary fence for the territory?  
 6 Q. For the Heber Territory.  
 7 A. Of course, this is the state highway, and the  
 8 right-of-way is fenced all the way along here.  
 9 Q. Okay.  
 10 A. There is no fence along this boundary, along the --  
 11 the rest of the boundary is not fenced except for private  
 12 land. There are fences within the territory, but --  
 13 Q. So, just for the purpose of the record -- just for  
 14 purposes of the record, so this is the -- which way is north?  
 15 The western -- the western edge of Heber Territory is bounded  
 16 by a fence that runs along the highway, correct?  
 17 A. Correct.  
 18 Q. And then when we get towards the southwestern  
 19 portion, going from highway -- can you tell me what highway  
 20 that is?  
 21 A. This is Highway 260.  
 22 Q. Highway 260, starting at that, in the intersection of  
 23 -- at the intersection -- let me rephrase that.  
 24 Starting at Highway 280, at the southwestern edge of  
 25 the Heber Territory, is there a fence at that portion?

Page 18

1 A. Right here?

2 MR. PATRICK: Let me -- wait a minute. Let me object

3 to form and foundation.

4 I don't think we have a Highway 280 here anywhere.

5 THE WITNESS: Yeah.

6 Q. (BY MS. KLEIN) Okay. Which highway is --

7 A. Highway 260.

8 Q. Highway 260. Thank you.

9 At the southwest edge of the Heber Territory along

10 Highway 260, is there a fence of some sort that would then

11 proceed basically in a southern direction?

12 A. Not that encloses the territory.

13 Q. Okay. And then as we continue around the territory,

14 going from the southwest to the southeast and moving north, is

15 there any fence along this boundary?

16 A. There may be some along this private land.

17 Q. Okay. And then as we come up to the tribal land --

18 A. That's --

19 Q. Am I in the right spot? Let me have you describe, as

20 we go towards the northeastern section of the territory, what

21 the -- what the Heber Territory abuts and whether or not

22 there's a fence.

23 A. You want to know what the Heber Territory abuts?

24 Q. Well, as I understood what -- what you told me is

25 that there might be a fence here, along --

Page 19

1 A. Along private land next to Heber-Overgaard.

2 Q. All right. And this is private land, not tribal

3 land?

4 A. That's correct.

5 Q. Okay. And where is the -- this is just, you know, to

6 help me understand as we're going through this -- where is the

7 tribal land adjacent to the Heber Territory?

8 A. There's none adjacent to the territory.

9 Q. Okay. Does it intersect at any point?

10 A. No.

11 Q. Is there a fence between tribal land and Heber

12 Territory along the boundary?

13 A. Along the boundary of what?

14 Q. Of the Heber Territory. Let's start -- let's not go

15 back there. Let's start over.

16 So, as I'm understanding, just, was there a fence

17 prior to the Rodeo-Chediski Fire that was in place? And, we

18 have along Highway 260.

19 Was there any other fence that was in place aside

20 from what you have mentioned in the south -- well, it's more

21 eastern, mid to eastern boundary with some private land?

22 A. Was there any fences in place -- could you -- I

23 guess, could you --

24 Q. Well, I don't --

25 A. On the district or what? A boundary or what? I'm

Page 20

1 not sure what --

2 Q. We'll move on, and I will figure out a better way to

3 ask --

4 A. All right.

5 Q. Okay. Let's try this again.

6 I'm going to take a break, and I'm going to figure

7 out how to articulate to you what -- the question that I'm

8 asking, and then we'll --

9 A. Sure.

10 Q. -- we'll start in a few minutes.

11 MR. PATRICK: Sounds good.

12 (Recessed, 10:56 a.m. until 11:00 a.m.)

13 Q. (BY MS. KLEIN) Let's try this again.

14 I want to ask you about the boundary fence between

15 the Black Mesa District and the tribal lands. Okay?

16 A. Okay.

17 Q. And I would like to know the condition of the

18 boundary fence between the Black Mesa District and the tribal

19 lands prior to the Rodeo-Chediski Fire in 2002, if you are

20 aware.

21 A. The basic condition of the fence, as I recall, was,

22 in most areas, a satisfactory -- or, in pretty good shape.

23 Q. And what do you mean when you say satisfactory or

24 pretty good shape? Do you mean there were no breaks in the

25 fence? Do you mean that it did not need repair? What do you

Page 21

1 mean by that?

2 A. Just that the overall condition of the fence, I

3 thought, was in decent shape, enough to -- it was in decent

4 shape.

5 Q. Okay. Do you know the approximate length of the

6 fence?

7 A. Not off the top of my head.

8 Q. All right. Do you know who constructed the fence?

9 A. No. No.

10 Q. And what material was the fence constructed of?

11 A. Pre fire?

12 Q. Pre fire.

13 A. There were -- it was barbed wire. There was some

14 steel posts and some wooden posts.

15 Q. Were there any gates along the fence?

16 A. Yes.

17 Q. And were those simply strings of wire with plastic

18 handles? Were they more formidable gates? What were the

19 gates like?

20 A. I think -- I believe there were Texas-style gates,

21 and a -- there might have been some other style of gates,

22 but --

23 Q. And what's a Texas-style gate?

24 A. I would consider -- well, I guess my definition of a

25 Texas-style gate would be wooden posts or a post on each end

Page 22

1 with wire, barbed wire or --  
 2 Q. Okay.  
 3 A. -- some kind of a wire stretched between them.  
 4 Q. Okay.  
 5 A. Not with a plastic handle, though. I'm not familiar  
 6 with the --  
 7 Q. Okay. And who was responsible for maintaining or  
 8 repairing the boundary fence prior to the fire?  
 9 A. Who officially was responsible? I don't know.  
 10 Q. Do you know, was there somebody that unofficially  
 11 took care of the fence?  
 12 A. I know our permittees who ran cattle down there took  
 13 care of it.  
 14 Q. And are you aware of any maintenance or repair  
 15 schedule for the fence?  
 16 A. Do you mean a formal document that would --  
 17 Q. Either formally or informally.  
 18 A. No.  
 19 Q. Okay. And you mentioned that, in your opinion, the  
 20 boundary fence was in satisfactory or pretty good shape.  
 21 What's the basis for that opinion?  
 22 A. Could you be more definite on what you mean by basis  
 23 or --  
 24 Q. Have you personally observed the fence?  
 25 A. Yes.

Page 23

1 Q. Prior to the fire?  
 2 A. Yes.  
 3 Q. And did you inspect the full length of the fence?  
 4 A. No.  
 5 Q. So is your -- would it be correct to say that your  
 6 observation is based on a view of the fence at the time you  
 7 happened to be in a specific area?  
 8 A. Yeah.  
 9 Q. Okay. And were you typically in multiple areas along  
 10 the fence or just in one particular area?  
 11 A. I guess it depended on the day I did an inspection, I  
 12 guess.  
 13 Q. Okay. And as you were doing inspections, would  
 14 your -- would your inspections take you, at some point, along  
 15 the length of the fence?  
 16 A. Along the entire length?  
 17 Q. Yes.  
 18 A. No.  
 19 Q. Along a specific portion of the fence?  
 20 A. Yes.  
 21 Q. And is there a name for that portion, or is there a  
 22 specific region, or can you give me an idea of, you know, was  
 23 it 50 percent of the full length of the fence that you  
 24 typically inspected? That's what I'm trying to understand.  
 25 How much of the fence did you see prior to the Rodeo-Chediski

Page 24

1 Fire?  
 2 A. At this time, I would say -- or, I would approximate  
 3 three quarters. 66 percent to three quarters. Two thirds to  
 4 three quarters.  
 5 Q. And did you keep any documentation when you were  
 6 inspecting the fence?  
 7 A. I'm not sure.  
 8 Q. Would you have taken any pictures of the fence?  
 9 A. I'm not sure.  
 10 Q. All right. Are you aware of any reports describing  
 11 the condition of the fence prior to the Rodeo-Chediski Fire?  
 12 A. Not that I'm aware of.  
 13 Q. Okay. I'd now like to focus on the condition of the  
 14 boundary fence, the same boundary fence, after the 2002  
 15 Rodeo-Chediski Fire.  
 16 Do you know when the new fence was built?  
 17 A. It was after the fire, in -- I'm not exactly sure  
 18 when they started, but I'm going to guess late 2002, 2003 is  
 19 when they started.  
 20 Q. And the reason --  
 21 A. I'm not a specific -- I'm not sure on the specific  
 22 date, but --  
 23 Q. That's fine. And the reason that they had to rebuild  
 24 the fence was that the fence was destroyed in the fire, is  
 25 that correct?

Page 25

1 A. Correct.  
 2 Q. And do you know whether it was a certain portion of  
 3 the fence that was destroyed or was the entire fence  
 4 destroyed?  
 5 A. I believe they replaced the whole fence.  
 6 Q. Okay.  
 7 A. Or, a large majority of the fence.  
 8 Q. All right. And who -- who was it that was  
 9 responsible for building the new fence?  
 10 A. The -- I believe -- the tribe.  
 11 Q. And what material was the new fence built of?  
 12 A. Similar material as the -- as the other one.  
 13 Q. And what would you describe is the state of, the  
 14 condition of, the fence at the present time?  
 15 A. At the present time, it is in fair condition. Now,  
 16 that's an overall of the whole fence.  
 17 Q. I'm sorry. Did you say not as an overall or as --  
 18 A. As an overall.  
 19 Q. Okay. And when you say fair condition, is that, for  
 20 all practical purposes, the same as pretty good condition,  
 21 satisfactory, or do you rate that -- is that different in your  
 22 mind?  
 23 A. No, that's -- there are portions that -- that are not  
 24 in that condition, but --  
 25 Q. And you mentioned that the tribe built the fence.



Page 26

1 Is the tribe also responsible for maintaining the  
 2 fence?  
 3 A. Technically, I -- I'm not sure.  
 4 Q. Okay. Have you, at any time during your employment  
 5 at the Forest Service, taken a census of the wild horse  
 6 population in the Heber Territory?  
 7 MR. PATRICK: Object, form and foundation.  
 8 You can answer the question.  
 9 THE WITNESS: Could you repeat it?  
 10 Q. (BY MS. KLEIN) Have you taken a census of the horses  
 11 in the Heber Territory?  
 12 A. Boy, for that direct purpose of a census? Is that  
 13 what you mean? I --  
 14 Q. Why don't you tell me if there's -- if there would be  
 15 a different purpose. We'll start with for a specific purpose  
 16 of counting the horses.  
 17 Have you ever done a census?  
 18 A. In that horse territory?  
 19 Q. Yes.  
 20 A. A formal census, no.  
 21 Q. Have you done an informal census?  
 22 A. For the direct purpose of a census of horses, no.  
 23 Q. Have you done an informal census for some other  
 24 purpose?  
 25 A. As we -- hmm. That's a tough one, how to answer this

Page 27

1 type of thing. I -- I guess I would say yes.  
 2 Q. And what did you do?  
 3 A. Just visually observed nothing. Done a visual  
 4 observation.  
 5 Q. Okay. And what did you visually observe?  
 6 A. No horses. Prior to the fire, was that? Did you say  
 7 prior to the fire?  
 8 Q. I did not.  
 9 A. Okay. Well --  
 10 Q. Would you like to go back? And was it your  
 11 understanding that we were talking about a census prior to the  
 12 fire?  
 13 A. Yes.  
 14 Q. Okay. So prior to the fire, my understanding is that  
 15 you informally took a census -- we'll use that in the loose  
 16 term -- and visually observed that there weren't any horses;  
 17 is that correct?  
 18 A. Yeah. I wouldn't say census. I would say  
 19 inspection, but --  
 20 Q. Okay.  
 21 A. -- I would assume they're -- you're talking about the  
 22 same stuff.  
 23 Q. Okay. And just so I understand, just, the  
 24 terminology, how do you distinguish between a census and an  
 25 inspection?

Page 28

1 A. A census -- this would be my opinion -- a census is  
 2 you're going out for that sole purpose.  
 3 An inspection could be anything from driving down the  
 4 highway to driving down the 86 Road, from driving down the 300  
 5 Road, observing anything that's -- that -- that may come up.  
 6 Q. So when you say prior to the Rodeo-Chediski Fire that  
 7 you visually observed no horses, that occurred while you were  
 8 driving down a forest road; is that correct?  
 9 A. That's correct.  
 10 Q. Okay. Let's talk about after --  
 11 A. In the territory.  
 12 Q. In the territory.  
 13 Let's talk about after the Rodeo-Chediski Fire.  
 14 A. Rodeo-Chediski Fire.  
 15 Q. Rodeo-Chediski?  
 16 A. (Indicating.)  
 17 Q. Okay. Have you taken a formal census, as you  
 18 describe, for the sole purpose of counting the horses after  
 19 the fire?  
 20 A. Where at?  
 21 Q. In the Heber Territory?  
 22 A. No.  
 23 Q. Have you done one in the Black Mesa District?  
 24 A. No.  
 25 Q. Have you done an informal census in the Heber

Page 29

1 Territory? Let me rephrase that.  
 2 Have you done an inspection in the Heber Territory?  
 3 A. Yeah. We drive the road, I mean, yes.  
 4 Q. Okay. And what do you see? And what have you seen  
 5 after the Rodeo-Chediski Fire?  
 6 A. Where at?  
 7 Q. In the Heber Territory.  
 8 A. Like I said earlier, there was -- I've seen, what,  
 9 two to three horses, I believe.  
 10 Q. For an inspection dealing with the Black Mesa  
 11 District -- so now we're talking outside the Heber  
 12 Territory -- have you seen horses as you were on an  
 13 inspection, for lack of a better term?  
 14 A. After the fire?  
 15 Q. After the fire.  
 16 A. Yes.  
 17 Q. Okay. And how many did you see?  
 18 A. I can't give you a definite number.  
 19 Q. A ballpark figure is fine?  
 20 A. That's hard to -- hard to say, because you go out at  
 21 different times. I mean, it's just hard to answer that  
 22 question.  
 23 Q. All right. In your estimation, based on your  
 24 inspection of the area roughly, how many horses do you think  
 25 were in the Black Mesa District after the Rodeo-Chediski Fire?

Page 30

1 A. I would estimate between two -- let's see -- I  
 2 believe -- between two and 300.  
 3 Q. Now, we talked about doing a formal census, or a  
 4 census where the sole purpose was to count the horses.  
 5 Is there any sort of internal guidance or memoranda  
 6 or internal policy on how to conduct such a census?  
 7 A. I'm unaware.  
 8 Q. And you mentioned that in the Black Mesa District,  
 9 after the Rodeo-Chediski Fire, that there were approximately  
 10 200 to 300.  
 11 How about prior to the fire, in the same -- in the  
 12 same district? Do you have an estimate of how many horses  
 13 were in the Black Mesa District?  
 14 A. I would estimate -- as a ballpark guess, I would  
 15 estimate there's 10 to 20.  
 16 Q. When did the Forest Service first plan to remove  
 17 horses from the Heber Territory?  
 18 A. Can I back up a second?  
 19 Q. Sure.  
 20 A. Could you repeat that last question?  
 21 Q. Prior to the Rodeo-Chediski Fire, in the Black Mesa  
 22 District --  
 23 A. Okay.  
 24 Q. -- what was --  
 25 A. Okay. That's --

Page 31

1 Q. -- the general horse population?  
 2 A. Okay.  
 3 Q. And you answered 10 to 20. Is that --  
 4 A. (Indicating.)  
 5 Q. Okay. So when did the Forest Service first plan to  
 6 remove the horses from the Heber Territory after the  
 7 Rodeo-Chediski Fire?  
 8 MR. PATRICK: Object, form and foundation.  
 9 Please answer the question, if you can.  
 10 THE WITNESS: I don't remember a specific date.  
 11 Q. (BY MS. KLEIN) Do you have a rough approximation?  
 12 Was it in, you know, the fall of 2003? I'm not looking for an  
 13 exact date.  
 14 A. Okay. Repeat the initial question.  
 15 Q. Do you know when the first -- the Forest Service  
 16 first planned to remove the horses from the Heber Territory?  
 17 MR. PATRICK: Same objection.  
 18 You can answer it, if you can.  
 19 THE WITNESS: I -- I'm not sure on a specific date.  
 20 Q. (BY MS. KLEIN) Okay. And is your answer the same if  
 21 I asked you, you know, when the Forest Service planned to  
 22 remove the horses at issue from the Apache-Sitgreaves Forest?  
 23 A. (Indicating.)  
 24 Q. Okay. Do you know how this issue first came about?  
 25 A. What issue?

Page 32

1 Q. As far as the need to remove horses from the  
 2 Apache-Sitgreaves Forest.  
 3 A. Why did it?  
 4 Q. Yes.  
 5 A. Because we seen a tremendous amount of horses on our  
 6 district after the burn, after the Rodeo-Chediski Fire.  
 7 Q. And when you say "our district", do you mean the  
 8 Apache-Sitgreaves Forest in general? Do you mean,  
 9 specifically, the Black Mesa District? Do you mean Lakeside  
 10 and Black Mesa? What do you use in that?  
 11 A. Yes. I guess you could lump Black Mesa and Lakeside  
 12 together.  
 13 Q. Okay. Who was involved in the decision to remove the  
 14 horses from the Black Mesa and Lakeside districts?  
 15 A. I'm not sure I could give you a good list. I know me  
 16 and Randall Chavez worked on the contract.  
 17 Q. Okay. Anyone else that you're aware of? It's to  
 18 your knowledge.  
 19 A. I'm sure other people were aware of it, but like, I  
 20 would assume Deb Bumpus, forest range staff or wildlife range  
 21 staff, was.  
 22 Q. Did you have any sort of meetings or scheduled times  
 23 at which you had phone conversations to discuss the removal of  
 24 the horses from the Black Mesa and Lakeside districts?  
 25 A. (Indicating.)

Page 33

1 Q. Did you have any meetings regarding the removal of  
 2 the horses from the Black Mesa and Lakeside districts?  
 3 A. I don't remember. I'm sure -- actually, I'm sure me  
 4 and Randall had them. I'm sure there was. I just don't -- I  
 5 don't recall, I guess.  
 6 Q. Okay. But you don't remember there being any regular  
 7 scheduled meetings, that sort of thing, where you met once a  
 8 week or once a month or something like that?  
 9 A. No. No.  
 10 Q. Okay.  
 11 A. No formal --  
 12 Q. And --  
 13 A. -- meetings like that.  
 14 Q. Okay. And if you had met during these informal  
 15 meetings, would you have kept any notes?  
 16 A. Me?  
 17 Q. Yes.  
 18 A. Probably not.  
 19 Q. And are you aware of anybody else that you met  
 20 with -- let me rephrase that.  
 21 Are you aware -- at the times you met informally with  
 22 Randall Chavez, Mr. Chavez, did you keep any notes?  
 23 A. Did I keep -- probably not.  
 24 Q. Okay. And are you aware if Mr. Chavez kept any  
 25 notes?

Page 34

1 A. No. I don't know if he did or not.  
 2 Q. Okay. All right. The big white book that you have  
 3 in front of you is Exhibit 1 to Elaine Zieroth's deposition.  
 4 It's the administrative record. We'll refer to it as  
 5 Exhibit 1 or the administrative record.  
 6 If you open to the front page of the book -- turn the  
 7 cover -- you will see that there is a table of contents  
 8 section. And, I have a similar book in front of me. This is  
 9 the table of contents. It's organized by date, starting with  
 10 September 4th, 1973. And for each date, there's a  
 11 corresponding tab.  
 12 So, as we talk about different documents, I'm going  
 13 to ask you to flip to the different tabs so that we're both  
 14 speaking of and looking at the same document, and the first  
 15 tab that I would like you to turn to is tab 20, and I'm  
 16 looking at a document that says: Eastern Arizona Counties RAC  
 17 Project Proposal Form.  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. Okay. Have you seen this document before?  
 21 A. Yes.  
 22 Q. What is it?  
 23 You're welcomed -- if you need time, you're welcomed  
 24 to --  
 25 A. It's a --

Page 35

1 Q. -- browse through the document.  
 2 A. It's a RAC grant, I guess.  
 3 Q. And what is a --  
 4 A. It's a --  
 5 Q. Excuse me. Go ahead.  
 6 A. RAC is resource advisory committee, I believe. It's  
 7 a project proposal form.  
 8 Q. What does a Resource Advisory Committee do?  
 9 A. A Resource Advisory Committee. I'll give you what I  
 10 think. A Resource Advisory Committee is set up of, I believe,  
 11 Apache, Navajo and Greenlee counties. And we -- I believe --  
 12 we receive or they receive money from a federal government to,  
 13 I believe, put projects back on the ground.  
 14 That's -- I'm sure there is a better definition than  
 15 I can give you there, but that's a basic idea.  
 16 Q. So they're -- would it be fair to say they're a  
 17 committee that funnels federal dollars for a certain --  
 18 specific projects? Is that -- is that the gist of what that  
 19 committee does?  
 20 A. Yeah. Yes. In my opinion, yes.  
 21 Q. And, the RAC committee, is it part of the Forest  
 22 Service or is it a separate entity?  
 23 A. RAC committee members are non Forest Service.  
 24 Q. And --  
 25 A. Non Forest Service employees.

Page 36

1 Q. Okay. And does the RAC committee only grant projects  
 2 for the Forest Service or does it deal with other entities?  
 3 A. I believe they deal with other entities.  
 4 Q. Okay. Did you have any role in preparing this RAC  
 5 Project Proposal Form?  
 6 A. I reviewed it.  
 7 Q. Okay. I'm looking at item number two, the -- let's  
 8 start with item number one, which is, the project name, the  
 9 Removal of Feral Horses from the Rodeo-Chediski Fire Area.  
 10 And it says it's proposed by Randall L. Chavez.  
 11 I'm looking at number two, which says it's a NEPA  
 12 project: Is the project NEPA sufficient? And the answer  
 13 appears to be: Not Needed.  
 14 Would you agree?  
 15 A. Would I agree with what it says?  
 16 Q. Yes.  
 17 A. Yeah. It says: Not Needed.  
 18 Q. Okay. And is -- what's your understanding of why a  
 19 NEPA project is not needed?  
 20 MR. PATRICK: Let me object to form and foundation.  
 21 Q. (BY MS. KLEIN) What's your understanding of the  
 22 meaning of the "not needed" comment?  
 23 Let's go back a step.  
 24 Do you know what NEPA is?  
 25 A. Yes.

Page 37

1 Q. Okay. And when it -- when this line refers to the  
 2 "Is the project NEPA sufficient", what does that mean?  
 3 A. Means has the project been through the process, would  
 4 be my understanding.  
 5 Q. Through the NEPA process?  
 6 A. Correct.  
 7 Q. Okay. And the NEPA process, as far as either an  
 8 environmental assessment, as an environ -- is this addressing  
 9 whether or not an environmental assessment has been conducted?  
 10 A. That could be a result of NEPA.  
 11 Q. Okay. Do you know if an environmental assessment was  
 12 conducted with respect to this project, the Removal of Feral  
 13 Horses from the Rodeo-Chediski Fire Area?  
 14 A. Could you a repeat the beginning of that question?  
 15 Q. Do you know if an environmental assessment was  
 16 conducted for this project which is the Removal of the Feral  
 17 Horses from the Rodeo-Chediski Fire Area?  
 18 A. Yes, I know if one was done or not.  
 19 Q. Can you repeat your answer, please?  
 20 A. Well, you asked do I know if one was done?  
 21 Q. Yes.  
 22 A. I guess, could you rephrase your question? That  
 23 would be --  
 24 Q. Has there been an environmental assessment project,  
 25 an environmental assessment completed, for the Removal of the

Page 38

1 Feral Horses from the Rodeo-Chediski Fire Area project?  
 2 A. No.  
 3 Q. Okay. Do you know what an environmental impact  
 4 statement is?  
 5 A. Do I know?  
 6 Q. Yes. I'm not asking -- looking for --  
 7 A. Yes.  
 8 Q. -- a definition. I just want to --  
 9 A. Yes.  
 10 Q. -- make sure we're on the same page.  
 11 Do you know if an environmental impact statement was  
 12 completed for this project, which is, the Removal of Feral  
 13 Horses from the Rodeo-Chediski Fire Area?  
 14 A. Yes, I know if one was done or not.  
 15 Q. Okay.  
 16 A. And one was not completed.  
 17 Q. All right. I'd like you to turn to the project  
 18 description. I'm looking at about the third sentence in that  
 19 says: During that time 300 to 400 head of feral horses  
 20 migrated onto the Black Mesa and Lakeside Ranger Districts.  
 21 Do you have any knowledge, or do you know, how the  
 22 Forest Service arrived at that estimation?  
 23 A. It was our -- Randall and our estimate at the time.  
 24 Q. And, Randall and our, you mean --  
 25 A. Randall and I.

Page 39

1 Q. -- Randall and yourself? Okay.  
 2 And was this estimate a result of the type of  
 3 inspections that we discussed earlier, where your viewing of  
 4 the horses was not done for the specific purpose of counting  
 5 the horses?  
 6 A. Correct.  
 7 Q. Okay.  
 8 A. Mine was. I'm not sure about Randall. You can ask  
 9 Randall.  
 10 Q. Okay. How did the Forest Service determine what  
 11 damage was attributable to the wild horses?  
 12 MR. PATRICK: Object to form and foundation.  
 13 You can answer.  
 14 THE WITNESS: Are you still looking at this project  
 15 form?  
 16 Q. (BY MS. KLEIN) Yes. If you look at about halfway  
 17 through the paragraph, in part five of the project  
 18 description, there's a sentence that starts: Damage has been  
 19 observed after restoration projects, native seed planting,  
 20 extensive used travel corridors, and watershed stabilization  
 21 projects.  
 22 My question to you is what assessment did the Forest  
 23 Service do to determine whether that damage mentioned was  
 24 attributable to the horses in the Black Mesa/Lakeside  
 25 Districts?

Page 40

1 A. Again, Randall wrote this. I'm not sure if he had  
 2 specific inspections. I can't answer for him. Ours were, I  
 3 guess, just an observed inspection.  
 4 Q. Okay. Did you complete a separate RAC form for  
 5 removal of the feral horses from the Rodeo-Chediski Fire area?  
 6 A. Could you repeat that?  
 7 Q. Have you ever completed a --  
 8 A. RAC grant?  
 9 Q. RAC grant? Is that what you call it?  
 10 A. Or --  
 11 Q. -- RAC Project Proposal Form for the Removal of Feral  
 12 Horses from the Rodeo-Chediski Fire Area?  
 13 A. Not that I'm aware of.  
 14 Q. Okay. So to the best of your knowledge, this is the  
 15 only RAC grant that was applied for for removal of the  
 16 Rodeo -- for the horses from the Rodeo-Chediski Fire area?  
 17 A. That's correct.  
 18 Q. Okay. I would like you to turn to tab 11 next, in  
 19 Exhibit 1. And I will give you just a couple of minutes to  
 20 flip through the tab. It's a little bit longer.  
 21 A. Am I supposed to read it?  
 22 Q. Just familiarize yourself with it.  
 23 And what I'd like to ask you is have you seen this  
 24 first document which has a date of February 18th, 1995 before?  
 25 A. Yes.

Page 41

1 Q. Okay. And this is a letter dealing with a Freedom of  
 2 Information Act request; is that right?  
 3 A. Yes.  
 4 Q. All right. What I'd like for you to do is turn to --  
 5 it's about five or six pages in. You'll see a fax cover sheet  
 6 that says "Chevelon-Heber" at the top. Keep going. There you  
 7 are.  
 8 Have you seen this document before, this fax cover  
 9 sheet?  
 10 A. Yes.  
 11 Q. Okay. Who is Mike Rising? Is that correct?  
 12 A. Rising.  
 13 Q. Rising?  
 14 A. Mike Rising was the forest range, staff range.  
 15 Watershed soils, wildlife, I believe.  
 16 Q. And in the comments sections, I believe that says  
 17 "Wild Horse Territory information"; is that correct?  
 18 A. It appears that way.  
 19 Q. And do you recall if you were faxing Mr. Rising some  
 20 information in response to a request from him?  
 21 A. Yeah.  
 22 Q. Okay. And it says that there are a number of pages,  
 23 six, not including the cover.  
 24 Do you see that on the fax cover sheet?  
 25 A. Yes.

Page 42

1 Q. And if you look behind, there's a single page which  
 2 we'll talk about in some detail in a few moments.  
 3 Do you recall what the rest of the fax contained?  
 4 A. No.  
 5 Q. Do you recall what questions from Mr. Rising -- and,  
 6 I just mean in general, for the fax. We'll talk about the  
 7 second page in a little bit.  
 8 Did he solicit information from you? Were you  
 9 supplying information to him as a matter of course? What was  
 10 the purpose of this fax --  
 11 A. I'm sure he --  
 12 Q. -- if you remember?  
 13 A. -- asked me a question. I don't remember --  
 14 Q. Okay.  
 15 A. -- exactly.  
 16 Q. And do you know whose signature that is at the bottom  
 17 of the Chevelon-Heber fax cover sheet?  
 18 A. It appears to be Ralph Giffen.  
 19 Q. And do you --  
 20 A. Griffin.  
 21 Q. -- know who that is?  
 22 A. I don't know him personally, but I believe -- I think  
 23 he's in the Washington office now.  
 24 Q. Okay. I would like to turn your attention to the  
 25 second page immediately following the cover sheet. And you'll

Page 43

1 see, at the top, it says: Answers to your questions on wild  
 2 horse and burro territories.  
 3 And, based on that statement, would you agree that  
 4 you're answering a certain question from Mr. Rising?  
 5 A. From Mr. Rising?  
 6 Q. Yes.  
 7 A. Correct.  
 8 Q. Okay. I'd like to look at item number one, where it  
 9 says: Heber is the name of the territory. No critters on the  
 10 area.  
 11 Do you remember what the question was?  
 12 A. Not exactly.  
 13 Q. Okay. Number two, "the territory is still listed in  
 14 the blue pages of the manual", what manual are you referring  
 15 to?  
 16 A. I would suspect, the Forest Service manual.  
 17 Q. And is there some import -- the blue pages, is that  
 18 referring to a specific section of the manual?  
 19 A. Yeah. There's a certain designation for the  
 20 different colored pages, but I don't remember, exactly.  
 21 Q. All right. Continuing on in that sentence, it says:  
 22 However, we eliminated the territory July 12th, 1993.  
 23 Who is the "we" referring to?  
 24 A. Can I look back in --  
 25 Q. You're welcome to.

Page 44

1 A. On July 12th, the letter would be from John Bedell.  
 2 Q. And --  
 3 A. Or, signed by John Bedell.  
 4 Q. And what tab is that under, just for the record?  
 5 A. 10.  
 6 Q. Okay. The third item says: July 1993.  
 7 Do you recall what the question was for that answer?  
 8 A. No.  
 9 Q. Number four, "the territory was eliminated by letter  
 10 from the Forest Supervisor", do you know which letter is being  
 11 referred to?  
 12 A. Tab 10.  
 13 Q. And then statement five -- or, item number five,  
 14 says: The Territory is not occupied by wild horses or burros.  
 15 What's your basis for that knowledge or for that  
 16 statement?  
 17 A. Because I never seen any wild horses.  
 18 Q. I'm going to take a five-minute break, if that's all  
 19 right with you.  
 20 A. Yeah, let's do that.  
 21 (Recessed, 11:45 a.m. until 11:57 a.m.)  
 22 Q. (BY MS. KLEIN) Before the break, we were talking  
 23 about the RAC project. And we're on a different tab. It's  
 24 back to tab 20, if you need to look at it again.  
 25 One of the questions I have for you is, you know,

Page 45

1 what happened with the RAC project? Did you receive -- did  
 2 the Forest Service receive money from -- from RAC?  
 3 A. I believe the project was approved.  
 4 Q. And what happened after the project was approved?  
 5 A. That's a pretty general question. I don't know --  
 6 Q. Did you --  
 7 A. -- that I --  
 8 Q. Did you receive the money? Did you implement the  
 9 project? What happened?  
 10 A. Like I say, Randall applied for the grant. He -- he  
 11 was probably the one that dealt with handling the money and --  
 12 and any money we received.  
 13 Q. Where --  
 14 A. I don't know how the -- the funds are transferred. I  
 15 don't. I'm not familiar with --  
 16 Q. Okay.  
 17 A. -- with how the funds are transferred or when or -- I  
 18 -- on this project.  
 19 Q. Were the horses removed from the Rodeo-Chediski Fire  
 20 area?  
 21 A. No.  
 22 Q. And why not?  
 23 A. Why weren't the horses removed from the -- from the  
 24 fire area?  
 25 Q. Uh-huh.

1 A. Well, we -- God. I don't know. I don't know if it's  
 2 called sued or --  
 3 MR. PATRICK: That's a good term.  
 4 THE WITNESS: Okay. And directly thereafter, our  
 5 funding ran out, I guess would be a -- would kind of just be  
 6 the -- a short answer to your question.  
 7 Q. (BY MS. KLEIN) Okay. And when you say your funding  
 8 ran -- ran out, is that your -- is the funding from the --  
 9 that you obtained from RAC, from the project proposal?  
 10 A. I believe it was -- no. I'm not aware of -- hmm. I  
 11 don't know what the agreement was on the RAC.  
 12 Q. Okay. What funding were you thinking of?  
 13 A. I believe it was long-term rehab.  
 14 Q. When did you first become aware that there might be  
 15 an issue with removal of the horses, as far as in terms of a  
 16 lawsuit?  
 17 A. (Indicating.)  
 18 Q. When did you become aware that there might be an  
 19 issue with the removal of the horses?  
 20 A. I can't recall a specific date. It was in -- I don't  
 21 know.  
 22 Q. Do you know if it was in the fall of 2005? Spring of  
 23 2006? The summer? Do you have a rough year?  
 24 A. I assume it was the summer or fall of 2005.  
 25 Q. Okay. Did you ever seek any sort of funding from

1 anyone for assistance with removal of the horses from the  
 2 Rodeo-Chediski Fire area?  
 3 A. What was that?  
 4 Q. Did you ever seek funding from anyone to help with  
 5 the removal of the horses?  
 6 A. Yes.  
 7 Q. And who did you seek funding from?  
 8 A. Habitat Partner -- wait a minute. Yeah, Habitat  
 9 Partnership Committee meeting, I believe.  
 10 Q. The Habitat Partnership? I just didn't hear what you  
 11 said.  
 12 A. Habitat Partnership Committee, I guess.  
 13 Q. And is that a -- what kind of organization is that?  
 14 A. This is a group of wildlife partners, I guess.  
 15 Q. Is it a private group? Is it a government entity?  
 16 A. The Game and Fish actually runs these committees.  
 17 There's several committees in the state, but the funding comes  
 18 from, I believe, private -- I believe -- private. Now, the  
 19 Game and Fish could fund some grants, I believe, through  
 20 their -- their funding sources.  
 21 Q. What did you have to do to seek money from this  
 22 Habitat Partnership Committee?  
 23 A. They have an application, and, filled out the  
 24 application, I guess.  
 25 Q. What sorts of information did you need to put on the

1 application form?  
 2 A. Whew. Okay. What the project is; where it is; cost;  
 3 I think, what kind of habitat it's in.  
 4 Q. I'll have you flip to the beginning of the index of  
 5 the administrative record which is Exhibit 1.  
 6 And, can you show me if that application is anywhere  
 7 in the administrative record?  
 8 And, just to remind you, it's organized by date. So,  
 9 if you know approximately when you filled out your  
 10 application, you can kind of skip a couple pages.  
 11 A. I don't see it.  
 12 Q. Okay. Other than the application, was there any  
 13 other documentation that you needed to supply to the Habitat  
 14 Partnership Committee?  
 15 A. Hmm. No, not that I'm aware of.  
 16 Q. Okay. How much money were you requesting from the  
 17 Habitat Partnership, just roughly?  
 18 A. I don't remember, exactly, or roughly, either.  
 19 Q. Do you recall if it was 50,000? Was it 100,000? Was  
 20 it 1 million? I'm just trying to understand what kind of  
 21 money we're talking about.  
 22 A. I think it was less than 50,000.  
 23 Q. Okay. And what was the result of that application?  
 24 Did you get the money?  
 25 A. No.

1 Q. Do you have an understanding why you didn't get the  
 2 money?  
 3 A. No.  
 4 Q. Okay. I'm going to go back to the administrative  
 5 record and just look at a couple more documents. I'm going to  
 6 have you turn to tab 22.  
 7 Did you find it?  
 8 A. (Indicating.)  
 9 Q. I'm looking at -- under tab 22. It's a letter to  
 10 Dr. Phil Blair, dated May 26th, 2005. And if you look on the  
 11 second page of the letter, towards the end of the last  
 12 paragraph, it says: The local contacts for this contract will  
 13 be Kendall Hughes of the Black Mesa Ranger District -- it  
 14 gives your phone number -- and, then, Randall Chavez of the  
 15 Lakeside Ranger District.  
 16 What contract are they talking about?  
 17 A. The contract to round up horses --  
 18 Q. Okay.  
 19 A. -- in the -- yeah -- in the fire area.  
 20 Q. And is this the proposed contractor? Had a contract  
 21 already been issued?  
 22 A. Yes. This was the proposed -- well, yeah -- proposed  
 23 contract.  
 24 Q. Oh. I'm sorry. Your page is upside down.  
 25 A. That's all right.

Page 50

1 Q. Okay. Were you ever contacted as a result of being  
 2 listed as a contact for the contract?  
 3 A. From Dr. Blair, after this letter?  
 4 Q. From anybody. From Dr. Blair, from --  
 5 A. Hmm. From this letter. As a result of this letter.  
 6 Hmm. Not that I'm aware of.  
 7 Q. In general, it was -- you were one of the -- just,  
 8 not referring to any specific letter, you were a contact  
 9 person for questions regarding the contract for the round up  
 10 of the horses?  
 11 A. Correct.  
 12 Q. What sorts of people contacted you, if any?  
 13 A. Regarding the contract?  
 14 Q. Yeah.  
 15 A. People interested in the contract, I guess. People  
 16 interested in bidding on the contract.  
 17 Q. And did you receive, you know, lots of phone calls,  
 18 or lots of contacts? What kind of contacts did you receive?  
 19 Just tell me a little bit about the contacts that you had  
 20 regarding the contract.  
 21 A. People just interested in knowing about the contract.  
 22 Q. Did you have -- so you had calls from -- is it my  
 23 understanding that you had people interested in bidding on the  
 24 contract?  
 25 A. Correct.

Page 51

1 Q. Did you also have calls from people opposed to the  
 2 idea?  
 3 A. At what time?  
 4 Q. At any time.  
 5 A. Seems like there was people that were opposed.  
 6 Q. Do you recall, you know, did the tribe contact you?  
 7 Did local citizens contact you?  
 8 A. I would say just the general public or citizens from  
 9 the general public.  
 10 Q. And if you can recall, can you just describe, you  
 11 know, some of the natures of the conversations that you had  
 12 with the citizens or the general public?  
 13 A. Yeah. Can I --  
 14 Q. What did you talk about?  
 15 A. One guy came in, and he swore there was horses  
 16 everywhere, but -- even up to Holbrook, which I -- I don't  
 17 know. I need some -- wanting to know what to do with them on  
 18 private land or what he could do, you know.  
 19 Q. And did you -- I'm sorry. Continue.  
 20 A. No. Go ahead.  
 21 Q. Did you take any notes of this conversation?  
 22 A. Not that I'm aware of.  
 23 Q. Do you remember who the guy was?  
 24 A. You know, he told me his name, but I don't remember,  
 25 off the top of my head, but it was a -- it was a unique name.

Page 52

1 How's that? I just -- I don't remember the name.  
 2 Q. What did you do as a result of this man's visit? Did  
 3 he visit you or did he call you?  
 4 A. He came in the office.  
 5 Q. What did you do after you met with him?  
 6 A. Just went back to work. I didn't -- as a result of  
 7 his visit, I don't know.  
 8 Q. Did you investigate any of his claims or look into  
 9 any of his statements or anything like that?  
 10 A. He was talking about stuff up at Holbrook, off the  
 11 forest, and that's really out of -- that's, jeez -- I don't  
 12 know -- 50 miles, 40 miles --  
 13 Q. Okay.  
 14 A. -- north of Heber-Overgaard, so I --  
 15 Q. Did you have anyone else come to visit you or make  
 16 phone calls other than -- we'll forget the people that were  
 17 bidding on the contract. Just, did you have any other phone  
 18 calls or visits?  
 19 A. Seems like, yeah, I did talk to some folks, but --  
 20 Q. Do you remember, in general, just, the things that  
 21 you talked about?  
 22 A. Some of them just wanted to know what we were doing  
 23 with them, with the horses, just -- no, not in general, I  
 24 don't, or, not specifically. I don't remember much of the  
 25 conversations.

Page 53

1 Q. And what were the problems that the horses were  
 2 causing you in your district? What did you perceive the  
 3 problem to be?  
 4 A. Well, in -- the horses on our district were -- seemed  
 5 like, in localized areas -- were -- were grazing some of  
 6 the -- the stuff that we had just -- some of the grasses we  
 7 had seeded, and we had just -- just got through rehabbing,  
 8 rehabilitating, the Rodeo-Chediski Fire, and so we allowed or  
 9 tried to allow the -- the grasses to establish, and some of  
 10 that wasn't -- in some areas -- wasn't occurring as well as it  
 11 could.  
 12 Q. And because some of the rehabilitation wasn't  
 13 occurring, what did you think was the cause?  
 14 A. Depends on where you were, I guess. I -- that's a  
 15 broad question, but --  
 16 Q. Can you just tell me, in general, about your  
 17 rehabilitation efforts and --  
 18 A. What was that? In general, what were they?  
 19 Q. Just about -- yeah, your rehabilitation efforts and  
 20 some of the problems that you faced.  
 21 A. General rehabilitation efforts were seeding and  
 22 "stramolgy". There was a lot that we -- needed to be weeded  
 23 out in that area. There was others, other things, but, you  
 24 know, some localized areas, they could pull the -- the whole  
 25 grass plant out with --

<p style="text-align: right;">Page 54</p> <p>1 Q. And --</p> <p>2 A. -- down to the root.</p> <p>3 Q. And by "they", do you mean the horses or do you mean</p> <p>4 other wild -- what do you mean by "they"?</p> <p>5 A. Animals, I guess, horses, which are animals, I guess.</p> <p>6 Q. I would agree with that.</p> <p>7 So your rehabilitation efforts, in some areas,</p> <p>8 weren't growing back, and you attributed it to some sort of</p> <p>9 wildlife issue; is that fair?</p> <p>10 A. Are you lumping wildlife and -- how are you</p> <p>11 specifying wildlife, I guess?</p> <p>12 Q. Oh. I'm just lumping all creatures that might munch</p> <p>13 on grass together.</p> <p>14 A. In some areas.</p> <p>15 Q. Were you able to identify any areas that horses were</p> <p>16 specifically preventing the rehabilitation?</p> <p>17 A. No. I didn't identify any areas.</p> <p>18 Q. Did you have any cattle permittees complaining about</p> <p>19 the horses?</p> <p>20 A. Yeah.</p> <p>21 Q. And what --</p> <p>22 A. Yes.</p> <p>23 Q. And what were the complaints?</p> <p>24 A. One was that thing -- we rested the area from -- from</p> <p>25 livestock, to allow recovery, but, yeah, we allowed the -- the</p>	<p style="text-align: right;">Page 56</p> <p>1 A. (Indicating.)</p> <p>2 Q. How did you -- how did you decide -- how do you know</p> <p>3 that they came off of the Indian reservation?</p> <p>4 A. Well, they came from somewhere, and knowing that they</p> <p>5 have a lot of horses down there, that's where I figured they</p> <p>6 came.</p> <p>7 Q. Okay. We are going to go back to the administrative</p> <p>8 record and just look at a couple more documents. I'm going to</p> <p>9 have you turn to tab 22. Actually, you are on tab 22, aren't</p> <p>10 you?</p> <p>11 I'm going to have you take a look at tab 24, which is</p> <p>12 just a couple tabs down from where you are.</p> <p>13 A. So, not 22?</p> <p>14 Q. Nope, not 22. Sorry. We've already talked about 22.</p> <p>15 A. Okay.</p> <p>16 Q. We're going to go to 24. This is a very similar</p> <p>17 letter --</p> <p>18 MR. PATRICK: Okay.</p> <p>19 Q. (BY MS. KLEIN) -- to the previous letter that we</p> <p>20 just looked at, except this one is a direct to Mr. Dallas</p> <p>21 Massey --</p> <p>22 A. Massey.</p> <p>23 Q. Massey? -- of the -- thank you -- of the tribal --</p> <p>24 he's the tribal chairman of the White Mountain Apache Tribe.</p> <p>25 What kind of contact did you have with the tribe</p>
<p style="text-align: right;">Page 55</p> <p>1 horses were -- were coming on, and they'd multiply,</p> <p>2 eventually, and what were we going to do about them. So --</p> <p>3 Q. And as a result of the cattle permittees complaints,</p> <p>4 did you take any action to address their concerns?</p> <p>5 A. Could you rephrase that question, I guess?</p> <p>6 Q. Sure. When the cattle permittees complained, what</p> <p>7 did you do?</p> <p>8 A. Well, I -- we informed them that we had this contract</p> <p>9 out. We informed them -- let them know what we were trying to</p> <p>10 do.</p> <p>11 Q. Did you have the contract out before the cattle</p> <p>12 permittees complained?</p> <p>13 A. No, not always -- or, no.</p> <p>14 Q. Okay. And -- and where do you think these horses</p> <p>15 came from?</p> <p>16 You mentioned, before the fire, that there were</p> <p>17 roughly 10 to 20, or something like that, in the Black Mesa</p> <p>18 District, and at some point after the fire, you know, roughly,</p> <p>19 I think you testified there were two to 300, or something in</p> <p>20 that nature.</p> <p>21 Where do you think the horses came from?</p> <p>22 A. I think they come from the south, off the Fort Apache</p> <p>23 Indian Reservation.</p> <p>24 Q. Okay. Did you do anything to determine if that was</p> <p>25 the case?</p>	<p style="text-align: right;">Page 57</p> <p>1 regarding the removal of the horses?</p> <p>2 A. Dallas Massey? I had none.</p> <p>3 Q. Did you have contacts with anyone else from the</p> <p>4 tribe?</p> <p>5 A. Seems like a couple people come up and -- from the</p> <p>6 tribe -- and we talked about them.</p> <p>7 Q. What did you talk about?</p> <p>8 A. They wanted to go look at them, I believe, look at</p> <p>9 some of them, so I kind of pinpointed them, showed them a map</p> <p>10 of the forest and --</p> <p>11 Q. And do you know what their purpose was or why they</p> <p>12 wanted to look at them?</p> <p>13 A. I would assume, to see if they were -- to come get</p> <p>14 them or something, if they wanted to come get them or -- or</p> <p>15 were going to come get them or something. I don't know.</p> <p>16 Q. Did you ever go out with any members of the tribe</p> <p>17 when they went to look at the horses?</p> <p>18 A. No.</p> <p>19 Q. Do you know if the Indian tribe claimed or went and</p> <p>20 got any of the horses that were --</p> <p>21 A. No, I don't know.</p> <p>22 Q. -- in your district?</p> <p>23 A. I don't know.</p> <p>24 Q. You just know that they looked at them?</p> <p>25 A. Yeah.</p>



Page 58

1 Q. Okay. And this -- again, this letter in tab 24, it  
 2 just lists you as a contact.  
 3 Do you recall any other contacts from the tribe,  
 4 regarding the removal of the horses?  
 5 A. Yeah. I don't remember --  
 6 Q. Okay.  
 7 A. -- any.  
 8 Q. Did you have any specific meetings with the tribe or  
 9 some sort of community awareness or something like that? Any  
 10 meetings? Anything like that?  
 11 A. No.  
 12 Q. Okay.  
 13 A. I didn't.  
 14 Q. I'll have you look at tab 25, which is a request for  
 15 a contract action.  
 16 I don't know what this document is. So, if you can,  
 17 if you know, can you just explain to me what this document  
 18 is -- what's its purpose, you know -- how it fits into the  
 19 plan to remove the horses?  
 20 A. This is just a Request for Contract Action, forest  
 21 service one, 60 -- 6300-4. It's something -- it's a form that  
 22 you fill out when you propose a contract or request a  
 23 contract.  
 24 Q. So is this form the start of the contract process?  
 25 A. I believe.

Page 59

1 Q. Can you tell me about the contract process in  
 2 general, like what happens? You know, we'll start with you  
 3 just -- you discovered there was wild horses in -- or, you  
 4 discovered that there were horses in the Black Mesa/Lakeside  
 5 District area. You know, what's the process? How did this  
 6 contract evolve?  
 7 A. I believe, first, you have to secure money, request a  
 8 contract action, and then do the contract.  
 9 Q. Okay. Is there any sort of preliminary work that  
 10 goes in before you get to this Request for Contract Action  
 11 point? Do you have to write some sort of formal report as a  
 12 justification, like an authorization for expenditure or  
 13 something of that equivalent?  
 14 A. Whew. Request. I believe this second sheet may be  
 15 it or -- I'm not exactly sure on -- on the complete steps  
 16 of -- of all this. I just know you have to request a contract  
 17 action and have money and a code to do it.  
 18 Q. Okay. Is this something where you need approval from  
 19 your supervisor before you start, before you fill out a  
 20 Request for Contract Action? Is there a group decision? Or,  
 21 you know, in any generic issue, when you wanted a contract,  
 22 could you just decide that, you know, I need a contract for a  
 23 specific -- I'm just trying to understand your process of, you  
 24 know -- and, not even necessarily with specific to the wild  
 25 horses, but just, you know, what's the process? Can you just

Page 60

1 request a contract action? Do you have to get approval before  
 2 you do that?  
 3 A. I --  
 4 Q. Let's --  
 5 A. I'm not sure I can answer that at this time. I'm not  
 6 sure of the whole steps. Like I said, I know -- I don't know  
 7 the whole steps of the contracting process. I know bits and  
 8 pieces, but --  
 9 Q. Well, just --  
 10 A. -- not the whole steps.  
 11 Q. Can you tell me the bits and pieces that you know of  
 12 what -- I mean, what's your reality? You just --  
 13 A. We --  
 14 Q. -- fill out a form?  
 15 A. Yeah, you fill out a form and request a contract  
 16 action, if you have money to do that, and, you know, somebody  
 17 ensures that you have money to do that. I'm sure there's  
 18 other steps I know, but I just can't think of them --  
 19 Q. Okay.  
 20 A. -- at this time.  
 21 Q. All right. We'll move on. You can put that back in  
 22 the sleeve. And the next question I have for you -- we're  
 23 going to take a look at a couple of documents. And, I'm just  
 24 trying to understand the notification process for this, with  
 25 the removal of the wild horses. And, I'm going to have you

Page 61

1 look at tab 32, which is a -- an e-mail, it looks like, from  
 2 Tina Sorenson, dated July 15th, 2005, and then tab 33 is the  
 3 one immediately after, which looks like it's an e-mail from  
 4 you, on the same date.  
 5 Do you see those?  
 6 A. (Indicating.)  
 7 Q. What's the purpose of the notice of intent to impound  
 8 unauthorized livestock?  
 9 A. What was the purpose of -- of this?  
 10 Q. Uh-huh.  
 11 A. Typically, we post these notices whenever we have  
 12 trespass animals on the forest.  
 13 Q. Okay.  
 14 A. Post them at public places to give people a  
 15 notification.  
 16 Q. And is the notice so that people are aware that there  
 17 are trespassing animals? What's the purpose of the notice?  
 18 Why do you inform people?  
 19 A. Yes. To let them know that if they have an animal on  
 20 the forest, that they need to come get them, capture them or  
 21 pick them up.  
 22 Q. And it looks like, from the e-mail under tab 32 and  
 23 under tab 33, that the postings occur in several locations.  
 24 Is that your standard form of locations to post  
 25 things in? Does it vary? How do you decide where to post the

Page 62

1 notices?  
 2 A. Yeah. Usually we post them at public places, post  
 3 office.  
 4 Q. Okay. I'm going to have you turn to tab 35, which is  
 5 another letter to Dallas Massey.  
 6 Did I get that right this time, Mr. Massey?  
 7 A. Is this the same letter?  
 8 Q. It's a little different letter. It's dated  
 9 July 25th. I think the first one was June 13th. It's very  
 10 similar in form.  
 11 If you look at -- let me see if I can find the line  
 12 for you -- if you look at the last paragraph on the first  
 13 page, the letter says: We ask for your participation during  
 14 this effort by trying to keep all gates closed along the Fort  
 15 Apache Reservation Boundary. This will keep livestock from  
 16 crossing back and forth and will assist us in completing our  
 17 contract.  
 18 I would just like to go back to -- with that comment  
 19 in mine -- just to talking about the fence. What was your  
 20 understanding about, you know, whether or not the gates were  
 21 kept open or closed? Just talk to me in general about the  
 22 fences.  
 23 A. In general, when they built the fence, they didn't  
 24 put gates in the fence.  
 25 Q. And do you know, did -- how long did it stay like

Page 63

1 that?  
 2 A. I'm going to say -- or, I'm going to estimate 2005,  
 3 2006.  
 4 Q. So, approximately a half a year or a year or year and  
 5 a half?  
 6 A. No. I'm going to say that's when they -- when the  
 7 gates were first starting to be put up.  
 8 Q. Okay. And remind me. They built the fence roughly  
 9 in?  
 10 A. Late 2002, 2003, sometime in there.  
 11 Q. Okay. So there was a few years when -- where there  
 12 weren't any gates?  
 13 A. Correct.  
 14 Q. Okay. And at this point, when there's the letter, is  
 15 this a -- you know, what's the purpose of this last statement?  
 16 Is it a friendly reminder to, hey, get some gates or is it --  
 17 is it that there were gates and they -- and the tribe left the  
 18 gates open? What's -- what was your understanding what the  
 19 gates were like at this -- around July 2005, around that time?  
 20 A. I would say -- I would say the gates were like I  
 21 explained. There might have not have been a whole lot of  
 22 them.  
 23 Q. Okay.  
 24 A. So --  
 25 Q. I'm going to have you turn to tab 13. Jump back in

Page 64

1 time a little bit.  
 2 A. Okay.  
 3 Q. And did you draft this e-mail?  
 4 A. Yes.  
 5 Q. Okay. And, I'm reading a line that says: I hope  
 6 this answers your question -- or, Gene, I hope this answers  
 7 your question. If not, let me know. Kendall.  
 8 So, it's my understanding that this letter is  
 9 addressing questions asked by Mr. Gene Onken; is that correct?  
 10 A. Yes.  
 11 Q. The first line says: Acres: 14,000.  
 12 Is that referring to the size of the Heber Territory?  
 13 Is that right?  
 14 A. Yeah. That was what was in previous documents.  
 15 Q. Okay. And what's the second line refer to, or what's  
 16 the -- what is the point of that line, where it says,  
 17 "Allotments within the Territory"?  
 18 A. There are portions of two allotments within this  
 19 territory.  
 20 Q. And what's an allotment?  
 21 A. An allotment is an area that is grazed by cattle and  
 22 has a permittee, typically, associated with it.  
 23 Q. Okay. So this line is saying that there are some  
 24 allotments within the Heber and Black Canyon -- is that --  
 25 what's -- I guess I don't understand what the line tells us.

Page 65

1 A. There's two allotments, portions of two allotments,  
 2 within this, this area here. One would be the Heber  
 3 allotment, and the other one would be the Black Canyon  
 4 allotment.  
 5 Q. Okay. And when you mean this area, do you mean  
 6 the --  
 7 A. That area there.  
 8 Q. But the Black -- I just need it for the record,  
 9 'cause she can't see what you're pointing to.  
 10 A. Yeah, the territory.  
 11 Q. The Heber Territory?  
 12 A. Yeah.  
 13 Q. Okay. And then, the first line says: Why is the  
 14 population "0" and why is it being managed at "0" population.  
 15 Is that Mr. Onken's question?  
 16 A. I would assume.  
 17 Q. And who is Mr. Onken?  
 18 A. Gene Onken was in the regional range management  
 19 staffing group, and, among other things, he was in charge of  
 20 noxious weeds and Wild Horse Territories in the region.  
 21 Q. Okay. And immediately following the "why is the  
 22 population "0" and why is it being managed at "0," it looks  
 23 like this is your explanation following it; is that correct?  
 24 A. It's an explanation that somebody -- you know,  
 25 somebody else's explanation. I wrote it, but --

Page 66

1 Q. So you looked at other documents, and then this is --  
 2 A. Correct.  
 3 Q. Okay. The first one referred to is a 1974 letter.  
 4 And just for the purposes of us understanding what  
 5 documents you're talking about, I'm going to have you flip to  
 6 either tab two or tab three.  
 7 And, just take a minute to look at tab two and tab  
 8 three. I just want to know if you're referring to one of  
 9 these letters in your e-mail that's under, I believe it's, tab  
 10 13.  
 11 A. All right. Yes.  
 12 Q. Okay. Do you know which one it is or is it both?  
 13 A. Tab two. Let me see. Tab three. Just tab two.  
 14 Q. Okay. And did you do anything to verify the  
 15 information from the 1974 letter which we think is tab two?  
 16 Did you do anything to verify whether or not -- what that  
 17 information was based on?  
 18 A. (Indicating.)  
 19 Q. Let me try that again.  
 20 Did you do anything to check the information that was  
 21 in the 1974 letter?  
 22 A. No.  
 23 Q. Okay. Your e-mail which is under tab 13 -- again,  
 24 we're just going to keep flipping back between different  
 25 documents. So, you're --

Page 67

1 A. Okay.  
 2 Q. -- you're right --  
 3 A. Okay.  
 4 Q. -- there on tab 13.  
 5 A. 13.  
 6 Q. Third line down, it says: A 1991 report indicates  
 7 that approximately 5 feral horses -- and then the sentence  
 8 continues on.  
 9 I'll give you a couple minutes to read that portion.  
 10 You ready?  
 11 A. Uh-huh.  
 12 Q. And my question for you is, is that information based  
 13 on the document underneath tab six in the administrative  
 14 record?  
 15 A. Correct.  
 16 Q. Okay. Do you remember reviewing that document, the  
 17 one underneath tab six?  
 18 A. Do I remember --  
 19 Q. Yeah.  
 20 A. -- reviewing it?  
 21 Q. Do you remember looking at that document?  
 22 A. I'm sure I did. I don't remember it at this time,  
 23 but --  
 24 Q. Okay.  
 25 A. -- I'm sure I did, because I look --

Page 68

1 Q. Okay.  
 2 A. -- at them, you know.  
 3 Q. I'm just trying to understand, if we're trying your  
 4 memory.  
 5 So, as you're flipping back to these documents, do  
 6 you -- do you remember, oh, yes, I looked at this or is it,  
 7 you know --  
 8 A. Yes, I -- yes, I did look at this.  
 9 Q. That's what I'm trying to say.  
 10 A. Okay.  
 11 Q. It's not --  
 12 A. Okay.  
 13 Q. And then the last, just -- finally, the last document  
 14 that you mention is a 1993 letter by the district ranger, and  
 15 if you flip to tab nine --  
 16 A. Okay.  
 17 Q. -- is that -- do you remember reviewing this document  
 18 in tab nine?  
 19 A. Yes. Wait a minute. Yes. Tab nine.  
 20 Q. Okay. And is that -- is the information in your  
 21 e-mail under tab 13 based, in part, on tab nine, when you're  
 22 talking about the 1993 letter?  
 23 A. Yes.  
 24 Q. Okay. And for the information that's contained in  
 25 tab six, which is the 1991 report, and tab nine, which is the

Page 69

1 1993 letter, did you do anything to check the accuracy of the  
 2 information or did you just rely on the face of the documents  
 3 as they were written?  
 4 A. Yes, I -- I had to rely on -- I had to rely on them.  
 5 Q. Okay. So you didn't dig into any other records?  
 6 This is where your -- this is the source of your  
 7 information --  
 8 A. This is, yeah, the --  
 9 Q. -- are the three documents?  
 10 And this e-mail and the three documents that, I  
 11 guess, are tab two, tab six and tab nine, did you rely on  
 12 those documents in making the decision of whether or not to  
 13 remove the horses from the Black Mesa District and Lakeside  
 14 District Territory?  
 15 A. In when?  
 16 Q. When you decided to remove the horses, when the  
 17 Forest Service decided to remove the horses, did the documents  
 18 in tab two and tab six and tab nine, were they part of your  
 19 decision-making process in determining whether the horses  
 20 could be removed?  
 21 MR. PATRICK: Object to form and foundation.  
 22 THE WITNESS: Can I ask Rich a question?  
 23 MS. KLEIN: Sure.  
 24 (Brief off-the-record discussion, 12:45 p.m. until  
 25 12:46 p.m.)

Page 70

1 THE WITNESS: So the question was, if I get this  
 2 right, did I rely on --  
 3 MS. KLEIN: This --  
 4 THE WITNESS: -- nine --  
 5 MS. KLEIN: Two, six and nine.  
 6 THE WITNESS: -- six -- they were part -- yes.  
 7 MS. KLEIN: They were part --  
 8 THE WITNESS: Yes, they were part of it. We relied  
 9 on those.  
 10 Q. (BY MS. KLEIN) And you relied on other things, as  
 11 well, in forming your --  
 12 A. Yes.  
 13 Q. -- in forming your decision on whether to remove the  
 14 horses from --  
 15 A. Yes.  
 16 Q. -- from the territory?  
 17 A. (Indicating.)  
 18 Q. Okay.  
 19 MR. PATRICK: You need to verbalize a response. If  
 20 you're going to say yes, say yes. If you're going to say no,  
 21 say no.  
 22 THE WITNESS: Yes.  
 23 Q. (BY MS. KLEIN) I'm going to have you flip back to  
 24 tab 76. I'm going to do the same.  
 25 A. Do you have a specific tab?

Page 71

1 Q. Start with tab 76. You're in the right --  
 2 A. Okay.  
 3 Q. You're in the right spot.  
 4 If you flip to the first page under tab 76, it's a  
 5 fax cover sheet addressed to you from Mr. Gene Onken. And if  
 6 you turn to tab A, so, 76A, you'll see the same e-mail that we  
 7 were just discussing in tab 13, I believe, and then you'll  
 8 also see some additional handwritten notes down below.  
 9 Have you ever seen these handwritten notes before?  
 10 A. Yes.  
 11 Q. And can you just explain to me what the -- what the  
 12 meaning of the handwritten notes is? I'm just trying to  
 13 understand what Mr. Onken is talking about in relation to your  
 14 e-mail and whether or not this is -- how this issue was  
 15 resolved.  
 16 A. Okay. What was the question?  
 17 Q. I'd just like you to explain to me what the -- what  
 18 the discussion is about. Seems there's a disagreement of some  
 19 sort, so I'm just trying to understand what this -- what this  
 20 communication is about.  
 21 A. Of course, this is not with me, so I'm -- this ain't  
 22 my discussion here, so --  
 23 Q. Okay.  
 24 A. It just says: It appears Kendall may be confusing  
 25 the situation of the horses from the Reservation unauthorized

Page 72

1 grazing on the Black Mesa District where there is no  
 2 designated Wild Horse Territory.  
 3 Q. And I'll have you stop there.  
 4 A. Okay.  
 5 Q. And I'll just ask you, did you ever have a  
 6 conversation with Mr. Onken regarding his comments?  
 7 A. These comments? Not that I'm aware of.  
 8 Q. Okay. I'll have you skip all the way down to --  
 9 A. Wait. There may have been, but -- a conversation  
 10 with this on -- regarding this, but --  
 11 Q. Do you remember what was said or what -- how it came  
 12 out? What was discussed?  
 13 A. No, not at this time.  
 14 Q. Okay. And I just have one more question.  
 15 At the bottom of this document under 76A, if you  
 16 look, it says: So AML equals zero.  
 17 Do you see where I'm looking at?  
 18 A. Yes.  
 19 Q. Do you have any idea what AML means?  
 20 A. It's a management level.  
 21 Q. Okay. Is that -- does that statement, so AML equals  
 22 zero -- what's that? Do you know what that refers to? Does  
 23 that mean something?  
 24 A. Let me see. It means that the management level of  
 25 that -- of the number of horses, I guess, for that territory.

Page 73

1 Q. Okay. All right. And I'll have you flip to the next  
 2 page, and I'm not sure if yours is three-hole punched, but it  
 3 looks like it says something to the equivalent of: INFRA  
 4 ENTRIES. Although, it looks like the N and the T are partly  
 5 wiped out by a three-hole punch.  
 6 At the top, it says: Wild Horse & Burro Data  
 7 Correctly Entered Into INFRA Database.  
 8 And under Wild Horse Territories, the first one is  
 9 listed as the Heber Territory, and you were listed as the  
 10 responsible person.  
 11 And then right after that column is a column dated  
 12 correct data entries -- or, Correct Data Entered For, and then  
 13 the years 2002, 2003, 2004.  
 14 My first question is why is there an N/A? I'm  
 15 assuming that's not applicable to -- for the years 2002 and  
 16 2003?  
 17 A. I'm not sure.  
 18 Q. Okay. And what does the "Yes" mean in the column of  
 19 2004?  
 20 A. I would assume that it means that data was entered  
 21 for 2004.  
 22 Q. Okay. And, I'll give you a couple minutes to look at  
 23 the next tab, it's 76AB, and this is a memo, it looks like,  
 24 referring to the 14th Biennial Wild Horse and Burro Report to  
 25 Congress, and it's addressed to Regional Foresters, R-1, R-3

Page 74

1 R-4, R-5 and R-6, and I'm just trying to understand what this  
 2 range INFRA Database is and how -- what sort of information do  
 3 you supply for this range INFRA Database?  
 4 A. The INFRA Database is a -- is exactly that. It's a  
 5 database. I'm not sure when -- you know -- when it was first  
 6 developed, but it's just a database that you enter data for  
 7 several different things. There's -- INFRA Database is a huge  
 8 database, anywhere from -- from wild horse information to plan  
 9 information to, I think they have, road information, just a  
 10 lot of stuff.  
 11 Q. And as far as the information that you would supply,  
 12 were you permanently responsible for fulfilling the -- or,  
 13 supplying the information dealing with the wild horse -- the  
 14 wild horses?  
 15 A. Could you repeat that?  
 16 Q. Sure. Were you primarily responsible -- I'm looking  
 17 back to the one that says "INFRA ENTRIES" on top, under 76A --  
 18 were you preliminarily responsible for entering the  
 19 information regarding wild horse and burro data into the INFRA  
 20 Database?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. In 2004.  
 24 Q. I'll have you keep looking at this page on 76A with  
 25 the table, and there's a handwritten comment that says -- at

Page 75

1 least, tell me if you disagree -- that says: Probably should  
 2 be deleted -- and there's an equal sign -- feral horses from  
 3 Reservation.  
 4 Do you agree that that's what it says?  
 5 A. It appears that a way.  
 6 Q. And that's in reference to Santa Fe, Espanola,  
 7 Chicoma? Did I get that right?  
 8 A. Yeah.  
 9 Q. Okay.  
 10 A. Yes.  
 11 Q. And there isn't a similar comment for the Heber  
 12 Territory; is that correct?  
 13 A. That's correct.  
 14 Q. All right. Is it a practice of the Forest Service to  
 15 eliminate territories?  
 16 MR. PATRICK: Objection, form. Foundation.  
 17 THE WITNESS: I'm unaware.  
 18 Q. (BY MS. KLEIN) Okay. Do you know under what  
 19 circumstances the Forest Service would recommend that a  
 20 territory be eliminated?  
 21 A. Could you rephrase that or repeat it?  
 22 Q. Do you know under what circumstances the Forest  
 23 Service would recommend that a wild horse and/or burro  
 24 territory be eliminated?  
 25 A. Other than what was written in tab nine and 10, no,

Page 76

1 I'm unaware --  
 2 Q. Okay.  
 3 A. -- of --  
 4 Q. I'm going to have you -- we're going to go back to  
 5 tab 76, and this is -- I'm going to jump to tab 76B. And  
 6 underneath tab 76B, there should be a chart that says: Forest  
 7 Service Region 3.  
 8 Have you seen this chart before?  
 9 A. Yes. Does it have a page 5 at the top?  
 10 Q. Yes, it does.  
 11 A. Yes.  
 12 Q. Do you know approximately when this chart was  
 13 created?  
 14 A. Not without reviewing -- there's no date on the  
 15 chart.  
 16 Q. Okay. And you don't recall when the date was  
 17 created -- or, the chart was created? Excuse me.  
 18 A. When the chart was created?  
 19 Q. And I just need you to give an audible answer.  
 20 A. I'm thinking.  
 21 Q. Oh, okay.  
 22 A. I don't know when this chart was created, a specific  
 23 date.  
 24 Q. Okay. Do you know why -- well, let's start here.  
 25 I'm looking at the first row, which says: Arizona,

Page 77

1 Acreage, Territory Plan, Desired Population, Current  
 2 Population and FY -- which I'm assuming is fiscal year -- Last  
 3 Census.  
 4 Do you know why the Heber Territory does not appear  
 5 in this column?  
 6 A. No.  
 7 Q. I'm going to have you jump to 76C, and it should be  
 8 page 8. It's a table of some sorts. It says: Wild Horse and  
 9 Burro Biennial Population Estimates. Number of animals as of  
 10 October 1st, 1999.  
 11 And then it has State, Horses and Burros across the  
 12 top. And underneath this information for Arizona and New  
 13 Mexico, under the Arizona column, where it says "Horses",  
 14 there's a zero there.  
 15 Do you know if that information includes the Heber  
 16 Territory?  
 17 A. I don't know.  
 18 Q. Okay. We're going to go to the next chart or table  
 19 right after that, that is on page 9 under tab 76C, and this,  
 20 again, lists the state and, under each state, the territory  
 21 name. It has a designation of FS, which I'm assuming is the  
 22 number of Forest Service acres -- is that correct -- for each  
 23 territory?  
 24 A. Yes.  
 25 Q. Okay. And then, several columns going across to the

<p style="text-align: right;">Page 78</p> <p>1 right, one of which is current population of horses and  2 burros, and then the fiscal year of the last census.  3 Do you see where I'm looking?  4 A. FY Last Census?  5 Q. Yes.  6 A. Yes.  7 Q. Okay. And this chart has the Heber Territory listed  8 as inactive; is that correct?  9 A. No. Inactive?  10 Q. Inactive.  11 A. Did you say inactive?  12 Q. Inactive?  13 A. Correct.  14 Q. Do you know why that is?  15 A. Do I know? Do I know why inactive is there?  16 Q. Yes. Do you?  17 A. I would assume because that they felt that the  18 territory was inactive.  19 Q. Okay. And then, looking at the last column, along  20 the row that says, Heber, inactive, it has a 97 in the column  21 of the fiscal year, the last census.  22 It's my understanding that that would mean there was  23 a census conducted in 1997; is that correct?  24 A. I'm not -- I don't know.  25 Q. Do you recall if there was a census corrected in</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. PATRICK: Again, objection, form and foundation.  2 THE WITNESS: Specifically for wild horses, you know,  3 I'm unaware of a census.  4 Q. (BY MS. KLEIN) And how about for any other horses?  5 A. Well, I know that Game and Fish has counted, counted  6 some.  7 Q. And would Game and Fish have counted the number of  8 horses in the Apache-Sitgreaves Forest?  9 A. Not as a forest.  10 Q. So when you say they, the Fish and Game, might have  11 counted some -- and, I'm assuming you mean some horses --  12 A. On the district.  13 Q. On the district. So, in which district?  14 A. Black Mesa and possibly Lakeside, but I'm not sure on  15 that.  16 Q. So it's possible that the -- that Fish and Game might  17 have a census of some sort, and, either formal or informal?  18 Is that --  19 A. I know they've counted horses when they do their  20 inventory of wildlife.  21 Q. Okay. Okay. And have you ever seen or reviewed the  22 Fish and Game's inventory of wildlife?  23 A. Yeah, I've seen some of their stuff.  24 Q. Okay. And is that stuff in the administrative  25 record?</p>
<p style="text-align: right;">Page 79</p> <p>1 19 --  2 A. I don't recall.  3 Q. -- conducted -- excuse me -- in 1997?  4 A. I don't recall.  5 Q. And you've been with the Forest Service since  6 1991ish; is that correct?  7 A. (Indicating.)  8 Q. Counting your co-op? Is that --  9 A. Yeah, '92 since -- you know, in Heber.  10 Q. Okay. '92 in -- thank you. I forgot about the other  11 territory, or the other district.  12 So, since 1992, to your knowledge, has there ever  13 been a census to determine the population of wild horses in  14 that Apache-Sitgreaves Forest?  15 MR. PATRICK: I'm going to object to form and  16 foundation.  17 THE WITNESS: That I'm aware of -- you know.  18 MS. KLEIN: Okay.  19 THE WITNESS: I'm unaware of any census. Was that  20 the question? I guess, repeat the question.  21 Q. (BY MS. KLEIN) Let me repeat the question so the  22 record's clear.  23 Are you aware of any census that's been conducted to  24 determine the population of the wild horses in the  25 Apache-Sitgreaves Forest?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. It appears that some of it is.  2 Q. And can you just tell me which ones you think are  3 from the Fish and Game service?  4 A. Looks like 16, document 16, 17, 18, 19.  5 Q. Okay. And would you have looked at those, looks  6 like, their survey records, to determine where the horses in  7 the Black Mesa District and possibly Lakeside District came  8 from? Why don't we turn to tab 16.  9 A. Okay.  10 Q. And then I'll just have you kind of flip through 16,  11 17, must be, 18 and 19.  12 And my question is do you recall looking at these  13 documents to determine -- did you look -- let me start that  14 over.  15 Did you look at these documents to determine the  16 population of the horses in the Black Mesa District?  17 A. I looked at these documents.  18 Q. Okay. All right. I'm going to jump back to tab 76  19 again, and --  20 THE WITNESS: Can I take a little break?  21 MS. KLEIN: Yes.  22 (Recessed, 1:11 p.m. until 1:16 p.m.)  23 Q. (BY MS. KLEIN) We were talking about tab 76, and  24 there's various tables and charts within tab 76.  25 My question is did you have any involvement in the</p>

Page 82

1 preparation of these charts?  
 2 A. Which charts, again? All the ones in 76?  
 3 Q. Yeah, just these charts in general. We're looking at  
 4 the ones in 76. We can go chart by chart if you want.  
 5 A. Well, I'll look through them.  
 6 I don't believe I entered any of these charts into  
 7 the A Database. I mean, INFRA hasn't been around since the  
 8 earliest parts of -- but, whatever database, I don't think I  
 9 entered these, specifically.  
 10 Q. And by entered, you mean entered the data?  
 11 A. Correct.  
 12 Q. We're going to turn to tab 77, and tab 77 is another  
 13 fax to you from Ralph Giffen, and there's a cover page of the  
 14 10th and 11th report to congress on the administration of Wild  
 15 and Free Roaming Horses and Burros Act, and then there's a  
 16 table or a chart from Appendix B for Region 3, and, again, I  
 17 want to just confirm that you -- did you have any input into  
 18 the preparation of this chart? Did you supply the statistics?  
 19 A. And this is from 1992 to '95?  
 20 Q. That's my understanding.  
 21 A. Not that I'm aware of.  
 22 Q. Okay. When were you aware that -- and, just, you  
 23 know, in a rough -- I don't need the exact date, but in just a  
 24 rough estimate, when were you aware that the Apache-Sitgreaves  
 25 Forest had a Wild Horse Territory?

Page 83

1 A. I'm going to say between -- I can't tell you  
 2 specifically, but -- between '90 -- when I got there and  
 3 probably '94 would be --  
 4 Q. So --  
 5 A. -- my estimation, or my guess.  
 6 Q. Okay. So somewhat early on in your employment with  
 7 the Forest Service, you were aware that there was a Wild Horse  
 8 Territory in the Apache-Sitgreaves Forest?  
 9 A. What was that again?  
 10 Q. So, early on in your career, so, within the first  
 11 three or four years, whatever it turns out to be.  
 12 A. As I recollect.  
 13 Q. As you recollect. Okay.  
 14 Did there come a time when that Wild Horse Territory,  
 15 the Heber Wild Horse Territory, was ever eliminated, just, to  
 16 your knowledge?  
 17 A. Let me read this.  
 18 I guess, in 1993, we thought that. We thought that  
 19 it was.  
 20 Q. And what document were you looking at? I just need  
 21 the tab.  
 22 A. Nine and 10.  
 23 Q. Okay. And other than looking at the documents, were  
 24 you ever specifically told that the Apache-Sitgreaves no  
 25 longer had a Wild Horse Territory?

Page 84

1 A. I can't remember --  
 2 Q. Was it --  
 3 A. -- that far back.  
 4 Q. Was it specific, just belief, that there was no  
 5 longer a Wild Horse Territory among the Forest Service?  
 6 MR. PATRICK: Objection, form and foundation.  
 7 THE WITNESS: Yes.  
 8 Q. (BY MS. KLEIN) Okay. We're just going to plow  
 9 through some documents really quickly. We're getting close to  
 10 1:30.  
 11 So, we're going to look at tab 54, and underneath tab  
 12 54, there's an e-mail to you from Deb Bumpus.  
 13 And my question to you is, in this e-mail, she  
 14 recommends that, Deb recommends that, you contact Elaine  
 15 Zieroth regarding this request from the -- I think it looks  
 16 like -- the Corrizo Livestock Association.  
 17 Do you recall this e-mail?  
 18 A. Yeah.  
 19 Q. Do you remember any conversations regarding the  
 20 Corrizo Livestock Association?  
 21 A. You know, like I said earlier, I talked to a couple  
 22 people, but I don't remember their names or -- or if it -- you  
 23 know -- if it was Corrizo Livestock Association or not.  
 24 Q. Okay. I'll have you flip to tab 52, which is  
 25 another -- looks like an e-mail from Deb Bumpus. It starts

Page 85

1 with: FYI. Kendall, I discussed with Elaine yesterday.  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. Do you recall any conversations regarding the sale  
 5 barn, as referred to in the e-mail, and what your  
 6 communications with the sale barn would have been if you had  
 7 any?  
 8 A. I don't believe I ever contacted the sale barn --  
 9 Q. Okay.  
 10 A. -- in my recollection.  
 11 Q. Okay. I'm going to have you flip to the second page  
 12 in the same tab, tab 52, and you will see an e-mail from, is  
 13 it, Joe Baeza? Do you know offhand?  
 14 A. Close.  
 15 Q. Okay. I'll have you just read that e-mail that  
 16 starts off with: Gene, I love the Forest Service with all my  
 17 heart.  
 18 You ready?  
 19 A. Yes.  
 20 Q. Had you read this e-mail before today?  
 21 A. Yes.  
 22 Q. Do you recall if you -- what your response was to  
 23 this e-mail? Did you take any actions to verify any of  
 24 Mr. Baeza's claims or information?  
 25 A. I'm not sure what we -- what actions were taken.

Page 86

1 Q. Okay. Do you recall any actions that you took to  
 2 determine whether or not the horses in the Apache-Sitgreaves  
 3 Forest and, specifically, in your area, the Black Mesa  
 4 District -- do you -- what actions did you take to ensure that  
 5 the horses on -- in the Black Mesa District were not wild and  
 6 free roaming horses?  
 7 A. None, that I'm aware of.  
 8 Q. Did you look for any branding or lack of branding?  
 9 A. I did look for branding. I did look for marks and  
 10 brands, stuff like that, I guess.  
 11 Q. And what did you -- when you were looking, what did  
 12 you find?  
 13 A. It was hard to -- it was hard to really see good, but  
 14 it appeared that most of them were not branded or marked, that  
 15 I could tell.  
 16 Q. When you were looking, were you just looking with the  
 17 naked eye?  
 18 A. Right.  
 19 Q. Did you have binoculars?  
 20 A. Naked eye.  
 21 Q. And how close were you, roughly? Were you a football  
 22 field away? Were you a half a football field? What was your  
 23 distance to the horses?  
 24 A. You know, that varied. It varied quite a bit,  
 25 actually. Sometimes I seen them from real close. Sometimes

Page 87

1 it was driving down the road. Sometimes it was a good hundred  
 2 yards.  
 3 Q. Okay. Did you ever make a specific attempt to  
 4 identify how many of the horses were wild and free roaming, as  
 5 opposed to strays or trespass animals?  
 6 MR. PATRICK: Object, form and foundation.  
 7 THE WITNESS: No. I guess, repeat the question  
 8 again.  
 9 Q. (BY MS. KLEIN) Did you ever make an attempt to  
 10 determine which of the horses were wild and free roaming, as  
 11 opposed to -- well, let's start with that, wild and free  
 12 roaming.  
 13 MR. PATRICK: Objection, form and foundation.  
 14 Q. (BY MS. KLEIN) Want it one more time?  
 15 A. One more time. Wait. With a --  
 16 Q. Did you attempt to determine what percentage of the  
 17 horses were wild and free roaming?  
 18 MR. PATRICK: Same objection.  
 19 THE WITNESS: No.  
 20 Q. (BY MS. KLEIN) Did you attempt to determine what  
 21 percentage of the horses were trespass horses?  
 22 A. Hmm. No.  
 23 Q. What attempts did you make to notify the public that  
 24 there might be trespass animals on Forest Service land for the  
 25 horses, that there might be trespass horses on Forest Service

Page 88

1 land?  
 2 A. What did we do?  
 3 Q. Uh-huh.  
 4 A. We discussed it earlier. We posted a notice.  
 5 Q. Okay.  
 6 A. Notices of intent to impound.  
 7 Q. Did you do anything else?  
 8 A. Not that I'm aware of.  
 9 Q. Okay. You ready? Do you have anything? Do you have  
 10 any questions that you'd like to ask?  
 11 MR. PATRICK: (Indicating.)  
 12 MS. KLEIN: Probably not. I think we're done. Thank  
 13 you for your time.  
 14 MR. PATRICK: We'll read and sign.  
 15 (The deposition concluded at 1:34 p.m.)  
 16 -oOo-  
 17  
 18  
 19  
 20  
 21 KENDELL L. HUGHES  
 22  
 23  
 24  
 25

Page 89

1  
 2 STATE OF ARIZONA )  
 ) ss.  
 3 COUNTY OF MARICOPA )  
 4  
 5 BE IT KNOWN that the foregoing deposition was  
 6 taken before me, JODIE GUHR, Certified Reporter No. 50191  
 7 for the State of Arizona and, by virtue thereof, authorized  
 8 to administer an oath; that the witness before testifying  
 9 was duly sworn by me; that the questions propounded by  
 10 Counsel and the answers of the witness thereto were taken  
 11 down by me in shorthand and thereafter transcribed under my  
 12 direction; that a review of the transcript by the witness  
 13 was requested; that the foregoing pages contain a full,  
 14 true, and accurate transcript of all proceedings and  
 15 testimony had, all to the best of my skill and ability.  
 16 I FURTHER CERTIFY that I am not related to nor  
 17 employed by any of the parties hereto and have no interest  
 18 in the outcome thereof.  
 19 DATED at Mesa, Arizona this 20th day of October  
 20 2006.  
 21  
 22  
 23 JODIE GUHR, RPR  
 Arizona Certified Reporter  
 No. 50191  
 24  
 25



I

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
 non-profit organization; the )  
 ANIMAL WELFARE INSTITUTE, a )  
 non-profit organization; and the )  
 INTERNATIONAL SOCIETY FOR THE )  
 PROTECTION OF MUSTANGS and BURROS, )  
 a non-profit organization; ) Case No.  
 PATRICIA HAIGHT, an individual; )  
 RICHARD POTTS, an individual, ) CV-05-2754-PHX-FJM

Plaintiffs, )

-vs- )

UNITED STATES GOVERNMENT )  
 DEPARTMENT OF AGRICULTURE, ANN M. )  
 VENEMAN, as acting UNITED STATES )  
 SECRETARY OF AGRICULTURE; UNITED )  
 STATES FOREST SERVICE; ELAINE J. )  
 ZIEROTH as the acting UNITED )  
 STATES FOREST SUPERVISOR, )

Defendants. )

Phoenix, Arizona  
 September 28, 2006  
 11:00 a.m.

DEPOSITION OF RANDALL CHAVEZ

Prepared For:

Ms. Christine E. Broucek  
Attorney at Law

(COPY)

**AZ LITIGATION SUPPORT**  
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Prepared by: Karen M. Niemtschk  
 Certified Court Reporter  
 Certificate No. 50447

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DEPOSITION OF RANDALL CHAVEZ

The deposition of Randall Chavez was taken pursuant to Notice before Karen M. Niemtschk, Certified Court Reporter No. 50447 in the State of Arizona, on September 28, 2006, commencing at 11:00 a.m., at the law offices of Bryan Cave, LLP, Two North Central Avenue, Suite 2200, Phoenix, Arizona.

APPEARANCES

FOR THE PLAINTIFFS:

BRYAN CAVE LLP  
BY: Ms. Christine E. Broucek  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004

FOR THE DEFENDANTS:

U.S. ATTORNEY'S OFFICE  
BY: Mr. Richard G. Patrick  
40 North Central Avenue  
Suite 1200  
Phoenix, Arizona 85004



1 A. (928) 368-8774.

2 Q. Great.

3 A. I take that back. That's my home phone number.

4 Q. Strike that.

5 A. 5111 is the last four digits of that.

6 Q. Have you ever had your deposition taken before?

7 A. No.

8 Q. Mr. Chavez, just so I can explain to you a little  
9 bit about how the process works, our court reporter here,  
10 she's taking down everything that you say so one of the  
11 key ideas behind this is making sure we get a clear  
12 record.

13 A. Okay.

14 Q. In that respect, I will be asking you questions.  
15 I want to make sure that you let me finish my question and  
16 I will also let you finish your answer so we don't step  
17 over one another.

18 A. Okay.

19 Q. In addition, we need a complete yes or no because  
20 the court reporter can't take down a head nod or an uh-huh  
21 or hu-huh. So I may remind you of that throughout the  
22 deposition.

23 It is also assumed that if you answer the  
24 question that I ask of you that you understood it. So  
25 make sure if I ask you something and it doesn't seem clear

1 or you can't answer it the way I asked, just ask me to  
2 rephrase it or ask and I will do my best to clarify.

3 A. Okay.

4 Q. Tell me a little bit about what position you hold  
5 currently in employment.

6 A. I'm an operations team leader at Lakeside Ranger  
7 District but for about two more weeks I'm currently the  
8 acting district ranger on the Springerville Ranger  
9 District but I will be back to my position in -- after the  
10 15th of October. But the operations team leader is  
11 actually on the district is in charge of implementation,  
12 and I'm in charge of range, timber, and water shed.

13 Q. When you say implementation, what does that  
14 mean?

15 A. We have a planning team and we have an  
16 implementation team. So the planning team does the  
17 paperwork and preps everything and I'm the implementation  
18 team leader which carries out the plans.

19 Q. And how long have you been in this current  
20 position of operations team leader?

21 A. Five years.

22 Q. So that would mean you started about 2002, 2001?

23 A. September of 2001.

24 Q. Okay. And what did you do prior to that  
25 position?

1           A.    I was a range land management specialist on the  
2 Clifton Ranger District which is still on the  
3 Apache-Sitgreaves National Forest.

4           Q.    Tell me a little bit about that position.  What  
5 were your duties?

6           A.    I was in charge of working with the ranchers that  
7 leased Forest Service land to raise livestock.

8           Q.    Did you actually handle the leases or did you  
9 just oversee --

10          A.    I was -- I helped administrate them, and I did  
11 have a supervisor that was mainly in charge of it but I  
12 was the next level down.

13          Q.    And tell me how long did you do that.

14          A.    I was there six years.

15          Q.    And prior to that, what did you do?

16          A.    I was a range, what they call, a student coop  
17 education program employee, which I went to school a  
18 semester and I worked a semester until I graduated and  
19 then I was permanently placed within the Forest Service.

20          Q.    And so what year did you graduate?

21          A.    In 1996.

22          Q.    And that was a degree in what?

23          A.    Range management.

24          Q.    And where did you attend?

25          A.    New Mexico State University.

1 Q. Do you hold any other particular certificates or  
2 degrees?

3 A. An Associate's of general science.

4 Q. And tell me again, you have been working in your  
5 current capacity for the past five years?

6 A. Yes.

7 Q. Tell me the distinction between this position and  
8 the acting --

9 A. The acting district ranger?

10 Q. What's the distinction there?

11 A. The ranger that was on the Springerville Ranger  
12 District retired in August and the current Forest Service  
13 supervisor asked me to fill in until the position could  
14 get filled or someone was hired. But it's a temporary  
15 promotion detail.

16 The acting district ranger is actually the person  
17 that is in charge of the district and all functions. The  
18 operations team leader, I'm just one of the five functions  
19 that are on a district.

20 Q. Okay. And that will go on for about two more  
21 weeks?

22 A. Two more weeks. I have been in there since  
23 August.

24 MR. PATRICK: I'm sorry. August of '05 or August  
25 of '06?



1 THE WITNESS: '06.

2 Q. Just in trying to understand the distinction  
3 between these different districts, how does Lakeside  
4 relate to the Apache-Sitgreaves National Forest as a  
5 whole?

6 A. Lakeside is actually on the Sitgreaves portion of  
7 the forest. Springerville that I'm on right now is on the  
8 Apache side. And I don't know if it puts -- then there  
9 also is the Black Mesa Ranger District which Heber is on  
10 the other side of Lakeside. Actually, Lakeside is in the  
11 middle of Heber and Springerville Districts.

12 Q. Okay. And give me a little indication of how  
13 reporting occurs. Who is your immediate supervisor?

14 A. Currently or in my operations team leader  
15 position?

16 Q. Let's do both. Currently?

17 A. Currently my supervisor that I report to is  
18 Elaine Zieroth, the forest supervisor.

19 Q. And then as operational team leader?

20 A. I report to Edward Collins, and he is the  
21 district ranger on Lakeside.

22 Q. And I might be a little confused here. Is Ed  
23 Collins the one that just retired and you're filling in  
24 for him?

25 A. No. He's still currently on. John McGiver was

1 the ranger on Springerville. He retired August 1st.

2 Q. Okay. And then who does Ed Collins report to?

3 A. Elaine Zieroth.

4 Q. That's the chain. Do you have others underneath  
5 you that report to you?

6 A. Yes. In the operations team leader?

7 Q. As operations team leader.

8 A. Yes.

9 Q. Who would those?

10 A. Carl Deceasar and he is my timber sale  
11 administrator. And then Pete Padilla, who is the  
12 assistant to timber sale administrator, assistant to Carl  
13 Deceasar. Pete Padilla is P-A-D-I-L-L-A, and Tina  
14 Sorenson, S-O-R-S-E-N-S-O-N, I believe, she is my resource  
15 assistant, and they all three directly report to me.

16 Q. So is it safe to say that based on your  
17 experience and your education that you went straight from  
18 undergrad to working for the Forest Service?

19 A. Correct.

20 Q. Have you had any other employment positions since  
21 graduating from your undergraduate?

22 A. No.

23 Q. What, if any, particular knowledge or skills do  
24 you have as it relates to wild horses?

25 A. To wild horses or horses in general?

1 Q. Wild horses.

2 A. I'm not sure I'm clear of the question, I guess.

3 Q. Based on your educational training and your  
4 experience you've had thus far in your employment, what  
5 experience have you developed in working with or managing  
6 wild horses?

7 A. The forest service doesn't really manage. We  
8 don't have a wild horse -- well, we do have a wild horse  
9 program, it's just not on my district or the district I  
10 was previously on. What I know about them is from what  
11 I've talked to other range land management specialists  
12 that do the wild horse program, which are in different  
13 forests.

14 Q. What forests would those be?

15 A. The Carson, which there is the Hickoria Ranger  
16 District.

17 Q. And so am I safe to assume that there is not a  
18 wild horse territory in the Heber, Sitgreaves-Apache  
19 Forest?

20 A. Well, on Lakeside, the district I'm on, there is  
21 no.

22 Q. So just specifically to Lakeside?

23 A. On Lakeside, no, there is no wild horse  
24 territory.

25 Q. In your capacity as operational team leader,

1 outside of the Lakeside area, have you had any experience  
2 dealing with wild horses or wild horse issues?

3 A. No.

4 Q. In your training and your educational background,  
5 was there any reference or I guess background given to you  
6 on how to deal with the issue of wild horses in a National  
7 Forest generally speaking?

8 A. No. As far as training, no. There is nothing  
9 that I have been through that has dealt with any wild  
10 horse issues. I mean, we do have regular horses in the  
11 Forest Service where we do use those for riding and from  
12 getting from one location to another. Clifton is a  
13 horseback district only. We have 400 miles worth of trail  
14 and we only had 100 miles worth of road, so we rode horses  
15 pretty much everywhere we needed to go.

16 Q. Okay. Are you familiar in your capacity as  
17 operational team leader with the issue of trespass horses?

18 A. Yes.

19 Q. Tell me a little bit about what your experience  
20 is in that matter.

21 A. When I arrived on the district at Lakeside in  
22 2001, the ranger did inform me that from time to time we  
23 would get reports of trespass horses and it was my duty,  
24 since I was the manager of the grazing permits and the  
25 allotments, it was one of my duties to deal with the

1 trespass horses, whether it was reservation cattle or from  
2 time to time we would get private land donkeys and mules  
3 get turned loose and we would deal with those.

4           So I would -- whenever I would get reports of  
5 animals that were not -- that did not belong to the  
6 grazing permittees then I would go out and deal with the  
7 trespass animals.

8           Q.   Tell me a little bit about how you would deal  
9 with trespass animals.

10          A.   Most of what we do is try to verify the location  
11 of where they were at. Most of the calls that I did get  
12 were from golf courses. We have the Torreon Golf Course  
13 and the Pinetop-Lakeside Country Club and they would call  
14 and tell us that the Forest Service horses were on the  
15 golf courses, which we don't have any horses so the  
16 closest area -- and none of my permittees run horses on  
17 their permits so the next fence that was over was the Fort  
18 Apache Reservation.

19           So what I would do is call the Fort Apache brand  
20 inspector and let him know that there were horses, and he  
21 would come up and verify who they belonged to and would  
22 take them to who they belonged to.

23          Q.   How would you document, one, the reports and  
24 then, two, the action you had to take to deal with any  
25 trespass animals?

1           A.    Basically, we would get a phone call record and  
2 we would put down whether, you know, I made contact with  
3 the brand inspector or not and informed him of the  
4 location. He would get back to us and just let us know  
5 whether he was able -- whether he was successful in  
6 gathering the animal or not.

7           As far as documentation, it would be basically a  
8 telephone log and that was about it.

9           Q.    So would those telephone logs still exist today?

10          A.    They should, but I don't know if they were on  
11 just these small paper copies or if they were  
12 actually -- we do have a telephone record log. There  
13 probably are a few in the what we call the field files.  
14 We have range allotment field files, and any time we make  
15 contact or something we try to document as much as  
16 possible in those.

17          Q.    Okay. Are you familiar at all, either through  
18 your work experience or your educational training, of the  
19 Wild Free Roaming Horse and Burro Act of 1971?

20          A.    I know a little bit about it, and basically, I've  
21 just learned more about it recently than I knew before.

22          Q.    What was your knowledge prior to this litigation?

23          A.    Basically, prior to the litigation basically what  
24 I had learned in high school, not high school, in college,  
25 and what the act was and what it was. And then basically

1 I knew it was an act that was within the Forest Service.  
2 That was about it.

3 Q. Were you aware when you came on board in 2001  
4 that there was a wild horse protected area in the  
5 Apache-Sitgreaves Forest?

6 A. No.

7 Q. Do you recall whether anyone made mention of the  
8 protected area one way or the other, like we had one or we  
9 used have one?

10 A. Again, when I did learn more about it was once  
11 the litigation started.

12 Q. What have you learned since then about the Wild  
13 Horse Act?

14 A. Well, since the act or since the litigation  
15 started?

16 Q. Since the litigation.

17 A. Since the litigation we did find out that there  
18 was an area designated on the Heber Ranger District and  
19 basically I know the location of it now and I just know  
20 it's about 14,000 acres.

21 Q. Tell me again who is in charge then of the Heber  
22 Ranger District?

23 A. Kendall Hughes. Well, the district ranger is  
24 Kate Klien.

25 Q. Kate Klien, I've heard that name.

1           A.    And Kendall Hughes reports to Kate.  Kate reports  
2 to Elaine Zieroth.

3           Q.    So activities and administration of Heber Ranger  
4 District, would you have anything to do with those  
5 operations?

6           A.    No.

7           Q.    Have you heard the word used feral?

8           A.    Yes.

9           Q.    F-E-R-A-L?

10          A.    Yes.

11          Q.    What is your understanding of what that word  
12 means?

13          A.    Of an animal that is -- basically, it's been  
14 turned loose or it's a horse that's not really -- that  
15 probably has been maybe rode before and is calm and then  
16 basically just kind of turned loose.

17          Q.    Abandoned?

18          A.    Abandoned or -- that's basically what I've  
19 understood.  They were tame at one time and now they have  
20 kind of been abandoned.

21          Q.    How does that, if you can distinguish, how is  
22 feral distinguished from maybe a trespass animal?

23          A.    Well, administratively I would probably say that  
24 trespass is a term that we use for our permits, an animal  
25 is not authorized to be on the allotment that basically we



1 have to collect a grazing fee for animals that are on the  
2 allotment and if there is not -- if there has not been a  
3 fee that has been paid for that livestock then it is in  
4 trespass. Feral, again, an animal that has been turned  
5 loose.

6 Q. Okay. What was your experience -- well, first of  
7 all, were you in your current position, meaning the  
8 operational team leader, were you in that position during  
9 the 2002 Rodeo-Chediski fire?

10 A. Yes.

11 Q. How did that impact the Lakeside District?

12 A. It impacted my district as far as it burned about  
13 40,000 acres of the district, and I don't recall how  
14 big -- how many acres total our district is at this point.

15 Q. And you said that you oversee grazing permits on  
16 your district?

17 A. Yes.

18 Q. About how many permittees do you have?

19 A. I have about 14 permittees.

20 Q. And you're able to charge a fee for their grazing  
21 rights?

22 A. Correct.

23 Q. What kind of permittees are they, cattle?

24 A. Cattle producers.

25 Q. And how did the fire impact those permittees?

1           A.    It affected them by -- it actually only affected  
2 two of my permittees out of the -- because one permittee  
3 owned the majority of those allotments or leased those  
4 allotments.  So basically we restricted him from not  
5 grazing livestock on the burned area until we had  
6 met -- what we did is we did a -- we set up some  
7 guidelines of what was needed before we could let  
8 livestock reenter the burned area.

9           And so we've actually just started grazing the  
10 burned area on these allotments in 2000 -- let me see.  We  
11 entered the first pasture in late 2005 and we're just now  
12 starting to reenter the grazing back into the burn here in  
13 2006 for cattle.

14          Q.    Did you have issues with fences coming down due  
15 to the fire?

16          A.    Yes.  We had had issues before the fire, and  
17 after the fire it -- basically all the posts were wooden  
18 so it left nothing but wire.

19          Q.    And all the wire just went to the ground?

20          A.    The wire went to the ground, so there basically  
21 was no fence along the Fort Apache reservation where the  
22 Rodeo-Chediski fire had come through.

23          Q.    And you indicated there was a problem with the  
24 fence prior to the fire?

25          A.    Yes.  We had been in constant conversation with

1 the Fort Apache reservation on fence maintenance. When I  
2 arrived in 2001 I know we were trying to set up a  
3 memorandum of understanding between the U.S. Forest  
4 Service and the Fort Apache on who would be responsible  
5 and what maintenance would take place, and we never did  
6 get any signatures. We got Forest Service signatures but  
7 never got any Fort Apache reservation signatures agreeing  
8 to fence maintenance. So basically the fences were in  
9 poor shape.

10 Q. Why was the Forest Service working with the  
11 Apaches? Was it their fence?

12 A. Correct. Most of the fence was on their side of  
13 the boundary.

14 Q. And they just let it fall into disrepair?

15 A. Well, a lot of trees fall on the fence. Elk when  
16 they run through the fence, they have timber sales, just  
17 various things tear up the fence.

18 Q. What were some of the issues that resulted with  
19 the fence being down, if you know?

20 A. Well, what it resulted in is that I would get  
21 certain calls of trespass livestock over in, whether the  
22 golf courses -- mainly in the golf courses is where I  
23 would get the calls.

24 Q. Would the same happen where some of your grazing  
25 permittees, their livestock would end up on the tribe's

1 territory and they would call you?

2 A. Sometimes. Most of the time -- one of our  
3 requirements of the permittees is try to mend as much as  
4 possible even though they cannot -- one thing we can't do  
5 is provide material to put on the reservation because  
6 we're providing property to somewhere else, so they would  
7 just mend the best they could.

8 And they would work with -- on the other side of  
9 the reservation is a grazing association which is a  
10 conglomerate of people that basically use that area on the  
11 reservation. And they would work with them somehow and  
12 work on these fences from time to time.

13 Q. What's the state of the fence now between the  
14 Forest Service and the Apache tribe land?

15 A. The fire was in 2002 and I believe it was  
16 directly after that, probably 2003 before they got  
17 everything up and running and it might have been late  
18 2002. The reservation did put forth a fence crew and  
19 materials and rebuilt the fence along the whole  
20 Rodeo-Chediski, 70 miles comes into my mind but it's  
21 approximately.

22 Q. And is there currently any kind of agreement that  
23 you have been able to figure out with the tribe to  
24 continue the maintenance of this fence line?

25 A. I know we were working on something, again, but

1 to my knowledge I don't know if it has been approved or  
2 signed or anything like that. I know we were trying to  
3 work on something again, but that is upper management that  
4 takes care of that. I'm not sure what they have decided  
5 or taken care of.

6 Q. Okay. Did there come a time that you became  
7 aware that a population or a herd of horses traveled from  
8 the reservation land onto the Forest Service during the  
9 repair time of this fence?

10 A. Yeah. I would say in my time from when I arrived  
11 on the district and before the fire I would get two to  
12 three calls a year of horses being on the golf course or  
13 in the general vicinity.

14 Currently what I'm observing is I have what I  
15 reference as to three different bands and two general  
16 locations and it's just geographical names that are on the  
17 district. I say we have the Joe Tank herd, we have the  
18 Juniper Ridge herd, and we have a Cottonwood herd which  
19 there are anywhere from 20 to 30 in each one of these  
20 herds that I'm observing after the fire.

21 Q. And by herds, these are horses?

22 A. Correct.

23 Q. Have you yourself witnessed and seen these  
24 horses?

25 A. Yes.

1 Q. Have you been close enough to observe whether  
2 there is any branding or markings of any kind?

3 A. Most of the time and from what I'm used -- what  
4 I'm familiar with on a brand on a horse is different from  
5 what the reservation uses. The reservation, they have  
6 markings is what they call them. And they have had to  
7 kind of show us what to kind of look for and usually I  
8 can't get close enough to see what exactly is on there.

9 Q. In your experience, what is the kind of  
10 markings? What do they use?

11 A. The markings I'm used to seeing on horses are  
12 what we call freeze brand and basically it's where they  
13 get the brand and put it in -- is it nitrogen? Basically  
14 freezing temperature and what it does is deaden the hair  
15 follicles, I believe, and makes the hair gray. It's a  
16 less painful way on horses and that's what I'm used to  
17 seeing.

18 I don't know if the reservation -- I don't think  
19 they use that method.

20 Q. Where do the markings that you're used to seeing,  
21 this freeze branding, where do you see that?

22 A. Usually see it on the hip or the shoulder of the  
23 animals. From what the reservation tells us is that they  
24 have an association marking and then they may have another  
25 identifier somewhere else that -- okay, they know it

1 belongs to this association, but it belongs to this person  
2 of that association, and it's two different -- and they're  
3 real thin, small scratches is what I would explain them to  
4 be.

5 Q. And has anyone ever told you where they like to  
6 place these scratches so if you were looking and trying to  
7 find it?

8 A. Mainly what the brand inspector from the  
9 reservation has told me is they usually place the  
10 association marking somewhere up around the mane and then  
11 sometimes on the hip they will put the person that it does  
12 belong to on the higher part of the hip.

13 Q. So it's like a double marking in a way?

14 A. Right.

15 Q. So of these maybe three bands or herds of horses  
16 that you've personally seen, you would have to get right  
17 up next to the horses to look for these reservation  
18 markings, correct?

19 A. Yes. You would have to probably corral them and  
20 possibly sometimes you might even have to shave the hair  
21 to see what is on the skin.

22 Q. Okay. Based on your experience or your knowledge  
23 of the Wild Horse Act that was implemented in 1971 and  
24 what you learned in school, now that you have come to  
25 realize that there is a protected wild horse territory in

1 the Apache-Sitgreaves Forest, would you agree that under  
2 the Act the Forest Service has a duty manage any wild  
3 horses that might be found on Forest Service land?

4 MR. PATRICK: Objection to form and foundation.

5 A. I'm unclear of the question also.

6 Q. Well, I'm trying to see how much knowledge you've  
7 maybe even remembered about the act. The Forest Service  
8 under the Wild Horse Act implemented in 1971 requires that  
9 any wild horses on those lands be managed. Would you  
10 agree with that statement?

11 A. If it was within the territory?

12 Q. Correct.

13 A. I would agree.

14 Q. So you would limit any responsibility of the  
15 Forest Service to just the horse territory?

16 A. Right.

17 Q. And again, is that just based on a recollection  
18 you have of what the act was intended?

19 A. I believe so, and I would have to read through  
20 the act again to fully -- I just have a general view of  
21 the act.

22 Q. So if I were to tell you that the act actually  
23 encompasses areas where the horses might move around to  
24 which would be off the protected horse territory would  
25 have you any way of disagreeing with me without reviewing



1 the act itself?

2 A. Again, I would have to review the act to say  
3 whether or not that would be the meaning of it, I guess.

4 Q. Okay. That's fair enough. Based on your answer  
5 that within at least the horse territory or the protected  
6 area that the Forest Service would have a duty to manage  
7 those horses, do you know whether or not anyone in the  
8 Forest Service in the Apache-Sitgreaves Forest has  
9 actually put together a management plan?

10 A. I don't know if they have. I haven't seen one.  
11 Not to say -- you know, it could be somewhere in our  
12 forest plan but -- what I'm getting at, I guess, is I  
13 pretty much just deal with the things that are on my  
14 district, and if it's something that is not associated  
15 with my district I don't deal with it as much as probably  
16 other of my counterparts do.

17 Q. Again, that's fair enough. If it's not in your  
18 territory do you know whether or not, and this based on  
19 your experience and what you have dealt with, whether the  
20 Forest Service has conducted any kind of inventory of wild  
21 horses that might exist on the Apache-Sitgreaves Forest?

22 A. Currently?

23 Q. Currently.

24 A. We have just been, since the fire, we have been  
25 documenting numbers, locations, and again pictures, mainly

1 pictures.

2 Q. And where would those pictures be kept or who's  
3 in charge of handling all the photos?

4 A. Basically what we do is we save them on our  
5 server or sometimes they're also placed on CDs. There are  
6 various people, some of the recreation people keep  
7 pictures, and I'm just speaking on my district, and then  
8 I've kept some pictures on CDs.

9 Q. Do you currently have any pictures that would  
10 show some of these horses since the fire?

11 A. Yes.

12 Q. About how many pictures?

13 A. Not on me but --

14 Q. You don't have them in your back pocket?

15 A. I would say approximately 20 to 30.

16 Q. And what was the reason for taking the  
17 photographs of the horses?

18 A. Basically for documentation.

19 Q. Do you know whether or not there is any data  
20 that's been generated as far as numbers of horses that  
21 have been seen in the forest area?

22 A. No. No database or anything has been established  
23 at this point.

24 Q. But as far as documentation, you're aware that  
25 maybe some numbers have been logged?

1           A.    I believe so.  We were starting one but I don't  
2 know how thorough it was.  Mainly, like I said, we've kind  
3 of just been taking pictures and capturing the date of  
4 when we saw them and general locations.

5           Q.    And the purpose of capturing dates and again --

6           A.    Since the fire and what we were intending was for  
7 the contract, basically, so we could tell whoever did get  
8 the contract of the locations of where we did see most of  
9 these animals.

10          Q.    So since the fire, which happened, again, in late  
11 spring, early summer of 2002?

12          A.    June the 18th of 2002.

13          Q.    Is burns in everybody's mind.  Since that date  
14 have you been keeping track knowing that you were going to  
15 need to round up all of these horses?

16          A.    I believe we didn't start until probably 2003  
17 that we were -- we started the rehab efforts probably in  
18 late 2002 and then when we started seeing more and more  
19 numbers in 2003 is when we started capturing more pictures  
20 and documenting and trying to note how many we had seen.

21          Q.    At the earliest juncture that you began to see  
22 more horses on your area that you're responsible for, did  
23 you begin -- let me see the right way to ask this.

24                         Did you follow the procedure you spoke about  
25 before where you would contact who you thought the owners

1 were and try to get some help in trying to get the horses  
2 back off?

3 A. We would contact the brand inspector from the  
4 reservation.

5 Q. And, again, would there be written documentation  
6 of any kind that would show what contacts were made and  
7 what resulted?

8 A. There might have been. Most of -- what I  
9 recollect is that as I was out in the forest patrolling or  
10 looking over areas that we had rehabed, I would basically  
11 make a cell phone call from my vehicle to the brand  
12 inspector and tell him where I was at, how many I had  
13 seen, and he told me he would try to get out there as soon  
14 as possible.

15 Q. Do you have any idea whether anyone ever came to  
16 retrieve horses?

17 A. I believe he came up, but the problem was the  
18 fences at that time all -- all the interior fences that  
19 the Forest Service even had at that time were burnt down  
20 also. And I believe he tried to -- I think he set up  
21 temporary panels to try to capture some. He was trying to  
22 lure them in with feed but there was so much feed  
23 throughout the whole area, they weren't attracted to what  
24 he was putting out because they weren't hungry because  
25 there was plenty of feed elsewhere. So I don't think he

1 was successful at all really on capturing anything.

2 Q. Who was the tribe inspector at that time and are  
3 we speaking about the 2003 time frame?

4 A. Yes. Pretty much dealt with -- well, let me take  
5 that back.

6 There have been two individuals that the name was  
7 passed on to me. Lowell, L-O-W-E-L-L, Walker is the main  
8 individual that I've dealt with. When I got to Lakeside  
9 in 2001 Joe Harvey was the person that -- the name was  
10 passed on to me, but he had moved into another position  
11 and Lowell had taken over. And their title is tribal  
12 brand inspector, horse and cattle.

13 (Brief recess ensued.)

14 Q. BY MS. BROUCEK: Jumping around just a little  
15 bit, tell me when you first became aware that there was a  
16 protected horse territory in the Apache-Sitgreaves Forest.

17 A. Sometime in 2005.

18 Q. And do you remember the circumstances of how you  
19 became aware?

20 A. I believe it was probably -- I know it was maybe  
21 right at the beginning of the litigation and it was after  
22 we had awarded the contract, and right there about the  
23 beginning of litigation.

24 Q. Now moving over and talking just about the  
25 contract to gather these horses, what was your involvement

1 in this process?

2 A. I was actually -- I was one of the two people  
3 that was probably in charge of developing, or not I  
4 wouldn't say developing, putting together the contract,  
5 myself and Kendall Hughes. And what I did is I called  
6 other forests, like that I had mentioned earlier, that had  
7 done horse gathering contract or this process, gathering  
8 horses, which I borrowed the contract from -- I  
9 basically -- first call I made was to the Lincoln because  
10 they were just in the process, they had just awarded a  
11 horse gathering contract, which they are also next to  
12 Muscularo Reservation, similar situation but they have no  
13 territory.

14 They had also passed down a name which I knew  
15 this person as well up to the Hickoria Ranger District on  
16 the Carson, and between those two I had got a copy of a  
17 contract and worked through that contract to make our fit,  
18 make it fit our area. And then I also passed it on to  
19 Kendall Hughes so that he could put his input into it  
20 before we sent it into the contracting officer.

21 Q. What was the time frame that you first initially  
22 started the project?

23 A. Again, sometime in 2005. And I don't remember  
24 whether it was earlier or later. I just know it was  
25 sometime in 2005 we started developing and putting

1 together the contract.

2 Q. Were there discussions prior to 2005 that  
3 something needed to be done with the horses and we  
4 needed -- what were those discussions?

5 A. What it was was we had started our rehab efforts  
6 on the burn, and we had invested a lot of money in seed,  
7 mulch. We were paying a contractor to put this material  
8 out. We were starting to see pretty good response. One  
9 of the things we were concerned about was the water shed,  
10 and we were seeing some areas that -- where these horses  
11 were congregating especially in drainage bottoms, a lot of  
12 the vegetation had been removed.

13 And then another thing that probably helped it  
14 escalate it is we had permittees complaining to the Forest  
15 Service that why weren't they allowed to graze their  
16 livestock when we were allowing horses to graze.  
17 Basically we had told them we could not let them reenter  
18 with cattle into this burn area until we had seen  
19 satisfactory conditions in vegetation, soil, and  
20 improvements, range improvements, which is the fences and  
21 tanks.

22 And they were complaining to us saying that,  
23 well, it's unfair that you are not letting us put our  
24 livestock in but you're allowing horses to still graze.

25 Q. At that point did you consider the horses that

1 were grazing to be trespass or feral?

2 A. Trespass, trespass feral. Again trespass to me  
3 is the administrative side and feral would be a general  
4 term that we would use.

5 Q. What would your response be to these complaints?

6 A. We would tell them that basically we -- what they  
7 would do is they would complain and say the criteria that  
8 we set up with them, that these horses were still  
9 violating those terms or conditions that we had set forth  
10 on them.

11 Q. Right.

12 A. So we told them that we would try to do  
13 something, and we would escalate it up to upper management  
14 to see what we needed to do. In one of the budget years  
15 some of the rehab money, we call it rehab dollars, they  
16 had provided us some money from the regional office to put  
17 forth towards the gathering or put to a contract in place  
18 to try to remove some of these trespass animals.

19 Q. And again, if efforts were made to contact the  
20 owners of these horses, would that be documented somewhere  
21 within this time frame in late 2002, 2003, 2004 time  
22 frame?

23 A. Yeah. We have, I want to say an annual or  
24 biannual. I want to say it's probably an annual  
25 cooperative meeting that is with the tribe. And Elaine is



1 basically the main person that does sit in with that, and  
2 she would inform the leaders, the tribal leaders of the  
3 situation and told -- and there should be documentation  
4 from those meetings informing them that their animals were  
5 up on federal land and if they wanted them to please come  
6 and get them.

7 Q. And to the best of your knowledge that would have  
8 been documented somewhere?

9 A. I would suspect that it is documented because  
10 they should take notes from those meetings or minutes or  
11 it will be an agenda item. There should be an agenda item  
12 or an agenda from those meetings. And I know that it was  
13 brought up in 2004 or 2005, and possibly both, but I know  
14 one of those two years that one of the agenda items was to  
15 talk about that and the fences. It might have been a dual  
16 item such as fences/animals or something like that.

17 Q. But in either event, there would be an agenda or  
18 some sort of follow-up meeting minutes?

19 A. Right.

20 Q. Did you ever see any agenda or meeting minutes  
21 for these meetings?

22 A. I believe I saw an agenda. I don't know if I saw  
23 the minutes from the meeting, but I believe one of the  
24 topics to be discussed was on the agenda.

25 Q. Well, backing up again to this project to gather

1 the horses, you and Kendall Hughes were in charge of it,  
2 correct, of putting the proposal together?

3 A. Correct, of submitting the contract to the  
4 contracting officer. And then also there -- you're  
5 talking about the proposal?

6 Q. Yes.

7 A. What we did is we knew that -- well, we were only  
8 given \$100,000 for the contract from the regional office  
9 that was funding that was passed down to our forest. What  
10 we didn't have was -- what we did is we went through --  
11 went to a resource advisory committee where they give out  
12 grants and submitted a proposal to try to get additional  
13 money basically to cover either more head being removed  
14 and also to cover administrative costs which was to  
15 administer the contract which we had no money for.

16 Q. So those were two separate items?

17 A. Two items but it's still within the same  
18 proposal. Within the proposal you have to calculate in a  
19 certain percentage for administrative costs, and I don't  
20 know what that percentage is. In the form it does give  
21 you a certain, whatever you're asking for plus this much  
22 for administrative costs.

23 Q. At that point in time in 2005 when you were  
24 putting together the contract and the proposal, how were  
25 you basing your numbers as far as what would be gathered

1 when it comes to the number of horses?

2 A. Basically what we were observing and through  
3 pictures.

4 Q. Was it all visual or did you have anybody get up  
5 in a plane and try to determine how many horses you were  
6 trying to --

7 A. The Forest Service didn't get up in a plane. It  
8 was basically through vehicle traffic that we were  
9 observing these and trying to keep track of how many per  
10 herd. Arizona Game and Fish did, in fact, fly and  
11 one -- they do fly for their elk survey and they did start  
12 keeping -- they were seeing more and more horses, so what  
13 they would do on their form is keep track of how many  
14 horses they did see during their surveys.

15 Q. In putting together the proposal and/or the  
16 contract for rounding up these horses, did you have to  
17 work with other districts to get numbers of horses that  
18 they might have?

19 A. Yes. Kendall and I would visit and I would tell  
20 him basically what I thought I had and he would tell me  
21 what he thought he had, and that's what we submitted to  
22 the proposal. He had more acreage and more territory or  
23 more district than I did and he was seeing larger numbers  
24 than I was.

25 Q. And how does Kendall's district relate to where

1 the Apache line was? You said you have direct fencing in  
2 your district with the Apache tribe territory?

3 A. Right. Both of our southern boundary is the Fort  
4 Apache reservation.

5 Q. So Kendall's district also has a boundary?

6 A. Right.

7 Q. Do you recall whether he mentioned to you similar  
8 issues with the fence being down and horses coming across?

9 A. Yes. We would discuss -- what we both get is  
10 what we call range betterment funds and it keeps -- the  
11 amount keeps dropping each year, and we both talk with the  
12 amount of money that we do get there was no way possible  
13 of trying to reconstruct any of that fence or anything  
14 like that.

15 So that was some of the discussions we would talk  
16 about is that we were kind of at a loss on what to do and  
17 we had kicked it up to the next person who was actually in  
18 charge of kind of giving us our funding at the forest,  
19 which is Deb Bumpus. She is our -- not really our  
20 director of range because that's in Albuquerque. She's  
21 our support at the supervisor's office.

22 Q. Did there come a time after the fire that anyone,  
23 whether it was Kendall or anyone on your staff, indicated  
24 we've had a large number of horses now suddenly appear on  
25 our land, on the Forest Service land?

1           A.    Well, what we had just been talking and saying  
2 that we had started seeing more and more numbers as far  
3 as, like I said, when I was -- before the fire, two to  
4 three heads was normal. Two to five head was probably  
5 normal. Now we were starting to see groups of 10, and  
6 then it just seemed like it just started escalating and  
7 then I refer back to the three bands and there was  
8 probably 20 to 30 in each band, which raised my numbers up  
9 to about 90, 80 to 90.

10           Q.    And what I'm trying to figure out is whether or  
11 not this horse migration or the suggestion that the horses  
12 were coming from the Apache reservation land, was that a  
13 gradual thing or was there a period that they tried to  
14 round up all these horses and a bunch escaped onto the  
15 forest service land?

16           A.    We had been told -- actually, it was told to the  
17 forest, it wasn't told to me directly but I believe  
18 Elaine, the Fort Apache reservation was going through  
19 efforts to try to capture a lot of horses that were on  
20 their area also, which what we've -- what may have been  
21 coincident but we started seeing more numbers after they  
22 had tried to take place with their gathering. So the  
23 numbers did fluctuate up quite a bit after their, I don't  
24 know how successful it was or anything like that, but  
25 their gathering.

1 Q. And that again would have been in the 2003 time  
2 frame?

3 A. 2003, 2004. Early 2004 probably. And one thing  
4 that we heard was they were going through efforts to  
5 replant a lot of trees. We call it reforestation. And we  
6 had heard through some of their members, tribal members,  
7 that these horses were basically camping in the areas  
8 where they had planted thousands and thousands of trees.  
9 And when we do reforestation, we usually protect the  
10 tree. We plant it and place a plastic cone on top of it  
11 so it has shading and protection and it also funnels  
12 moisture into it, and these horses were pulling the cones  
13 and pulling the trees up.

14 So they had went through a big effort and spent a  
15 lot of money to do this reforestation and they felt it was  
16 being disturbed.

17 Q. And tell me again what this term camping means.

18 A. Camping or basically positioning themselves right  
19 in the middle of this and staying there for long periods  
20 of time in the middle of these areas.

21 Q. And do you know, if anything, what they did with  
22 the issue on their land with the horses camping?

23 A. Again, they tried to go through a capturing or a  
24 gathering effort. We had heard rumors, but basically it  
25 is rumors, that they had shot some and I don't

1 know -- that's what we heard.

2 Q. Just a rumor?

3 A. We had no way of confirming that.

4 Q. At the time that you heard they were trying to  
5 gather the horses because they were trying to reforest, do  
6 reforestation efforts on their territory, do you know  
7 whether the fence had been repaired by that point?

8 A. It had. After -- it was in late 2002 or early  
9 2003, the reservation actually jumped on rebuilding the  
10 fence right away. I mean, it was within months after the  
11 Rodeo-Chediski fire.

12 Q. That must have been surprising after so many  
13 efforts to try to get them to work on the fence?

14 A. Well, what had happened is after a disaster like  
15 this, a fire, not only did we get money, they also got  
16 money because the BIA, Bureau of Indian Affairs, is part  
17 of the Department of Interior, and they also released or  
18 not released but initiated a burned area -- burned  
19 emergency area rehab team, a BEAR team, which the  
20 Department of Agricultural does the same thing, Forest  
21 Service. But there were two separate teams working at  
22 that time, a Department of Interior team and Department of  
23 Agricultural team, Forest Service team and they had got  
24 money to do these rehab efforts. And so I think one of  
25 the items that they submitted is they wanted to do the

1 fence which that burned area money would pay for.

2 Q. And that was in your district or would that be  
3 kind of across the board that the fence was being  
4 repaired?

5 A. It was across the board. It started on Highway  
6 260 and supposedly went all the way across the Lakeside  
7 District, all the way through the Black Mesa District to  
8 the Young Road, which is, like I said, 70 miles jumps into  
9 my mind but that's an approximate.

10 Q. Do you have any idea how long it took them to get  
11 all that fencing back up?

12 A. It took them I would say probably six months.

13 Q. And then they began the reforestation efforts  
14 afterwards or were they doing that in conjunction?

15 A. What they were doing is actually they went in and  
16 tried to salvage as much timber as possible and then in  
17 areas that were either completely -- had high intense  
18 burns or areas that after they salvaged they would go in  
19 and replant trees because for the reservation it's an  
20 income for them.

21 Q. Because they sell the timber?

22 A. Right.

23 Q. And so trying to figure out, if the fence went  
24 right back up, pretty much after the fire and then they  
25 started their reforestation efforts maybe a little bit



1 after that time frame and then they started having  
2 problems with these horses getting into their new growth,  
3 when did the horses get into the forest land?

4 A. What happened is they went through this big  
5 effort to put the fence in and mainly what I observed on  
6 my part of the district, which I did ask Kendall if it was  
7 happening on his as well, they didn't put in any gates or  
8 the gates that they did put in were being left open by the  
9 people that were doing the salvage timber sales. And what  
10 they would do is the 300 Road runs along the whole entire  
11 Mogollon Rim, and most of their timber entrances to go  
12 down through the canyon are right off this 300 Road. And  
13 what the timber trucks would do is drive in to go get  
14 their logs but would leave the gate open. And they would  
15 leave them open during basically the whole time of  
16 operation, which would be like at 6:00 in the morning  
17 until 6:00 in the afternoon.

18 And what I did personally observe was horse  
19 tracks coming right through the gate. Because I was  
20 trying to pinpoint where they were coming from as well.  
21 And right -- because the road turns to fine powder with as  
22 many trucks that go through there, and you can clearly see  
23 once a truck goes through if anything had passed through.

24 So we would -- and I may or may not, I can't  
25 remember, on one of those CDs may have pictures of horse

1 tracks right in the gate.

2 Q. Was there anybody riding horses in that area?

3 A. Not to my knowledge.

4 Q. Before the fire occurred, did you have any  
5 knowledge of any wild horses existing in the  
6 Apache-Sitgreaves Forest?

7 A. No.

8 Q. Had you ever seen any inventories or consensus  
9 indicating there was anywhere from two to five like in the  
10 early '90s?

11 A. I haven't.

12 Q. Let me take a minute and if we can show him the  
13 administrative record. We previously marked at the  
14 deposition of Elaine Zieroth, we marked the administrative  
15 record that was given to us to document the  
16 decision-making process that went into the contract to  
17 gather the horses. And I would like you to just look at  
18 it and see if you're familiar with some of the  
19 documentation or all of it. Can you review this one?  
20 Just take a minute and take a look through and see what  
21 you're familiar with and what you're not.

22 A. Is there a certain point?

23 Q. No. There is actually an index in the beginning,  
24 table of the contents. Just so you're familiar with items  
25 in there and what's included.

1 MR. PATRICK: Okay. No hurry. Take your time.

2 A. Did you need me to tell you what I was --

3 Q. No. I will ask you a couple questions, but I  
4 want to make sure that I give you enough time to review  
5 the record. Okay?

6 A. Okay.

7 Q. I'm going to have you look in the index and we  
8 will try and find this, the proposal, the project proposal  
9 form. It's called the Eastern Arizona County's Rack and  
10 it's -- I don't see a date other than there is a  
11 handwritten approved, 4-19-05.

12 A. All right. There should be a date; maybe, maybe  
13 not.

14 Q. Just make sure we're looking at the same  
15 document.

16 MR. PATRICK: Yeah.

17 Q. Tell me, are you familiar with this document  
18 entitled the Eastern Arizona Counties Rack project  
19 proposal form?

20 A. Right. This is the resource advisory committee  
21 that I told you earlier we went to seek additional funding  
22 for either gathering additional numbers from the money  
23 that was given to us and plus to cover the administration  
24 costs.

25 Q. Number 2 on the Proposal talks about NEPA. What

1 is NEPA?

2 A. NEPA is the National Environmental Protection  
3 Act, and basically what this is referring to is we have to  
4 go through a process to -- what I'm familiar with is any  
5 disturbance or if there is any -- we have two levels,  
6 three levels actually, category exclusion and then there  
7 is an environmental assessment process and then an  
8 environmental impact statement process.

9 So it just depends on how significant your  
10 impacts are decides on what level you go with and also the  
11 category exclusions, there are certain exclusions that the  
12 chief of the Forest Service has given us and if it fits  
13 within one of those exclusions you just have to do a  
14 decision memo versus a decision notice, and the  
15 documentation is less than if you went with an  
16 environmental assessment or environmental impact  
17 statement.

18 Q. Okay. And by indicating on here it says, "not  
19 needed," what was that referencing?

20 A. NEPA was not needed because this was an  
21 administrative process, and through our grazing permits it  
22 talks about that for trespass animals that it's either the  
23 permittees or Forest Service's responsibility to remove  
24 them. In our Forest Service manual, which is basically  
25 our direction, there are certain steps that tells you what

1 to do if this occurs. There is the manual and the  
2 handbook and both of them should provide you a little bit  
3 of guidance. And for trespass animals I think we mainly  
4 follow the manual because there is not too much in  
5 handbook. And since this was an administrative process,  
6 we were told that it wasn't -- that we shouldn't need any  
7 sort of NEPA.

8 Q. Okay.

9 A. Because it's not a long term. It was basically  
10 something that we were going to try to administer and it  
11 was an administrative process, and it was within our  
12 authority. And once it was taken care of, there would be  
13 no other impacts, basically.

14 Q. At that point in time in early 2005 when you were  
15 working on this proposal, did anyone bring to your  
16 attention that these horses could be potentially wild?

17 A. No.

18 Q. That was never a consideration?

19 A. Not at this time.

20 Q. Okay. Jumping down to Number 5, project  
21 description.

22 A. Okay.

23 Q. Did you develop this description yourself or did  
24 you work with others in doing that?

25 A. Kendall and I both prepared this. We -- I

1 basically visited with him and then I would type some and  
2 then I would submit to him for review, and then basically  
3 if he had anything to add he would provide me edits.

4 Q. Okay. And you estimate a number of 3- to 400?

5 A. That was for the total between his district and  
6 my district on the whole Rodeo-Chediski area. And how we  
7 arrived at that is, like I said, I was seeing anywhere  
8 from 80 to 90. The bands that I had were, like I said,  
9 from 20 to 30, and I had the three bands. And he was just  
10 estimating that he had probably around 200 just on his  
11 district, so 200 to 300 is what he told me, so the  
12 combination of the two we came up with that number.

13 Q. How did you come up with the conclusion that the  
14 horses were multiplying?

15 A. With the young colts that we were seeing with  
16 them that are in the pictures as well.

17 Q. Did the colts come across with the horses, or  
18 were they actually reproducing within the forest?

19 A. Some might have been coming across with them but  
20 as the years from 2003, 2004 we would see new colts.

21 Q. It says here Arizona Game and Fish Department  
22 expressed concerns that the herds can impact wildlife  
23 habitats. What kind of information were you provided by  
24 the Arizona Game and Fish Department?

25 A. This stemmed after they were doing their surveys,

1 and if I remember right, that they said that these horses  
2 again were congregating in the bottoms, drainage bottoms,  
3 and basically in the same area that elks would and  
4 basically they were competing for habitat.

5 Q. Okay. And did the Arizona Game and Fish  
6 Department at any point in time during this proposal  
7 process suggest or state these could be wild horses?

8 A. No.

9 Q. Did they make any indication one way or the other  
10 as to the source of these horses?

11 A. No.

12 Q. And as far as you know, other than your  
13 observations between yourself and Mr. Hughes, the Forest  
14 Service had not conducted had any kind of census or  
15 inventory to figure out how many horses were on the Forest  
16 Service property?

17 A. The Forest Service hadn't but the Game and Fish  
18 had through aerial surveys.

19 Q. If we can turn to page 2 and look at Number 7,  
20 social impact. If you will just read your statement and  
21 tell me what you meant by the statement.

22 A. Which statement? Under Number 7?

23 Q. Yeah. Under Number 7.

24 A. What this was was that we did have complaints  
25 from a couple of private landowners that were saying that

1 these horses were coming up to their fence and -- and  
2 actually it was a complaint and wanted to know what the  
3 Forest Service was going to do about this and that they  
4 had a stallion or they had a stud that was trying to get  
5 over the fence and was trying to get with some of these  
6 herds.

7           And that was one of the complaints that one of  
8 the landowners said, I vaccinate and doctor my horse.  
9 These horses could not -- maybe they have some sort of  
10 disease and they just didn't want to pass it onto their  
11 prize stud that they paid lots of money for. And that's  
12 where the disease, and we had a complaint or two from  
13 these people saying that their horses were trying to get  
14 with these other horses.

15           And the visual aesthetics is we do get a lot of  
16 complaints of people that try to go out on nature hikes  
17 and the last thing they want to see is a cow or a horse in  
18 the middle of their nature trail. And they don't like  
19 also cow patties and horse dung in the trails.

20           Q.    What about -- do folks ride horses up in these  
21 areas?

22           A.    In some of the areas. Actually, yeah. They  
23 could probably ride anywhere on National Forest if they  
24 want.

25           Q.    With regard to vaccination and the complaints



1 that came from adjacent property owners, would that  
2 information have been documented somewhere that you were  
3 getting complaints?

4 A. I know it was a telephone call, and I could have  
5 documented it. I know the name of the lady but her last  
6 name is escaping me right at this point.

7 Q. So the call you received --

8 A. Sylvia Weber.

9 Q. And do you recall what, if anything, you  
10 responded to her would be, you know, what the Forest  
11 Service would do or --

12 A. Basically, I believe that I had told her that  
13 these weren't our horses and we were trying to come up  
14 with something to try to take care of these horses. I  
15 also probably did inform her to contact the Arizona State  
16 Livestock Board, the livestock inspector, to come and look  
17 at the property to see if they could get a brand off this  
18 horse as well.

19 Q. And do you recall the time frame that you would  
20 have received this, such a telephone call?

21 A. No, I wouldn't. I know it was before this  
22 proposal. I would say somewhere probably in 2004, 2005,  
23 somewhere in those two years.

24 Q. So when you were putting together this proposal  
25 was that just something you remembered, or were you

1 reviewing documentation when you were putting together  
2 your proposal?

3 A. It was just something that I remembered and  
4 mainly the private landowners being very cautious of  
5 diseases and, you know -- oh, you know what, there was a  
6 state-wide disease going around at that time which was  
7 vesicular stomatitis, and a lot of people were really  
8 concerned about that time about this disease. And there  
9 was actually quarantines within the state. I don't know  
10 exactly where. Maricopa County was one of the areas I  
11 believe and --

12 Q. That's a disease that affects horses?

13 A. Yes. It's basically only found in -- well, I  
14 don't know if it is only found in horses but it is a  
15 disease that is found in horses. And it may be commonly  
16 referred to as the hoof and mouth disease, but I'm not 100  
17 percent sure on that. And I know that they do get sores  
18 within their -- and it is passed along through saliva, and  
19 if the horses drink out of the same water, it can be  
20 passed along.

21 Q. Is that an issue, again, you're not sure if it's  
22 just horses or is it something cattle or elk and wildlife  
23 in general?

24 A. I mainly heard about it in horses and know the  
25 state was quarantining horses at that time because of this

1 disease. And a blood test is really -- you can observe  
2 the sores in the mouth but a blood test is about the only  
3 way to confirm it.

4 Q. Is it something that can be vaccinated against?

5 A. I believe so.

6 Q. Do you know whether or not the Indians vaccinated  
7 their horses?

8 A. I don't know.

9 Q. I note that at least initially it looks like you  
10 guys weren't looking to remove all the horses. What was  
11 the plan initially?

12 A. We knew we weren't going to have enough money to  
13 remove all of them but we figured -- and our thought  
14 process was, and actually through this grant process, that  
15 we would try to go to this group and try to receive some  
16 funding and maybe try some other groups. There is also  
17 another one that we submitted a proposal to which got  
18 denied and that was through the Habitat Partnership  
19 Committee. And I think Kendall and I were working  
20 simultaneously. I submitted this one, took it to the Rack  
21 and Kendall went to the Habitat Partnership Committee and  
22 tried to receive additional funding.

23 So basically in this proposal we had to say how  
24 many we thought we were going to be able to get with the  
25 money we had, and we thought we would keep requesting

1 throughout the years from our burned money rehab, our  
2 rehab money, rehab dollars.

3 Q. Would the proposal essentially have been the same  
4 going to these different groups looking for money or do  
5 you have to tailor it to the group?

6 A. No. I believe -- well, you do have to tailor  
7 them a little bit but I believe we had the same general  
8 statements in both of these proposals that went forward to  
9 the Rack Committee and to the Habitat Partnership  
10 Committee.

11 Q. Would there be documentation showing the proposal  
12 that went to the Habitat Committee?

13 A. Should be because it's basically a form that gets  
14 filled out and basically sent.

15 Q. Would there be -- you said they denied your  
16 grant?

17 A. I'm pretty sure that one didn't get funded.

18 Q. Would you get a letter saying we're not going to  
19 fund you and the reasons why?

20 A. What you do you is submit these to the committee  
21 and then you have to actually go and defend them in front  
22 of the groups, and just depending on how they prioritize  
23 everything then that decides -- you basically know pretty  
24 much there, they do a voting, I believe, whether they  
25 approve it or not.

1 Q. Did either you or Kendall attend the voting for  
2 the Habitat Committee?

3 A. Kendall. Kendall submitted that one and defended  
4 it. I took this one forward.

5 Q. And did you receive the funding on this one?

6 A. Yes.

7 Q. Did that funding eventually expire or were you  
8 able to use it for the purpose?

9 A. I know that we did get the \$25,000, and last I  
10 knew about it it was still sitting there. The forest was  
11 in the process of trying to work with the tribe on either  
12 using that money to pay for a crew to go down the fence,  
13 the reservation boundary fence to either do one of two  
14 things to -- well, we've got a lot of trees, dead trees  
15 falling on the fence now so we have breaks in the fence  
16 currently also.

17 So they were either to cut and remove the fallen  
18 trees that are on the fence and repair the fence as they  
19 went through there. And we were trying to work a deal  
20 where they would not only cut the trees on their side but  
21 cut them on our side, a certain buffer throughout the  
22 fence line. And I'm not sure where it went at that  
23 point. I know Elaine was in negotiations with the tribe  
24 saying we have \$25,000 if they would go through and cut  
25 the trees once we knew that the contract wasn't going

1 through.

2 Q. So we started to talk about that. You worked on  
3 the proposal with the contract. What happened  
4 after -- tell me -- continue the process to where we ended  
5 up in litigation, if you wouldn't mind.

6 A. Okay. I went to those forests that had been  
7 through a contract or a contracting process and basically  
8 got knowledge through them how they did everything. They  
9 sent me samples of contracts so I wouldn't have to  
10 recreate the wheel. And Kendall and I went through and  
11 tailored that to our forest and submitting it basically to  
12 the contracting office representative and I submitted that  
13 to the contracting officer. And with that, basically, and  
14 I believe I did see in the index a request for contract  
15 action which is the starting process for the contract,  
16 that basically alerts the contracting officer, hey,  
17 someone has a contract and we would like to go forward  
18 with it.

19 Q. Okay. And then what comes of that? What's the  
20 process?

21 A. Then I believe the contracting officer basically  
22 solicits this contract and he either sends it out to -- he  
23 talks to other contracting officers in the region, finds  
24 out if anybody has been awarded any of these types of  
25 contracts. Then he gets their addresses and sends them

1 the contract and then he also posts it on a website,  
2 Fedbizops, which is a nationwide contractor -- contracting  
3 site that all contractors go to to see if there are any  
4 contracts that met their needs and then they send in a  
5 proposal.

6 Q. Was this going to be a difficult contract as far  
7 as somebody actually completing the work you needed done?

8 A. We weren't sure at that time. The knowledge that  
9 we gathered from the other districts or forests that been  
10 through this, and I believe there was two  
11 different -- there is only actually, that I know of, two,  
12 to my knowledge I know of two contractors, not two  
13 contractors, two ways that this contract could have been  
14 done. And Hickoria which they do deal with the wild horse  
15 territories up there and gather horses for adoption, they  
16 had hired one contractor that basically sets up some  
17 portable panels with an electronic switch gate where he  
18 can remotely control this gate to open, or I mean to  
19 close. It's basically spring-loaded open and when he  
20 releases -- pushes a button and releases it, it spring  
21 loads closed. And they load up these horses in trailers  
22 and then take them up to a handling facility that they  
23 have up there.

24 And then the other was that I knew on the Lincoln  
25 is that basically it was a local rancher or a guy that was

1 going up through there and he would do a similar process,  
2 probably not as sophisticated. The way this other one  
3 would do it was with infrared cameras, motion detector  
4 cameras. He was pretty sophisticated. He came and showed  
5 us a proposal. Basically he had a DVD that he showed us  
6 of his proposal. And he had a little trailer that he  
7 would sit in and these cameras would come on when some  
8 animals would come into the corral areas and he would  
9 determine whether to shut the gate or not.

10 Q. Okay.

11 A. The other way was basically corrals that were  
12 gates tied back and they would put feed in the corrals and  
13 they would somehow swing the gate shut.

14 Q. Once the horses were in?

15 A. Once the horses were in.

16 Q. Did there come a time during this process that  
17 you found out that there were -- there was an issue of  
18 wild horses being in this area, potentially being in this  
19 area?

20 A. Well, we gained knowledge of the territory  
21 directly after the contract was awarded due to the  
22 litigation.

23 Q. Who did -- who was awarded the contract, do you  
24 recall?

25 A. I don't know if I'm at liberty to say because I



1 don't know if it was formally -- I was on the committee,  
2 the panel that -- sat on the panel to determine whether --  
3 or to actually go through the proposals.

4 Q. Right.

5 A. And the process that we do go through is that the  
6 contracting officer basically gives whoever is on the  
7 panel, which Kendall and myself and I think it was just  
8 Kendall and myself maybe that were on the panel that I can  
9 remember. There might have been another person but I'm  
10 not positive on that. But there will be meeting notes on  
11 all that. We have to document and put our rationale on  
12 why we selected this certain contractor.

13 Q. Okay.

14 A. And I lost my train of thought.

15 Q. Your recollection is that the contract was  
16 awarded but you feel better not saying who at this point?

17 A. I know that we basically made our recommendation  
18 and then the litigation started, and we didn't -- we  
19 basically dropped the contract.

20 Q. It probably didn't go anywhere?

21 A. Yeah, it didn't. So I mean, I would have to  
22 actually check because I know the contracting officer says  
23 we can't say until -- there should be documentation of the  
24 award letter that went to that contractor. And I didn't  
25 see it in here.

1 Q. So there may be documentation beyond this  
2 record?

3 A. Well, the contracting officer, yes. But since it  
4 was the contract was probably dismissed, he may kind of  
5 hold that. I don't know. The contracting officer knows  
6 his laws a little better than I do. He may have to hold  
7 that confidential. If there was no formal --

8 Q. Award?

9 A. -- award letter, then he would still hold that  
10 until it was, but there could be an award letter. I can't  
11 remember or not if it was formally awarded or not, but we  
12 did make a recommendation of who to select.

13 Q. Were efforts made throughout this time frame to  
14 contact the tribe and have them claim horses that were  
15 theirs?

16 A. Yes. We even submitted a contract to the tribe  
17 to bid on this so they were fully aware of -- that we were  
18 in the process of doing the contract. As a matter of fact  
19 one of the bidders was from the reservation. We had three  
20 bids.

21 Q. Were they aware that you believed the horses were  
22 their property?

23 A. Yes. We had even sent a letter, I believe Elaine  
24 had sent a letter to one of the tribal leaders informing  
25 of the process that we were going to go through.

1 Q. Did you get any kind of response other than the  
2 one bid aside, did you get any formal response saying, you  
3 know, yeah, they're our horses, we'll come get them. No,  
4 they're not our horses, we don't know what you're talking  
5 about?

6 A. That would be Elaine's level. I know the letter  
7 did go out from our supervisor's office from her to one of  
8 the tribal leaders and I don't know whether or not they  
9 did respond or not.

10 Q. So you don't know whether or not they contacted  
11 Elaine and said these are not our horses?

12 A. I don't know personally. Elaine would know  
13 that. Right here. Dallas Matthews was --

14 Q. The contact?

15 A. -- the contact. And I don't know --

16 Q. Who's Theresa Brown?

17 A. Theresa Brown is our budget finance officer, and  
18 she is the one that is in charge of determining whether  
19 funds are there or not to make expenditures. She goes  
20 through -- if someone tries to make an expenditure and  
21 there are no funds there she denies the action.

22 Q. Are you familiar with -- do you know a fellow by  
23 the name of the Joe -- I'm going to --

24 A. Weger.

25 Q. I always want to say Wagner but it's Weger?

1 A. Yes.

2 Q. How do you know Mr. Weger?

3 A. A couple ways I guess. I had first met Mr. Weger  
4 on the resource advisory committee. He sits on the  
5 resource advisory committee. He was one of the  
6 individuals that voted on my proposal.

7 Q. Okay.

8 A. Whether, I mean -- and as I remember he was in  
9 favor of my proposal. Second way I know about him is he  
10 was a prospective bidder or he was one of the bidders on  
11 the contract. And then after, and I don't know if he  
12 knew -- well, I believe he had called the contracting  
13 officer and asked if he had got the contract or not, and  
14 the contracting officer told him, no, and I don't know if  
15 there is documentation of that, though. Then I know he  
16 started getting a little more involved as far as he was  
17 concerned with the horses after that.

18 Q. Do you think that was a result of not getting the  
19 contract? Just be speculation on your part?

20 A. Just speculation on my part.

21 Q. What was the time frame that you approved -- I  
22 know you are not at liberty to say who you awarded the  
23 contract to, but what was the time frame that you awarded  
24 the contract?

25 A. I want to say we were starting to get into the

1 fall of 2005 because one of the concerns that the  
2 contractor did have that we selected is that he wanted to  
3 know the time frame he had because he was worried about  
4 snow fly or snow coming. And he wanted to know if he  
5 started would he be shut down for snow and we told him  
6 most likely. So it was sometime in the latter part of  
7 2005.

8 Q. If you were making awards on a bid and  
9 hypothetically you have three bids and you select one, do  
10 you -- is that a process you do at all once, or do you  
11 eliminate bids as they come in, no, we don't want this or  
12 is it a review of the whole thing?

13 A. No. There is a closing date of the contract.  
14 And we allow, I believe, 12 to 14 days after the contract  
15 closes so that the mail can come through. Or it may have  
16 to be post marked or something. I'm not exactly sure on  
17 that. That it has to be in our supervisor's office or to  
18 the contracting officer at a certain time or date and then  
19 we allow a little bit of time just to make sure that  
20 everything does come in, and I could be wrong. Now that I  
21 think about it there was three to four bids.

22 There was a company that was in the eastern  
23 United States but really didn't know much about our  
24 geographical area. But re-ask the question again.

25 Q. Again, just trying to figure out whether or not

1 you would review all the bids at once and then select your  
2 winner essentially, or if you get a bid in and say, we  
3 don't want him, let's keep moving?

4 A. No. All bids -- we sit down in a room, closed  
5 room, contracting officer comes in and gives us side  
6 boards and says here's the valuation criteria. And some  
7 contracts are based on performance and not price, and I  
8 believe this was a performance-based contract so we  
9 weren't even given the price until -- that was the last  
10 criteria we evaluated on the proposal. And we had to  
11 select the best alternative or best proposal that we  
12 thought would fit our area.

13 Q. To your knowledge, are the proposals that come  
14 in, are those considered confidential?

15 A. I am not sure. I know the price is.

16 Q. Okay.

17 A. But I would think the proposal is public record.

18 Q. So we could find out who all your bidders were?

19 A. Oh, yeah.

20 Q. And then again, would there have been a letter or  
21 anything saying we're selecting A, not B, C, and D?

22 A. Yes. There should be an award letter that comes  
23 directly from our contracting officer.

24 Q. But then everything got stalled out because of  
25 the litigation?

1           A.    Right.  Yes.  And honestly, I can't remember if  
2 that letter had been sent or not.  I just know that we had  
3 made a recommendation, the contracting officer knew who we  
4 wanted or who we thought was best suited for this type of  
5 action.  And basically, once we make the recommendation  
6 then it goes into the contracting officer's hands and he  
7 does the rest of the process.

8           Q.    With the folks that don't get selected, do they  
9 get some sort of notification that they didn't receive the  
10 award or is it, if you don't hear from us assume you  
11 didn't get it?

12          A.    I don't know if there is a formal way or not.  
13 But I believe that -- I don't know for sure if they do get  
14 notified or not.  They may just have to call in and find  
15 out.

16          Q.    Okay.  If you can look in the table of contents,  
17 there is a July 6th letter to Joe Wager from Elaine and  
18 it's CC'd as the Lakeside District Ranger so I would  
19 assume you got a copy of that but you will have to tell me  
20 if it looks familiar.  July 6, 2005 would have been the  
21 letter and I'm not sure what tab it is.

22          A.    27.  And Joe had been calling us trying to find  
23 out more -- and that's one of the things, the solicitation  
24 it will list who will be the contracting officer  
25 representative, and if they need more information on that

1 contract to please contact Randall Chavez and Kendall  
2 Hughes, and I had been talking with Joe on the phone a  
3 little bit and actually we played phone tag.

4 Q. That's what the letter seemed to indicate.

5 A. He called me from Young, and I would call him.  
6 We probably maybe visited one time out of six through this  
7 phone tag.

8 Q. And do you recall at some point -- you do recall  
9 speaking to him and telling him he didn't get the bid?

10 A. I don't know. See that's one of the things that  
11 the contracting officer tells us we don't have that  
12 authority. The contracting officer is the only person who  
13 has authority to say who -- and what our direction is is  
14 to tell anybody that either bid or is interested in  
15 bidding please contact the contracting officer.

16 Q. So based on this letter, July 6, 2005, is it safe  
17 to assume that the bid award or the recommendation for the  
18 award would have come at some point after that time  
19 frame?

20 A. First paragraph, last sentence, after the  
21 resource supervisory committee meeting and after the  
22 proposal was accepted and awarded to me or through the  
23 resource supervisory, Joe did tell me he was interested in  
24 bidding on that contract. So one of my processes or my  
25 duties as contracting officer representative is to let the



1 contracting officer know who would like to bid on this.  
2 And with the contracting -- request for contract action,  
3 one of the attachments that you put in it is prospective  
4 bidders or anything like that, so there should have been a  
5 deal that had Joe's name and address on there. And I  
6 believe that's --

7 Q. So it would have been attached to this, the Rack  
8 form?

9 A. No. I haven't -- I know I've seen it in here.

10 25. Yes. Right here is the list of interested  
11 prospective bidders, and there are several forms, there is  
12 the map that goes in there also, and the funds  
13 availability form, which is also with this, I believe.

14 Q. So that should have been attached?

15 A. Should have been.

16 Q. With this document?

17 A. Should have been.

18 Q. It might be a subsequent tab or --

19 A. Could be. But yes, there is a --

20 MR. PATRICK: For the record, Mr. Chavez, which  
21 tab of the administrative record are you looking at?

22 THE WITNESS: 25. But yes, actually you can find  
23 out the prospective bidders because I believe there were  
24 two to three, maybe two for sure, I know two for sure that  
25 were on that prospective bidders that went in with that.

1 Q. Okay.

2 A. So that gets back to that sentence, the last  
3 sentence of this where Joe Wager had -- he did put his  
4 name on the contract bid list for this contract.

5 Q. He wanted to be a --

6 A. Prospective bidder.

7 Q. Let's jump to -- it's got a fax date of 10-13-05?

8 A. I did see that.

9 Q. That's probably -- it's a fax to Deb.

10 A. 79. I think I saw this.

11 Q. Under Tab 79 of the administrative record. Who  
12 is Ed?

13 A. Ed Collins is my supervisor, district ranger for  
14 Lakeside.

15 Q. What did this fax relate to, if you recall?  
16 First let me ask if you're familiar with this document?

17 A. Yes.

18 Q. Is that your handwriting?

19 A. Yes. I faxed it. The first page with the dates  
20 is Ed Collins' writing and I was asked to fax this  
21 information to Deb.

22 Q. Okay.

23 A. And what this is is where we were talking about  
24 the coordination -- the annual coordination meeting with  
25 the Forest Service and the White Mountain Apache Tribe and

1 Bureau of Indian Affairs, FA is Fort Apache. This is  
2 where they get together, and maybe it's quarterly. I'm  
3 not -- I don't go to these meetings, or it's biannual or  
4 what it is. There are multiple dates there but I'm not  
5 sure. Deb will know because she attends this also,  
6 whether these are annually, quarterly, or biannually. But  
7 these were the dates that either the horses or fences were  
8 discussed with Fort Apache.

9 Q. And this was a result of a request that came in,  
10 somebody needed the information?

11 A. Ed Collins, he's really good about keeping a  
12 planner and he's basically ever year since he has been  
13 ranger he has kept real good documentation about what goes  
14 on throughout the day, and he went through his planners  
15 and compiled dates that he had wrote down that they had  
16 discussed something with either Fort Apache or somebody  
17 associated with the White Mountain Apache tribe or BIA or  
18 somebody had discussed these issues.

19 Q. So based on this there were fence issues dating  
20 all the way back to '99?

21 A. Apparently, yes.

22 Q. And do you know if -- do you have knowledge if  
23 whether or not there were horses coming and going as early  
24 as '99?

25 A. I don't know if there had been -- apparently so

1 because when I arrived there in 2001 the ranger had  
2 informed me that one of the issues that would come up or  
3 that I would be having to deal with is trespass horses  
4 that were coming from the tribe. So that was one of the  
5 things that he passed on to me.

6 Q. And at the point that you came on in 2001 was  
7 there any discussion or disclosure of how many horses just  
8 resided in your district?

9 A. No.

10 Q. Okay.

11 A. I did know about the time I did come on that they  
12 were really trying to make a big push with the memorandum  
13 of understanding, and I know 2001 was the year that we  
14 were really trying to get signatures. And as you can see,  
15 it started with a draft in 2000. It was discussed again  
16 in September of 2000. Two MOUs, which White Mountain  
17 Apache Tribe and San Carlos. San Carlos borders the  
18 Clifton Ranger District and Alpine Ranger District which  
19 apparently there were also issues of trespass livestock  
20 crossing back and forth. And I have been aware of  
21 situations on Clifton when I was there that we had  
22 trespass cattle that we did do a contract and paid a  
23 contractor to remove the cattle that were belonging to San  
24 Carlos Reservation.

25 Q. Okay.

1           A.    But you can see even in June of 2001 the MOU was  
2 discussed again, fence agreement, 2001, still with  
3 attorneys.  So the White Mountain Apache Tribe was  
4 probably having their attorneys review them.

5           Q.    And to your knowledge would there be either an  
6 agenda or meeting minutes from these particular meetings?

7           A.    Should be.  Should be.

8           Q.    Okay.  But do you know for sure?

9           A.    I mean, I would believe so that there should be  
10 some sort of minutes because of all the people, whether  
11 White Mountain Apache Tribe or BIA or Forest Service.  
12 Elaine or Deb would be a better person to ask for those  
13 because I don't attend those.

14          Q.    Jumping here to current dates and situations,  
15 tell me again what the current status is with the fence  
16 line between the Forest Service and the tribe?

17          A.    Currently right now we are experiencing  
18 difficulties with dead trees that either were dead from  
19 the fire or have died since and as the trees throughout  
20 this time have gone on, they get rotted and they're  
21 currently -- anytime wind storms come through the tops get  
22 too heavy, they're falling and they're falling and  
23 jackstrawing, meaning they're crossing over the fence, and  
24 breaking the fences in several places.

25                   We did have one of the expenditure funds, not

1 expenditure funds but one of the items that we did request  
2 money for through rehab was to pay for an engine crew to  
3 do nothing but go up and down the reservation fence on our  
4 side, and it would be also classified as a forest boundary  
5 event, to go through and take off any trees that were on  
6 the fence.

7 Q. What kind of materials is the fence currently  
8 made out of?

9 A. Most of the corners are oak posts and then it's  
10 three, they might have went three or four barbed wire  
11 steel with stays, S-T-A-Y-S.

12 Q. And you said you still have issues with elk, they  
13 try to go over it and they're too big?

14 A. They're too big or if there is a large herd and  
15 they run up a canyon or something they can run through,  
16 break the fence. Or when they do jump they catch on the  
17 top wire and it will either lower it or break it.

18 Q. Have you had any horses jumping over it or is it  
19 too tall or do horses even do that?

20 A. Yeah. And it's only, I believe their standard is  
21 the same as ours and it's probably only 42 inches tall,  
22 the top wire is 42 inches off the ground. I haven't  
23 personally observed it but I have heard people tell me  
24 that the horses can stand right there at the fence and  
25 jump completely right over it.

1 Q. Are you aware of any current inventories or  
2 censuses being undertaken to count how many horses are on  
3 Forest Service lands?

4 A. None that are -- what's the word, like a formal  
5 inventory. You know, it's basically, again, just either  
6 people come into my office and say I saw this many horses  
7 or they will give me pictures. And basically we will put  
8 down, or I have got a CD of pictures that a lady came in  
9 and said I took all these pictures of horses on this date.

10 Q. Okay.

11 A. In this general area.

12 Q. Do you know whether or not the Forest Service is  
13 undertaking to do any sort of horse management plan for  
14 the horses currently located on the Forest Service  
15 property?

16 A. I know that there is talk about from the  
17 litigation that we probably have to do a management plan,  
18 but I'm not directly involved with that since I'm not on  
19 that district.

20 Q. Okay.

21 A. And Elaine hasn't told me whether I will be part  
22 of this or not.

23 Q. Do you still have horses on your district?

24 A. Yes.

25 Q. So is it safe to assume that you will eventually

1 be brought in if they're going to do some sort of  
2 management plan, that that would somehow include you?

3 A. I don't know. That's Elaine. They will put  
4 together an intradisciplinary team and until there is a  
5 project initiation letter basically which is the starting  
6 point for that process, and that identifies who will be  
7 involved with that process but to my knowledge there is  
8 not a project initiation letter in place yet.

9 Q. Do you know whether or not the Forest Service  
10 still intends to eliminate all the horses on the Forest  
11 Service property?

12 A. I don't know actually at this point what  
13 we're -- what the intent is since it's all in litigation.  
14 I think that's what we're -- we will wait until -- until  
15 there is a decision on this to decide what shall be done.

16 Q. Do you know, based on the fact that you know now  
17 there is a wild horse territory in the forest, in the  
18 Apache-Sitgreaves Forest area, if a bid such as removing  
19 the horses came up now, do you believe that that would  
20 impact the environment to the extent that it would require  
21 some sort of -- you said there are three categories of  
22 documents that --

23 A. Three different levels of NEPA.

24 Q. Would that be implemented now based on your  
25 understanding of how NEPA works?



1 MR. PATRICK: Form and foundation.

2 A. I don't know. Again, it would -- you mean just  
3 to carry out the contract?

4 Q. Uh-huh.

5 A. I don't know. We would have to probably seek  
6 some direction from the regional office on whether that  
7 would or not.

8 Q. Okay.

9 A. Again, through our -- through our manual we still  
10 do have administrative processes to still deal with  
11 trespass animals, and I don't know if we would just follow  
12 the administrative process to remove the trespass  
13 livestock or just, you know, or do the plan to decide what  
14 to do there. But I honestly don't know.

15 Q. How does the Forest Service then make the  
16 determination that you're, in fact, dealing with a  
17 trespass horse versus a wild horse now that you are aware  
18 that there is a wild horse sanctuary in the area?

19 A. Again, we probably would have to go up to the  
20 regional office for them to provide us some guidelines or  
21 something on what we should do. And honestly, I'm not  
22 sure what they would direct us to do at that time.

23 Q. Okay.

24 A. I would think that we would get the -- the  
25 Arizona Livestock Board still would be involved somehow to

1 help determine whether they were branded or some sort of  
2 nature like that.

3 Q. Right. Since there is an indication of  
4 ownership?

5 A. Right.

6 Q. Are you aware whether or not there is a forest  
7 plan revision currently in process?

8 A. Yes. I am aware that it is in -- it's in the  
9 beginning stages.

10 Q. What is that exactly?

11 A. We have a forest plan that was developed back in,  
12 and every forest has one, back in the '80s.

13 Q. Okay.

14 A. And we know a lot of things have changed since  
15 the '80s to current, and what we're going through is --  
16 and we were actually supposed to revise these or update  
17 them every so many years, 10 or 20 years you're supposed  
18 to update them and we're behind on that. And all the  
19 forests are in the process of revising their forest plans  
20 to address current situations.

21 Q. What are some of the, I guess, current situations  
22 or factors you have to look at as far as your district  
23 goes?

24 A. Off-road vehicles is one thing we're currently  
25 tasked with or four wheelers. Back in the '80s there was

1 three wheelers and probably maybe one out of every, I'm  
2 going to just say maybe one out of every few families had  
3 four wheelers or three wheelers. Now, families have two  
4 to three four wheelers so it's something that we're seeing  
5 a lot more off and we have to either -- we have to do some  
6 sort of management.

7 Q. How does it impact the forest?

8 A. We have a lot more people that are going off  
9 roads. There is a travel management rule that we're  
10 trying to implement that, trying to keep people on certain  
11 designated roads for these certain types of vehicles.

12 That rule is already in place but it's something that we  
13 want to address. We want to try to designate certain  
14 areas where four wheelers can go and do whatever they need  
15 to do. And try to find a fine balancing act between  
16 hikers, bikers, horseback riders and off-road vehicles.

17 Q. Right. And will the forest plan also deal with  
18 things like continuing rehabilitation since the fire or is  
19 that kind of over with now?

20 A. I don't know if -- it probably will be something  
21 in the forest plan that we have a new area that we  
22 basically have a vegetation change. A lot of these areas  
23 were Ponderosa pine areas. Now where areas got real hot  
24 we have areas that are mostly brush, grass, and open  
25 areas.

1 Q. Okay.

2 A. So there may be something in the forest plan.  
3 I'm not part of the forest plan revision team so I'm not  
4 sure how -- I know we have an ecologist on the team that  
5 probably will be addressing vegetation-type things and  
6 could also be dealing with the Rodeo-Chediski area, what  
7 we will be doing from here on out.

8 Q. And then in a plan such as that with the revision  
9 would you also have to take into account any wild life or  
10 cattle or wild horses that might be on your district  
11 property?

12 A. I know the livestock and the wild life, yes. I'm  
13 not positive whether wild horses will be analyzed through  
14 that or not. That would be something the forest plan  
15 revision team does.

16 Q. Were you ever made aware of the fact that  
17 personnel earlier in the '90s thought they had eliminated  
18 the wild horse territory?

19 A. I did learn about this once we got into  
20 litigation.

21 Q. So after the fact?

22 A. After the fact.

23 Q. Okay. How many -- do you have all your  
24 permittees grazing again in your district?

25 A. Like I said, there were two that were affected,

1 and we just -- I just authorized one of the permittees to  
2 come in with livestock in 2005. And we did analyze a lot  
3 of the pastures now in 2006 and we're just now starting to  
4 reenter a lot of the pastures that were affected by the  
5 Rodeo-Chediski fire. And I have to go in and do an  
6 inventory and analysis of what the condition is of the  
7 forage, soil conditions, and range improvements and take  
8 pictures and I do document all that.

9 Q. With the permittees that you have on your  
10 district up in Lakeside, is there the potential that you  
11 will expand and include more permits, or are you at  
12 capacity?

13 A. Expand more permits?

14 Q. I guess allow more permittees, or is there more  
15 land to be used or is all the available land --

16 A. No. The permittees that I have -- basically the  
17 fire didn't change any of the boundaries or anything for  
18 those permittees, so no, I will probably not be expanding  
19 to more additional permittees. It will be the same  
20 permittees that I currently have.

21 Q. Okay. One more question with regard to the  
22 development of the proposal and the contract to remove the  
23 horses, was there any other alternatives discussed in, I  
24 guess at any point after the fire when you noticed an  
25 increase in horses, the horse population, was there any

1 alternatives discussed with regard to bringing in folks to  
2 remove the horses of how to deal with it?

3 A. I know that like Elaine had been talking with the  
4 tribe and offering up to them to come and get their  
5 horses, and after seeing no action was taking place, the  
6 contract was the only avenue or alternative that we went  
7 forward with.

8 Q. Were you told at any point that you were allowed  
9 to go forward with the contract because you finally had  
10 budgetary availability, and was it a priority after the  
11 fire as to when you dealt with the horses?

12 A. No. It was once we did get the funding and  
13 basically what we do is we discuss it on the forest and  
14 then it gets sent up through the water shed staff up to  
15 the regional office for this request for money and either  
16 they approve it or deny it and send it back down and  
17 that's when the decision was made to go forward with the  
18 contract.

19 Q. Had you attempted to get money prior to the  
20 early, I guess, 2005 time frame and were denied money due  
21 to competing interests for Forest Service money?

22 A. No. I believe that was the first time that we  
23 had decided to go forward with -- on my district, to go  
24 forward with this effort. Like I said, there are other  
25 districts on this forest that have done contracts to

1 remove trespass animals, again, back on Clifton where they  
2 did remove trespass cattle.

3 Q. Okay.

4 A. There was I believe some efforts on Alpine Ranger  
5 District also, but that was dealing with San Carlos  
6 Reservation to remove horses, and I don't know -- I  
7 thought they may or may not have done a contract, but I  
8 know they did an effort where they got as many Forest  
9 Service people on horses as they could and tried to push  
10 the horses back onto the San Carlos Reservation.

11 Q. Was it successful, do you know?

12 A. I'm not sure. I think they got some pushed back  
13 across but not all of them, probably.

14 Q. So is it --

15 A. And I think we even ended up with a reservation  
16 horse and the Alpine Ranger District used these horses.  
17 They basically gathered it and there was -- nobody claimed  
18 it after the Arizona Livestock Board had come in, and  
19 because there is notification that has to be done that the  
20 Arizona Livestock Board sends out and puts it in the paper  
21 and tries to distribute it widely and if nobody collects  
22 it then it goes to sale, and I think the ranger district  
23 went and bought that animal from the sale.

24 Q. Where is San Carlos located in relation to  
25 Apache-Sitgreaves? There might be a map in there that you

1 can refer to.

2 A. Where is my --

3 Q. There is one that is with the Rack proposal  
4 form. There is just a vicinity --

5 A. Do you have a tab number on it?

6 Q. I don't. Mine are not tabbed, but it's dated  
7 around April of '05. It might have been around 20  
8 something tab.

9 A. 25. I don't know if it will have all the  
10 districts on it but it should be pretty close.

11 Q. Tell you what, you can just look at this one. I  
12 just want to see so I get my bearings straight. There is  
13 a map of Arizona and a small picture of  
14 Apache-Sitgreaves.

15 A. We're going to have to use the small one because  
16 the big one doesn't -- okay. Okay. This darker part here  
17 is the Heber or Black Mesa Ranger District. This line  
18 that's right down through here, that's the district  
19 boundary, and this is all Lakeside Ranger District.

20 Q. Okay.

21 A. The Apache-Sitgreaves, the Apache side basically  
22 kind of runs north and south. It's the long part. The  
23 Sitgreaves side runs west to east. It's the horizontal  
24 lines versus the other. The Sitgreaves portion pretty  
25 much runs horizontal and the Apache side runs vertical.



1 This portion all right through here is the Fort Apache  
2 Reservation. And San Carlos Reservation is right below it  
3 and it runs closer to this side of the forest.

4 Q. Okay. So was it your district that you were  
5 having to deal with the San Carlos trespass horses?

6 A. The district I was previously on, the Clifton  
7 Ranger District.

8 Q. So that would be farther down?

9 A. Right.

10 Q. In this area?

11 A. Right.

12 Q. I had another question and I lost my train of  
13 thought. With regard to the bid process and proposal  
14 process, was there any kind of public comment period or  
15 was the public at any point invited to weigh in on your  
16 contract or proposal to remove the horses on the  
17 Apache-Sitgreaves?

18 A. No. Not on the contract.

19 Q. Okay. When you do conduct any kind of NEPA  
20 studies or assessments, do those usually require some sort  
21 of public comment?

22 A. Yes. That's one of the steps in the NEPA  
23 process.

24 Q. I think that's all I have.

25 MR. PATRICK: I have no questions and we will

1 read and sign.

2 MS. BROUCEK: I will take a full version and  
3 that's it.

4 (The deposition concluded at 1:14 p.m.)

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RANDALL CHAVEZ

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1 STATE OF ARIZONA            )  
                                  ) ss.  
2 COUNTY OF MARICOPA        )

3           BE IT KNOWN that the foregoing deposition was  
4 taken before me, KAREN M. NIEMTSCHK, Certified Court  
5 Reporter No. 50447, in and for the County of Maricopa,  
6 State of Arizona; that the witness before testifying was  
7 duly sworn by me to testify to the whole truth; that the  
8 questions propounded to the witness and the answers of the  
9 witness thereto were taken down by me in shorthand and  
10 thereafter reduced to typewriting under my direction; that  
11 pursuant to request, notification was provided that the  
12 deposition was available for review and signature; that  
13 the foregoing 81 pages are a true and correct transcript  
14 of all proceedings had upon the taking of said deposition,  
15 all done to the best of my skill and ability.

16           I FURTHER CERTIFY that I am in no way related to  
17 any of the parties hereto nor am I in any way interested  
18 in the outcome hereof.

19           DATED at Phoenix, Arizona, this 29th day of  
20 October 2006.

21

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23

-----  
Karen M. Niemtschk, CCR  
Certified Court Reporter No. 50447

24

25

**J**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the )  
ANIMAL WELFARE INSTITUTE, a )  
non-profit organization; and )  
the INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS and )  
BURROS, a non-profit )  
organization; PATRICIA HAIGHT, )  
an individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

No. CV-05-2754-PHX-FJM )

UNITED STATES GOVERNMENT )  
DEPARTMENT OF AGRICULTURE, ANN )  
M. VENEMAN as acting UNITED )  
STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

THE DEPOSITION OF DEBORAH BUMPUS

Phoenix, Arizona  
October 13, 2006  
1:06 p.m.

(COPY)

PREPARED FOR:

MR. ANTHONY W. MERRILL  
Attorney at Law

REPORTED BY:

Marty Herder, CCR  
Certified Court Reporter  
CCR No. 50162

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I N D E X

<u>Examination By:</u>	<u>Page:</u>
Mr. Merrill	4
Mr. Patrick	72

E X H I B I T S

No. 1	Defendant's Rule 26 Initial Disclosure Statement	14
No. 2	Document entitled Certification of Administrative Record, executed April 19th, 2006	23

1 THE DEPOSITION OF DEBORAH BUMPUS,  
2 Taken at 1:06 p.m., on October 13, 2006 at the Law Offices  
3 of BRYAN CAVE LLP, Two North Central Avenue, Suite 2200,  
4 Phoenix, Arizona, 85004, before Marty Herder, Certified  
5 Court Reporter, pursuant to the Rules of Civil Procedure.

6

7 **COUNSEL APPEARING:**

8 For the Plaintiffs:

9 BRYAN CAVE LLP  
10 BY: Anthony W. Merrill, Esq.  
11 Two North Central Avenue  
12 Suite 2200  
13 Phoenix, Arizona 85004

14

15 For the Defendants:

16 U.S. ATTORNEY'S OFFICE  
17 BY: Richard G. Patrick, Esq.  
18 40 North Central Avenue  
19 Suite 1200  
20 Phoenix, Arizona 85004

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Phoenix, Arizona  
October 13, 2006  
1:06 p.m.

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DEBORAH BUMPUS,

called as a witness herein, having been first duly sworn,  
was examined and testified as follows:

E X A M I N A T I O N

BY MR. MERRILL:

Q. Would you please state your full name for the  
record for me?

MR. PATRICK: Mr. Merrill, if I may interrupt, I'm  
going to put my standard form comment on the record  
initially. And that is that the Unites States doesn't  
believe it's appropriate to do discovery on such matters.  
We recognize the District Court's position on that issue,  
and accordingly we are here consistent with the District  
Court's order in that regard.

MR. MERRILL: I would like to state for the record  
that defendants have not filed a motion to quash this notice  
of deposition.

BY MR. MERRILL:

Q. Would you please state your name for the record  
for me?

A. Deborah Lynn Bumpus.



1 Q. And could you spell your last name for the  
2 reporter?

3 A. B-U-M-P-U-S.

4 Q. Ms. Bumpus, my name is Anthony Merrill. I'm an  
5 attorney representing the plaintiffs in this lawsuit.

6 Do you understand what the basic issue is in this  
7 litigation?

8 A. I believe I do.

9 Q. And, to your understanding, what is that issue?

10 A. There are discrepancies in the Defense of Animals'  
11 interpretation of our regulations versus how when he  
12 interpret those regulations relating to feral horses.

13 Q. And you understand the Defense of Animals to be  
14 the plaintiff in this matter?

15 A. Yes.

16 Q. And when you use the term feral horses, what is  
17 your definition of feral?

18 A. Owned but not claimed by an individual.

19 In this case, we believe that the majority of  
20 these, if not all, are from the reservation.

21 We do not believe that any of these are considered  
22 protected under the Wild Horse and Burro Act.

23 Q. Have you ever had your deposition taken before?

24 A. Yes, I have.

25 Q. How many times?

1 A. Once.

2 Q. And what was that in relation to?

3 A. Oh, man, that was 20 years ago.

4 It was a -- I worked for a university. An  
5 employee was being charged with use of an illegal drug.

6 Q. And do you recall what jurisdiction this was in?

7 A. No. It was in Missouri.

8 Q. Since it's been a little while, let me go over the  
9 guidelines for you.

10 Mr. Patrick may have done this as well.

11 You understand that your testimony you give here  
12 today is under oath?

13 A. Yes.

14 Q. And this is a question and answer format, so to  
15 keep the record straight, I'd appreciate if you could  
16 verbalize your answers like you've been doing as opposed to  
17 head nods and those kind of responses.

18 A. Uh-hmm.

19 Q. Unfortunately for you, I have to ask you the  
20 questions today, and sometimes you may not understand the  
21 question I ask because I may have asked a bad question.

22 If you don't understand anything that I ask you,  
23 please don't answer the question. Just ask me to rephrase  
24 or say you don't understand.

25 However, on the flip side, if you do answer a

1 question, I'm going to assume you understood; is that fair?

2 A. That's fair.

3 Q. And I'm trying to not keep you here too long  
4 today, but if you do need a break, just ask me, and we'll  
5 make every reasonable accommodation.

6 A. Okay.

7 Q. Ms. Bumpus, are you presently employed?

8 A. I'm employed by the Forest Service,  
9 Apache-Sitgreaves.

10 Q. What is your present job title?

11 A. Ecosystems staff officer for range, wildlife,  
12 watershed, fisheries.

13 Q. How long have you held that position?

14 A. Going on four years in February.

15 Q. So this would have been February of 2003 --

16 A. Yes.

17 Q. -- when you started?

18 A. Yes.

19 Q. What are the duties of an ecosystem staff officer?

20 A. I have administrative duties to oversee those  
21 programs, from an administrative standpoint.

22 There are specialists within each of those  
23 programs that I supervise.

24 But my job is to get information from the regional  
25 office, pass it to the field, respond to issues related to

1 personnel or program management, budgeting, things like  
2 that. Just be the liaison between the Forest Service and  
3 the districts and our regional office.

4 Q. How much of your time is spent in the field as  
5 opposed to an office setting?

6 A. Less than 10 percent of my time.

7 Q. On an average month, how many hours would you say  
8 that you're out in the field?

9 A. On a good month, maybe 16.

10 Q. And your position includes all of the  
11 Apache-Sitgreaves forest; is that correct?

12 A. Yes.

13 Q. That would include all five ranger districts?

14 A. Yes.

15 Q. Who do you report to?

16 A. Elaine Zieroth, the forest supervisor.

17 Q. Who reports directly to you?

18 A. I have -- do you want their names and titles?

19 Q. Yes, please.

20 A. Chris Nelson, watershed program manager.

21 Kathy Taylor, forest wildlife biologist.

22 Jerry Ward, forest fisheries biologist.

23 Tom Subirge, forest riparian manager.

24 And then we have a vacant range program manager  
25 position.

1 Q. Do the district rangers report to you?

2 A. They do not.

3 Q. Do you have any relationship with the various  
4 district rangers?

5 A. We serve on the forest leadership team together.

6 And then in the same capacity that I explained  
7 earlier, I relate information to the rangers, so they pass  
8 information down to their employees. If we have direction  
9 that comes to the regional office on any issue related to  
10 the programs that I manage.

11 Q. You don't directly supervise the operations of the  
12 district rangers?

13 A. I do not.

14 Q. Does managing of wildlife on the forest fall under  
15 your job duties?

16 A. Would you restate that?

17 Q. Sure.

18 As ecosystem staff officer, do your job  
19 responsibilities include any management over wildlife on the  
20 forest?

21 A. No.

22 Q. And same question with respect to cattle grazing  
23 on the forest?

24 A. No.

25 Q. Same question with respect to horses on the

1 forest?

2 A. No.

3 Q. Prior to your employment as ecosystem staff  
4 officer in 2003, what was your employment?

5 A. I was a threatened endangered species biologist in  
6 region four, stationed in Ogden, Utah, at the regional  
7 office.

8 Q. That's great. I'm from Salt Lake City.

9 A. Are you?

10 Q. Yeah.

11 How long were you with the Forest Service there?

12 A. I was there for two and a half years. It was a  
13 temporary assignment.

14 Prior to that I was in threatened endangered  
15 species biologist on the Sawtooth National Forest in central  
16 Idaho.

17 Q. How long were you on the Sawtooth?

18 A. Eight years.

19 Q. Prior to 2003, did you have any contact with the  
20 Apache-Sitgreaves National Forest?

21 A. No, I did not.

22 Q. Have you ever received any training with respect  
23 to management of wildlife?

24 A. Yes. Wildlife, yes.

25 Q. What training have you received?

1           A.    I have a bachelor's degree in wildlife management.  
2    In addition when -- once I started with the Forest Service,  
3    we have a continuing education program, and I've taken  
4    courses directly related to wildlife management, and  
5    indirectly, such as, there is a two-week short course on  
6    management of wildlife and fisheries and Forest Service, and  
7    then there are other courses like conservation biology that  
8    are indirectly related to wildlife management.

9           Q.    Did any of those courses have to do with horses?

10          A.    None.

11          Q.    Any of those courses have to do with cattle?

12          A.    None.

13          Q.    Other than the bachelor's degree in wildlife  
14    management that you spoke of, do you have any other academic  
15    degrees?

16          A.    I have a master's degree in forest recreation from  
17    Utah State University.

18          Q.    When did you obtain that degree?

19          A.    1991.

20          Q.    And, Ms. Bumpus, what did you do to prepare for  
21    your deposition here today?

22          A.    Well, I reviewed -- I went back and reviewed  
23    portions of the record. I've spoken with our attorney,  
24    briefly, just about procedures for giving depositions. That  
25    would be it.

1 Q. Was your conversation with Mr. Patrick via the  
2 telephone?

3 A. Yes.

4 Q. About how long was that conversation?

5 A. Probably 30 minutes, roughly.

6 Q. And did you speak with any employees of the Forest  
7 Service regarding your deposition?

8 A. I have.

9 Q. And who would those be?

10 A. Randall Chavez and Ed Collins and Elaine Zieroth.

11 Q. Were these separate conversations or all together?

12 A. Separate.

13 Q. And how long was your conversation with Randall  
14 Chavez approximately?

15 A. Five minutes.

16 Q. What was the subject matter of that conversation?

17 A. The length of time that he was here.

18 That was it.

19 Q. Well, you can compare when you get back.

20 A. Exactly.

21 Q. When did you speak with Mr. Chavez about the  
22 deposition?

23 A. It was the afternoon of his deposition, which I  
24 don't remember the exact date.

25 Q. And about how long did you talk with Mr. Collins



1 about your deposition?

2 A. Maybe five minutes.

3 It was just downstairs.

4 Q. That was today?

5 A. Yes.

6 Q. And about how long did you talk with Ms. Zieroth  
7 about your deposition?

8 A. About the same amount of time.

9 Q. What was the substance of your conversation with  
10 her?

11 A. Just basically just general questions that were  
12 not specific questions, general content of the deposition.

13 No coaching of any kind from any of those folks.  
14 It was just generic information.

15 Q. Other than documents contained in the  
16 administrative record which you indicated, did you review  
17 any other documents to prepare for your deposition?

18 A. No, I did not.

19 Q. Have you ever owned horses?

20 A. No, I haven't.

21 Q. Have you ever ridden a horse?

22 A. Uh-hmm.

23 Q. Do you consider yourself to be an experienced  
24 horse rider?

25 A. I would not.

1           Nobody would let me out on my own on a horse, I  
2 can tell you that.

3           Q.    I'd like to show you a document which I'm going to  
4 go ahead and have marked as Exhibit 1 to your deposition.

5                           (Deposition Exhibit No. 1 was marked for  
6 identification by the reporter.)

7 BY MR. MERRILL:

8           Q.    Exhibit 1 is entitled Defendant's Rule 26 Initial  
9 Disclosure Statement.

10                   If you could turn to Page 2 for me. Do you see  
11 your name listed at the top of Page 2?

12           A.    I do.

13           Q.    And is the contact information listed under your  
14 name correct?

15           A.    It is not.

16                   Our street address has changed.

17           Q.    Can you tell me the new street address, please?

18           A.    30 Chiricahua.

19           Q.    Can you spell that for me?

20           A.    C-H-I-R-I-C-A-H-U-A.

21           Q.    You want to make it difficult for people writing  
22 you letters.

23           A.    I know.

24           Q.    30 Chiricahua, still in Springerville, Arizona?

25           A.    Yes. Yes.

1           And telephone number is incorrect. Telephone  
2 number is (928)333-6302.

3           Q.    Could you read for me, please, what is listed  
4 there under your contact information, beginning with can  
5 attest to?

6           A.    Can attest to specific monitoring and reporting on  
7 the Heber wild horse territory post-2003 and information on  
8 the associated allotments.

9           Q.    Ms. Bumpus, is it your understanding that you can  
10 provide testimony on those two topic areas today?

11          A.    Yes, I can.

12          Q.    With regard to the first area, what specific  
13 monitoring or reporting has been done on the wild horse  
14 territory since 2003?

15          A.    The information I'm aware of is listed in our  
16 database that's a forest-wide database.

17                In 2003 it was called the Infra, I-N-F-R-A,  
18 database, and it was converted to another database that we  
19 use now called I-Web.

20                Those two databases, the districts are responsible  
21 for reporting. And I can't recall the specifics of the  
22 particular page on that, but it's generally just reporting  
23 population, numbers. I believe there's space there for  
24 territory. Management plan information related to NEPA.

25          Q.    Is this nationwide or particular to

1 Apache-Sitgreaves?

2 A. It's a nationwide database, but those particular  
3 pages are only required for the forests that have  
4 territories.

5 Q. Is Apache-Sitgreaves included in that?

6 A. Yes.

7 Q. You stated that this database contains numbers  
8 regarding horse populations; is that correct?

9 A. Uh-hmm.

10 Q. How are those numbers obtained?

11 A. The districts, from my understanding, the  
12 districts provide that information based upon the data that  
13 they've collected for that year or the previous years.

14 Q. And is there a district in the Apache-Sitgreaves  
15 forest currently collecting such information?

16 A. The Black Mesa Ranger District.

17 Q. When was the last time that they collected  
18 information that was reported to this database?

19 A. There was a report in 2005.

20 Q. And just offhand, do you know if that report is  
21 included in the administrative record?

22 A. I believe it is. I'm not certain. I'm not really  
23 sure.

24 Q. We'll let you look at that in a second.

25 A. Okay.

1 Q. Do you know the process which the Black Mesa  
2 Ranger District undertakes to gather these numbers?

3 A. No, I do not.

4 Q. Do you know who was in charge of that?

5 A. Kendell Hughes.

6 Q. To your knowledge, does the Apache-Sitgreaves  
7 forest have any set guidelines and procedures for obtaining  
8 these population numbers?

9 A. The Forest does not.

10 Q. Does any other government agency, to your  
11 knowledge?

12 A. Only hearsay. I don't know specifically. I  
13 haven't seen any document on that.

14 Q. So do you know if the Black Mesa Ranger District  
15 is relying on procedures established by an agency other than  
16 the Apache-Sitgreaves National Forest?

17 A. I do not know.

18 Q. Other than information contained in this, I think  
19 it's called I-Web database, do you have any other knowledge  
20 with respect to reporting and monitoring of the Heber wild  
21 horse territory?

22 A. It's also included in the biannual report to  
23 Congress. And that, I believe, is in the record.

24 Q. And is the information contained in the biannual  
25 report the same information as contained in the database?

1           A.    Yes, that's where they now pull the information.  
2                    Prior to our databases, they would get the  
3 information directly from our region.

4                    So it's kind of a step-down conversation.

5           Q.    But, personally, you've never gone out and tried  
6 to inventory the horses?

7           A.    No, I have not.

8           Q.    Have you ever personally accompanied anybody  
9 within the Black Mesa Ranger District on one of these  
10 population surveys?

11          A.    I have not.

12          Q.    It's not something that they have to report to  
13 you?

14          A.    No.

15                    That reporting goes directly from the district  
16 into the database, and the regional office or the Washington  
17 office actually does the collection and report out then.

18          Q.    Does anybody within the Apache-Sitgreaves Forest  
19 Service oversee the operations of the Black Mesa District  
20 with respect to this inventory?

21          A.    The -- Kendell's -- the hierarchy of the district,  
22 Kendell's position is supervised by the district ranger, and  
23 in general she oversees every bit of work that he does and  
24 sets up a plan of work for a particular year.

25          Q.    But, to your knowledge, it's Mr. Hughes who

1 directly enters the information into the database?

2 A. Yes.

3 Q. Other than the I-Web database and the biannual  
4 report to Congress, is there any other specific reporting  
5 and monitoring that goes on with respect to the Heber wild  
6 horse territory?

7 A. Not that I'm aware of.

8 Q. The second topic on the disclosure statement is  
9 information on associated allotments.

10 Would you explain to me what an allotment is?

11 A. It's an area on the forest that is designated for  
12 livestock grazing. It has a specific boundary. Also has a  
13 specific permittee associated with a particular allotment,  
14 grazing allotment.

15 Q. And on the Apache-Sitgreaves forest, approximately  
16 how many allotments are there?

17 A. I would have to really estimate here.

18 Q. Okay.

19 A. There's over a hundred. I think 115 or so.  
20 I'm not certain of the number.

21 Q. And who sets the allotments?

22 A. The boundaries?

23 Q. Who establishes the allotment?

24 Let's ask this way. What's the process for  
25 obtaining an allotment?

1           A.    The process for obtaining an allotment.

2                    There has to be an individual, cattle person,  
3 sheep, that has an interest, has private land within the  
4 vicinity either within the allotment itself or adjacent to  
5 the allotment, and own livestock.

6                    If there is a vacant allotment, a piece of ground  
7 that doesn't have an assigned permittee on that, then he  
8 can -- he or she can fill out an application to be the  
9 permittee for that particular allotment.

10                   The allotment boundaries were established -- they  
11 have been in place for well over 50 years.

12                   I do not know the history of how those got  
13 established, either on this forest or elsewhere in the  
14 Forest Service.

15           Q.    Is there allotment map?

16           A.    There is.

17           Q.    Do you have possession of that map?

18           A.    It is in the Forest GIS database.

19           Q.    Is that a publicly accessible database?

20           A.    Yes.

21           Q.    And if there is a vacant allotment, an application  
22 is submitted, who decides if the applicant is awarded the  
23 allotment?

24           A.    The district ranger would make the final decision  
25 based upon that applicant meeting all the requirements,



1 paying fees, making sure that they validate, which means  
2 they put 90 percent of their approved livestock number on  
3 the allotment within the first year of receiving that.

4 Q. There's a fee associated with obtaining an  
5 allotment?

6 A. Uh-hmm. They pay in advance for the number of  
7 animal unit months that are assigned to that allotment.  
8 It's so much per head.

9 Q. And is this an annual fee?

10 A. It's an annual fee, and it varies every year. The  
11 amount varies every year, and it's set by Congress.

12 Q. That was my next question.

13 To your knowledge, are there any allotments within  
14 the Heber wild horse territory?

15 A. There are, but I believe it's the Chevlon -- I'm  
16 uncertain of the name of it.

17 Q. And how many allotments are there?

18 A. Associated with the territory?

19 Q. Yes.

20 A. I do not know the specific number.

21 Q. More than ten?

22 A. No.

23 Q. So less than ten?

24 A. I would assume so.

25 I don't think that the district has that many

1 allotments as a total.

2 Q. This would be the Black Mesa District?

3 A. Uh-hmm.

4 Q. So there are over a hundred on the forest, but --  
5 but ten or less in the Black Mesa District?

6 A. Right.

7 They have very large allotments compared to some  
8 of the other acreages on other allotments in other  
9 districts.

10 Q. Do you know why that is?

11 A. I do not.

12 Q. Is the Black Mesa a heavily forested area?

13 A. Portions.

14 Q. Is the Heber wild horse area pretty heavily  
15 forested?

16 A. I don't know. I have not been there.

17 Q. Do you know if the allotments on the Heber wild  
18 horse territory are vacant?

19 A. I don't know that.

20 Q. Do you know if any of those allotments are set  
21 aside specifically for horses?

22 A. They are not.

23 Q. They're not?

24 A. We have horses associated with a lot of the  
25 allotments, but not an allotment specific for horses.

1 Q. When you say horses associated, are these  
2 privately owned horses or are these the horses associated  
3 with this litigation?

4 A. It's the privately owned horses associated with  
5 the permittee, that he uses in his operation.

6 Q. So there's no -- is there a specific allotment for  
7 wild horses within the wild horse territory?

8 A. No.

9 Q. And do you know why that is?

10 A. No.

11 Q. Do you know if there ever has been a specific  
12 allotment for wild horses in the territory?

13 A. I don't know.

14 Q. I'd like to show you a second document, and have  
15 this marked as Exhibit 2.

16 (Deposition Exhibit No. 2 was marked for  
17 identification by the reporter.)

18 BY MR. MERRILL:

19 Q. Exhibit 2 has been marked. It's a document  
20 entitled Certification of Administrative Record, executed  
21 April 19th, 2006.

22 Ms. Bumpus, could you turn to Page 2 of that  
23 document for me?

24 Is that your signature there?

25 A. Yes.

1 Q. To your knowledge, was this document prepared on  
2 April 19th, 2006?

3 A. It was.

4 Q. And why was this document prepared?

5 A. To submit the administrative record in this  
6 particular case.

7 Q. And in front of you you have what's been  
8 previously marked Exhibit 1 to Elaine Zieroth's deposition.  
9 Is that the administrative record associated with this  
10 certification?

11 A. Yes, it is.

12 Q. Would you turn to the first page, the first  
13 paragraph for me, please?

14 A. Okay.

15 Q. The second sentence reads: In this capacity I am  
16 the custodian of the administrative record assembled for the  
17 July 2005 bid solicitation related to capturing and  
18 relocating trespass horses on the Apache-Sitgreaves National  
19 Forest, which is the subject of this litigation.

20 Did I read that correctly?

21 A. You did.

22 Q. When was the record assembled?

23 A. The record itself was started -- and we call these  
24 two different things.

25 We have a -- some districts call it a project

1 file.

2 And I believe that's what district referred this  
3 to. It's a project file that's put together for any type of  
4 action that we will be partaking of. And a portion of this,  
5 and not necessarily in any particular order, was put  
6 together for the solicitation.

7 And then when the lawsuit or the temporary  
8 restraining order came up and the lawsuit and succeeding  
9 actions, we completely filled this out to fit our needs for  
10 an administrative record for a legal action.

11 So we added to the project record.

12 Q. So is it fair to say that not all of the  
13 information contained in the administrative record was  
14 relied upon by the Forest Service prior to the 2005 bid  
15 solicitation?

16 A. That's true.

17 And there are some things that are not pertinent  
18 to a bid solicitation in there.

19 Q. Did you personally assemble the record?

20 A. I did not.

21 Q. Who assembled the record?

22 A. Kendell Hughes.

23 Q. Do you know how Mr. Hughes went about assembling  
24 the record?

25 A. The administrative record?

1 Q. Yes, ma'am.

2 A. We were asked to pull together any information  
3 that we had on the horse territory, and that would include  
4 any previous monitoring before Kendell was on the forest.  
5 Any correspondence that would have been put together related  
6 to the horse territory.

7 And then that's how it's done.

8 It's put into chronological order, anything that  
9 would have been related to the horse territory at all.

10 Q. Do you know approximately when Mr. Hughes was  
11 asked to pull this information together?

12 A. I do not.

13 Q. Was it concurrent with this certification, or  
14 sometime prior?

15 A. It was prior to the certification.

16 Q. A week prior? A month prior?

17 A. I do not recall.

18 Q. And you stated that a portion of the  
19 administrative record was part of the project file?

20 A. Yes.

21 Q. Are you able to identify which documents were part  
22 of that project file and which documents were not?

23 A. Probably could, to a certain degree.

24 Q. But would Mr. Hughes be better able to do that?

25 A. Yes.

1 Q. Did Mr. Hughes receive any guidance from you with  
2 respect to compiling the record?

3 A. Not guidance.

4 He received documents from me.

5 Q. If you could turn to the second page,  
6 paragraph two, the second sentence states: The documents  
7 accompanying this declaration are accurate copies and  
8 comprise the complete administrative record for this  
9 litigation.

10 Did I read that correctly?

11 A. You did.

12 Q. What do you understand the word complete to mean?

13 A. All documents that would have anything to do with  
14 the horse territory.

15 Q. Is it possible that the Forest Service relied on  
16 other documents when it decided to issue the solicitation  
17 for bid for removal?

18 A. Not that I'm aware.

19 Q. Is it possible that the Forest Service did not  
20 rely on all of those documents in making the bid for  
21 removal?

22 A. There are documents that would have been relied on  
23 more heavily than others.

24 There are newspaper articles in there, for  
25 instance.

1           We would not have made a decision based upon a  
2 newspaper article.

3           Q.   Who made the actual decision to issue the  
4 solicitation for bid to remove the horses?

5           A.   It would have been Elaine Zieroth's decision.

6           Q.   Did you assist Ms. Zieroth in making that  
7 decision?

8           A.   I did not.

9           Q.   Did you have any involvement in making that  
10 decision?

11          A.   I did not.

12          Q.   Did Ms. Zieroth consult you in any way prior to  
13 making that decision?

14          A.   She did.

15          Q.   What was the subject of that consultation?

16          A.   Just background on the situation, relative to the  
17 fire.

18                 We were doing rehab in that area, and just general  
19 background on what the situation was.

20          Q.   Did she ask you any questions regarding the Heber  
21 wild horse territory?

22          A.   She did not.

23          Q.   Did she ask you any questions regarding the  
24 history of the area prior to the fire?

25          A.   She did not, not to my recollection.



1           Q.    Could you describe for me, please, the Forest  
2 Service's plan to remove the horses?

3           A.    Well, we -- what we did was describe the area that  
4 we felt the horses were in.  And it was pretty well  
5 consistent with the boundaries of the Rodeo-Chediski fire  
6 based upon information from employees and also from Arizona  
7 Department of Game and Fish employees, and just tracks,  
8 things like that.

9                        So we had a general idea of the population, and  
10 put that together into a contract.

11                       And the contract does not specify to my knowledge  
12 exactly how the contractor was to gather the animals.

13                       We would leave that up to the contractor,  
14 because there were several different methods that some  
15 contractors who had an interest in this had discussed with  
16 the district.

17                       None of this was discussed directly with me, so  
18 I'm relating information that was related to me by Kendell  
19 Hughes and Randall Chavez.

20           Q.    You mentioned the boundaries of the Rodeo-Chediski  
21 fire.  What are those boundaries?

22           A.    They go -- they cover both the Lakeside and the  
23 Black Mesa Ranger District.  Also it's on the reservation to  
24 the south.

25           Q.    Does it go north of Highway 260?

1           A.    In some places, but not -- it's not as extensive  
2 to the north of the highway as it is south.

3           Q.    Are you familiar with the Bison Ranch area?

4           A.    I am.

5           Q.    Is the Bison Ranch area included within these  
6 boundaries?

7           A.    I believe it was.

8           Q.    You stated that you, the Forest Service, had a  
9 general idea of the horse population. What was its general  
10 idea? How many horses did the Forest Service think were out  
11 there?

12          A.    Based upon the documentations, the year of the  
13 fire, and after the fire, and that was before I got there,  
14 so this is just information that I read, they had estimated  
15 roughly 30.

16                   And the reason that this number was given was we  
17 are asked following a fire the type of mitigation -- or  
18 money that we need to mitigate the effects of the fire.  
19 It's rehab dollars.

20                   And we were indicating that we needed -- we were  
21 seeing an influx of horses following the fire, and our  
22 reasoning was that the fence that was the boundary fence  
23 between the reservation and the forest had been burned and  
24 was down in many, many places.

25          Q.    You said an influx of horses.

1           There were horses on the forest prior to the fire?

2           A.    There are no records of horses in our monitoring.

3           There are various anecdotal records of horses both  
4 on the forest and in the communities that are within the  
5 forest boundaries.

6           Q.    But nothing on paper?

7           A.    Nothing on paper.

8           Q.    You stated that there were documents regarding the  
9 population after the fire that you reviewed; is that  
10 correct?

11          A.    I wouldn't say they're documents.  They're just  
12 e-mails.

13                They came up as a result of being asked to provide  
14 a list of projects that we needed to have funding to  
15 mitigate the effects of the fire.

16          Q.    Are those e-mails included in the administrative  
17 record to your knowledge?

18          A.    They are not.

19          Q.    Do you know why they are not?

20          A.    They were -- they came from our regional BAER,  
21 burned area emergency rehab, coordinator, and they were not  
22 specific to horses.

23                They were specific to the damage done by the fire  
24 itself.

25                The boundary fence was identified, but the

1 relationship between the horses and the boundary fence was  
2 not related to our burned area emergency rehab coordinator.

3 Q. Is it the Forest Service's position that all the  
4 horses presently on the forest land are a result of the  
5 Rodeo-Chediski fire?

6 A. Yes.

7 Q. And what year was the fire?

8 A. 2000, I believe.

9 I was not there.

10 Q. Do you know what the Forest Service has done to  
11 confirm that belief with respect to the horses?

12 A. Restate that, please.

13 Q. Has the Forest Service undertaken any study to  
14 confirm that there were no horses on the forest prior to the  
15 Rodeo-Chediski fire?

16 A. We've not conducted any studies.

17 There are previous monitoring documents that  
18 indicate related to the territory that we had no horses  
19 there.

20 The other information that we have that we have  
21 looked at, and I believe that is in the record, are aerial  
22 surveys from the Arizona Department of Game and Fish.

23 And they've included numbers that they've seen.

24 Their surveys started right after the fire and are  
25 continuing.

1           They're looking at the changes in habitat and  
2 changes in numbers of deer and elk, and they include horses  
3 in those.

4           Q.    Would it be fair to say that with respect to the  
5 2005 decision to remove the horses that the Forest Service  
6 relied on information gathered from previous inventories as  
7 opposed to any new studies?

8           A.    There are no formal inventories completed.

9           The information is gathered from employees being  
10 out in the field, as much as anything, and other people  
11 being out in these areas.

12          Q.    So there's no formal inventory program?

13          A.    Other than the Game and Fish aerial flights,  
14 that's the only formal program.

15          Q.    So nothing from the Forest Service?

16          A.    No.  No.

17          Q.    To your knowledge, has the Apache Tribe ever  
18 claimed these horses as belonging to them?

19          A.    Yes.

20          Q.    When did they do that?

21          A.    We have had -- well, I have not had these  
22 conversations.

23                I believe Elaine had conversations with the tribal  
24 attorney, and I cannot recall his name.

25          Q.    Alex Ritchie perhaps?

1           A.    Yes, Alex Ritchie.

2                    And he indicated that they were having the same  
3 problems that we were in our fire rehab area, and horses  
4 were coming into those areas and destroying all the  
5 vegetation that they had recently planted, trees, grass,  
6 whatever, and that he understood that we were having the  
7 same problems, and that most likely they came from the  
8 reservation.

9           Q.    Has anybody from the reservation ever submitted a  
10 written claim of ownership on any of these horses?

11          A.    No.

12          Q.    Has anybody from the reservation gone across the  
13 boundary and claimed one of these horses?

14          A.    Not to my knowledge.

15                   I know that Alex had two of his employees come up  
16 and actually do some informal surveys at some time, just to  
17 get an idea of the number of horses that were in a  
18 particular area.

19                   But, I don't have the specifics of that.

20                   We very rarely get anything in writing from the  
21 tribe. A lot of conversation.

22          Q.    Is that just their preferred way of conducting  
23 business?

24          A.    Yes. Yes.

25          Q.    Do you know approximately how far Bison Ranch is

1 from the Apache reservation?

2 A. Not off the top of my head, no.

3 Q. Is it close?

4 A. Depends on how you define close.

5 Q. Within 10 miles?

6 A. I believe it is.

7 Q. If we could turn back to Exhibit 2 for a second,  
8 there's an index attached to your certification.

9 Am I correct in saying that this index reflects  
10 the documents contained in the administrative record?

11 A. Yes.

12 Q. Is there any way to tell from this index what  
13 documents were part of the project file and which documents  
14 were not?

15 A. There is nothing that would delineate one from the  
16 other. It would just be necessary for somebody to go  
17 through individual, each individual document.

18 If that's what you're asking me. . .

19 Q. I won't make you deal with every document. We'll  
20 pick a certain number of documents. We wouldn't want to  
21 keep Ms. Klein waiting all day.

22 If you could maybe set that index over to the side  
23 and open the administrative record for me, to tab two.

24 Tab two of the administrative record is described  
25 on the index as letters submitting information on horse and

1 burro territory including map.

2 Ms. Bumpus, was this document part of the project  
3 file?

4 A. It was not.

5 Q. Do you know why it was not?

6 A. It was not related to the Rodeo-Chediski fire  
7 boundary and where we were wanting to gather the horses.

8 Q. Do you know if anybody relied on this document in  
9 formulating the Forest Service's decision to remove the  
10 horses?

11 A. No.

12 Q. No, you don't know, or, no, you don't think they  
13 did?

14 A. No, I know we did not.

15 This is related -- I probably should know this.  
16 This is related to wild horses. We felt all these horses  
17 were feral horses from the reservation.

18 That's why we felt this was not in the gathering  
19 contract for feral horses.

20 Q. What did you base that belief on?

21 A. The previous information from all the monitoring  
22 that we have in this document, as I stated earlier.

23 Q. So would it be fair to say prior documents  
24 reflected zero wild horses in the territory?

25 A. (Witness nods head.)



1 Q. Is that a yes?

2 A. Yes. Sorry.

3 Q. And then after the fire there were horses on the  
4 territory; correct?

5 A. Correct.

6 Q. And is that the information upon which the Forest  
7 Service relied to determine that these horses were escaped  
8 Apache horses?

9 A. Yes.

10 Q. With respect to tab two, do you know how this  
11 document was created?

12 A. I do not.

13 Q. Section -- excuse me, paragraph two states  
14 estimated number of horses, December 1971, seven.

15 Do you know how that conclusion was reached?

16 A. Only through hearsay.

17 I mean, the information when the Wild Horse and  
18 Burro Act was passed, the information that was sent out to  
19 the Forest asking them for recommendations for territories.

20 That is what I assume that this was sent back for.

21 This is what the Forest supervisor at that time  
22 sent back.

23 Seven horses, we've heard a multitude of horses  
24 about what those seven horses were, and there's no way for  
25 us to say one way or another.

1 Q. Okay. Fair enough.

2 Would you turn with me, please, to tab six of the  
3 administrative record. Tab six is described on the index as  
4 wild and free-roaming horses on public lands record.

5 Ms. Bumpus, was this document part of the project  
6 file?

7 A. It was not.

8 Q. And would it be fair to say that this document was  
9 not relied on in making the decision to remove the horses in  
10 the summer of 2005?

11 A. You're correct.

12 Q. This document is from 1991.

13 If you go down to the middle of the page, it lists  
14 a horse population of five; is that correct?

15 A. Yes.

16 Q. Do you know how that number was obtained?

17 A. I do not.

18 Q. If you could turn with me to Page 3, the last  
19 paragraph states: Approximately five feral horses wander  
20 along the Mogollon Rim back and forth from the White River  
21 Apache Reservations. The Indians do not manage the horses,  
22 neither does the Forest Service. Natural attrition will  
23 eliminate the horses eventually.

24 Did I read that correctly?

25 A. You did.

1 Q. Do you know the reason for that last statement  
2 that natural attrition will eliminate the horses?

3 A. Well, again, it's based upon old stories that  
4 we've heard, but the stories that I have heard is that the  
5 stud was sterile, and so natural attrition follows.

6 If you don't have a stud to breed with the mares,  
7 you're not going to have any horses, unless you get them  
8 coming in from other areas.

9 Q. And do you know how it was verified that the stud  
10 was sterile?

11 A. No.

12 Q. Would you turn with me to tab nine?

13 Tab nine is described on the index as memo  
14 territory withdraw recommendation.

15 It's a letter dated June 21st, 1993, to the forest  
16 supervisor from Kate Klein, Heber district ranger.

17 Is Ms. Klein still employed at the Forest?

18 A. She is.

19 Q. Is she presently the district ranger for the Black  
20 Mesa Ranger District?

21 A. She is.

22 Q. Was this document part of the project file?

23 A. No, it was not.

24 Q. Was this document relied on in formulating the  
25 decision to remove the horses from the territory?

1 A. It was not.

2 Q. If you could turn with me, please, to tab 14.

3 Tab 14 is described as populations in 2004 of wild  
4 horses in Heber territory.

5 Ms. Bumpus, is this information taken from the  
6 I-Web database?

7 A. Yes, it is.

8 Q. Did you pull this information from the database or  
9 did Mr. Hughes?

10 A. I did not.

11 Q. How do you know it's from the database?

12 A. Generally the information that they have here are  
13 the same things that are in the database, the RMU, which is  
14 the management unit, specific IDs, territory, all of that is  
15 the same information that they ask us.

16 Q. And you referred earlier to a 2005 inventory. I  
17 didn't see that in the record.

18 Could this be what you were talking about?

19 A. It could be.

20 We get asked every two years to do the reporting  
21 for the biannual, two years prior to the actual report date  
22 that comes out.

23 I believe that very easily have the dates confused  
24 there.

25 Q. And in tab 14 of the administrative record, what

1 does it reflect the horse population to be?

2 A. Zero.

3 Q. And do you know how that number was obtained?

4 A. I do not.

5 Q. Do you know if -- there were horses on the forest  
6 in 2004; correct?

7 A. Yes.

8 Q. Do you know if any of those horses happened to be  
9 in the Heber horse territory?

10 A. Not to my knowledge.

11 Q. And do you know why those horses on the forest  
12 were not listed in this report?

13 A. Because they're only asking for horses associated  
14 with the territory, within the territory. Wild horses  
15 within the territory.

16 Q. So if a horse was found in the territory, do you  
17 know how whoever was gathering this information would make  
18 the determination that it was wild or not?

19 A. I do not.

20 Q. Is it possible that this number is based on prior  
21 data?

22 A. It could be. And it could be tied back to that  
23 statement in the previous tab six, natural attrition from  
24 1971 forward.

25 Q. Do you know if anybody actually went out in the

1 field to count horses to gather this information?

2 A. I do not.

3 Q. Is it possible that that didn't happen?

4 A. I have no knowledge to answer that question.

5 Q. Okay. Fair enough.

6 If you turn to tab 18 for me, please, in the  
7 administrative record, this is an example of, I believe, the  
8 Fish and Game surveys you were speaking about earlier; is  
9 that correct?

10 A. It is.

11 Q. And the date on this is January 30th, 2005; is  
12 that correct?

13 A. Yes.

14 Q. Does this document reflect a horse population in  
15 the forest?

16 A. This actually says January the 13th.

17 Q. My apologies.

18 January the 13th?

19 A. Could you restate your question?

20 Q. Does this document reflect a horse population  
21 within the forest?

22 A. It does.

23 Q. And how many horses does it reflect?

24 A. Twenty-three.

25 Q. And where are you getting that number from?

1           A.    If I'm reading this correctly, there is a horse  
2 column for adults and unknowns, even though it's only  
3 showing seven, the totals say 22 adults and one unknown, for  
4 a total of 23.

5           Q.    And the survey was taken after the Rodeo-Chediski  
6 fire; is that correct?

7           A.    Yes.

8           Q.    And does it indicate on here what portion of the  
9 forest was surveyed?

10          A.    It has a survey area identified with a GPS file  
11 associated with that, which would give you the precise  
12 location.

13                    But a map is not associated with this.

14          Q.    Are you able to determine if this survey took  
15 place in the Black Mesa Ranger District from that  
16 information?

17          A.    I cannot, because I'm not familiar with that  
18 district on the ground.

19          Q.    This survey took place after the Rodeo-Chediski  
20 fire; correct?

21          A.    Yes.

22          Q.    Were there more than 23 horses on the forest after  
23 the Rodeo-Chediski fire?

24          A.    The district indicated that there were well over  
25 23 horses.

1 Q. And this was a -- the survey was conducted from a  
2 helicopter; correct?

3 A. Right.

4 Q. And you testified before that portions of the  
5 forest are pretty heavily forested; correct?

6 A. The ones that are not within the Rodeo-Chediski  
7 fire burn area.

8 Q. And the ones within the area, trees have been  
9 burned?

10 A. Trees have been burned, no needles, easy to see  
11 the ground, especially if there was snow on the ground,  
12 which from this I don't know if there was.

13 Q. Is it easy to see the ground from a helicopter of  
14 the area within the Heber wild horse territory?

15 A. Yes, it is.

16 Q. And that's because it's part of the burn area?

17 A. I don't know if it is or not.

18 You can see any of our ground from the helicopter.  
19 Helicopters can hover, so moving in any direction you can  
20 get a good visual from any direction to see underneath the  
21 canopy of the trees.

22 Q. Do you have any idea why they only saw 23 horses  
23 then?

24 A. I do not.

25 Q. And was this document part of the project file?



1           A.    No, it was not.

2           Q.    And was this document relied on in formulating the  
3 decision to remove the horses?

4           A.    No.

5           Q.    If you could turn on the index for me now, on the  
6 document that's been marked as Exhibit 2 to our deposition,  
7 Page 2 of that index, rows 21A through 21S contain various  
8 Arizona statutory provisions; is that correct?

9           A.    Yes.

10          Q.    And were these statutory provisions part of the  
11 project file?

12          A.    I believe they were.

13          Q.    And do you know why these statutory provisions  
14 were part of the project file?

15          A.    Because the Arizona Department of Agriculture is  
16 responsible for the horses once they are gathered.

17                It's their responsibility to find the owners and  
18 either get those horses to the owners or then take them to  
19 the auction barn.

20          Q.    So the Forest Service itself was not going to try  
21 to find the owners of the horses?

22          A.    We're not required or allowed to do that.

23          Q.    I'm sorry, what agency was it that was going to do  
24 this?

25          A.    Department of Agriculture.

1 Q. The State Department of Agriculture?

2 A. Uh-hmm.

3 Q. Did they have any involvement in planning the  
4 decision to remove the horses?

5 A. No.

6 Q. And how was the Department of Agriculture then  
7 going to make this -- go and try to find the horses if they  
8 had no involvement?

9 A. Prior to the solicitation for bids, one or both of  
10 the districts had contacted the local brand inspector, which  
11 is our requirement to do when we have unclaimed livestock.

12 I believe there's a letter in the file from that  
13 person indicating that they would be available to assist  
14 once the horses are gathered.

15 Q. So the plan was to gather the horses first, then  
16 try to find owners; is that correct?

17 A. That's how we do that.

18 We gather them and hold them for the Department of  
19 Agriculture, and then they find the owners.

20 Q. Could you turn with me, please, to tab 28 in the  
21 administrative record. Tab 28 is a notice of intent to  
22 impound unauthorized livestock, dated July 6th, 2005, signed  
23 by Elaine Zieroth, forest supervisor.

24 To your knowledge, was this document part of the  
25 project file?

1           A.    It was.

2           Q.    And at the time this document was created the  
3 Forest Service had already decided to remove the horses;  
4 correct?

5           A.    Yes.

6           Q.    If you look, there's a box, kind of a second  
7 paragraph, topographical unit legal subdivision or  
8 allotment.

9                    Do you see that?

10          A.    Yes.

11          Q.    Is that what you've been referring to as the  
12 Rodeo-Chediski fire area?

13          A.    Yes.

14          Q.    Was that area subject to this bid for solicitation  
15 to remove the horses?

16          A.    It was.

17          Q.    Did the solicitation include any areas out of that  
18 legal subdivision or allotment?

19          A.    No.

20                    We are required to follow the description that is  
21 in -- that is identified in this box that you're referring  
22 to.

23          Q.    So was the contract to remove the horses ever  
24 awarded, to your knowledge?

25          A.    I do not know.

1 Q. No horses were removed in any event?

2 A. No, they were not.

3 Q. Had this gone forward, would horses outside of  
4 this allotment have been left alone?

5 A. Yes.

6 Q. Were there any guidelines in the solicitation for  
7 bid with respect to what horses the contractors were to  
8 gather, or was it just first 80 you see?

9 A. What a contractor would have to do is gather up  
10 all the horses that he can, because you cannot sort prior to  
11 capturing them.

12 And then there were instructions on what to do if  
13 they were branded, what to do if they were unbranded.

14 And at that point, once they are gathered, the  
15 Department of Agriculture becomes the responsible party for  
16 those horses.

17 Q. I'm assuming that any branded horses their owners  
18 would have been notified?

19 A. Yes.

20 Q. And unbranded horses, what would happen to those?

21 A. They are taken to a private sale barn. There's a  
22 public sale. They're taken to an auction barn. And in this  
23 case I think we had planned to taking those to the Sun  
24 Valley Auction Barn in Holbrook.

25 Q. Are you familiar With that sale barn?

1           A.    Only driving by.

2           Q.    If you could, look at the second to last  
3 paragraph, which begins after impoundment.

4                    Are you with me?

5           A.    Yes.

6           Q.    It says:  After the impoundment, owners of  
7 unauthorized livestock may regain possession thereof only by  
8 first showing proof of ownership and reimbursing the United  
9 States in full for the expense incurred in impounding,  
10 feeding, and care of such livestock.

11                   Do you know what was meant by proof of ownership?

12           A.    Typically an owner, if they have a brand, that  
13 brand has to be registered with the State.

14                   So they would show the form of the registration.

15           Q.    And how would a party prove ownership of an  
16 unbranded horse?

17           A.    By markings.

18                   Some individuals, there are lots of people that do  
19 not mark or brand their horses, and they use color markings,  
20 notches in ears, other types of things, other than a heat  
21 brand on a horse.

22           Q.    Are those registered anywhere, to your knowledge?

23           A.    I do not know.

24           Q.    Would the Forest Service have made the decision  
25 with respect to the validity of an ownership claim or would

1 that have been the State Livestock Board or some other  
2 agency?

3 A. It's the State's responsibility.

4 Q. So essentially the Forest Service was going to  
5 gather the horses and turn them over to the State to  
6 determine what happened to them?

7 A. Yes. We have an MOU with the State, and that's  
8 the requirement within that MOU.

9 Q. Can you please turn to tab 46 in the  
10 administrative record?

11 Do you recognize tab 46?

12 A. I do.

13 Q. What is tab 46?

14 A. It's a copy of the public law 92-195, which is the  
15 Wild Free-Roaming Horse and Burro Act.

16 Q. Was this act part of the project file?

17 A. No.

18 Q. To your knowledge, did anybody within the Forest  
19 Service review the provisions of this act prior to the  
20 decision to remove the horses?

21 A. Not to my knowledge.

22 Q. If you could, look at the index briefly on Page 5,  
23 where it references tab 46. The date associated with tab 46  
24 is August 26, 2005.

25 Do you know what the significance of that date is?

1           A.    I do not.

2           Q.    Is it fair to assume that that was the date the  
3 Forest Service first reviewed the act with respect to this  
4 proceeding?

5           A.    No.

6                    I doubt that.

7                    I would assume that it's the date that we printed  
8 it from the computer.

9           Q.    And do you know why it would have been printed  
10 from the computer?

11           A.    At that point we -- I'm not sure of the date of  
12 the temporary restraining order, but related to the contract  
13 itself, we had not gone forward with it, and we knew that in  
14 conversations with Dr. Haight that she intended to appeal or  
15 sue us on the decision to have this contract.

16                    So at that point we started to build the  
17 administrative record.

18                    Somewhere close to that date.

19           Q.    Are you familiar with the provisions of the Wild  
20 Horse Act?

21           A.    Very generally.

22           Q.    Do you know what the purpose of the act is?

23           A.    To protect wild horses that were associated with  
24 designated territories at the time of the act.

25           Q.    You think that's a good thing?

1 A. It's neither good nor bad to me.

2 Q. Have you ever seen any horses on forest land?

3 A. Yes.

4 Q. Where did you see the horses?

5 A. In the Rodeo-Chediski fire, the majority. I've  
6 seen them adjacent to forest land in Honda, in Lakeside, on  
7 the Pinetop Lakes Country Club Golf Course.

8 Q. How often have you seen horses out on the forest?

9 A. When I'm on the forest, in that particular area, I  
10 have seen either the individuals or signs of horses every  
11 time I've been out.

12 Q. This would be in what's been defined as the  
13 Rodeo-Chediski fire area?

14 A. Yes.

15 Q. Have you ever seen any brands on the horses?

16 A. I haven't.

17 I haven't looked for them either.

18 Q. To your knowledge, does the Forest Service have  
19 any management plan in place with respect to wild horses?

20 A. We do not.

21 Q. Turn with me, please, to tab 52 in the  
22 administrative record.

23 Do you recognize document 52 from the  
24 administrative record?

25 A. I do.



1 Q. What is document 52?

2 A. It's a compilation of e-mails related to horses on  
3 the forest in the wild horse territory establishment.

4 Q. The first paragraph appears to be an e-mail from  
5 you to Kendell Hughes and Randall Chavez; is that correct?

6 A. Yes.

7 Q. First sentence says: Kendell, I discussed with  
8 Elaine yesterday your idea to contact the sale barn again.

9 Do you recall why Kendell wanted to contact the  
10 sale barn?

11 A. We, on any type of impoundment for livestock, we  
12 always contact the sale barn to let them know of our plans  
13 to do an impoundment. We find out the dates of their sales  
14 and if they have room for any type of livestock.

15 Q. Do you know if Mr. Hughes ever contacted the sale  
16 barn?

17 A. I don't.

18 Q. If you could drop below your e-mail, there appears  
19 to be a second e-mail that was forwarded to you from Gene  
20 Onken?

21 A. Yes.

22 Q. The last sentence of the first paragraph, which  
23 begins, Mr. Ritchie?

24 A. Yes.

25 Q. Says Mr. Ritchie has also advised the Forest that

1 he will talk to the tribal council to see if they might  
2 claim horses after a gather.

3 Do you know if Mr. Ritchie ever did that?

4 A. I believe that he did.

5 But, again, that goes back to the conversations  
6 that he and Elaine had.

7 Q. If you could, turn to the second page of that  
8 document, an e-mail from Jo Baeza to Gene Onken.

9 Do you see where I'm at?

10 A. Yes.

11 Q. And I believe this e-mail was forwarded to you by  
12 Mr. Onken; is that correct?

13 A. Yes.

14 Q. Who is Gene Onken?

15 A. Gene was the -- he worked in their regional office  
16 in the range program area. And he wore many hats.

17 He coordinated our reporting for the wild horse  
18 territories throughout the region, but he was also the --  
19 dealt with noxious weed management.

20 Q. Do you know Jo Baeza?

21 A. Only by name. I've never met her.

22 Q. And how do you know her name?

23 A. She writes articles for the newspaper.

24 Q. Which newspaper is that?

25 A. The White Mountain Independent.

1           Q.    The first part of this e-mail from Ms. Baeza  
2 states:  Gene, I love the Forest Service with all my heart,  
3 but I got to disagree about any classification of these  
4 horses.  Some are domestic turnout horses.  Some are branded  
5 or gelded.  Many, many that I have seen look Spanish Mustang  
6 and are of the same bloodlines that I believe have been  
7 around for a long time out on the Rim.  I've lived in the  
8 area for 55 years and have seen lots of horses, both on and  
9 off the reservation.

10                   Did I read that correctly?

11           A.    You did.

12           Q.    Do you know if the Forest Service did anything  
13 with respect to that information from Ms. Baeza?

14           A.    Nothing specifically.

15                   We were receiving information from, again, lots of  
16 people on the horses that they were seeing.  Public, Game  
17 and Fish.

18                   This was just one of those pieces of information.

19           Q.    To your knowledge, did the Forest Service do  
20 anything to confirm or disprove Ms. Baeza's statement?

21           A.    No.

22                   That decision we felt had been made previously  
23 with the decision way back by John Bedell and Kate Klein to  
24 eliminate that territory because the numbers were zero.

25           Q.    That was a decision that was made in '93?

1 A. Yes.

2 Q. So there was no -- the Forest Service didn't  
3 revisit that decision?

4 A. No.

5 Q. Would you turn with me, please, to tab 54 of the  
6 administrative record.

7 Fifty-four is an e-mail from you to Kendell  
8 Hughes; is that correct?

9 A. It is.

10 Q. First line mentions Tim Kessay. Who is  
11 Mr. Kessay?

12 A. He works for the reservation, White Mountain  
13 Apache Reservation, in the Carrizo Livestock Association,  
14 specifically. And he has a relationship with Alex Ritchie,  
15 the tribal attorney. And he is one of the individuals that  
16 I spoke of earlier that Alex Ritchie had come to the forest  
17 to actually do a visual inventory for the horses.

18 Q. And why did you contact Mr. Kessay?

19 A. At the request of Alex Ritchie, to assist in  
20 identifying tribal horses, because he was familiar with the  
21 type of branding that the tribe typically uses, which we are  
22 not familiar with.

23 Q. And, to your knowledge, did Mr. Kessay actually  
24 identify any horses on the forest that had tribal branding?

25 A. I believe that when he was on the forest he saw

1 less than five, if that many.

2 And they could not get close enough to get an  
3 idea.

4 Q. The next line references a Wilke Griggs. Who is  
5 Mr. Griggs?

6 A. Well, he is their brand inspector, or is in charge  
7 of collecting all the brands from the tribal members and  
8 keeping a running tab of all those.

9 Q. To your knowledge did Mr. Griggs ever visit the  
10 forest?

11 A. I do not know.

12 Q. And, to your knowledge, does Mr. Griggs maintain a  
13 written record of Apache tribal brands and marks?

14 A. I believe he is the one that is responsible for  
15 that.

16 Q. Has he ever provided you with that documentation?

17 A. He has.

18 He provided it to Elaine.

19 Q. And have you seen this?

20 A. Yes.

21 I believe it's in the project record.

22 Q. Could you flip through the index and identify that  
23 for me, please?

24 A. I don't see it.

25 It would have been from a tribal member.

1           Can I flip through here?

2           Q.    Sure.

3           MR. MERRILL:  Off the record.

4           (Brief recess taken.)

5           THE WITNESS:  I have seen a list that was faxed to  
6 us from the tribe, faxed to Elaine from the tribe.

7 BY MR. MERRILL:

8           Q.    Based on your review, it does not appear in the  
9 administrative record?

10          A.    Not in my quick review.

11          Q.    Do you know if that list was part of the project  
12 file?

13          A.    It was not.

14          Q.    And do you know if somebody within the Forest  
15 Service still maintains that list?

16          A.    Yes.

17          Q.    Turn with me, please, to tab 71 of the  
18 administrative record.

19                Tab 71 is an e-mail dated September 16, 2005 from  
20 Ms. Bailey, B-A-I-L-E-Y, Williams, to Mailroom\_WO@SF.fed.US.

21                Do you recognize that e-mail address?

22                The first one, the mail room at the --

23          A.    Yes, it's a generic mail room that takes public  
24 comments on anything.

25          Q.    Is that a local setup or is that a federal?

1 A. It is set up at the Washington office.

2 Q. And it appears that e-mail was later forwarded to  
3 a Mailroom R3ApacheSitgreaves@FSNOTES?

4 A. Yes.

5 Q. Who reads e-mails directed to that address?

6 A. Most often our public affairs officer, Bob Dyson.

7 Q. Prior to assembling the administrative record, did  
8 you see this e-mail from Ms. Williams?

9 A. No, I did not.

10 Q. If you could look down towards the bottom of the  
11 page, where it's the text of her e-mail.

12 A. Yes.

13 Q. It begins: I am writing to encourage the  
14 reevaluation of the Apache-Sitgreaves horses.

15 Do you know if the Forest Service took any action  
16 based on Ms. Bailey's(sic) request to reevaluate the horses?

17 A. No, because I believe at this time we were under a  
18 temporary restraining order.

19 We had pulled the contract well before September.

20 Q. Ms. Bailey(sic) goes on to say: A census taken  
21 14 years ago cannot be expected to accurately determine  
22 status of the wild horses in the area.

23 Do you agree that with statement?

24 A. I do not.

25 Q. Why do you not?

1           A.    Based upon the numbers of the survey 14 years ago  
2 and the information that we had at hand, you cannot create  
3 300 horses out of five.

4                    And it was unknown, or at least it was indicated  
5 in our records, that those horses were not of the wild  
6 lineage.

7           Q.    Any chance that those records could have been  
8 wrong?

9           A.    Every record could be wrong.

10                   We have to use our best information that we have  
11 to make our decisions.

12           Q.    Turn with me to tab 70.  Tab 70 of the  
13 administrative record is an e-mail that was originally from  
14 James Payne, P-A-Y-N-E, to Ms. Bumpus, which was then  
15 forwarded to Kate Klein.

16                    It's attaching an article from the Payson Roundup  
17 entitled The Fate of Wild Horses Stalls in Legal Wrangling,  
18 dated September 16th, 2005.

19                    Could you turn to the second page of the document  
20 for me, please?

21                    Prior to assembling the administrative record, had  
22 you ever seen this document before?

23           A.    I saw it as a -- yes, it was -- it became part of  
24 the record, yes.

25           Q.    There's a big white space in the middle.



1           Is that something that's been blocked out or is  
2 that just printer error?

3           A.    This is all that was sent to me.

4           It was probably an ad.

5           Q.    So there's no text that's been redacted from the  
6 record?

7           A.    No.

8           Q.    Turn to the next page, please.

9           There's the fourth paragraph.  It's a quotation,  
10 begins with the Forest alleges.

11           Do you see that?

12           A.    Yes.

13           Q.    It's attributed to Joe Wager.  The Forest alleges  
14 that the wild horses died, but everybody knows that's just a  
15 lie.  He said before the fire the fence was nothing, it was  
16 down everywhere, and the horses just ran back and forth.

17           Do you agree with that statement from Mr. Wager?

18           A.    Parts of it.

19           Q.    What parts do you agree?

20           A.    That the fence was down in many places and that  
21 there were horses going back and forth from the reservation.

22           Q.    And you disagree with the remainder of the  
23 statement?

24           A.    In the way, in the context of how he stated that,  
25 yes.

1 Q. And do you disagree with his assertion that the  
2 wild horses did not die out?

3 A. I disagree with that.

4 Q. What's your basis for your disagreement?

5 A. All the data that we have in our files, the  
6 monitoring information that I alluded to earlier.

7 Q. Which is contained in the administrative record?

8 A. Yes.

9 Q. If you could continue on that page, drop down to  
10 the third to last paragraph, there's a quote attributed to  
11 you, which begins the Forest Service.

12 Are you with me?

13 A. Yes, I am.

14 Q. It reads: The Forest Service in this forest in  
15 particular has absolutely no interest in disposing of horses  
16 that would qualify under the Wild Horse and Burro Act, but  
17 the branded ones definitely belong to somebody and we want  
18 to find their owners, Bumpus said.

19 Did I read that correctly?

20 A. You did.

21 Q. Do you recall making that statement?

22 A. I do.

23 Q. And does that accurately reflect the statement  
24 that you made?

25 A. It does.

1 Q. And to whom did you make that statement?

2 A. To the author of this article, Jim Keyworth.

3 Staff reporter.

4 Q. And prior to making that statement, had you ever  
5 seen any branded horses in the forest?

6 A. No, I had not.

7 Q. Do you know if anybody in the forest who would  
8 have actually gone out and taken an inventory to see if  
9 there were branded horses?

10 A. Not an inventory.

11 Again, there had been anecdotal information from  
12 employees saying they had seen some brands.

13 Q. Is there anything written down?

14 A. No.

15 Q. Do you recall which employees made these  
16 statements?

17 A. I do not.

18 Q. Did they ever describe the brands?

19 A. No, not to me.

20 Q. Do you know if they were ever described to  
21 anybody?

22 A. They may have been described to the employees of  
23 Black Mesa Ranger District.

24 Q. Did anybody from the State Livestock Board ever  
25 call in it to verify that there were perhaps branded horses

1 on the forest?

2 A. I'm not aware of that, but, again, either Kendell  
3 or Randall had those conversations with the State.

4 Q. The next sentence appears to be a quotation from  
5 Mrs. Zieroth, but it's not in quotations.

6 It says if some or all of horses end up being  
7 sold, the best way to keep them from being slaughtered is  
8 for horse lovers to purchase them and give them good homes,  
9 Zieroth said.

10 Is this referring to purchase at auction at the  
11 Holbrook sale barn?

12 A. Yes.

13 Q. Do you know approximately how much that would cost  
14 to purchase one head of one horse?

15 A. It depend on the type of horse that it is.  
16 We take our own stock to auction.

17 Sometimes they only sell for \$100, but other --  
18 they are usually bought by other ranchers.

19 Q. But had the plan to remove the horses gone  
20 through, the Forest Service wouldn't have had any  
21 involvement in that purchase; is that correct?

22 A. Correct.

23 Q. Or that sale?

24 A. Correct.

25 Q. Would you please turn with me now to tab 81 of the

1 administrative record.

2 Tab 81 is entitled in the index Heber Territory  
3 Horse Population Information, 1974 to 2004.

4 The first page is a fax cover sheet to Deb Bumpus  
5 from Gene Onken.

6 Do you recall receiving this fax?

7 A. I do.

8 Q. And do you know why Mr. Onken provided you this  
9 information?

10 A. I had requested Mr. Onken to go through the  
11 regional office files to see if there were any documents  
12 that they may have had in their files that we did not have,  
13 which is what he sent to us.

14 Q. And was the information contained in tab 21 part  
15 of the project file with respect to the decision to remove  
16 the horses?

17 A. It no.

18 Q. And to your knowledge was the information  
19 contained in this document relied on in making the decision  
20 to remove horses?

21 A. No.

22 Q. Turn to the first page for me, please.

23 Entitled documented wild horse population numbers.

24 The second column on the left-hand side reflects  
25 various numbers, seven one year, five one year, up to eight,

1 back to seven.

2 Are those numbers reported to Congress in the  
3 biannual Wild Horse and Burro Act with respect to the Heber  
4 territory?

5 A. Yes.

6 Q. Do you know how those numbers were obtained?

7 A. I do not.

8 Q. From 92 on there's an entry of zero; is that  
9 correct?

10 A. Yes.

11 Q. Do you know why that is zero?

12 A. The implication is that this is an indication of  
13 the population on the -- within the territory.

14 It has been reported by either the district or the  
15 forest at that time.

16 Q. So once the population allegedly hit zero in '92,  
17 do you know if in subsequent years anybody actually went out  
18 and actually looked for horses or if they just, if it was  
19 zero one year, it was zero the next year?

20 A. I do not know. I was not here.

21 Q. If you could turn to the next page for me, please.  
22 Down near the bottom, the second column, there are two  
23 entries for Heber horse territory.

24 Do you see that?

25 A. Yes.

1 Q. And the couple columns over it lists Black Mesa  
2 Ranger District.

3 Do you know why only the Black Mesa Ranger  
4 District is listed there?

5 A. Because that's where the territory resides.

6 Q. Do you know if information on populations was ever  
7 gathered in any district outside of Black Mesa?

8 A. I do not know.

9 Let me restate that.

10 I do know.

11 Relative to the Wild Horse and Burro Act, none.

12 Because we have no territories outside of the  
13 Heber territory.

14 Q. So is it your understanding that the Wild Horse  
15 and Burro Act only applies to horses while they stay on the  
16 territory?

17 A. Yes.

18 Q. So if a horse were to stray off the territory a  
19 particular day, it would no longer fall under the  
20 protections of the act?

21 A. Correct.

22 Q. Would you flip to Page 6 for me, please.

23 Page 6 is a chart entitled: Fiscal Year 2000 Wild  
24 Horse and Burro Report.

25 Under Arizona, the Heber territory is listed as

1 inactive.

2 Do you know why the territory is listed as  
3 inactive?

4 A. I do not.

5 Q. Review the index for me again.

6 Is there any reference to the federal code of  
7 regulations, code of federal regulations in the index?

8 A. No, there is not.

9 Q. And do you know why that is?

10 A. I do not know.

11 Q. Is it fair to say that the code of regulations was  
12 not consulted with respect to the decision to remove the  
13 horses from the territory?

14 MR. PATRICK: Objection to form and foundation.  
15 You can answer the question.

16 THE WITNESS: No, it was not fair to say that.

17 There are a number of articles and documents that  
18 we do review, and for information, and it's tiered down then  
19 to our Forest Service manual.

20 I remember going to the code of regulations, but  
21 not including it in here.

22 BY MR. MERRILL:

23 Q. Okay. So it's possible that those regulations  
24 were reviewed --

25 A. Yes.



1 Q. -- just not in the administrative record?

2 A. Yes.

3 Q. Are there any documents, any other documents that  
4 you know of that may have been reviewed prior to making the  
5 decision to remove the horses that are not included in the  
6 administrative record?

7 A. Not that I'm aware of.

8 Q. Do you know why the code of federal regulations  
9 was omitted but the Arizona state statutory provisions were  
10 included in the administrative record?

11 A. Well, the reason that we include those is just to  
12 show that we relinquish responsibility for the horses once  
13 they are gathered and it becomes the responsibility of  
14 someone else.

15 That was the reasoning there.

16 Q. Okay.

17 Do you know the reasoning why the code of federal  
18 regulations were not included?

19 A. I do not.

20 Q. Are you aware if the Forest Service is currently  
21 preparing a horse management plan with respect to the wild  
22 horse territory?

23 A. Yes.

24 Q. Are you involved in that process at all?

25 A. Only as a consultant.

1 Q. And on what matters do you consult?

2 A. Budget mainly.

3 Q. Fun.

4 A. Or lack of.

5 Q. Are you aware of why the process has begun to  
6 draft a horse management plan?

7 A. We -- my recollection is, in discussions with  
8 Elaine Zieroth and discussions between her and Patricia  
9 Haight, she indicated that we would go ahead and proceed  
10 with that territory plan and that it would be a NEPA  
11 decision which would allow the public to participate in that  
12 process.

13 Q. Who was overseeing the draft of this plan?

14 A. It's the responsibility of the Black Mesa Ranger  
15 District. Kate Klein is supervising that work.

16 Q. Do you know when this process began to put this  
17 plan together?

18 A. Formally, they had their first formal meeting, I  
19 think, within the last four weeks, if not less than that.

20 Q. Are you aware of any goals that the Forest Service  
21 hopes to accomplish with respect to this plan?

22 A. A decision.

23 We expect to use the plan to establish a  
24 population level for the territory, which is the requirement  
25 of the plan.

1 Q. Is elimination of the territory one possible  
2 outcome of that plan?

3 A. No.

4 Q. Prior to the decision to remove the horses in the  
5 summer of 2005, did the Forest Service undertake any study  
6 under the National Environmental Protection Act under NEPA  
7 with respect to the horses?

8 A. No.

9 Q. You mentioned earlier, and we reviewed in tab  
10 nine, the recommendation to close the Heber territory in  
11 1993?

12 A. Yes.

13 Q. Was the territory actually ever officially closed?

14 A. Not according to the information that we received  
15 later from our regional office.

16 The decision was based upon direction that's found  
17 in Forest Service manual which states that a forest  
18 supervisor can remove a territory, and that particular  
19 wording should have been removed sometime ago according to  
20 the regional office, but it never was.

21 Q. Is it your understanding, however, that from 1993  
22 on, the Forest Service internally considered the territory  
23 to be closed?

24 A. Correct.

25 Q. And by Forest Service we're referring to the

1 Apache-Sitgreaves Forest Service?

2 A. And the regional office.

3 Q. And the regional office as well?

4 A. Because that was sent to the regional office.

5 MR. MERRILL: I don't have any further questions.

6 MR. PATRICK: I've just got one or two.

7

8 E X A M I N A T I O N

9 BY MR. PATRICK:

10 Q. Ms. Bumpus, plaintiff's counsel asked you several  
11 questions about documents contained in a project record  
12 versus the administrative record.

13 Do you recall that general line of questioning?

14 A. Yes, I do.

15 Q. Then he further asked you whether or not to your  
16 knowledge documents in the administrative record, but  
17 outside of the project record, were relied upon for purposes  
18 of the 2005 horse removal decision.

19 Do you recall that question?

20 A. I do.

21 Q. And I think you said to your knowledge those  
22 documents in the administrative record but not in the  
23 project record were not relied upon by the Forest for  
24 purposes of the removal decision?

25 A. I did.

1           Q.    By that statement, do you mean to suggest that  
2 Forest Service personnel in the chain recommending up to  
3 Ms. Zieroth what to do with the horses, are you saying that  
4 those people would not, to your knowledge, have had any  
5 understanding of those non-project record documents?

6           A.    No, I'm not suggesting that.

7                    I'm suggesting that there was not a relationship  
8 between the territory and the wild horses and the activity  
9 that we were going to take with removal of feral horses.

10          Q.    I guess my question specifically is, is it  
11 possible that people making recommendations up to  
12 Ms. Zieroth knew of those non-project records about which  
13 you testified as part of their rationale for making their  
14 recommendations on the removal decision?

15                   MR. MERRILL:  Objection.  Foundation.

16                   THE WITNESS:  I believe that the majority of the  
17 information that is in the project record, minus the  
18 newspaper articles, is knowledge that the district ranger on  
19 the district and the range staff on the district were aware  
20 of.

21                   They did not believe that that had any influence  
22 on the removal of feral horses from the Rodeo-Chediski fire  
23 area.

24                   They were unrelated.

25                   We by all -- all the information that we had

1 indicated that there were no wild horses on the territory,  
2 and then it had been removed, and so, therefore, why would  
3 we consider wild horses when there were no longer any wild  
4 horses on the territory.

5 MR. PATRICK: I have nothing further.

6 MR. MERRILL: Thank you for your time here today.

7 MR. PATRICK: We'll read and sign.

8 (Whereupon, the deposition concluded at  
9 12:47 p.m.)

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DEBORAH BUMPUS

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) ss.

3 BE IT KNOWN that the foregoing deposition was  
4 taken before me, Marty Herder, a Certified Court Reporter,  
5 CCR No. 50162, State of Arizona; that the witness before  
6 testifying was duly sworn by me to testify to the whole  
7 truth; that the questions propounded to the witness and the  
8 answers of the witness thereto were reduced to typewriting  
9 under my direction; that the witness elected to read and  
10 sign the deposition transcript; that the foregoing 74 pages  
11 constitute a true and accurate transcript of all proceedings  
12 had upon the taking of said deposition, all done to the best  
13 of my skill and ability.

14 I FURTHER CERTIFY that I am in no way related to  
15 any of the parties hereto, nor am I in any way interested in  
16 the outcome hereof.

17 DATED at Chandler, Arizona, this \_\_\_\_ day of  
18 October, 2006.

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\_\_\_\_\_  
C. Martin Herder, CCR  
Certified Court Reporter  
Certificate No. 50162

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

In Defense of Animals, a non-profit organization; )  
the Animal Welfare Institute, a non-profit )  
organization; and the International Society for the )  
Protection of Mustangs and Burros, a non-profit )  
organization; Patricia Haight, an individual; )  
Richard Potts, an individual, )

Plaintiffs, )

vs. )

No. CV 05-2754 PHX-FJM

United States Government, Department of )  
Agriculture, Ann M. Veneman as acting United )  
States, Secretary of Agriculture; United States )  
Forest Service; Elaine J. Zieroth, as the acting )  
United States Forest Supervisor, )

Defendants. )

CERTIFICATION OF ADMINISTRATIVE RECORD


1. I am currently employed by the United States Department of Agriculture, Forest Service, as the Ecosystem Management Staff Officer on the Apache-Sitgreaves National Forests and have held this position for 3 years. In this capacity, I am the custodian of the Administrative Record assembled for the July 2005 Bid Solicitation, related to capturing and relocating trespass horses on the Apache-Sitgreaves National Forests, which is the subject of this litigation.

EXHIBIT # 2  
Bumpus

2. Based on my official knowledge and information, I hereby certify that the Administrative Record for the issues identified in Plaintiffs' Complaint, consist of the documents contained in 1 three-ring binder. The documents accompanying this declaration are accurate copies and comprise the complete Administrative Record for this litigation. The Administrative Record documents are identified in the attached index.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of April 2006.

  
DEB BUMPUS  
Ecosystem Management Staff Officer  
Apache-Sitgreaves National Forests  
309 South Mountain Ave.  
Springerville, AZ 85938  
(928) 333-6220

**In Defense of Animals, et al. v. United States Government, et al.**  
**CIV 05-2754 PHX-FJM**  
**Administrative Record**

Doc. #	Date	Author	Addressee	Description
1	09/04/1973	W.R. Fallis, R-3 Asst. Reg. Forester	Arizona Forest Supervisors	Cooperative Agreement in Implementation and Administrations of the 1971 Wild Free-Roaming Horse and Burro Act
2	01/15/1974	J.S. Tixier Forest Supervisor, Sitgreaves NF	Regional Forester, USDA Forest Service R-3	Letter submitting information on Horse and Burro Territory, including map.
3	11/04/1974	W.R. Fallis, Director Range Management	Ms. Jeanne C. Raudenbush	Letter transmitting reports of wild horses and burros as of December 1973; #2 is the attached A-S report and map.
4	1987	Apache-Sitgreaves National Forests Plan	District Files	Excerpt from Forest Plan, Page 166 with standard and guideline to "maintain existing wild horse territory and herd"
5	6/1/89	Nick McDonough/Forest Supervisor	District Files	Range Management Plan for the Buckskin, Gentry and Heber-Mud Tank Allotments - item II (D), regarding trespass horses.
6	1991	Heber Ranger District	District Files	Wild and Free Roaming Horses on Public Lands Report
7	01/31/1991	Region 3 Manual Supplement 2200-91-1	District Files	Cooperative Agreement on Estray Livestock State of New Mexico, US Forest Service, US BLM
8	1992	United States Department of the Interior, United States Department of Agriculture	Congress	Ninth Report to Congress on the Administration of the Wild Free-Roaming Horse and Burro Act
9	06/21/1993	Kathleen Klein, District Ranger, Heber Ranger District	John Bedell, Forest Supervisor	Memo: Territory Withdrawal Recommendation
10	07/12/1993	John Bedell,	Kathleen Klein	Letter regarding Wild Horse Territory Removal
11	02/18/1999	Katherine A. Meyer	FOIA Officer, BLM and FOIA Officer, FS	FOIA Request regarding wild horses and burros
12	01/24/2003	WO FSM Manual Amendment	District Files	FSM 2200, Range Management, Chapter 2260 - Wild Free-Roaming Horses and Burros including R-3 supplement 1/31/91
13	06/12/2003	Kendell Hughes, Black Mesa District Range Cons.	Gene Onken, FS R3 Invasive Plants Program Manager	Email responding to questions about the history of the Heber Wild Horse Territory

**In Defense of Animals, et al. v. United States Government, et al.**  
**CIV 05-2754 PHX-FJM**  
**Administrative Record**

Doc. #	Date	Author	Addressee	Description
14	2004	Infrastructure report	District Files	Populations in 2004 of wild horses in Heber Territory
15	01/20/2004	Gene Onken	Kendell Hughes	Clarifications and information concerning 6/12/03 email
16	09/07/04	AZG&FD, Birkland, Halama, Conrad	District Files	AZ Game and Fish Department Elk Survey records for GMU 3C showing # of horses seen during survey
17	09/08/04	AZG&FD, Barber, Schahn, Cagle	District Files	AZ Game and Fish Department Elk Survey records for GMU 3C showing # of horses seen during survey
18	01/13/05	AZGFD, Birkeland, Cagle, Halama	District Files	AZ Game and Fish Department Deer-Elk Survey records for GMU 3C showing # of horses seen during survey
19	01/14/05	AZGFD, Birkeland, Cagle, Halama	District Files	AZ Game and Fish Department Deer-Elk Survey records for GMU 3C showing # of horses seen during survey
20	4/19/2005	Randall Chavez, Lakeside District Range Conservationist	Eastern Arizona Counties Resource Advisory Committee	Proposal, AS-33, Removal of feral horses from Rodeo-Chediski Fire Area.
21	05/05/2005	Arizona State Legislature	District Files	Arizona Revised Statutes 3-1331 through 1337; 3-1339 through 1349 (regarding equine inspections, certificates, transport,)
21a				ARS 3-1331. Inspection required; powers and duties of livestock officers
21b				ARS 3-1332. Method, place and time of inspecting livestock
21c				ARS 3-1333. Record of inspection
21d				ARS 3-1334. Inspection as to ownership of livestock
21e				ARS 3-1335. Certificate of inspection; delivery
21f				ARS 3-1336. Inspection of livestock to be slaughtered, sold, or transported; fee; violation; classification
21g				ARS 3-1337. Service charge and inspection fee; self-inspection; civil penalties
21h				ARS 3-1339. Mobile slaughtering units; custom slaughtering; brand inspections
21i				ARS 3-1340. Unbranded livestock kept in close confinement; shipment, sale and inspection
21j				ARS 3-1341. Transportation of livestock by person without certificate of inspection, validated auction invoice or bill of sale; violation; classification

**In Defense of Animals, et al. v. United States Government, et al.**  
**CIV 05-2754 PHX-FJM**  
**Administrative Record**

Doc. #	Date	Author	Addressee	Description
21k				ARS 3-1342. Alteration of certificate or record of inspection; classification
21l				ARS 3-1343. Substitution of animals after issuance of certificate of inspection; classification
21m				ARS 3-1344. Ownership and hauling certificates for equines; inspection; exemption; cancellation; fees
21n				ARS 3-1345. Transfer or issuance of ownership and hauling certificates; fees
21o				ARS 3-1345.01. Equine; inspection fund
21p				ARS 3-1346. Seasonal inspection for exhibition livestock; fee
21q				ARS 3-1347. Violation; classification
21r				ARS 3-1348. Equine trader permit
21s				ARS 3-1349: Inventory and monthly report of equine traders
22	05/26/2005	Elaine Zieroth	Dr. Phil Blair, State Veterinarian, AZ Dept of Agriculture	Letter regarding removal of trespass horses from National Forest and desire to comply with state laws governing process
23	06/01/2005	Phil A. Blair DVM	Elaine Zieroth	Letter documenting state concurrence with horse removal process; states letter of intent conforms to statute, contract not enclosed
24	06/13/2005	Elaine Zieroth	Dallas Massey, White Mtn Apache Tribal Chairman	Letter to White Mountain Apache Tribe notifying them of our intent to remove trespass horses
25	6/13/2005	Randall Chavez	Warren Abbott- Contracting Officer	Document: Request for contract Contract Action and Procurement Request No. 9507
26	July 2005	Patricia Haight	Bob Dyson, A-S Public Affairs Staff Officer	Newspaper Article: "Arizona Congressmen Grijalva and Hayworth Show Repeated Commitment to Protecting Horses" (they voted to deny fed. funds to slaughterhouses)
27	07/06/2005	Elaine Zieroth	Joe Wager	Letter regarding FS plans to remove trespass horses on Lakeside and Heber areas
28	07/06/2005	Elaine Zieroth	Public Posting	Notice of Intent to Impound Unauthorized Livestock
29	07/11/2005	Joe Wager	Elaine Zieroth	Letter of concern regarding horses to be removed from forest going to Holbrook auction, and article on unwanted horses.

**In Defense of Animals, et al. v. United States Government, et al.**  
**CIV 05-2754 PHX-FJM**  
**Administrative Record**

Doc. #	Date	Author	Addressee	Description
30	07/12/2005	Patricia Haight, PhD, SW Reg. Dir. Defense of Animals	Senator John McCain	Letter expressing concern with FS plans to remove horses from Sitgreaves National Forest
31	07/13/2005	Senator John McCain	Emma Carroll, FS Congressional Liaison	Letter asking for a response to letter from Patricia Haight
32	7/15/2005	Tina Sorenson, Lakeside RD Resource Assistant	Randall Chavez, Kendell Hughes	e-mail of the public postings of notice of Intent to Impound Unauthorized Livestock
33	7/15/2005	Kendell Hughes	Randall Chavez	e-mail of additional public postings of notice of Intent to Impound Unauthorized Livestock
34	07/25/2005	Joe Wager	Elaine Zieroth	Letter regarding decision not to bid on trespass horse removal contract
35	07/25/2005	Elaine Zieroth	Mr. Dallas Massey, Tribal Chairman	Letter to tribe enclosing impoundment notice and encouraging the tribe to also post the notice
36	07/26/2005	Elaine Zieroth	Dr. Patricia Haight, PhD	Letter responding to Dr. Haight's 7/6/05 letter to Senator McCain
37	07/29/2005	Delia and Jack McCormick, Animal Defense Council, Animal Welfare Institute, The National Horse Protection Coalition, In Defense of Animals, Internat'l Soc. for the Protection of Mustangs and Wild Burros	Elaine Zorathor (sp.) Forest Supervisor	Letter asking the US Forest Service to stop plans to gather horses
38	8/12/2005	John and Nancy Teets	Elaine Zieroth	Letter in support of 7/29/05 letter requesting a stop to soliciting for a contract to gather the horses
39	8/17/2005	Gene Onken	Elaine Zieroth	FAX: notes provided to Ralph Giffen, Asst Dir. Rangelands Mgt, to use in drafting a response to Sen. McCain Inquiry.

In Defense of Animals, et al. v. United States Government, et al.  
 CIV 05-2754 PHX-FJM  
 Administrative Record

Doc. #	Date	Author	Addressee	Description
40	8/19/2005	Gene Onken	Toni Strauss, R4 Wild Horse & Burro Spec, USFS	E-mails requesting status of Heber Territory, and response by Gene. Note on page four of email is an excerpt of 92-95 report to congress that population is managed at 0, and supports that current horses are feral and not wild
41	8/23/2005	Patricia Haight, PhD	Warren Abbott	Memorandum of a call wanting information on cattle impound
42	8/23/2005	Patricia Haight, Ph.D /In Defense of Animals	Elaine Zieroth	Letter- FOIA request for information on contracts awarded to remove horses.
43	8/24/2005	Elaine Zieroth	Patricia Haight, PhD	Fax - response to FOIA, explaining where the horse gather contract information is located on the internet, and how to get it
44	8/25/2005	Joe Wager	Elaine Zieroth	Letter - contradicting a definition within a July 6 <sup>th</sup> letter, and providing incidental historical information on wild horses
45	8/26/2005	Debra Sirower -Bryan Cave LLP	Elaine Zieroth	Fax and letter Re: Removal of 400 Wild Horses from Heber Wild Horse Territory Apache-Sitgreaves Forests, Law Firm Retained
46	8/26/2005	Wild Free-Roaming Horse and Burro Act	District Files	"1971 Act" from the Internet
47	8/26/2005	BLM-History of the Program -internet article	District Files	Bureau of Land Management's "National Wild Horse and Burro Program"
48	8/29/2005	Washington Office - Forest Service	Senator John McCain	Response notes- Congressional Inquiry by Senator John McCain
49	8/30/2005	USDA Forest Service; Bob Dyson	Local Media	News Release- Un-authorized horses to be removed from the National Forest
50	8/31/2005	USDA Forest Service; Bob Dyson	Local Media	News Release- Un-authorized horses to be removed from the National Forest
51	8/31/2005	Debra A. Sirower- Bryan Cave attorney	Elaine Zieroth	Fax and letter- wanting documentation on contract extension, etc
52	9/1/2005	Deb Bumpus	Kendell Hughes Randall Chavez	E-mails Re: contacting the Sale Barn; also e-mails between Gene Onken and Jo Baeza concerning potential Spanish mustang descendants among stray horses
53	9/1/2005	James W Payne, USFW R3 Public Affairs, Reg. Media Officer	Elaine Zieroth, Deb Bumpus, Robert Dyson,	E-mail with Julianne French's message disputing feral horse designation and about her visits with Congressman Kolbe, Senators Kyl and McCain.
54	9/1/2005	Deb Bumpus	Kendell Hughes Randall Chavez	e-mail - Deb's discussion with Tim Kessay from Corizzo Livestock Association, who is interested in seeing the horses

In Defense of Animals, et al. v. United States Government, et al.  
 CIV 05-2754 PHX-FJM  
 Administrative Record

Doc. #	Date	Author	Addressee	Description
55	9/1/2005	Deb Bumpus	Kendell Hughes Randall Chavez	E-mails with message from In Defense of Animals message board about horses, seeking funds
56	9/2/2005	Kathleen Klein	Kendell Hughes	E-mails regarding press release
57	9/2/2005	DenverPost.com	District Files	News article on Wild Horse herd on W. Slope Range
58	9/2/2005	Pine Graphics Weekly	District Files	News article: Unauthorized Horses to be Removed from the National Forest
59	9/2/2005	Debra Sirower -Bryan Cave LLP	Elaine Zieroth	FOIA request for information on what investigations or reports does the FS to base their claim that all of the horses are feral and not wild
60	9/3/2005	Mary Jo Pitzl/Azcentral.com	District Files	Internet news article- regarding animal groups trying to halt roundup of horses on forest land.
61	9/6/2005	AZGFD, Halama, Schahn, Birkeland,	District Files	AZ Game and Fish Department Deer-Elk Survey records for GMU 3C showing # of horses seen during survey
62	9/6/2005	Elaine Zieroth	Dianne Douglas, public person	Email response to Dianne's concerns regarding the horses
63	9/6/2005	Steve Spangle	Dianne Douglas	Email response to Dianne's concerns regarding the horses, referring her to the Forest Service
64	9/6/2005	Kendell Hughes	Elaine Zieroth	Email - response to Elaine's request for FOIA information and attached Fax which includes the Range Management Plan for the area. Also mentions discussion with Tribal range rep on Tribal brands.
65	9/6/2005	Mara Reyes/White Mtn. Independent	District Files	News article-Rambling horses causing damage
66	9/7/2005	James Payne	Elaine Zieroth, Deb Bumpus, Robert Dyson, Kate Klein	e-mail sending a copy of Mary Jo Pitzl's Arizona Republic article on animal groups trying to halt roundup.
67	9/7/2005	Elaine Zieroth	Debra Sirower- Byran Cave LLP	Letter in response to 8/26, 8/31, and 9/2/05 letters
68	9/7/2005	Pioneer - Navajo County	District Files	News article from local newspaper
69	9/8/2005	Debra Sirower - Bryan Cave LLP	Elaine Zieroth	Fax and letter advising that they will seek temporary restraining order unless FS delay award indefinitely
70	9/16/2005	Kathleen Klein	Kendell Hughes	e-mail with news article from the Payson Roundup



**In Defense of Animals, et al. v. United States Government, et al.**  
**CIV 05-2754 PHX-FJM**  
**Administrative Record**

Doc. #	Date	Author	Addressee	Description
71	9/16/2005	Bailey Williams	Mailroom R3 Apache-Sitgreaves District Files	e-mail - encouraging the re-evaluation of the A-S horses as wild or feral
72	9/19/2005	Arthur Rotstein/ Casper Star Tribune		News article
73	9/22/2005	Deryl Jevons for Elaine Zieroth	Patricia Haight, Ph.D./In Defense of Animals	Letter- Response to FOIA request of 8/23/05 with "9 <sup>th</sup> Report .. on Admin. of Wild Free-roaming Horse and Buro Act; and excerpts of FSH5309.11 (law enf. Hb); R3 suppl to FSH 2200; and Region's 1974 Report.
74	9/27/2005	Jo Baeza/The Independent	District Files	News article- Congress moves to stop horse slaughter
75	9/29/2005	Deryl Jevons for Elaine Zieroth	Debra Sirower - Bryan Cave LLP	Letter- response to FOIA: contract cancelled, and page 2 of 9/7/2005 letter.
76	10/8/2005	Gene Onken	Kendell Hughes	Fax submitting requested information
76a				page 1 same as #15, with Infra database entry correction for 2004 for R3 Horse territories (pg2)
76b				Pages 3-5: the 14 <sup>th</sup> biennial wild horse and burro report to congress- Heber Territory not even listed,
76c				pages 6-10: the 13 <sup>th</sup> biennial Report to Congress on Wild Horses and Burros (FY 98&99) population "0".
76d				Pages 11-12: the 12 <sup>th</sup> biennial report to Congress on Wild Horses and Burros (FY 96&97) pop. "0"
76e				Page 13: a report that George Martinez filed in 1998
76f				Pages 14-15: letter submitting correction to 10 <sup>th</sup> biennial report
77	10/11/2005	Ralph Giffen, USFS Asst Dir, Rangelands Management	Kendell Hughes	Fax - with excerpt from The 10 <sup>th</sup> and 11 <sup>th</sup> Report to Congress on the Administration of the Wild Free-Roaming Horses and Burros Act for Fiscal years 1992- 1995
78	10/11/2005	Patricia Haight, Ph.D./In Defense of Animals	White Mtn. Independent	Letter to the editor. Horses are not "illegally" trespassing
79	10/13/05	Ed Collins, Lakeside District Ranger /Randall Chavez, Lakeside Range Cons	Deb Bumpus	Fax- list of coordination meetings with the tribe in which discussions of feral horses and fences occurred.

In Defense of Animals, et al. v. United States Government, et al.  
 CIV 05-2754 PHX-FJM  
 Administrative Record

Doc. #	Date	Author	Addressee	Description
80	10/14/05	Patricia Haight, PhD	Bob Dyson	Freedom of Information Act request (catalogued by A-S as A-S-2006-002) requesting info on all grazing leases and capacity
81	10/20/05	Gene Onken	Deb Bumpus	Heber Territory horse population information 1974-2004
82	10/20/2005	United States Department of Agriculture	Files	Cultural Resources Management. The Early Days: A Sourcebook of Southwestern Region History, Book 2
83	11/15/05	Elaine Zieroth	Patricia Haight, PhD	Response to FOIA, Control No. A-S-2006-002 Spreadsheets with requested info on all grazing leases; and "Considerations Concerning Stocking Rates" document

1 PAUL K. CHARLTON  
United States Attorney  
District of Arizona  
2  
3 RICHARD G. PATRICK  
Assistant U.S. Attorney  
Arizona State Bar No. 5148  
Two Renaissance Square  
4 40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
5 Telephone: (602) 514-7500  
Facsimile: (602) 514-7760  
E-Mail: [richard.patrick@usdoj.gov](mailto:richard.patrick@usdoj.gov)  
6

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 In Defense of Animals, et al.,  
10 Plaintiffs,  
11 v.  
12 United States Government, Department  
13 of Agriculture, et al.  
14 Defendants.

CIV-05-2754-PCT-FJM  
**DEFENDANTS' RULE 26 INITIAL  
DISCLOSURE STATEMENT**

15 Pursuant to Rule 26(a), Federal Rules of Civil Procedure, defendants submit the following  
16 Initial Disclosure Statement:

17 **A. Rule 26(a)(1)(A): individuals likely to have discoverable information that the**  
18 **United States may use to support its claims or defenses:**  
19

20 **Elaine Zieroth, Forest Supervisor**  
Apache-Sitgreaves National Forests  
21 309 South Mountain Ave.  
Springerville, AZ 85938  
22 (520) 333-4301  
23

24 **CAN ATTEST TO:** decisions related to the Heber Territory post Rodeo-Chediski  
25 Fire from 2003 to present; approval for funding of feral horse gather contract

26 **John Bedell, Forest Supervisor (Retired), Apache-Sitgreaves National Forests**  
PO Box 15017  
27 Flagstaff, AZ 86011-5017  
28 928-639-0093

EXHIBIT # 1  
*Bumpus*

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**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Deb Bumpus, Ecosystem Staff Officer**  
Apache-Sitgreaves National Forest  
309 South Mountain Ave.  
Springerville, AZ 85938  
(520) 333-6220

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory post-2003; information on associated allotments

**Michael Rising, Ecosystem Management Staff Officer (Retired), Apache-Sitgreaves National Forests**  
PO Box General Delivery  
Nutrioso, AZ 85932  
928-339-4349

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Kate Klein, District Ranger, Black Mesa Ranger District**  
PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation

**Ed Collins, District Ranger, Lakeside Ranger District**  
2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** : decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation; draft MOU with White Mtn. Apache Tribe for fence replacement, repair, and maintenance

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**Kendell Hughes, Range Staff, Black Mesa Ranger District**  
PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

**Randall Chavez, Range Staff, Lakeside Ranger District**  
2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

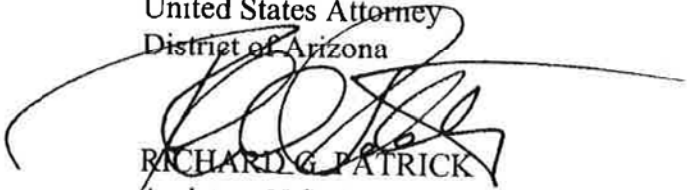
**Gene Onken, Invasive Plants and Planning, Regional Office**  
333 Broadway SE  
Albuquerque, NM 87102  
505-842-3227

**CAN ATTEST TO:** monitoring reports to Congress, historic reporting data for the Heber Wild Horse Territory; data on Region 3 Wild Horse Territory monitoring and reporting

**B. Rule 26(a)(1)(B): Documents**

See Administrative Record lodged and produced to plaintiffs this date.


Respectfully submitted this 21<sup>st</sup> day of April, 2006.

United States Attorney  
District of Arizona  
  
RICHARD G. PATRICK  
Assistant U.S. Attorney

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ORIGINAL mailed this 21<sup>st</sup> day of April, 2006 to:

Anthony W. Merrill  
Christine Elizabeth Broucek  
BRYAN CAVE LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406

  
\_\_\_\_\_  
Office of the U.S. Attorney

DISK

**AZ Litigation Support, LLC**  
(480) 481-0649

---

**Deposition of:**  
**Kathleen Klein, Deborah Bumpus & Edward Collins**

**October 13, 2006**  
**In Defense of Animals vs US Government**



**K**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the )  
ANIMAL WELFARE INSTITUTE, a )  
non-profit organization; and )  
the INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS and )  
BURROS, a non-profit )  
organization; PATRICIA HAIGHT, )  
an individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

No. CV-05-2754-PHX-FJM

UNITED STATES GOVERNMENT )  
DEPARTMENT OF AGRICULTURE, ANN )  
M. VENEMAN as acting UNITED )  
STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

THE DEPOSITION OF EDWARD W. COLLINS

Phoenix, Arizona  
October 13, 2006  
10:34 a.m.

(ORIGINAL)  
PREPARED FOR:  
DISTRICT COURT

REPORTED BY:  
Marty Herder, CCR  
Certified Court Reporter  
CCR No. 50162

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I N D E X

<u>Examination By:</u>	<u>Page:</u>
Mr. Merrill	4

E X H I B I T S

No. 1	Map entitled Heber Wild Horse Plan Black Mesa Ranger District	12
No. 2	Defendant's Rule 26 Initial Disclosure Statement	15

1 THE DEPOSITION OF EDWARD W. COLLINS,  
2 Taken at 10:34 a.m., on October 13, 2006 at the Law Offices  
3 of BRYAN CAVE LLP, Two North Central Avenue, Suite 2200,  
4 Phoenix, Arizona, 85004, before Marty Herder, Certified  
5 Court Reporter, pursuant to the Rules of Civil Procedure.

6

7 **COUNSEL APPEARING:**8 For the Plaintiffs:

9 BRYAN CAVE LLP  
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12

13 For the Defendants:

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Phoenix, Arizona  
October 13, 2006  
10:34 a.m.

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EDWARD W. COLLINS,  
called as a witness herein, having been first duly sworn,  
was examined and testified as follows:

E X A M I N A T I O N

BY MR. MERRILL:

Q. Would you please state your full name for the record?

MR. PATRICK: Mr. Merrill, if I may, I've been putting a statement on each deposition that the defendants maintain that discovery should not be permitted in a case of this nature. We appreciate the District Court's ruling, accordingly we'll obviously participate, but we want to make our objection known for purposes of each and every deposition.

MR. MERRILL: Okay. And if I could have the record reflect that no motion has been filed to quash this notice of deposition.

MR. PATRICK: Correct.

BY MR. MERRILL:

Q. Would you please state your full name for the record, sir?

1           A.    Edward, middle initial is W for William, and last  
2 name Collins, C-O-L-L-I-N-S.

3           Q.    Mr. Collins, my name is Anthony Merrill.  I'm an  
4 attorney representing the plaintiffs in this matter  
5 concerning the dispute regarding the status of certain  
6 horses located on the Apache-Sitgreaves forest.

7                    Have you ever had your deposition taken before?

8           A.    No, I have not.

9           Q.    I'd like to go over some of the ground rules here.  
10                   As you're probably aware, the testimony that  
11 you're about to give today is under oath.  The court  
12 reporter has sworn you in just like as if you would testify  
13 in a court of law.

14                   It's a question and answer format.

15                   I'm going to be asking the questions, which might  
16 be unfortunate for you.

17                   If you don't understand a question, it's more than  
18 likely because I asked a bad question.

19                   I appreciate that if you don't understand a  
20 question, that you don't answer it, but rather ask me to  
21 rephrase or say that you don't understand.

22           A.    All right.

23           Q.    If you do answer a question, however, I'm going to  
24 assume that you understood it; is that fair?

25           A.    That's fair.

1 Q. As I stated, this is on the record, so in order to  
2 make the record clear, we need yes or no answers or verbal  
3 responses as opposed to head nods or other non-verbal  
4 responses.

5 A. I understand.

6 Q. I don't think we'll be very long, but if you do  
7 need a break, just ask me, and we'll make every effort to  
8 accommodate you.

9 A. Okay.

10 Q. Are you presently employed?

11 A. I am.

12 Q. What is your present occupation?

13 A. I'm district ranger, working for the U.S. Forest  
14 Service at Lakeside Ranger District.

15 Q. And how long have you been employed in this  
16 capacity?

17 A. Nineteen years at the current location.

18 Q. And what are the job duties of a district ranger?

19 A. I'm responsible for everything that occurs on the  
20 national forest. Legal and illegal. We get blamed for all  
21 the trespasses that other people cause, but I'm ultimately  
22 responsible for the management of the 265,000 acres under my  
23 responsibility.

24 Q. And this is limited to the Lakeside Ranger  
25 District?

1 A. Correct.

2 Q. Again, the size of that district?

3 A. 265,000 acres.

4 Q. How much of your time is actually spent on the  
5 ground in the forest as opposed to in an office?

6 A. It varies with the time of the year. But if I  
7 were to average the entire year together, I spend about  
8 90 percent of the time in an office, meetings, phone,  
9 conferences, and so on, and about 10 percent out in the  
10 field.

11 Q. Is your office located in the boundaries of the  
12 Lakeside Ranger District?

13 A. It is.

14 Q. Where is that?

15 A. In the community of Pinetop Lakeside.

16 Q. And who do you report to? Who's your direct  
17 supervisor?

18 A. My supervisor is Elaine Zieroth for supervisor of  
19 the Apache-Sitgreaves. See Corrections/CMH

20 Q. How big is the Apache-Sitgreaves forest  
21 approximately?

22 A. 2.2 million acres about.

23 Q. How many district rangers are there within that  
24 2.2 million acres?

25 A. Five.



1 Q. Other than the Lakeside, what are the other names  
2 of the other districts?

3 A. Black Mesa Ranger District to the west. To the  
4 east is Springerville, Alpine, and Clifton.

5 Q. And how many people do you supervise in your  
6 capacity as district ranger?

7 A. Again, that depends on the time of the year.

8 I have a workforce of about 30 or 31 full time.

9 During the summer that will increase to between  
10 55 and 65, depending on the severity of the fire season and  
11 the project work that we have from it.

12 Q. And of the 30 to 31 full-time employees,  
13 approximately how many of those are office or administrative  
14 personnel?

15 A. Four.

16 Q. And the other 26, are they field rangers?

17 A. They're a mixture of staff, officers, substaff,  
18 engine captains, equipment operators, and the like.

19 Q. And do you supervise Kendell Hughes?

20 A. No, I do not.

21 Q. Does Kendell Hughes work in the Lakeside Ranger  
22 District?

23 A. He does not.

24 Q. And you supervise Randall Chavez?

25 A. Yes.

1 Q. And does he work in the Lakeside Ranger District?

2 A. He does.

3 Q. His position is staff ranger or range staff?

4 A. He's what we call operations team leader.

5 Q. And what does an operations team leader do?

6 A. He's responsible for overseeing the administration  
7 of all the grazing permits on the district, all the timber  
8 sales, all the wildlife projects that are under way, as well  
9 as all the follow-up activities after timber thinnings, like  
10 tree planting, pre-commercial tree thinning, and the like.

11 Q. When you say wildlife projects, would that put  
12 Mr. Chavez kind of overseeing the dispute currently at issue  
13 regarding these horses? Would that fall under wildlife  
14 projects?

15 A. It would not. It would fall more under grazing  
16 management.

17 Q. That would still be Mr. Chavez?

18 A. Correct.

19 Q. Is it fair to state that Mr. Chavez is kind of the  
20 person on the ground that reports to you regarding this  
21 litigation about the horses?

22 A. That's correct.

23 Q. You've stated you've been at your current position  
24 for 19 years. What did you do prior to that?

25 A. Prior to that I was a staff officer on two

1 districts of the Santa Fe National Forest in north central  
2 New Mexico, over a 12-year span.

3           Before that I was a staff officer in the  
4 Verde Valley, a ranger district called Beaver Creek, for a  
5 little over a year.

6           Prior to that, I was two and a half years in the  
7 timber department at a place called Happy Jack, Arizona,  
8 also in the Coconino National Forest.

9           Then I had three assignments while I was going to  
10 college, temporary jobs with the Forest Service. Two in  
11 Southern California on a hot shot firefighting crew, and  
12 then one up in Idaho, as what's called a GDA, general  
13 district assistant.

14           Q.   And if we go back, when you were a staff officer  
15 in Valley Verde --

16           A.   No, a staff officer in Camp Verde, just north of  
17 here.

18           Q.   I apologize.

19                   In any of your various employments with the Forest  
20 Service, have you received any specific training with regard  
21 to horses?

22           A.   Just how to ride them.

23           Q.   So these would be domestic horses?

24           A.   That's correct.

25           Q.   And same question with respect to managing

1 wildlife, have you had any experience managing wildlife on  
2 the forest?

3 A. Yeah. In the current job I am responsible for a  
4 whole department that deals with wildlife.

5 Q. And does the Forest Service define horses as  
6 wildlife?

7 A. I don't believe so.

8 Q. Do you know why?

9 A. No.

10 Q. Mr. Collins, do you have any academic degrees?

11 A. Yes.

12 Q. Can you please state what those are?

13 A. I have a bachelor of science in forest land  
14 management from Northern Arizona University.

15 Q. And when did you obtain that degree, sir?

16 A. 1971.

17 Q. And have you taken any specialized training or  
18 certification courses within the Forest Service?

19 A. Numerous, over the years.

20 Q. Have any of those had to do with the management of  
21 wildlife?

22 A. Yes. Endangered Species Act training.

23 Q. Have you ever had any training with respect to the  
24 Wild Horse and Burro Act of 1971?

25 A. No.

1 Q. If you could for a moment, I'd like you to help me  
2 take a look at this map here.

3 A. Okay.

4 MR. MERRILL: Richard, I believe you produced this  
5 map to Christine; is that correct?

6 MR. PATRICK: Yes.

7 I don't think it was marked in the prior  
8 depositions.

9 It was referred to, but I don't think it was  
10 formerly marked.

11 MR. MERRILL: I would like to formally mark it as  
12 Exhibit 1. I don't have a copy of it. I would like to  
13 maintain it and get you a copy later.

14 MR. PATRICK: I have a copy.

15 MR. MERRILL: Mark this as Exhibit 1.

16 (Deposition Exhibit No. 1 was marked for  
17 identification by the reporter.)

18 BY MR. MERRILL:

19 Q. Exhibit 1 has been marked. It's a document, a map  
20 entitled Heber Wild Horse Plan Black Mesa Ranger District.

21 Mr. Collins, is the Lakeside Ranger District  
22 reflected on this map?

23 A. No, it's not.

24 Q. Have you ever seen this map before?

25 A. I have not.

1 Q. Are you familiar enough with the area represented  
2 in this map to point out landmarks and that sort of thing,  
3 if I were to ask you?

4 A. Only as a visitor.

5 For example, this morning on the drive down, the  
6 entire north boundary is right along Highway 260.

7 So I obviously went ahead and looked at it as I  
8 was driving down this morning.

9 Q. Fair enough.

10 Do you know why this portion of the map is  
11 entitled winter pasture?

12 A. No, I don't.

13 Q. And the same thing with towards the bottom half,  
14 summer pasture?

15 A. I do not.

16 Q. My questions might be more appropriate for  
17 Ms. Klein.

18 Let's go ahead and fold this back up.

19 A. I have a forest map that reflects where that is in  
20 relation to the Lakeside Ranger District. And it's still  
21 quite a ways west of the national forest that I'm  
22 responsible for.

23 MR. MERRILL: Do you mind if we mark it?

24 MR. PATRICK: There are maps in there.

25 THE WITNESS: If there is an Apache-Sitgreaves

1 National Forest map, that's the one we want to look at.

2 MR. PATRICK: I believe there is.

3 There's a map in there someplace.

4 I apologize. I don't have it memorized.

5 MR. MERRILL: Off the record for a second.

6 (Brief recess taken.)

7 BY MR. MERRILL:

8 Q. Mr. Collins, I'd like to show you what has been  
9 marked as Exhibit 1 to the deposition of Elaine Zieroth.

10 This has been submitted and certified as the  
11 administrative record in this matter.

12 Could you please turn to tab two for me, please.  
13 The second page of that document there.

14 Page 2 of tab two is a map entitled Heber Ranger  
15 District, Sitgreaves National Forest, Arizona, 1972.

16 Mr. Collins, have you ever seen this document  
17 before?

18 A. I have not.

19 Q. Mr. Collins, is the Lakeside Ranger District  
20 represented on this map?

21 A. It is not.

22 Q. Is the Heber wild horse territory represented on  
23 this map?

24 A. Yes.

25 Q. From the Heber wild horse territory, which

1 direction is the Lakeside Ranger District?

2 A. It would be to the right, or east, since the north  
3 is to the top of the map, approximately 18 to 20 miles.

4 Q. Thank you.

5 Mr. Collins, I'm handing to you a document  
6 entitled Defendant's Rule 26 Initial Disclosure Statement,  
7 which I would like to have marked as Exhibit 2 to this  
8 deposition.

9 (Deposition Exhibit No. 2 was marked for  
10 identification by the reporter.)

11 BY MR. MERRILL:

12 Q. Exhibit 2 has been marked as Defendant's Rule 26  
13 Initial Disclosure Statement.

14 Mr. Collins, have you ever seen this document  
15 before?

16 A. No, I have not.

17 Q. Mr. Collins, what did you do to prepare for your  
18 deposition here today?

19 A. I spoke with two of the three folks who were  
20 disposed(sic) recently. Elaine Zieroth and Randall Chavez.  
21 Primarily to get directions how to get down here.

22 Secondly I had about a 40-minute telephone call  
23 with Richard Patrick.

24 Q. Did you review any documents to prepare for your  
25 deposition here today?



1           A.    There's only one document I went ahead and looked  
2 at.   I'm not even sure it's in the record.

3                    It relates to meetings that the Forest Service had  
4 with BIA and White Mountain Apache tribal representatives, a  
5 document I went ahead and prepared.

6           Q.    Is this a handwritten document?

7           A.    Yes.

8           Q.    I believe we have that.

9                    Turning back to Exhibit 2 for a minute, on Page 2,  
10 do you see your name listed there?

11          A.    I do.

12          Q.    And the address listed there, is that correct?

13          A.    That is correct.

14          Q.    And could you read the paragraph below your  
15 address beginning with can attest to?

16          A.    Decisions related to the management of the Heber  
17 wild horse territory, issues with boundary fence  
18 maintenance, Rodeo-Chediski fire rehabilitation, draft MOU  
19 with White Mountain Apache Tribe for fence replacement,  
20 repair, and maintenance.

21          Q.    Mr. Collins, are you prepared to testify to each  
22 of those matters here today?

23          A.    All but the first one.

24          Q.    And why can't you testify to the first one?

25          A.    Because that territory is on an adjoining ranger

1 district, so I had no direct -- no dealings on any of that.

2 Q. Is it fair to say that you haven't made any  
3 decisions related to the management of the Heber wild horse  
4 territory?

5 A. That's correct.

6 Q. With regard to the second issue listed there on  
7 the boundary fence maintenance, what do you understand is  
8 the meaning of the term boundary fence?

9 A. As we define for this project, it's the fence  
10 between the White Mountain Apache and the national forest.

11 Q. Is that fence located within the Lakeside Ranger  
12 District?

13 A. A portion of it is.

14 Q. And the other portion is located on the  
15 reservation; would that be correct?

16 A. Actually the boundary fence covers a much larger  
17 area than that, so it's a fence that borders part of the  
18 Tonto National Forest, and, let me see, all ranger districts  
19 on the Apache-Sitgreaves. So it does border Black Mesa,  
20 Lakeside, Springerville, Alpine, and part of Clifton Ranger  
21 Districts as well.

22 Q. Does the boundary fence ever intersect or cross  
23 through the Heber wild horse territory?

24 A. According to the map you showed me earlier, no, it  
25 does not.

1 Q. That would be the map reflected in tab two of the  
2 administrative record?

3 A. That is correct.

4 Q. And within the Lakeside Ranger District, is the  
5 fence actually on public lands, Forest Service lands, or is  
6 it on reservation lands?

7 A. It's actually on reservation lands.

8 Q. Then, if it's on reservation land, does it fall  
9 under your jurisdiction to maintain the fence at all?

10 A. Not directly.

11 Q. So would it be fair to characterize your  
12 involvement as working with the White Mountain Apache Tribe  
13 with regard to the fence?

14 A. That's correct.

15 Q. So with respect to fence maintenance, do Forest  
16 Service employees or staff actually do any or perform any of  
17 the maintenance?

18 A. Since the Rodeo-Chediski wildfire, the answer is  
19 yes.

20 Q. What maintenance has been performed by the Forest  
21 Service?

22 A. It was primarily preventative maintenance.

23 The cutting down of dead trees that we thought  
24 would fall onto the fence and cause future breaks.

25 We could only do that on the national Forest

1 Service side of the fence, the north side of the fence,  
2 which was, how shall I phrase it, the more minor problem,  
3 because prevailing winds blow out of the south and  
4 southwest.

5 Q. Did the Forest Service, other than the  
6 preventative maintenance, did the Forest Service repair any  
7 of the fence?

8 A. If there was a break, and our crew went along  
9 cutting trees down, and a fence -- and a tree was across the  
10 fence, they went ahead and cut and patched that portion of  
11 the fence.

12 Q. Do you know how many times that was done?

13 A. Not with any accuracy.

14 During the summers of 2004 and 2005, we had a  
15 small crew of two people that that was their assignment over  
16 a three-month period, in addition to responding to fires.

17 Q. And what are the names of those two people?

18 A. That would be -- hold on.

19 They're two summer employees.

20 Ken Owens, and -- the last name, Chavez. First  
21 name -- I'm drawing a mental blank.

22 I'll think about it.

23 Q. But it's not Randall?

24 A. No, it's not Randall.

25 These are teachers during the year, and during the

1 summer months when they're off they come work for us  
2 temporarily.

3 Q. So they're not full time?

4 A. They're not full time.

5 Q. Are they teachers in Pinetop?

6 A. One is a teacher in Snowflake, and one is a  
7 teacher in the Show Low School District.

8 Q. And Mr. Owens, is he Show Low or Snowflake?

9 A. I can't remember.

See Corrections/CMH

10 I get the two confused.

11 Q. Fair enough.

12 Is there any documentation reflecting the work  
13 that Mr. Owens and Mr. Chavez did on the fence?

14 A. I don't believe so.

15 When you say documentation, no written  
16 documentation.

17 Q. Now, you said that if there was a tree that had  
18 fallen on a portion of the fence from Forest Service land  
19 they would move that tree?

20 A. They would cut out that segment on the fence and  
21 go to patch it.

22 Q. If there was a hole in the fence but no tree on  
23 it, would they patch that portion?

24 A. They would probably patch that portion, yeah.

25 Q. But you don't know for sure if they would? You

1 said probably?

2 A. I don't know with 100 percent certainty.

3 Q. When was the boundary fence originally  
4 constructed?

5 A. I don't have a clue.

6 Q. When you arrived in the Lakeside Ranger District  
7 19 years ago, was the fence in place?

8 A. It was.

9 Q. Could you briefly describe the fence for me, what  
10 it's made out of, kind of? Is it a chain link fence, wooden  
11 fence, barb wire fence?

12 A. Prior to the Rodeo-Chediski or after?

13 Q. Let's begin with prior.

14 A. The fence is primarily a five strand barb wire  
15 fence.

16 So all strands are made up of barb wire.

17 Most of the posts were metal, but most of the  
18 braces, and the braces that were constructed at every turn  
19 in the fence, and every gate on both sides of gates, and  
20 what's the length of wire, a spool of wire is a quarter mile  
21 in length, so whenever the wire ran out there would be  
22 another H brace. And they were made up of wood, and I'm not  
23 sure of the species. It would either be oak or alligator  
24 juniper.

25 Q. Do you know approximately how many gates are on

1 the Lakeside Ranger District?

2 A. Not without looking at the map.

3 Q. Would you say there's more than 20?

4 A. No -- are we talking a portion of the fence in the  
5 Rodeo-Chediski, or for the entire district boundary?

6 Q. The entire district boundary.

7 A. It would be more than 20.

8 Q. And the portion of the fence within the  
9 Rodeo-Chediski area?

10 A. Would be somewhere around six to ten.

11 Q. And what was the condition of the fence after the  
12 Rodeo-Chediski fire?

13 A. The fence was unserviceable.

14 Between the heat of the fire, all of the wire lost  
15 it's strength, and the damage caused by trees blowing over,  
16 there were many, many breaks in the fence.

17 Q. Is this the entire fence or just a portion of the  
18 fence?

19 A. The majority of the fence.

20 There were some shorter portions where the fire  
21 stayed on the ground, did not get in the tree tops, and that  
22 portion of the fence would have survived the fire.

23 Q. So is it your testimony that the fire impacted the  
24 majority of the fence?

25 A. That's correct.

1           Q.    So when you just said there are six to ten gates  
2 within the fire area and more than 20 outside the fire area,  
3 were those additional gates also impacted by the fire?

4           MR. PATRICK:  Let me object to form and  
5 foundation.

6                    Please, go ahead and answer.

7                    I have to do that for him.

8           THE WITNESS:  Okay.  The gates, some of the gates  
9 would have been destroyed in the fire.

10                   If the fire burned the wooden supports on both  
11 sides, then the swinging gate would be virtually useless  
12 because it wouldn't be firm.

13                   If was a Texas gate or a wire gate, oftentimes the  
14 braces in between to keep the wires separated were wood, and  
15 they could have burned.

16 BY MR. MERRILL:

17           Q.    Prior to the Rodeo-Chediski fire how high was the  
18 fence?

19           A.    I'd only be guessing, because I never went out and  
20 measured, but a five strand would be somewhere in the  
21 vicinity of 48 to 52 inches.

22                    But, again, I never measured it.

23           Q.    Were there any gaps or breaks in the fence prior  
24 to the Rodeo-Chediski fire?

25           A.    There are always trees.  There are always



1 maintenance needs on fences. Many of those maintenance  
2 needs caused by trees falling on the fence.

3 So the simple answer is, yes, there were some.

4 Q. And which entity, being the Forest Service or the  
5 reservation, closes or operates the gates in the fence?

6 A. Those are under the control of the reservation.

7 Q. And prior to the Rodeo-Chediski fire, were those  
8 gates always closed?

9 A. Most of the time.

10 Q. And why would those gates ever be open?

11 A. People that wanted to go visit a portion of the  
12 reservation would use the universal key, a bolt cutter, and  
13 drive on down and do what they were going to do, non-tribal  
14 members.

15 So occasional trespass would open gates.

16 The tribe would occasionally have projects where  
17 they had to gain access to the project site by crossing  
18 national forest lands. Sometimes they were good at closing  
19 the gate on the way out and sometimes they weren't.

20 Q. And prior to the -- the Rodeo-Chediski fire  
21 occurred summer of 2002?

22 A. That's correct.

23 Q. Prior to the Rodeo-Chediski fire, was it the  
24 reservation that maintained the fence?

25 A. That's correct.

1 Q. And --

2 A. But I need to add a clarification.

3 Q. Please.

4 A. And the clarification is, on the national forest  
5 side, those areas are also set aside for grazing, domestic  
6 livestock grazing. And the grazing permittees didn't always  
7 rely on the tribe to provide the fence maintenance, because  
8 they wanted to prevent their animals from drifting south.  
9 So they also provided some maintenance of the fence to make  
10 sure it turned their livestock back onto the national  
11 forest.

12 Q. And would these private livestock owners need a  
13 permit or would they do it on their own?

14 A. They do it on their own.

15 Q. So I'm assuming there's no record of this?

16 A. Not that I'm aware of.

17 Q. In your opinion did the reservation properly  
18 maintain the fence?

19 A. Pre-Rodeo-Chediski, I would say it was substantial  
20 compliance, if we were to have a contract.

21 Q. Has the since the Rodeo-Chediski fire has the  
22 fence been rebuilt?

23 A. Yes, it has.

24 Q. Who has rebuilt the fence?

25 A. The White Mountain Apache Tribe rebuilt the entire

1 portion on Lakeside -- on the south side of Lakeside Ranger  
2 District that was within the Rodeo-Chediski area.

3 Q. Was this in cooperation with the Forest Service?

4 A. Forest Service offered to cooperate, but the  
5 standard of fence that we suggested for that section, the  
6 tribe did not want our standard.

7 We would have required a more wildlife friendly  
8 fence, to where the bottom wire is smooth, and not barbed,  
9 so that a young deer and any antelope could cross underneath  
10 the fence without damage.

11 They insisted on a five strand barbed wire fence,  
12 and when they insisted on that standard we could not  
13 cooperate.

14 Q. And in rebuilding the fence, was it built in the  
15 same manner as prior to the fire? For example, they still  
16 used the metal poles, the five strands?

17 A. That's correct.

18 Q. Wooden braces?

19 A. Yes.

20 Some of the braces were reconstructed with metal,  
21 but the key braces, as I've driven that road along the  
22 fence, yeah, substantial amount of the braces are wood  
23 still.

24 Q. Let's move into the next subject on your  
25 disclosure statement, Rodeo-Chediski fire rehabilitation.

1           What efforts has the Forest Service undertaken to  
2 rehabilitate the forest after the fire?

3           A.   Well, smoke was still in the air. We put a team  
4 together that we called burned area emergency rehab team. <sup>See Corrections</sup> ~~rehab team~~ <sup>CMH</sup>

5                   We abbreviate it BAER, a BAER team.

6                   And that BAER team, in a very intense ten-day  
7 period, evaluate the areas that need to be treated, need  
8 some immediate treatment, and those areas that could be  
9 deferred until later.

10                  So the fire rehabilitation is to prevent damage  
11 from upcoming rain and snow melt efforts.

12                  Forest Service defines that as the summer rains  
13 that come in the months of July, August, and early September  
14 as being a series of events, but that first event.

15                  And then the following winter and the snow melt  
16 that would come from winter.

17                  So that team went ahead and identified the areas  
18 and the work to be done to try to stabilize the soils.

19                  And that work, when it was ultimately costed out  
20 in that nine-month period was about \$12 and a half million  
21 of work.

22                  It consisted primarily of seeding. Most of that  
23 from the air.

24                  So from fixed-wing aircraft.

25                  It consisted of applying straw in areas that had

1 been severely burned, so trees killed and needles consumed  
2 in the fire.

3           Some of that work was done on the ground. We  
4 initially tried to get it done by hand crews, 20-person hand  
5 crews, but the 2002 fire season was so intense we could not  
6 get access to those crews.

7           So most of that work was done via helicopter and  
8 dropping bales from the air.

9           We removed a number of culverts from roads to  
10 prevent the plugging of the culvert, the damming up of  
11 runoff behind the culvert, which could lead to a  
12 catastrophic failure and flooding down drainage.

13           There were a number of earthen stock tanks that we  
14 breached, because we did not want the failure of those  
15 earthen stock tanks to lead to a catastrophic flow down  
16 drainage.

17           We had to harden a number of sites.

18           By that I mean where we removed the culverts and  
19 those culverts crossed drainages, we converted the road to a  
20 low water crossing, applying gravel to prevent vehicles from  
21 getting stuck in the middle of those crossings.

22           There was at least one cemetery that needed to  
23 have barriers put along one side to prevent the cemetery  
24 from washing away. And a number of archeological sites had  
25 to be protected as well.

1           Removal of a whole bunch of trees that we felt  
2 were an immediate hazard to anybody that would be traveling  
3 in the Rodeo-Chediski -- the national forest portion of the  
4 Rodeo-Chediski area, so along the main roads that we were  
5 going to keep open for public trial we removed a number of  
6 trees. And other miscellaneous work.

7           Q.    Who is on the BAER team?

8           A.    I don't -- I don't know that I could list all the  
9 members of the BAER team.

10          Q.    Approximately how many people are on the BAER  
11 team?

12          A.    There would have been somewhere in the range of  
13 10 to 15. And initially we had to bring a number of  
14 specialists from off of the forest to help us, because we  
15 didn't have enough of the skills on hand to complete the  
16 evaluation.

17                As time went on, then the members of the BAER team  
18 were just from the Apache-Sitgreaves.

19          Q.    Are you on the BAER team?

20          A.    No, I am not.

21          Q.    Were you ever on the BAER team?

22          A.    No, I was not.

23          Q.    Does the BAER team still exist?

24          A.    No, not in its initial form.

25          Q.    Is the rehabilitation project from the

1 Rodeo-Chediski fire still ongoing?

2 A. Yes, it is.

3 Q. And what aspects of that project are still  
4 presently ongoing?

5 A. When we talk emergency management, again, that  
6 first nine months, or two wet cycles, the rehabilitation  
7 after that portion cannot be determined to be emergency in  
8 nature. So it falls under our regular program.

9 So that would be the timber salvage effort that  
10 occurred. That would be the rebuilding of various  
11 improvements. That would be additional removal of hazards  
12 in recreation areas.

13 The improvements are primarily fences and a corral  
14 or two. But the fences that are used for managing domestic  
15 livestock, grazing.

16 Q. And by domestic livestock, is that cattle?

17 A. That's cattle.

18 Q. And you stated you did seeding, or the BAER team  
19 performed seeding from the air.

20 Was this -- what was seeded? Was it grass?  
21 Trees?

22 A. The project was contracted out, and it had a  
23 mixture of grasses, a mixture of four to six species, and I  
24 couldn't begin to repeat those without refreshing my memory.

25 Q. Would you consider the rehabilitation project a

1 success?

2 A. A portion.

3 Q. Which portion?

4 A. The seeding was very successful.

5 The placement of the straw and hay, to help in the  
6 germination of the grass seed, was very important.

7 Some of the rehabilitation of improvements have  
8 stretched for a much longer period than we would have liked  
9 to have seen happen.

10 Q. And what portions are those?

11 A. Primarily fences, for domestic livestock grazing.

12 Q. Would this include the boundary fence for the  
13 Apache Tribe or separate fences?

14 A. Separate fences.

15 Q. As you know in this case, there's an allegation of  
16 an unknown quantity of horses up in the forest. Somewhere  
17 between 100 or 400.

18 Have these horses had any impact on the  
19 rehabilitation efforts?

20 A. The horses have.

21 The reports I've had from Randall and some of the  
22 other users of the national forest is where the horses tend  
23 to congregate, they beat those area out very heavily.

24 So the loss of the ground level forage, the  
25 grasses in the forest, which then leads to unacceptable soil



1 movement.

2 Q. But overall the seeding has been a successful  
3 effort?

4 A. That's correct.

5 Q. Are there presently cattle grazing on the forest?

6 A. There are.

7 Q. And was cattle grazing stopped for a time after  
8 the 2002 fire?

9 A. That's correct.

10 Q. And when was cattle grazing reinstated?

11 A. We allowed the first cows on Lakeside district  
12 back last summer in one pasture.

13 That was the east Cottonwood pasture.

14 So we limited the number of cows, the numbers, to  
15 what that one pasture could sustain.

16 This summer we have opened up, let me see, I think  
17 four additional -- no, three additional pastures within the  
18 Rodeo-Chediski.

19 Q. And these are all just on the Lakeside Ranger  
20 District?

21 A. Yes.

22 Q. To your knowledge, have other ranger districts  
23 done the same, allowed cattle back on?

24 A. Yes, I understand Black Mesa has allowed cows back  
25 on.

1 Q. In the four pasture areas in the Lakeside Ranger  
2 District, approximately how many head of cattle are allowed  
3 to graze?

4 A. Goodness. Randall would have those numbers.  
5 Last year I think the numbers were somewhere in  
6 the 80 to 100 head range.

7 This year I think we're around 120 head.

8 Q. The final topic is a draft MOU with the White  
9 Mountain Apache Tribe for fence replacement.

10 Am I correct that MOU is memorandum of  
11 understanding?

12 A. That's correct.

13 Q. Is this memorandum of understanding still in draft  
14 form?

15 A. It's still in draft form.

16 Q. So would it be fair to say that there's no binding  
17 memorandum of understanding between the Apache Tribe and the  
18 Forest Service for fence replacement repair and maintenance?

19 A. That's correct.

20 Q. What are the terms of this draft MOU?

21 A. The intent of the draft was to identify segments  
22 of common boundary that would be the responsibility of each  
23 entity.

24 So, for instance, a portion could be national  
25 forest, Lakeside Ranger District, and then we would assign

1 that to the adjoining, to the grazing permittee and keep  
2 that section maintained.

3 Other segments would be the responsibility of the  
4 grazing associations on the White Mountain Apache Tribe.

5 But, again, it was never finalized despite a  
6 number of attempts to have that done.

7 Q. And when was the draft first circulated?

8 A. We started discussions way back in 1999.

9 Q. So prior to the fire?

10 A. It was prior to the fire.

11 Q. To your understanding what's the holdup? Why  
12 hasn't it been finalized?

13 A. I don't know.

14 Q. Okay.

15 A. At different coordination meetings we had with the  
16 tribe, we would bring up the topic to ask what the status  
17 was, and we would get variable answers from the attorneys  
18 have it to the grazing association has it. But never was  
19 anything moved forward to actually be approved by the tribal  
20 council.

21 Q. But has this draft MOU met with Forest Service  
22 approval?

23 A. Yes. We've basically agreed to the contents.

24 We haven't signed, because we wanted to make sure  
25 that the tribe was, and BIA, were supportive.

1 Q. And BIA is Bureau of Indian Affairs?

2 A. Yes.

3 Q. And is this still a live issue, or is it dead  
4 after so much negotiation?

5 A. It's still a live issue, at least at every  
6 coordination meeting we have we bring it up and say, is  
7 there going to be movement on this or not.

8 Q. Does this draft memorandum of understanding  
9 address horses in any fashion?

10 A. No, it does not.

11 Q. Mr. Collins, are you at all familiar with the Wild  
12 Free-Roaming Horse and Burro Act of 1971?

13 A. I know there is one, but I'm not aware of the  
14 details, no.

15 Q. And you've never reviewed that act?

16 A. No.

17 Q. I would like, if you could turn back to what was  
18 marked as Exhibit 1 of Ms. Zieroth's deposition. It's the  
19 administrative record in this matter.

20 Could you turn to tab 46 for me, please?

21 Tab 46 of the administrative record contains the  
22 Wild Free-Roaming Horse and Burro Act, public law 92-195.

23 Mr. Collins, do you know what the purpose of this  
24 act is?

25 A. On established territories, to protect long-term

1 horses and burros and the habitat that they exist in.

2 Q. And do you know if this act applies to public  
3 lands near or around established territories?

4 A. I do not.

5 Q. On the first page there of tab 46, section two,  
6 small paragraph B, could you read that definition for me,  
7 please, approximately the middle of the page?

8 A. Section two, paragraph B?

9 Q. Yes, sir.

10 A. Wild free-roaming horses and burros means all  
11 unbranded and unclaimed horses and burros on public lands of  
12 the United States.

13 Q. Mr. Collins, have you ever seen horses on the  
14 forest?

15 A. Yes.

16 Q. Have you ever seen any horses within the Lakeside  
17 Ranger District?

18 A. Yes.

19 Q. Have you ever seen any unbranded horses on the  
20 Lakeside Ranger District?

21 A. Probably.

22 Q. And by probably, you mean you don't recall and  
23 it's likely?

24 A. By probably, I'm not a grazing expert, and by  
25 seeing the horses, I might have seen them at a distance,

1 because they tend to be -- tend to keep their distance from  
2 any human interaction. And normally when I'm out in the  
3 field, I do not have a pair of binoculars to where I could  
4 bring up a brand if one existed.

5 Q. So have you ever gone out in the field  
6 specifically looking for horses?

7 A. No.

8 Well, yes.

9 Q. And when was this?

10 A. This would have been back 12, 15 years ago. And  
11 this was on a trespass on the east side of the ranger  
12 district, where a land owner tried to winter his horses on  
13 national forest lands for about a four-year period.

14 Q. Did you find the horses?

15 A. We found the horses.

16 Q. And this horse, was it claimed by its owners?

17 A. He acknowledged he owned the horses.

18 Q. And were they branded, do you recall?

19 A. They were branded.

20 Q. Other than this incident approximately 12 years  
21 ago, have you ever, at any other time, gone out on the  
22 forest specifically looking for horses?

23 A. Not specifically looking for horses, no.

24 Q. So would it be fair to characterize your  
25 interaction with the horses as just kind of coincidence or

1 casual viewing?

2 A. Yes. Incidental.

3 Q. Incidental. You're out there doing something else  
4 and you see a horse?

5 A. Correct.

6 Q. And when was the first time you saw a horse on the  
7 forest; do you recall?

8 A. On the Rodeo-Chediski?

9 Q. Anywhere within the Lakeside Ranger District.

10 A. Probably in the late '80s, early '90s, that was a  
11 trespass case that I told you about.

12 Q. And other than that trespass case, did you see any  
13 other horses in the late '80s, early '90s?

14 A. No.

15 Q. When was the last time you saw a horse on the  
16 forest?

17 A. This summer.

18 Q. And how many did you see?

19 A. Somewhere in the range of 10 or 11.

20 Q. And was this just one time that you saw horses, or  
21 did you see horses throughout the summer?

22 A. I've only been on the Rodeo-Chediski this summer  
23 about four times. And two of those four times I saw horses.

24 Q. Did you happen to notice if those horses were  
25 branded?

1           A.    They were too far off.

2           Q.    Within the Lakeside Ranger District do you know of  
3 any active management of horses?

4           A.    No, we don't have any active management of horses.

5           Q.    Do you know if there is any active management of  
6 horses within the Apache-Sitgreaves forest as a whole?

7           A.    I guess I'm going to ask for a clarification.  
8 When you use the term active management, what do you mean?

9           Q.    Is there presently a program in place where people  
10 will go out in the field for the specific purpose of, say,  
11 inventorying horses?

12          A.    Well, Black Mesa would have had that on the Heber  
13 horse territory, until it was extinguished as a territory,  
14 or they thought it was.

15                So, yes, there was some inventory work that was  
16 done, but it was not done on Lakeside.

17          Q.    And --

18          A.    And since then, every time our people go out, I  
19 know Randall Chavez has asked for help in keeping track of  
20 where horses are and what the numbers might be.

21                And that's similar on other ranger districts as  
22 well, because the fence problem that we've experienced with  
23 White Mountain Apache Tribe does not just occur on the  
24 Rodeo-Chediski, does not just occur on Lakeside or Black  
25 Mesa. It's on other areas as well.



1 Q. When you say Mr. Chavez is keeping track of  
2 horses, is there documentation to reflect that?

3 A. I don't know.

4 I don't know if he's keeping a running tally or  
5 not.

6 Q. So you haven't seen it?

7 A. I haven't seen it.

8 Q. Is it the position of the Forest Service that  
9 these horses somehow belong to the Apache Tribe?

10 A. It -- when you start talking about where the  
11 horses are, that starts defining where the horses came from.

12 Q. Okay.

13 A. So, if your question is on the Rodeo-Chediski, the  
14 answer is yes, from the White Mountain Apaches.

15 If you're talking the presence of horses in other  
16 locations on the national forest, I'm sure there's some  
17 examples of horses coming off of private land.

18 Q. But, other than the location of the horses in the  
19 Rodeo-Chediski area, is there any other indication that  
20 these horses somehow belong to the Apache reservation?

21 A. I've been told that there are some. There are  
22 some brands that can be found on some of the horses.

23 But nobody's ever pointed that out to me while  
24 I've been out in the field.

25 Q. And who told that to you?

1           A.    Let me see.

2                    When I've heard it in -- probably one of our  
3 forest leadership team meetings.

4                    Probably heard it from Randall Chavez as well as  
5 my staff assistant.

6                    Heard it from several sources.

7           Q.    Have you ever seen any documentation regarding  
8 brands on these horses?

9           A.    Randall at one time showed me the equivalent of a  
10 brand list, and that's two or three pages of who the owners  
11 of the horses on the reservation might be.

12          Q.    So that was a Apache tribal brand list?

13          A.    Yes.

14          Q.    But you've never actually seen any of those brands  
15 on a horse out in the forest?

16          A.    Right.

17          Q.    You haven't seen any pictures of a horse on the  
18 forest with those brands?

19          A.    No.

20          Q.    How far is Highway 260 from the Apache  
21 reservation?

22          A.    It depends on what part you're talking about.

23          Q.    Are you familiar with the area of Bison Ranch?  
24 Have you ever heard that term?

25          A.    Yes.

1 Q. How far is Bison Ranch from the Apache  
2 reservation?

3 A. I would have to look at a map because that's on  
4 Black Mesa Ranger District.

5 Q. Do you know approximately how far the Black Mesa  
6 Ranger District is from the Apache reservation?

7 A. On the south end it borders. The south edge of  
8 portions of the Black Mesa Ranger District border the White  
9 Mountain Apache Tribe.

10 Q. If we could turn again to what has been marked as  
11 Exhibit 1 to this deposition, this map, could you identify  
12 for me approximately where Bison Ranch is?

13 A. It's off the map.

14 Q. Off the map --

15 A. To the right or to the east.

16 Q. To your right?

17 A. To my right.

18 Q. To the east.

19 And the Apache Indian reservation is off to your  
20 left; is that correct?

21 A. Well, actually it's the bottom of the map. You  
22 can see portions marked with this orange tannish color.

23 Q. For example, if someone was to see a group of  
24 horses near Bison Ranch, would you think those horses came  
25 from the reservation?

1           A.    Don't know.

2                    Because I'm not familiar with the private  
3 ownership that borders the national forest in the  
4 Heber-Overgaard area.

5                    If I knew where the owners were that kept horses,  
6 if I knew where the stables were, it would give me an  
7 estimate of whether those horses could be private versus off  
8 the reservation.

9           Q.    But you're working under the assumption that any  
10 horse seen in the forest is owned by somebody?

11           A.    That's correct.

12           Q.    And on what do you base that assumption?

13           A.    For the last decade or so we haven't had wild  
14 horse territory on the forest.

15                    So any horse then observed would be owned by  
16 somebody else, and if it's not authorized on the forest  
17 would be considered trespass.

18           Q.    I'm sorry, you said for the last 12 years there  
19 hasn't been a horse territory on the forest?

20           A.    Ten or 12 years.

21           Q.    And could you look in bottom right-hand corner of  
22 Exhibit 1? That date is August 4th, 2006.

23           A.    That's when the map was put together.

24           Q.    And the wild horse territory is reflected on this  
25 map; is that correct?

1           A.    That's what the map says.

2           Q.    Can you explain to me why that is if there hasn't  
3 been a wild horse territory for 10 to 12 years?

4           A.    Well, because I had heard about that time that the  
5 territory had been extinguished because there were no horses  
6 on it.

7                    So whatever process the agency had to go through,  
8 the ranger requested, and I thought was approved that the  
9 territory was extinguished.

10          Q.    But you weren't involved in that process?

11          A.    I was not involved in that process.

12          Q.    And do you know how it was determined that there  
13 were no wild horses out on the territory?

14          A.    Just through inventory over the years.

15                    I think there was an annual report that was  
16 supposed to be submitted.

17          Q.    Did you participate in any of those inventories?

18          A.    I did not.

19          Q.    Did the Lakeside Ranger District ever participate?

20          A.    Not that I'm aware of.

21          Q.    Could you turn for me, please, to tab 81 of the  
22 administrative record?

23                    Mr. Collins, have you ever seen this document  
24 before?

25          A.    I don't think I've ever laid my eyes on it, no.

1           Q.    Tab 81 of the administrative record is described  
2 in the index as Heber territory horse population  
3 information, 1974 to 2004.

4                    The first page is a fax from Ms. Deb Bumpus --  
5 excuse me, to Ms. Deb Bumpus from Gene Onken.

6                    Do you know Mr. Onken?

7           A.    Yes.

8           Q.    And does Mr. Onken work for the Forest Service?

9           A.    I think he's currently retired.  But he was an  
10 employee that worked in the regional office in Albuquerque.

11           Q.    So did he actually work on the Apache-Sitgreaves  
12 forest?

13           A.    I don't know his career background.

14           Q.    He never worked with you at the Lakeside Ranger  
15 District?

16           A.    No.

17           Q.    The second page of page -- it's actually numbered  
18 Page 1, it's after the fax page, purports to represent  
19 documented wild horse population numbers, Heber wild horse  
20 territory, Apache-Sitgreaves National Forest.

21                    Mr. Collins, do you know how these numbers were  
22 arrived at?

23           A.    I don't.

24           Q.    And, to your knowledge, the Lakeside Ranger  
25 District has never participated in any one of these

1 population inventories?

2 A. I cannot state that with 100 percent certainty.

3 To the best of my knowledge, no.

4 But an individual employee may have been asked to  
5 go help on a particular inventory day and I just wasn't  
6 aware of it.

7 Q. But you have never asked any employee to do that?

8 A. That is correct. I have never asked.

9 Q. Do you know who would have made such a request in  
10 your absence?

11 A. Whoever would have been doing the inventory at the  
12 time.

13 It could have been the range staff officer at  
14 Heber at the time, or what's now Black Mesa Ranger District,  
15 could have asked for help from other of his fellow staff  
16 officers on the Forest Service. See Corrections/CMH

17 Q. So what you're referring to here, would this have  
18 been a supervisor, for lack of a better term, from another  
19 ranger district asking somebody from your district to go  
20 into their district and help them out with the census?

21 A. It would have been co-equals asking. So a staff  
22 officer on one ranger district asking a staff officer on  
23 another district, hey, I need help on this project, can you  
24 give me a day or two.

25 So some of that informal stuff goes on on

1 different projects.

2 Q. But the projects would have taken place outside of  
3 the Lakeside Ranger District?

4 A. That's correct.

5 Q. So no one has ever reported to you with respect to  
6 counts of horses on the Lakeside Ranger District?

7 A. That's right.

8 MR. PATRICK: Well -- well, it's on the record.

9 MR. MERRILL: A little too quick for you.

10 BY MR. MERRILL:

11 Q. Mr. Collins, could you turn to tab 24 of the  
12 administrative record for me, please.

13 A. Twenty-four.

14 Q. Tab 24 is a letter dated June 13th, 2005, from  
15 Elaine Zieroth to Mr. Dallas Massey.

16 Mr. Collins, I realize that you were not copied on  
17 this letter. Have you ever seen it before?

18 A. I may have, but I don't recollect that I did.

19 Q. Who is Dallas Massey?

20 A. Tribal chairman, White Mountain Apache Tribe.

21 Q. Do you know Mr. Massey?

22 A. Yes.

23 Q. And what has your interaction been with  
24 Mr. Massey?

25 A. Occasional meeting, meeting attendants. When we



1 have a coordination meeting he may attend, oh, 20 percent of  
2 those meetings.

3 At different events that occur where agency  
4 representatives might participate, I'd find a way to  
5 introduce and say hi.

6 For instance, the annual coordination for  
7 firefighting, in preparation for fire season, I would have  
8 met him several of those years at those meetings.

9 And occasionally he does some of his shopping in  
10 the Pinetop Lakeside area. It's a small community, and you  
11 run into him.

12 Q. Have you ever discussed issues regarding the  
13 horses that are the subject of this litigation with  
14 Mr. Massey?

15 A. I haven't directly, no.

16 Q. Have you ever discussed the issue regarding these  
17 horses with anybody from the White Mountain Apache Tribe?

18 A. Combination White Mountain Apache and BIA at our  
19 coordination meetings, yes.

20 Q. With whom did you have those discussions?

21 A. Whoever would have been attending those meetings.  
22 It could have been the BIA superintendent, Ben  
23 Nuvumsa.

24 He was a regular participant at those meetings.

25 Ben had a number of staff that also attended the

1 meetings. Many of those are now retired or transferred off.

2 But -- what's his name, who's still there, he's in  
3 charge of the entire timber program for BIA. He is a tribal  
4 member as well. I can't remember his name right now.

5 Q. Okay.

See Corrections/CMH

6 What was the general substance of these  
7 conversations?

8 A. We have a history dating back to 1999 on trying to  
9 get an MOU established. So it was in regards to the MOU,  
10 then the new fence being built, the damage to the fence, and  
11 then we started seeing more and more horses on national  
12 forest.

13 So we started equating the damage caused by the  
14 wildfire and the numbers of horses that we were starting to  
15 see as being connected, a cause and effect.

16 Q. Did any representative of the Apache reservation  
17 ever claim they owned the horses?

18 A. Most of the attendees at these meetings were BIA.  
19 The exception being the tribal forester, a fellow by the  
20 name of Paul DeClay.

21 But I don't remember Paul ever coming out and  
22 saying, yeah, those are our horses, but implying that they  
23 probably were.

24 Q. And how did he imply that?

25 A. I'm not sure whether it was Paul or another member

1 that described at one of our coordination meetings the  
2 trapping of horses ongoing on the reservation to help with  
3 their rehabilitation efforts, their burned area  
4 rehabilitation efforts.

5 And the feeling that because of the trapping,  
6 because of the fence being down, that it tended to drive  
7 some of the horses from the reservation onto the forest.

8 Q. And if that was the case, that the fire drove  
9 horses from the reservation onto the forest, do you know why  
10 they wouldn't have just returned after the fire?

11 MR. PATRICK: Let me object to the foundation for  
12 that question.

13 Go ahead.

14 THE WITNESS: It would not have been the fire that  
15 drove the horses. It would have been the aftermath of the  
16 fire.

17 BY MR. MERRILL:

18 Q. Can you explain what you mean by that?

19 A. Following the fire, large parts of the reservation  
20 were badly devastated. So the horses that were down on the  
21 reservation would have wanted to find some more friendly  
22 territory.

23 We were quite successful in getting the ground  
24 forage re-established fairly quickly on the national forest  
25 portion.

1           The fence was down. As the horses moved for  
2 habitat or food, they came over onto the forest and found  
3 the habitat to their liking and then stayed.

4           Q. So it's a habitat issue?

5           A. I think it would be a habitat issue.

6           Q. To your knowledge, has the Forest Service ever  
7 undertaken any formal or scientific study regarding horse  
8 habitats?

9           A. I don't have a clue.

10          Q. The last paragraph of the letter to Mr. Massey --  
11 last paragraph on Page 1, discusses Forest Road 300.

12                   Is Forest Road 300 in the Lakeside Ranger  
13 District?

14          A. A portion is, yes.

15          Q. The first sentence of that paragraph states: The  
16 Forest would like your cooperation during and after this  
17 contract by keeping all gates closed along the reservation  
18 boundary on Forest Road 300.

19                   Do you know, is this referring to gates on the  
20 boundary fence within the Lakeside Ranger District?

21          A. It would be gates on the boundary fence. Some of  
22 those gates on Lakeside Ranger District.

23          Q. And, to your knowledge, were those gates being  
24 left open by the reservation?

25          A. As crazy as it sounds, there were some gates that

1 were never installed.

2 Q. So just big open spaces of fence?

3 A. There were open spaces in the fence.

4 Where gates were installed, the reservation had so  
5 many activities going on at the time, a tremendous amount of  
6 salvage logging under way, they requested that the salvage  
7 loggers close the gates but never received complete  
8 compliance.

9 So they may have opened it in the morning, left it  
10 open all day while the log trucks were moving, and then  
11 closed it at the end of the day.

12 So it was a -- this was intended to address a  
13 number of issues that were occurring, but putting up a new  
14 fence and not having the gates in place, or the gates  
15 functioning, kind of defeats the purpose of that fence.

16 Q. So prior to the fire, were there portions of the  
17 fence where a gate was intended but a gate never installed?

18 A. To my knowledge, prior to the fire, there was a  
19 gate at every gate location.

20 Q. And that's not the case with the rebuilt fence?

21 A. That was not the case with the rebuilt fence.

22 Q. And is that issue addressed in the memorandum of  
23 understanding, the draft memorandum?

24 A. Correct.

25 Q. Is it fair to assume that it's the position of the

1 Forest that the reservation should install those gates?

2 A. That's right.

3 Q. If you could turn with me, please, to tab 28 of  
4 the administrative record.

5 Tab 28 is a document entitled notice of intent to  
6 impound unauthorized livestock, reference FSM 5330.

7 It's dated July 6th, 2005, and signed by Elaine  
8 Zieroth.

9 Mr. Collins, have you ever seen this document  
10 before?

11 A. Yes, I have.

12 Q. When have you seen this document?

13 A. Oh, while we were preparing for the impoundment  
14 action.

15 Q. And was this document posted within the Lakeside  
16 Ranger District?

17 A. Yes. And Randall Chavez was responsible for  
18 ensuring it got the proper postage -- posting both on the  
19 ranger district and down at White River. See Corrections/CMH

20 Q. Was this distributed to any private parties?

21 A. May have, but I don't know that with 100 percent  
22 certainty.

23 Q. Was this distributed to the White Mountain Apache  
24 Indian reservation?

25 A. That's correct, to the tribal government as well

1 as being posted at the Post Office and other common areas  
2 down there.

3 Q. There's a box about a third of the way down that's  
4 entitled topographical unit legal subdivision or allotment.

5 Do you see that box?

6 A. Yes, I do.

7 Q. And what -- is that box describing what you've  
8 referred to as the Rodeo-Chediski fire area?

9 A. Yes.

10 Q. Does that description include what's been  
11 designated as the Heber wild horse territory?

12 A. Yes, it would get far enough west to include the  
13 Heber horse territory, as shown on that map that you showed  
14 me earlier.

15 Q. To your knowledge would it include the entirety of  
16 the territory?

17 A. Yes.

18 Q. And would this legal subdivision include the  
19 entirety of the Lakeside Ranger District?

20 A. No.

21 Q. And would it include, to your knowledge, would it  
22 include the entirety of the Black Mesa Ranger District?

23 A. No.

24 Q. If you could drop down for me, please, to the  
25 second to last paragraph, which begins, after impoundment,

1 are you with me?

2 A. Yes.

3 Q. After the impoundment, owners of unauthorized  
4 livestock may regain possession thereof first by showing  
5 proof of ownership and reimbursing the United States in full  
6 for the expense incurred in impounding, feeding, and care of  
7 such livestock.

8 Do you know what proof of ownership this notice is  
9 referring to?

10 A. It would be brands, if there was any paper that  
11 people had for sale of a horse from one individual to  
12 another, that kind of proof.

13 Q. After impoundment could a private owner walk up to  
14 a horse and say that's my horse? Would that be sufficient  
15 proof of ownership?

16 A. That's not the Forest Service to determine that.  
17 There's a state organization that is responsible  
18 for that.

19 The State Livestock Board.

20 So they would be the ones that would determine the  
21 actual ownership, not Forest Service.

22 Q. So any claims of ownership made to the Forest  
23 Service would be referred to the State Livestock Board?

24 A. That's correct.

25 Q. And the validity of that claim would be determined



1 based on the procedures of the livestock board?

2 A. That's right.

3 Q. To your knowledge, did this notice result in any  
4 claims of ownership of the horses?

5 A. I don't know of any members of the reservation  
6 coming out to gather their horses.

7 Q. And to be fair, the horses were never gathered; is  
8 that correct?

9 A. That's correct.

10 Q. Could you turn with me, please, to tab 79.

11 The first page of the document behind tab 79 of  
12 the administrative record is a fax cover sheet dated  
13 October 13th, 2005, from the Lakeside Ranger District to Deb  
14 Bumpus, from Ed, slash -- I believe it's Randall.

15 Mr. Collins, do you recognize this fax cover  
16 sheet?

17 A. Yeah, I saw it yesterday.

18 Q. Did you send this to Ms. Bumpus or did Randall?

19 A. Randall. That's Randall's writing.

20 Q. Turn to the second page of that document, please.

21 What is represented here?

22 A. That's a list of the coordination meetings that I  
23 had put together after reviewing my daily planner pages.

24 Q. Is this your handwriting, sir?

25 A. That's my handwriting.

1 Q. And why did Ms. Bumpus request this information?

2 A. I don't know that she requested it as much as I  
3 said it's germane to the topic at hand and I offered to put  
4 it together and send it to her.

5 Q. And what was the topic at hand?

6 A. Trespass horses, and what may have led to horses  
7 crossing onto the forest, and our attempts in coordinating  
8 with the tribe to prevent that from happening.

9 Q. So was the issue of the horses discussed in each  
10 of the meetings reflected in this document?

11 A. No. As I look at my note here, if I didn't have a  
12 scribbled note in my planner page, because I don't think  
13 there are any official transcripts or notes taken at any of  
14 those meetings, just what us individually would have put  
15 down, if there was no reference to fences or horses, then I  
16 didn't list anything.

17 If I didn't attend, I stated I didn't attend.

18 If there was reference to a fence or horse, then I  
19 listed the reference.

20 Q. To your knowledge, in any of these meetings did  
21 representatives of the Apache Indian reservation claim any  
22 of these so-called feral horses?

23 A. Most of the representatives at the meeting were  
24 Bureau of Indian Affairs, and only occasionally would there  
25 have been some tribal representatives.

1           As I look at the list of the meetings, the  
2 individual responsible for fences, fence maintenance, and so  
3 on, maybe attended two or three of those meetings, but not  
4 all of them.

5           Paul DeClay, being the tribal forester, may have  
6 been the individual implying ownership. Or it could have  
7 been one or more of the BIA representatives that would have  
8 implied some ownership.

9           Certainly I got in my mind that these horses were  
10 coming from the reservation.

11          Q.    But there was never any agreement entered into  
12 that the Apaches would go take these horses?

13          A.    I think there was an agreement in the works, and  
14 that was being handled by Elaine Zieroth, but I wasn't a  
15 part of that taking place.

16          Q.    Have you ever seen any documentation to that  
17 effect?

18          A.    No.

19          Q.    If the tribe wanted to go take some of those  
20 horses, is there anything preventing them from doing that?

21          A.    Not that I'm aware of.

22          Q.    You reference the term feral horses. What  
23 definition are you giving that word feral?

24          A.    Another term for trespass.

25                I don't think I have a separate definition for

1 feral.

2 Q. When you use the word feral, you believe that to  
3 be a domesticated animal?

4 A. I can only guess, yes. I interchange feral and  
5 trespass routinely, and in my notes.

6 Q. In your notes, when you use the word feral, you  
7 are identifying a trespass horse?

8 A. That's correct.

9 Q. What do you identify as a trespass horse?

10 A. And animal that is not authorized by permit or  
11 law. **See Corrections/CMH**

12 Q. How did you confirm that an animal is not  
13 authorized by permit or law?

14 A. We don't have any territory on Lakeside Ranger  
15 District, so we never had any authorization, either by  
16 permit or by law, for horses beyond Lakeside.

17 Q. But there's no scientific study or official study  
18 that takes place?

19 A. Not that I'm aware of.

20 Q. Now, it's your testimony here today that the Heber  
21 wild horse territory was, for lack of a better word,  
22 dissolved approximately 12 years ago?

23 A. Somewhere in that time frame, yes.

24 Q. Had a horse 12 years ago strayed from that  
25 territory onto the Lakeside Ranger District, would you

1 consider that a trespass horse?

2 A. Don't know that that ever happened.

3 Q. But say for purposes of this question that it did.

4 Would that horse have been considered a trespass horse?

5 A. I would probably say yes.

6 Q. Do you know when the Forest Service made the

7 decision to remove these horses from the forest?

8 A. Not the specific date, no.

9 Q. Approximately?

10 A. It would have taken several months leading up.

11 The document that we looked at earlier on the impoundment

12 action, the decision was probably a couple months before

13 that, the formal decision.

14 Q. That would be tab 28?

15 A. The employment action, whatever tab that was.

16 Q. So the record is clear, is this the document that

17 you're referring to?

18 A. That's correct.

19 Q. And that's tab number 28 of the administrative

20 record?

21 A. Correct.

22 Q. And that's dated July 26, 2005?

23 A. Correct.

24 Q. So it's your testimony that the decision to remove

25 the horses took place that date?

1 A. Yes.

2 Q. Did you have any involvement in that decision?

3 A. Yes.

4 Q. And what was your involvement?

5 A. We've got a resource issue. We've got a resource  
6 problem on the district. It's caused by horses, by a fence  
7 being down.

8 We've got to find a way to put those under control  
9 in some way or another.

10 Q. So would it be correct to say that the decision to  
11 remove the horses was at least in part motivated by cost?

12 A. Cost would have been a contributor.

13 Q. What other factors contributed to the decision?

14 A. Resource impacts. The permits that we had in  
15 place with the grazing permittees.

16 Q. These would be cattle permits?

17 A. Yes. Where we would not allow them on any of the  
18 burn areas until a certain level of restoration or  
19 rehabilitation had occurred. And yet the horses were there.  
20 And they were letting us know routinely that that was not  
21 right to be occurring.

22 Q. Is that still an issue given the fact that  
23 approximately 100 head of cattle have now been allowed on  
24 the Lakeside district?

25 A. That's correct.

1 Q. It's still an issue?

2 A. It's still an issue.

3 Q. To what degree?

4 A. Well, whenever I meet with the permittees, I hear  
5 about it.

6 We had a forest plan, public meeting, for revising  
7 the forest plan for the entire forest. We had a public  
8 meeting out at Pinedale, and that was raised as an issue by  
9 a non-grazer, just a local resident, that was basically  
10 saying when are you going to get these horses out of here  
11 because of the damage they're causing.

12 So it's not just permittees now. It's gotten out  
13 into other people that are letting us know.

14 But that certainly postdated the 2005 decision.

15 Q. Is it your understanding that this decision was to  
16 remove all horses from the forest?

17 A. No.

18 We were -- that would have been an unreasonable  
19 expectation.

20 We did not have funding. Based on projects that  
21 we had heard elsewhere on what the cost per animal, we  
22 figured we would only be able to remove 80 to 150 horses,  
23 and the estimate went as high as 300 or 400 that were out  
24 there.

25 So we expected with that effort to only remove a

1 portion of them.

2 Q. And were there any guidelines as to which portion  
3 you would remove or was it the first 120 you saw?

4 A. We hadn't got that far.

5 Q. But the decision had been made to remove them?

6 A. To make an attempt to remove them, yes.

7 Q. And the guidelines just weren't specifically  
8 defined; is that correct?

9 A. Well, they would have been in the contract. That  
10 was one of Randall's projects. So Randall was in control  
11 for the Lakeside portion.

12 Q. And what was the Forest Service planning to do  
13 with these horses once they were gathered and captured?

14 A. They would have been transported down to sale  
15 barn, I believe in the Holbrook area. And that's where the  
16 care and feeding would have continued. That's where the  
17 state livestock inspector would have gotten involved.

18 Q. Are you familiar at all with that sale barn?

19 A. I am not.

20 Q. Was sale barn going to pay the Forest Service for  
21 these animals?

22 A. Not that I'm aware of.

23 Q. Was the Forest Service going to receive any money,  
24 any money for transferring these animals to the sale barn?

25 A. I don't know. I really don't.



1 Q. Is there a heavy demand for recreation use in the  
2 forest in the Lakeside Ranger District?

3 A. Very heavy.

4 Q. What type of recreation uses go on?

5 A. You name it, it occurs out there.

6 Q. Motorcycle riding?

7 A. Lots of ATV, yes.

8 Lots of camping. Lots of hunting. Lots of day  
9 hiking. Small amount of back packing. Not a lot. Most is  
10 day hiking.

11 A lot of what we call throw down camping.

12 People that come up and want to spend a weekend to  
13 all summer on the forest to escape the heat down here.

14 Q. That would be nice.

15 A. Just nature viewing, wildlife viewing. Again, you  
16 name it. Target shooting.

17 There's people that set up bales of hay and go out  
18 and practice their archery.

19 And the list just goes on and on.

20 Q. Do the horses have any impact on the recreation  
21 uses in the Lakeside district?

22 A. I have not heard of any direct conflict that  
23 recreation has passed on relative to horses.

24 Q. Does hunting take place on the Lakeside district?

25 A. It does.

1 Q. Do you consider hunting recreational use or a  
2 separate category?

3 A. It's recreation.

4 Q. What type of game is hunted on the forest?

5 A. Anything that's authorized by Arizona Game and  
6 Fish Department.

7 They have the responsibility for management of the  
8 wildlife species. So the big ticket items for them are elk,  
9 deer, we have some antelope country, bear, and small species  
10 like squirrel, coyote, and I'm sure there's some other  
11 species I'm missing.

12 Q. To your knowledge, have the horses had any impact  
13 on hunting within the forest?

14 A. At our annual coordination meeting with Arizona  
15 Game and Fish Department, they expressed concern on the  
16 numbers of animals out there and the conflict that they're  
17 having with the elk.

18 But I didn't get any more specific than that.

19 Q. Did Fish and Game ask the Forest Service to do  
20 anything about the horses?

21 A. The Game and Fish have been very interested in  
22 tracking our progress or lack thereof on managing the  
23 numbers of horses. Because a resource is a finite thing,  
24 and if you have too many elk it conflicts with cows. If you  
25 have too many cows, it conflicts with wildlife habitat.

1 When you add horses into that mix -- resources are finite.

2 Q. Do you believe that resources in the forest could  
3 support a horse population?

4 A. Probably, but in order to do so we would have to  
5 reduce the numbers of domestic livestock and also cut back  
6 on some of the wildlife numbers.

7 Q. Has that ever been discussed, to your knowledge,  
8 within managing personnel of the forest?

9 A. Not that I'm aware of, in any discussions that  
10 I've been involved in.

11 Q. Are you aware if the Forest Service is presently  
12 drafting a management plan with respect to these horses?

13 A. I've heard of an effort that Black Mesa Ranger  
14 District is starting to undertake.

15 Q. Do you have any involvement in that?

16 A. No.

17 Q. Are you familiar at all with the National  
18 Environmental Protection Act?

19 A. Yes.

20 Q. Also referred to as NEPA?

21 A. NEPA.

22 Q. Have you ever had any training with respect to  
23 NEPA?

24 A. Yes.

25 Q. Can you explain that training briefly?

1           A.    A series of training sessions on what NEPA is all  
2 about and how the Forest Service implements it. How to make  
3 the various documents stand up in court cases or appeal  
4 courses. So those kinds of training sessions.

5           Q.    To your knowledge, has any study under NEPA been  
6 taken with respect to the horses?

7           A.    Not that I'm aware of.

8                    But that's part of the effort that is under way  
9 now.

10          Q.    That's part of the management plan that the Black  
11 Mesa District is --

12          A.    That's correct.

13          Q.    Do you know an individual by the name of Joe  
14 Wager?

15          A.    Is he a member of the five county RAC, resource  
16 advisory committee?

17          Q.    I believe he is, yes.

18          A.    I think so, yes.

19                    I've attended several RAC meetings, and I think it  
20 was Joe attended a tour that I went ahead and put on about a  
21 year ago on one of our vegetative thinning projects.

22          Q.    Do you know if Mr. Wager had any involvement in  
23 the Forest Service decision to move the horses?

24          A.    Not any direct involvement.

25                    When he found out about it, it's my understanding

1 that he became quite opposed to the concept of trapping and  
2 removing any horses.

3 Let me just add to that.

4 His knowledge occurred as we tried to find the  
5 funding to implement that. So a proposal was presented to  
6 the resource advisory committee to help fund the removal of  
7 some of the horses.

8 Q. Is it fair to say that Mr. Wager has a different  
9 opinion with respect to the status of these horses than the  
10 Forest Service?

11 A. That's correct.

12 Q. Are you aware of what those differences are?

13 A. Partly.

14 The way he voiced some of those differences in  
15 accusing the Forest Service and some of my employees, like  
16 Randall Chavez, of lying, being deceitful, troubled the heck  
17 out of me when I heard about them.

18 Q. To your knowledge, did the Forest Service engage  
19 in any public notice and comment period with respect to the  
20 proposed removal of the horses?

21 A. The only public notice process is the impoundment  
22 process, but no separate notice would have been needed to  
23 remove what we would consider to be trespass livestock.

24 MR. MERRILL: I don't think I have any further  
25 questions.

1 Do you have anything, Richard?

2 MR. PATRICK: I don't have anything. We'll read  
3 and sign.

4 MR. MERRILL: I appreciate your time. Thank you.

5 (Whereupon, the deposition concluded at  
6 12:19 p.m.)

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8 \_\_\_\_\_

9 EDWARD W. COLLINS

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1 STATE OF ARIZONA            )  
   )  
 2 COUNTY OF MARICOPA        )            ss.

3                    BE IT KNOWN that the foregoing deposition was  
 4 taken before me, Marty Herder, a Certified Court Reporter,  
 5 CCR No. 50162, State of Arizona; that the witness before  
 6 testifying was duly sworn by me to testify to the whole  
 7 truth; that the questions propounded to the witness and the  
 8 answers of the witness thereto were reduced to typewriting  
 9 under my direction; that the witness elected to read and  
 10 sign the deposition transcript; that the foregoing 69 pages  
 11 constitute a true and accurate transcript of all proceedings  
 12 had upon the taking of said deposition, all done to the best  
 13 of my skill and ability.

14                    I FURTHER CERTIFY that I am in no way related to  
 15 any of the parties hereto, nor am I in any way interested in  
 16 the outcome hereof.

17                    DATED at Chandler, Arizona, this 8th day of

18 November  
 October, 2006.

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C. Martin Herder, CCR  
 Certified Court Reporter  
 Certificate No. 50162

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✓  
Deposition of: EDWARD W. COLLINS

Page/Line No.                      Change/Correction                      Reason

P7/L18	Delete "for" replace with "forest"	Correct Title
P19/L14	Delete "2004 and", Should only be the summer of 2005 for Owens & Chavez. The summer of 2004 was performed by a crew from Black Mesa R.D. I do not know if any fence repair was done by that 2004 crew	Error in the answer
P19/L21	add "Mark"	Add first name
P20/L9	Owens teaches in Snowflake Chavez teaches in Snow Lake	To answer question
P27/L3	Delete "Well," replace with "When", remove period replace with comma; $\neq$ make "we" small case "we."	Accuracy
P46/L16	Delete "Service"	Accuracy
P49/L4	add "Robert LaCox"	Name of Person
P53/L18	Delete "postage" replace with "posting"	Accuracy
P59/L10	Delete "And" replace with "An"	Accuracy
P60/L15	Delete "employment" replace with "impoundment"	Accuracy
	<i>Edward W. Collins</i>	



EXHIBITS

1 PAUL K. CHARLTON  
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District of Arizona

2  
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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 In Defense of Animals, et al.,  
10 Plaintiffs,  
11 v.  
12 United States Government, Department  
13 of Agriculture, et al.  
14 Defendants.

CIV-05-2754-PCT-FJM  
**DEFENDANTS' RULE 26 INITIAL  
DISCLOSURE STATEMENT**

15 Pursuant to Rule 26(a), Federal Rules of Civil Procedure, defendants submit the following  
16 Initial Disclosure Statement:

17 **A. Rule 26(a)(1)(A): individuals likely to have discoverable information that the**  
18 **United States may use to support its claims or defenses:**

19 **Elaine Zieroth, Forest Supervisor**  
20 Apache-Sitgreaves National Forests  
21 309 South Mountain Ave.  
22 Springerville, AZ 85938  
(520) 333-4301

23 **CAN ATTEST TO:** decisions related to the Heber Territory post Rodeo-Chediski  
24 Fire from 2003 to present; approval for funding of feral horse gather contract

25 **John Bedell, Forest Supervisor (Retired), Apache-Sitgreaves National Forests**  
26 PO Box 15017  
27 Flagstaff, AZ 86011-5017  
28 928-639-0093

EXHIBIT # 2  
Collins

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**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Deb Bumpus, Ecosystem Staff Officer**

Apache-Sitgreaves National Forest  
309 South Mountain Ave.  
Springerville, AZ 85938  
(520) 333-6220

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory post-2003; information on associated allotments

**Michael Rising, Ecosystem Management Staff Officer (Retired), Apache-Sitgreaves National Forests**

PO Box General Delivery  
Nutrioso, AZ 85932  
928-339-4349

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Kate Klein, District Ranger, Black Mesa Ranger District**

PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation

**Ed Collins, District Ranger, Lakeside Ranger District**

2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** : decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation; draft MOU with White Mtn. Apache Tribe for fence replacement, repair, and maintenance

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**Kendell Hughes, Range Staff, Black Mesa Ranger District**  
PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

**Randall Chavez, Range Staff, Lakeside Ranger District**  
2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

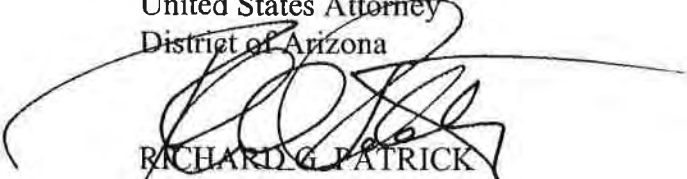
**Gene Onken, Invasive Plants and Planning, Regional Office**  
333 Broadway SE  
Albuquerque, NM 87102  
505-842-3227

**CAN ATTEST TO:** monitoring reports to Congress, historic reporting data for the Heber Wild Horse Territory; data on Region 3 Wild Horse Territory monitoring and reporting

**B. Rule 26(a)(1)(B): Documents**

See Administrative Record lodged and produced to plaintiffs this date.

Respectfully submitted this 21<sup>st</sup> day of April, 2006.

United States Attorney  
District of Arizona  
  
RICHARD G. PATRICK  
Assistant U.S. Attorney

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ORIGINAL mailed this 21<sup>st</sup> day of April, 2006 to:

Anthony W. Merrill  
Christine Elizabeth Broucek  
BRYAN CAVE LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406

  
\_\_\_\_\_  
Office of the U.S. Attorney

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the )  
ANIMAL WELFARE INSTITUTE, a )  
non-profit organization; and )  
the INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS and )  
BURROS, a non-profit )  
organization; PATRICIA HAIGHT, )  
an individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

No. CV-05-2754-PHX-FJM

UNITED STATES GOVERNMENT )  
DEPARTMENT OF AGRICULTURE, ANN )  
M. VENEMAN as acting UNITED )  
STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

THE DEPOSITION OF KATHLEEN KLEIN

Phoenix, Arizona  
October 13, 2006  
3:09 p.m.

(ORIGINAL)  
PREPARED FOR:  
DISTRICT COURT

REPORTED BY:  
Marty Herder, CCR  
Certified Court Reporter  
CCR No. 50162

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I N D E X

<u>Examination By:</u>	<u>Page:</u>
Mr. Merrill	4, 62
Mr. Patrick	61

E X H I B I T S

No. 1	Defendant's Rule 26 Initial Disclosure Statement	18
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THE DEPOSITION OF KATHLEEN KLEIN,

Taken at 3:09 p.m., on October 13, 2006 at the Law Offices  
of BRYAN CAVE LLP, Two North Central Avenue, Suite 2200,  
Phoenix, Arizona, 85004, before Marty Herder, Certified  
Court Reporter, pursuant to the Rules of Civil Procedure.

**COUNSEL APPEARING:**

For the Plaintiffs:

BRYAN CAVE LLP  
BY: Anthony W. Merrill, Esq.  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004

For the Defendants:

U.S. ATTORNEY'S OFFICE  
BY: Richard G. Patrick, Esq.  
40 North Central Avenue  
Suite 1200  
Phoenix, Arizona 85004

Phoenix, Arizona  
October 13, 2006  
3:09 p.m.

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KATHLEEN KLEIN,  
called as a witness herein, having been first duly sworn,  
was examined and testified as follows:

E X A M I N A T I O N

BY MR. MERRILL:

Q. Would you please state your full name for the  
record?

MR. PATRICK: Mr. Merrill, if I may again, I'm  
going to interrupt.

MR. MERRILL: Had to do it to you.

MR. PATRICK: The government wants to note its  
objection to discovery in this matter.

We respect the fact that the District Court has  
permitted discovery, but I wanted to put that on the record  
for purposes of demonstrating that we don't waive our  
continuing objection.

MR. MERRILL: Plaintiffs would like to put on the  
record that the defendants have not filed any motion to  
request to quash this notice of deposition.

BY MR. MERRILL:

Q. Would you please state your name for the record?

1           A.    Kathleen Sue Klein.

2           Q.    And, Ms. Klein, my name is Tony Merrill.  I'm an  
3 attorney for the plaintiffs in this matter.

4                    Do you have a general understanding of what the  
5 subject matter is of this litigation?

6           A.    Yes, I do.

7           Q.    And what is your general understanding?

8           A.    My general understanding is that the complaint was  
9 filed to stop the Forest Service from rounding up trespass  
10 horses off the Sitgreaves National Forest.

11          Q.    Are you presently employed?

12          A.    Yes, I am.

13          Q.    And who is your employer?

14          A.    The USDA Forest Service.

15          Q.    What position do you hold with the Forest Service?

16          A.    District ranger.

17          Q.    How long have you served in that position?

18          A.    Fifteen years.

19          Q.    And this is with the Black Mesa Ranger District?

20          A.    That's correct.  It was previously the Heber  
21 Ranger District, but we consolidated in 2000 and became the  
22 Black Mesa Ranger District.

23          Q.    Were you also district ranger for the Heber Ranger  
24 District?

25          A.    I was.  It was Heber before.

1           Q.    Are the boundaries of the now Black Mesa Ranger  
2 District the same as the former Heber Ranger District?

3           A.    No.

4           Q.    How have those boundaries changed?

5           A.    They enlarged.

6                    The consolidated district includes the Heber  
7 Ranger District and the former Cheylon Ranger District.  So  
8 increased the acreage.

9           Q.    Approximately how big an increase in acreage was  
10 there?

11          A.    About 240,000 acre increase.

12          Q.    The Heber wild horse territory is located within  
13 the Black Mesa Ranger District; is that correct?

14          A.    That's correct.

15          Q.    And was this territory also located within the  
16 Heber Ranger District?

17          A.    Yes, it was.

18          Q.    And prior to your position as staff ranger with  
19 the Heber Ranger District, what was your occupation?

20          A.    I was a timber staff, timber and minerals staff  
21 officer on Tres Piedras district of the Carson National  
22 Forest.

23          Q.    Is this Nevada?

24          A.    No, that's New Mexico.

25          Q.    How long were you in that position?

1 A. Approximately three years.

2 Q. And what did you do prior to that?

3 A. I was a timber staff, timber and wildlife staff  
4 officer in Michigan for the Forest Service.

5 Q. And what forest?

6 A. The Huron-Manistee.

7 Q. How long were you in that position?

8 A. Approximately seven years.

9 Well, I was there in Michigan seven years.

10 I was in that position -- let's see. Three years.

11 Q. And what was your position prior to that position?

12 A. Prior to that I was a forester at the same  
13 location for four years.

14 Q. Does the Huron forest in Michigan contain a wild  
15 horse territory?

16 A. Not to my knowledge.

17 Q. Did the forest where you worked in New Mexico  
18 contain a wild horse territory?

19 A. The Carson National Forest does, yes.

20 I believe it does.

21 Q. Did you have any -- were you associated at all  
22 with that territory?

23 A. No, I wasn't.

24 Q. Do you know if the Forest Service is actively  
25 managing that wild horse territory?

1           A.    I had heard information about it when I was there,  
2 so I think they were.  Yes.

3                    I believe they were.

4           Q.    Do you know if it still exists as a territory  
5 today?

6           A.    I believe that it does.

7                    I haven't heard otherwise.

8           Q.    Fair enough.

9                    Have you obtained any academic degrees?

10          A.    Yes.

11          Q.    What degrees have you obtained?

12          A.    I have a bachelor of science in forest management.

13          Q.    And from what institution did you receive this  
14 degree?

15          A.    Penn State.

16          Q.    And what year did you receive this degree?

17          A.    1976.

18          Q.    And in your employment with the Forest Service  
19 have you received any specialized educational courses,  
20 certification, and training?

21          A.    Yes.  Numerous.

22          Q.    Has any of that related to wildlife management?

23          A.    Yes.

24          Q.    And what training have you received with regard to  
25 wildlife management?

1           A.    I'm not sure I can name specific courses, but I've  
2 had -- I've just taken a lot of different courses on forest  
3 ecology and biology and environmental assessment.

4                         Analysis of effects on wildlife.

5                         I honestly can't remember any specific courses  
6 right now related to wildlife.

7           Q.    Have you had any training with respect to horses?

8           A.    No, I haven't.

9           Q.    Have you had any training with respect to the  
10 Wild Horse and Burro Act of 1971?

11          A.    No specific training, no.

12          Q.    Do you own any horses?

13          A.    No.

14          Q.    Have you ever ridden a horse?

15          A.    Yes.

16          Q.    Do you consider yourself an expert horse woman?

17          A.    No.

18          Q.    Are you fairly familiar with the animals?

19          A.    No.    Somewhat.

20          Q.    In your present employment as district ranger, who  
21 do you report to?

22          A.    I report to the forest supervisor, Elaine Zieroth.

23          Q.    And how long has Ms. Zieroth been in that  
24 position?

25          A.    Since about April 2003, about three and a half

1 years.

2 Q. And who was the forest supervisor prior to  
3 Ms. Zieroth?

4 A. John Bedell.

5 Q. Is Mr. Bedell now retired?

6 A. To my knowledge.

7 Q. And did he retire in April 2003 when Ms. Zieroth  
8 took over?

9 A. Somewhere in there, March or April.

10 Q. Ms. Klein, what did you do to prepare for this  
11 deposition today?

12 A. What did I do?

13 I reviewed the letter that I wrote in 1993, and  
14 the forest supervisor's response, and looked briefly through  
15 the record, and also looked at some notes that I have taken  
16 over the course of the past year. Just on the horses,  
17 management of the horses.

18 I reviewed the Wild Horse and Burro Act.

19 Q. When you say you briefly reviewed the record,  
20 would that be the administrative record?

21 A. Yes.

22 Q. And you say that you reviewed various of your own  
23 personal notes?

24 A. Yes.

25 Q. Could you briefly explain to me what information



1 is contained in those notes?

2 A. It's notes about -- it was a conversation that I  
3 had with a tribal employee regarding horses on tribal lands,  
4 White Mountain Apache lands, that is.

5 And the other was some notes from a conversation I  
6 had with a wild horse and burro manager for the Forest  
7 Service.

8 I'm not sure of the exact title.

9 Q. With regard to the first conversation, do you  
10 remember the name of the tribal employee?

11 A. I do.

12 Q. What was the name?

13 A. Mary Stuever.

14 Q. Can you spell the last name for me?

15 A. S-T-U-V-E-R, I think.

16 Q. And what was the substance of your conversation  
17 with Ms. Stuever?

18 A. We were talking about maintenance of the boundary  
19 fence, and opportunities to work together to get the fence  
20 repaired and get the dead trees knocked down that are  
21 adjacent to the fence that continue to fall on the rebuilt  
22 fence, and then we just talked about the tribe's management  
23 of horses on tribal lands.

24 Q. What position does Ms. Stuever have with the  
25 tribe?

1           A.    Well, I think she is their BAER coordinator, but I  
2 really am not positive.

3                    BAER is burned area emergency response, which is  
4 just the acronym for that, which is what we do after we have  
5 a wildfire.

6           Q.    Did you discuss ownership of the horses that are  
7 the subject of this litigation with Ms. Stuever?

8           A.    Yes, we did talk about that.

9                    Well, briefly.

10                   I just -- I told her that we consider the horses  
11 the tribe's horses.

12           Q.    And how did she respond to that?

13           A.    She did not deny that.

14           Q.    Did she confirm that?

15           A.    Yes.

16           Q.    How did she confirm that?

17           A.    She just said that they are -- that she believes  
18 they came from tribal lands after the fire. The horses that  
19 are on the national forest.

20           Q.    Did you gather from her on what she was basing  
21 that statement?

22           A.    Her personal -- no. I guess I could suppose, but  
23 no.

24           Q.    With respect to the wild horse and burro manager  
25 that you spoke to, what agency was this person from?

1 A. Forest Service.

2 Q. Forest Service?

3 And do you recall the name of this person?

4 A. Toni Strauss.

5 Q. And what was your -- the substance of your  
6 conversation with Toni Strauss?

7 A. Clarification of the Wild Horse and Burro Act for  
8 my information and edification.

9 Q. When did this conversation take place?

10 A. A few months ago.

11 I don't remember the exact date.

12 Q. But this year?

13 A. Yes, 2006.

14 Q. And your conversation with Ms. Stuever, when did  
15 that take place?

16 A. February of this year.

17 Q. Did you have conversations with anybody else  
18 regarding the subject matter of this deposition?

19 A. Yes, I did, with Kendell Hughes, Elaine Zieroth,  
20 and Randall Chavez.

21 Q. And are you aware that all three of those persons  
22 have been deposed in this matter?

23 A. Yes.

24 Q. And did your conversation take place before or  
25 after their depositions?

1 A. Both.

2 Q. What was the substance of your conversations with  
3 Mr. Hughes?

4 A. He reviewed with me the type of information that  
5 he was asked, the types of questions that he was asked.

6 Q. And what did he convey to you were the types of  
7 questions he was asked?

8 A. Well, he basically went through the -- he just  
9 flipped through the record and told me that questions had  
10 been asked about various documents in the record.

11 Q. Does Mr. Hughes work with you in the Black Mesa  
12 Ranger District?

13 A. Yes, I supervise him.

14 Q. As a district ranger, how much of your time is  
15 spent in the field as opposed to in an office?

16 A. Ten percent of my time probably in the field.

17 Q. And were your conversations with Ms. Zieroth and  
18 Mr. Chavez regarding the deposition similar to the  
19 conversation you had with Mr. Hughes?

20 A. Much briefer.

21 Q. For about how long did you speak with Mr. Hughes?

22 A. Fifteen minutes.

23 Q. Ms. Klein, I'd like to show you, if I could, a map  
24 that's been provided to us by the U.S. Attorney's Office.  
25 It was marked as Exhibit 1 in connection to Mr. Collins'

1 deposition.

2           However, as it's a map of the Black Mesa Ranger  
3 District, Mr. Collins wasn't overly familiar with it.

4           Have you ever seen this map before?

5           A.    Yes, I have.

6           Q.    And what is represented in this map?

7           A.    This map shows the boundary of the Heber wild  
8 horse territory as it was known back in 1973 or '74.

9           Q.    And, to your knowledge, does that territory still  
10 exist?

11          A.    To my knowledge, I thought the territory had been  
12 disbanded, based on a letter that I received.

13          Q.    And could you look at the bottom, your right-hand  
14 corner of the map.  What's the date on the map?

15          A.    October 4th, 2006.

16          Q.    Does this map contain the entirety of the Black  
17 Mesa Ranger District or just a portion thereof?

18          A.    Just a portion thereof.

19          Q.    Could I have your help in identifying where some  
20 locations might be on this map, if you wouldn't mind?

21          A.    Sure.

22          Q.    Are you familiar with the Bison Ranch area?

23          A.    Yes, I am.

24          Q.    Is that area represented on this map?

25          A.    No, it's not.

1 Q. And if this map were continued out, would it be  
2 more towards me, more towards to your right?

3 A. To my right. To the east.

4 Q. To the east?

5 A. Uh-hmm.

6 Q. Would that be to the east of the wild horse  
7 territory on this map?

8 A. Yes.

9 Q. Is Forest Road 103 displayed on this map?

10 A. Not to my knowledge, no.

11 I'm not familiar with Forest Road 103.

12 Q. Is Forest Road 300 displayed on this map?

13 A. Yes, it is.

14 Q. Could you mark the path of Forest Road 300 with  
15 this red pen for me, please?

16 A. (Witness complies.)

17 Q. Would you make a little note saying Forest  
18 Road 300 for me? That way I won't get confused later.

19 Thank you.

20 Is Forest Road 124 represented on this map?

21 A. No.

22 Q. Is Forest Road 146 represented on this map?

23 A. No.

24 Q. At Highway 260 is the highway that represents the  
25 northern border of the wild horse territory?

1 A. Yes.

2 Q. Turning your attention to the northeastern portion  
3 of the wild horse territory, it's labeled winter pasture.  
4 Do you see that?

5 A. Yes.

6 Q. Do you know why that's designated as winter  
7 pasture?

8 A. Because it would be, the area that would be more  
9 likely occupied in the winter, because the summer it gets  
10 less snow, and it's a little more temperate than this area,  
11 closer to the Mogollon Rim, which would be southern, so it  
12 generally drives animals out of this country in the winter  
13 and into the lower country.

14 Q. Was that winter pasture designated by the Wild  
15 Horse Act?

16 A. Not to my knowledge.

17 Q. Do you know what agency designated that winter  
18 pasture?

19 A. I think that we probably did. The Forest Service.

20 Q. Was this designation based on any formal study or  
21 just kind of casual observation?

22 A. I don't know.

23 Q. Is Buckskin Canyon represented on this map?

24 A. Barely.

25 I think that's it right there.

1           And actually right there.

2           Q.    Could you mark the portion you indicated as  
3 Buckskin Canyon in blue for me, please?

4           A.    Do you want me to write on that there?

5           Q.    Yes, Buckskin Canyon, so I can see it on the map.  
6           Thank you.

7           Do you know why it's called Buckskin Canyon?

8           A.    No.

9           Q.    Ms. Klein, I'd like to show you a document which I  
10 would like to have marked as Exhibit 1 to your deposition.

11                           (Deposition Exhibit No. 1 was marked for  
12 identification by the reporter.)

13 BY MR. MERRILL:

14           Q.    Exhibit 1 to your deposition has been marked.  
15 It's entitled Defendant's Rule 26 Initial Disclosure  
16 Statement.

17                           Ms. Klein, could you turn to Page 2 of that  
18 document for me, please? Do you see where your name is  
19 listed about halfway down the document on Line 15?

20           A.    Yes, I do.

21           Q.    Is the contact information listed under your name  
22 correct?

23           A.    I believe so.

24                           I'm just not positive about the street number on  
25 Highway 260.



1 I don't use it.

2 It's a small town. We just generally say 260.

3 Q. And the postman can find you?

4 A. Well, we have a Post Office box.

5 Q. Okay.

6 Could you read for me, please, the paragraph below  
7 your address information that says can attest to?

8 A. Can attest to decisions related to the management  
9 of the Heber wild horse territory, issues with boundary  
10 fence maintenance, Rodeo-Chediski fire rehabilitation.

11 Q. Can you testify to all three of those issues here  
12 today?

13 A. Yes.

14 Q. Beginning with the first issue, what decisions  
15 have you made related to management of the Heber wild horse  
16 territory?

17 A. The only decision that I have made is when I --  
18 actually it was a recommendation, to -- I'm not sure what  
19 the right word is -- to disband the territory or remove the  
20 territory as a valid wild horse territory.

21 Q. I think that document's reflected in the  
22 administrative record.

23 A. Yes, it is.

24 Q. Which has been marked as Exhibit 1 to Elaine  
25 Zieroth deposition. I believe it's at tab nine.

1           Could you flip to tab nine and we'll look at that  
2 recommendation?

3           Is this tab nine containing the letter?

4           A.    Yes, it does.

5           Q.    And it's dated June 21st, 1993?

6           A.    Yes.

7           Q.    That is your signature on the bottom of the  
8 letter?

9           A.    It is.

10          Q.    And it says to forest supervisor.

11                   Who was the forest supervisor at that time?

12          A.    John Bedell.

13          Q.    First sentence: The wild horse territory on the  
14 Heber Ranger District should be eliminated from formal  
15 management designation.

16                   Did I read that correctly?

17          A.    Yes.

18          Q.    And why did you make that recommendation with  
19 Mr. Bedell?

20          A.    Well, I think the letter includes some rationale  
21 that at that point in time we felt that there were only two  
22 mares left in the herd, that it was not a viable herd, and  
23 that, in fact, the horses that were originally in the  
24 territory were -- and this was stated in the original  
25 nomination, I think -- were unclaimed animals from

1 Fort Apache Indian Reservation and some animals that were  
2 abandoned. When a local family left, my range staff  
3 recommended to me that it wasn't a viable herd and that we  
4 should request to have it withdrawn.

5 Q. Did you ever personally go out onto the forest to  
6 verify that there were only two mares left in the herd?

7 A. No.

8 Q. Did you direct anyone to do that?

9 A. No.

10 Q. Do you know if that was ever done?

11 A. My range staff was a field going person, and he is  
12 the one that told me that. And I accepted his -- I accepted  
13 his count without question.

14 Q. Did he tell you how he obtained that number?

15 A. No.

16 Q. Did you ever ask him how he obtained that number?

17 A. No.

18 Q. The first paragraph of your letter states: Indian  
19 horses have been claimed when the district has published a  
20 notice to impound stray animals.

21 Is that referring to a specific incident or just  
22 kind of a general statement?

23 A. General statement, to my knowledge.

24 Q. Is it your recollection that prior to you drafting  
25 this letter the tribal members were pretty good about

1 claiming their horses?

2 A. I have no experience with that.

3 This refers to work that was done prior to my  
4 tenure there as district ranger.

5 Q. If you could look at the last statement you wrote:  
6 It is recommended -- I recommend it be removed from the  
7 records as a territory and that the animals be removed by  
8 the State Livestock Sanitary Board.

9 To your knowledge, was the territory ever removed  
10 from the records as a territory?

11 A. Based on my -- the response from my supervisor,  
12 John Bedell, I thought that it had been.

13 Q. And when you say records, to what record are you  
14 referring to?

15 A. I guess any official record of territories,  
16 although I don't know specifically what that would be.

17 Q. Prior to your drafting this letter, what  
18 management did your district do with respect to the wild  
19 horse territory?

20 A. During my tenure, nothing.

21 Q. And --

22 A. No -- nothing.

23 Q. Was a formal inventory ever taken?

24 A. Not during my tenure.

25 Not that I know of.

1 I can't speak for my range staff and what he did.

2 Q. Would your range staff ever undertake such an  
3 inventory without your knowledge?

4 A. Yes. I think he could.

5 Q. Would there be a record of that?

6 A. I don't know.

7 Q. And would the purpose of this -- would this be  
8 more of an informal type inventory?

9 A. I believe so.

10 Q. If this inventory was ever taken by one of your  
11 range staff, would they have reported that to you?

12 A. He didn't, so I guess the answer is no.

13 Q. Do you recall ever asking any of your range staff  
14 if they ever undertook inventory of that territory?

15 A. No, I never did.

16 After 1993, I considered the territory gone, to be  
17 honest.

18 Q. Before '93?

19 A. 1990 -- I started in 1991, and in 1991, 1992, I  
20 did not ask for that information.

21 Q. The very last portion of your letter is a  
22 recommendation that the two mares be removed by the State  
23 Livestock Sanitary Board.

24 To your knowledge, was that ever done?

25 A. Not to my knowledge.

1 Q. Could you flip in the records to tab ten for me,  
2 please.

3 A. Uh-hmm.

4 Q. Tab ten appears to be Mr. Bedell's response to  
5 your letter recommending elimination of the territory; is  
6 that correct?

7 A. That's correct.

8 Q. Did Mr. Bedell ask you for any information in  
9 addition to what you stated in your letter?

10 A. Not that I remember.

11 Q. The final sentence of his letter, Mr. Bedell  
12 states: The record will be closed on this subject.

13 What did you take that to mean?

14 A. I took that to mean that the wild horse territory  
15 had been withdrawn or removed as an officially designated  
16 territory.

17 Q. And, do you know if Mr. Bedell took any steps  
18 beyond this letter to eliminate or close out the territory?

19 A. I don't know.

20 Q. After this point in time did you ever discuss this  
21 matter further with Mr. Bedell?

22 A. No, not the territory, no.

23 Not that I remember.

24 Q. Were biannual reports of horse populations still  
25 submitted to Congress after 1993?

1 A. Not to my knowledge.

2 Q. Okay.

3 Would you feel there was any reason to do that if  
4 a territory had been closed in '93?

5 A. No.

6 Q. Returning to Exhibit 1, your disclosure statement,  
7 the final issue is Rodeo-Chediski fire rehabilitation.

8 Ms. Klein, were you on the BAER team with regard  
9 to the Rodeo-Chediski fire rehabilitation?

10 A. No.

11 Q. Did you have any direct involvement with the BAER  
12 team?

13 A. In a coordination role, information role. But I  
14 didn't supervise the team.

15 Q. What was your role with respect to Rodeo-Chediski  
16 fire rehabilitation?

17 A. I provided what I considered to be priorities for  
18 rehabilitation, needs that I thought the team should look  
19 at, resource concerns. And once the team, once the team  
20 developed their plan, I guess I reviewed that.

21 Q. What were the priorities that you set for the  
22 rehabilitation?

23 A. The team initially sets the priorities.

24 They do that based on their field work and their  
25 assessment of what the risk is.

1           Really priorities when it comes to burned area  
2 rehabilitation is watershed stabilization.

3           That basically comes out of policy.

4           Watershed stabilization, protection of downstream  
5 properties, homes, things like that.

6           So that priority is pretty well set.

7           And then -- what was your question again? I don't  
8 think I answered it.

9           Q.    I think you did.

10          A.    Okay.

11          Q.    To your knowledge, did the horses that are subject  
12 of this litigation have any impact on Rodeo-Chediski fire  
13 rehabilitation?

14          A.    Did they have an effect on the rehabilitation?

15          No.

16          Q.    Are there presently allotments for cattle grazing  
17 on Black Mesa Ranger District?

18          A.    Yes.

19          Q.    Do you know how many are there?

20          A.    We have 12 or 13.

21          Q.    Are any of those allotments vacant at the present  
22 time?

23          A.    They may be ungrazed, but they're not vacant.

24          Q.    So there's a permittee for each allotment?

25          A.    Yes.



1 Q. Are cattle now allowed to graze within the Black  
2 Mesa Ranger District?

3 A. Yes.

4 Q. After the fire was there a period of time when  
5 cattle were not allowed to graze on the Black Mesa Ranger  
6 District?

7 A. On a portion of the district they were not allowed  
8 to graze, a portion of the district that included the  
9 Rodeo-Chediski, we rested that from cattle grazing from 2002  
10 to 2005.

11 Q. So now that area is reopened to cattle grazing?

12 A. We opened it this summer, this year, 2006.

13 Q. Do you know approximately how many head of cattle  
14 graze on the Black Mesa District?

15 A. No. I don't know off the top of my head.

16 Q. Are any of the cattle grazing allotments within  
17 the Black Mesa Ranger District located within the area  
18 designated as the Heber wild horse territory?

19 A. Yes.

20 Q. How many?

21 A. Portions of two allotments.

22 Q. Do you know approximately how many head of cattle  
23 those allotments are set up for?

24 A. Roughly.

25 Q. And approximately how many roughly?

1           A.    Well, the Black Canyon allotment, we authorize  
2 60 head, I believe, approximately 60 head in there for a  
3 summer grazing season.

4                    And that allotment is probably -- the largest part  
5 of it is within the territory.

6                    The other allotment is the Heber allotment, which  
7 is very large, and has a small portion that's within this  
8 territory, and the permitted numbers there, I believe, were  
9 800 for that allotment.

10           Q.    Were these allotments established prior to your  
11 arrival at the Forest Service?

12           A.    Yes.

13           Q.    And do you know approximately when the allotments  
14 were established?

15           A.    No.

16           Q.    Are there any allotments within the Black Mesa  
17 Ranger District set aside for horses?

18           A.    No.

19           Q.    What's the country like in the Black Mesa Ranger  
20 District? Is it easily accessible? Is it heavily forested?

21           A.    The ranger district is characterized by being on  
22 the Colorado Plateau north of Mogollon Rim, and it's  
23 generally a gentle terrain that's bisected by steep canyons.  
24 The further north you go, the steeper the canyons are.

25                    They generally start, some of them start right

1 north of the Rim, or the canyons run generally north-south,  
2 the main canyons, and the side canyons might be east-west  
3 going into the main canyons.

4 Ponderosa pine, mixed forest on the south, and  
5 pinion juniper to the north.

6 Q. Does the Forest Service ever inventory wildlife  
7 within Black Mesa Ranger District?

8 A. Yes.

9 Q. How are those inventories undertaken?

10 A. We have protocols for the species that we  
11 inventory.

12 Q. For example, do you inventory elk on the Black  
13 Mesa Ranger District?

14 A. No, we don't. Game and Fish Department does that.

15 Q. Do you inventory any large game? Deer?

16 A. No, we don't.

17 Q. What species of wildlife do you inventory?

18 A. Mexican spotted owl, northern goshawk, Chiricahua  
19 leopard frog, songbirds, those are the ones we have  
20 protocols for.

21 Q. These are done by people on the ground walking  
22 through the forest observing?

23 A. Yes.

24 Q. It makes sense because you're not going to see a  
25 frog from a helicopter?

1 A. No.

2 Sometimes you don't see them on the ground either.

3 Q. Could you turn back to the administrative record  
4 for me, please, and look at tab six.

5 Tab six of the administrative record contains a  
6 document entitled Wild and Free-Roaming Horses and Burros  
7 Public Lands Report, dated for the fiscal year of 1991.

8 Ms. Klein, have you ever seen this document  
9 before?

10 A. Yes.

11 Q. Did you review this document to prepare for your  
12 deposition here today?

13 A. No.

14 Q. And when have you previously seen this document?

15 A. When we were putting the record together.

16 Q. And you assisted in assembling the administrative  
17 record?

18 A. Yes. Well, I guess I did.

19 Q. It's my understanding that Mr. Hughes was tasked  
20 with assembling the record?

21 A. Yes, he was.

22 Q. Would you characterize your role as kind of  
23 overseeing?

24 A. Oversight.

25 Q. Did you make any specific recommendations for

1 documents to be included in the administrative record?

2 A. My letter, the letter that I wrote and the letter  
3 from the forest supervisor.

4 I don't remember recommending anything else.

5 Q. Did you ever recommend to Mr. Hughes to not  
6 include a particular document in the administrative record?

7 A. No.

8 Q. Turning back to tab six, this public lands report  
9 reflects a horse population within the forest on the Heber  
10 Ranger District.

11 Was this report prepared during your tenure within  
12 the Heber Ranger District?

13 I believe you arrived in '91, so I'm not sure.

14 A. I don't know, because I don't have a date.

15 Q. Do you recall any personal involvement in  
16 preparing this report?

17 A. No.

18 Q. Did you have any personal involvement in gathering  
19 the information represented in this report?

20 A. No.

21 Q. On the first page, about halfway down, there's a  
22 section four, current population.

23 And under horse, number of animals, Forest  
24 Service, it lists five.

25 Do you see that?

1 A. Yes.

2 Q. Do you know how that number was obtained?

3 A. No, I don't know.

4 Q. Would this report pertain solely to the Heber  
5 Ranger District?

6 A. It would pertain solely to the wild horse  
7 territory, I believe.

8 Q. Just the 14,000 acres in the territory?

9 A. Yes.

10 Q. On the same line, three spaces over from the  
11 number five, there's a number 60.

12 Do you know what that number represents?

13 A. It looks like animal months, which is -- it's a  
14 way that we measure the amount of time that an animal would  
15 be on the forest, like a cow, an animal month.

16 It would be -- it's also used to estimate, to  
17 generate bills, you know, bills for the use, for cattle  
18 grazing.

19 Q. Is this 60 number just --

20 A. Five times --

21 Q. We spoke over each other.

22 This number 60 is merely representing that each of  
23 the five animals was on the forest for an entire 12-month  
24 period; is that correct?

25 A. Yes, I believe that is true.

1 Q. Could you turn to Page 3 with me of that document.  
2 The last paragraph under the heading program issues states,  
3 approximately five feral horses wonder along the Mogollon  
4 Rim, back and forth from the White River Apache  
5 Reservations. The Indians do not manage the horses.  
6 Neither does the Forest Service. Natural attrition will  
7 eliminate the horses eventually.

8 Did I read that correctly?

9 A. Yes.

10 Q. What definition does the word feral have in that  
11 statement to your understanding?

12 A. I think it means -- my understanding of the word  
13 feral is that it's domestic horses that have escaped from  
14 domestication.

15 Q. In your position with the Heber District and the  
16 Black Mesa District, is that how you use the term?

17 A. Yes.

18 Q. And is it generally your understanding that that's  
19 how the term is defined in documents from the Forest Service  
20 pertaining to the Heber wild horse territory?

21 MR. PATRICK: Let me object to the form and  
22 foundation.

23 Go ahead and answer.

24 THE WITNESS: That's my understanding of the term.  
25 I can't speak for everyone that uses the term.

1 BY MR. MERRILL:

2 Q. Fair enough.

3 The last sentence regarding elimination through  
4 natural attrition, do you know how that conclusion was  
5 reached?

6 A. No.

7 Q. Can you turn to the next page for me, please? The  
8 very last paragraph of the document states: Elimination of  
9 incidental feral horses and burros from formal management  
10 consideration to reduce impacts on management resources,  
11 personnel, and time. The AS herd should not be recognized  
12 at all.

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. Is that statement in accordance with the letter  
16 you drafted in 1993?

17 A. The last sentence is, that the Apache-Sitgreaves  
18 herd should not be recognized at all.

19 Q. To your knowledge, did you rely on this report in  
20 drafting your 1993 letter to Mr. Bedell regarding  
21 elimination of the territory?

22 A. No.

23 I relied on my range staff and his recommendations  
24 to me at that time.

25 Q. Would you turn with me, please, to document 14 in



1 the administrative record.

2 Do you recognize what's represented there in  
3 document 14?

4 A. It's a table.

5 Q. Have you ever seen tables like that before?

6 A. No. I've seen tables, but not this one.

7 Q. Do you have any idea what that table, what  
8 information is represented in that table?

9 A. It says Heber territory, Black Mesa Ranger  
10 District, and has fiscal year, has the forest and district  
11 number.

12 It has number of animals and breeding mare  
13 numbers.

14 Has the zero number of animals and zero breeding  
15 mares.

16 Q. Do you know how those numbers were obtained?

17 A. I do not.

18 Q. Did you participate in any inventory in the fiscal  
19 year 2004 regarding horses on the Heber territory?

20 A. No.

21 Q. Did you direct anyone to do any inventory for  
22 fiscal year 2004 on the Heber territory?

23 A. No.

24 Q. Were there horses in the Black Mesa Ranger  
25 District in 2004?

1 A. Horses? Anywhere on the district?

2 Q. Yes.

3 A. Yes.

4 Q. Do you know why those horses are not reflected in  
5 this chart?

6 A. I don't know for certain, except that they would  
7 not be -- this is Heber territory, and I'm guessing that's  
8 Heber wild horse territory, and those animals were not  
9 associated with the Heber wild horse territory, the animals  
10 that were on the district in 2004.

11 Q. And do you know how that determination was made  
12 that they were not associated with the Heber wild horse  
13 territory?

14 A. By observation and knowledge of people that work  
15 there, I believe.

16 Q. And do you know who made that decision?

17 A. The decision? Which decision?

18 Q. You told me that the differentiation was made  
19 based on observation and knowledge of people that were  
20 there.

21 Who made the observation?

22 A. All of us that worked there observed animals when  
23 we're in the field. Any of us.

24 Q. You didn't have any input into this study?

25 A. No.

1 Q. So it wasn't your observation?

2 A. No.

3 Q. Do you know whose observation it was?

4 A. I don't know, no.

5 Q. But you've seen horses in the territory?

6 A. In the territory itself, no, I have not.

7 Q. Have you seen horses in the Black Mesa Ranger  
8 District?

9 A. Yes, I have.

10 Q. Have you seen horses in the Black Mesa Ranger  
11 District prior to the Rodeo-Chediski fire in 2002?

12 A. Yes.

13 Q. And have you seen horses after the Rodeo-Chediski  
14 fire?

15 A. Yes.

16 Q. Have you ever seen any unbranded horses on the  
17 Black Mesa Ranger District prior to the Rodeo-Chediski fire  
18 in 2002?

19 A. I never got close enough to tell whether they were  
20 branded or not.

21 Q. And after the 2002 fire, have you seen any  
22 unbranded horses?

23 A. Likewise, I have not been able to -- I haven't  
24 observed any. I can't tell you.

25 Q. Have you ever asked anyone to undertake such an

1 effort to try to make that observation?

2 A. Yes, I've asked people to try to look when they're  
3 in the field to see what they can observe, whether the  
4 horses are branded, shod, marked.

5 Q. Was this part of a formal project or kind of just  
6 informally?

7 A. Informal.

8 Q. And is there any -- did anybody report back to  
9 you, hey, we've seen branded horses out here?

10 A. Not that I remember, no.

11 Q. Have you ever seen any documentation to reflect  
12 that horses in the Black Mesa Ranger District have brands?

13 A. No.

14 I've seen documentation from the tribe of the  
15 types of marks that they use, marks and possibly brands.

16 Q. But have you ever seen any of those marks on the  
17 horses in the territory?

18 A. I haven't.

19 Q. Do you know of anyone who has?

20 A. No.

21 Q. Could you turn with me, please, to tab 18 in the  
22 administrative record.

23 I believe this is a survey taken by Fish and Game;  
24 is that correct?

25 A. Yes.

1 Q. Have you ever seen surveys like this before?

2 A. Yes, when they've provided them to us.

3 Q. Is the survey area indicated on this document?

4 A. It looks like it, yes.

5 Q. Is that in the Black Mesa Ranger District?

6 A. Yes.

7 Q. Does this survey include Heber wild horse  
8 territory?

9 A. It appears to, although it doesn't have a -- it  
10 has an east-west boundary, what I can see, but not  
11 north-south, so I'm not sure of the exact area surveyed.

12 Q. Looking at the chart, the left-hand column, it's a  
13 number column that begins at 10 and goes down to 22.

14 Do you know what that represents?

15 A. No.

16 Q. Could that be number of fly overs, maybe?

17 A. I don't know.

18 Q. This survey indicates it was conducted by  
19 helicopter; correct?

20 A. Yes.

21 Q. Conducted December 13th of 2005?

22 A. I can read 1-13. I can't read the year. The hole  
23 punch knocked it out on the copy.

24 Q. Let me flip back to the index.

25 I think the index reflects the date of tab 18 as

1 January 13th, 2005.

2 A. Yes.

3 Q. Okay?

4 A. Okay.

5 Q. Turning back to tab 18, how many horses did Fish  
6 and Game see in this survey?

7 A. It looks like 22 to me.

8 Q. Do you know --

9 A. Total.

10 Q. Do you know how they reached that total? Because  
11 I see a two and a five, and it seems to total 22.

12 A. I don't know.

13 Q. In January 2005, to your knowledge, were there  
14 more than 23 horses on the Black Mesa Ranger District?

15 A. I believe there were, but I don't know that for  
16 sure.

17 Q. Did the Forest Service make any efforts to get a  
18 count of how many horses were in the Black Mesa Ranger  
19 District in 2005?

20 A. Not to my knowledge.

21 Q. Turn with me to document 24 in the administrative  
22 record, please.

23 Document 24 of the administrative record is a  
24 letter dated June 13th, 2005 from Elaine Zieroth to  
25 Mr. Dallas Massey, tribal chairman, White Mountain Apache

1 Tribe.

2 Ms. Klein, have you ever seen this letter before?

3 A. Yes.

4 Q. Do you know what the purpose of sending this  
5 letter to Mr. Massey was?

6 A. Not without reading it again.

7 Q. Go ahead.

8 A. Do you want me to read it?

9 Q. Yeah. Just skim through it. It's not very long.

10 A. It appears to me that the purpose was to notify  
11 the tribe. We, the Forest Service, was planning to impound  
12 unauthorized livestock, and specifically horses, and we  
13 wanted to give the tribe notice of that, since I think our  
14 belief is that those horses, a lot of them belonged to the  
15 tribe, so to give them a chance to claim the horses. And  
16 then the other was a request to ask them to keep the gates  
17 closed on the boundary.

18 Q. Do you know on what the Forest Service based the  
19 belief that these horses belonged to the tribe?

20 A. I believe it's based on past experience, past  
21 knowledge about where the horses were coming from, past  
22 observations, past relationships with the tribe would be my  
23 thought.

24 Then also our observations, mine and those of many  
25 of my staff, that the number of horses on the forest

1 increased drastically after the Rodeo-Chediski fire.

2 Q. And --

3 A. And our knowledge that the tribe has horses on  
4 their property.

5 Q. Have you ever seen horses on the tribal lands?

6 A. No. I'm not allowed to go on tribal lands without  
7 a permit.

8 Q. To your knowledge, did anyone from the tribe ever  
9 respond to this letter saying, yep, those are our horses?

10 A. I have no knowledge of that.

11 Q. Did you ever hear of the tribe claiming the horses  
12 as their own?

13 A. My boss told me, yes, that they acknowledged that.

14 Q. By your boss --

15 A. Ms. Zieroth.

16 Q. Ms. Zieroth?

17 A. Yes.

18 Q. Have you ever seen a written claim of ownership  
19 from the tribe with respect to these horses?

20 A. I have not, no.

21 Q. Would you turn to tab 28 in the administrative  
22 record for me, please?

23 Tab 28 is a notice of intent to impound  
24 unauthorized livestock dated July 6, 2005 and signed by  
25 Elaine Zieroth supervisor.



1 Ms. Klein, have you ever seen this notice before?

2 A. I don't remember.

3 Q. Do you know if this notice was posted in the Black  
4 Mesa Ranger District?

5 A. My range staff, Kendell Hughes, handled the  
6 notification and posting, and I believe he would have posted  
7 it at various locations, but I don't know specifically  
8 where.

9 Q. Would this notice have been mailed to anyone  
10 specifically?

11 A. I don't know.

12 Q. Would this notice have been published in a  
13 newspaper or other periodical, to your knowledge?

14 A. I don't know.

15 Q. What's the Forest Service's general practice with  
16 respect to these type of notices to impound unauthorized  
17 livestock? Are they published or are they just posted in  
18 the ranger district?

19 A. I haven't any experience specifically with it, but  
20 generally we post legal notices in the record, our paper of  
21 record, which is the White Mountain Independent.

22 Q. But you don't know if this notice was published in  
23 that?

24 A. I do not.

25 Q. Ms. Klein, were you involved in the Forest

1 Service's decision to remove these horses from forest lands?

2 A. No.

3 Q. Had Ms. Zieroth never asked you for your opinion  
4 with respect to the status of the horses?

5 A. She asked me my opinion. I didn't make the  
6 decision.

7 Q. Did you consult on the decision?

8 A. Did I talk to Ms. Zieroth about it?

9 Q. Yes.

10 A. Yes, sure.

11 Q. What did you talk about?

12 A. I'm sure we discussed what she was planning to do.  
13 I'm sure she would have informed me, yes.

14 Q. Did she ask you for any specific information to  
15 help her make her decision?

16 A. Not me.

17 Kendell, I believe she would have asked Kendell.

18 Q. And would Mr. Hughes have reported the information  
19 that he transmitted to Ms. Zieroth to you?

20 A. He would have -- I think he would have talked to  
21 me about what he was doing, yes.

22 Q. Do you recall any conversations with him about  
23 this decision to remove the horses?

24 A. I recall him briefing me on what he was doing as  
25 far as being involved in having to take care of notification

1 and contacting the State as to their role in this.

2 Q. Do you recall who Mr. Hughes notified?

3 A. Who he notified?

4 Q. Yes.

5 A. No.

6 Q. Other than the conversation with Ms. Stuever in  
7 February of 2006, did you have any communications with the  
8 White Mountain Apache Indian tribe regarding the removal of  
9 these horses?

10 A. No.

11 Q. Would you turn with me to tab 46 of the  
12 administrative record, please?

13 Do you recognize tab 46, Ms. Klein?

14 A. I do.

15 Q. What is that?

16 A. Wild Free-Roaming Horse and Burro Act.

17 Q. Do you understand what the purpose of this act is?

18 A. I believe I do.

19 Q. And what is the intended purpose of this act?

20 What is your understanding of the intended purpose?

21 A. The intent was to manage wild, free-roaming horses  
22 and burros on public land that were there at that time that  
23 the law was passed, and to manage those horses, I think, for  
24 the enjoyment of people of the United States, and to manage  
25 them in ecological balance with the environment and to

1 protect them.

2 I believe that's what the general gist of it is.

3 Q. As district ranger for either the Heber or Black  
4 Mesa Ranger District, have you ever consulted the provisions  
5 of this act, reviewed them?

6 A. Yes.

7 Q. And why would you have reviewed the provisions of  
8 this act?

9 A. Because I have learned since 1993 that the  
10 territory was not disbanded and that we need to develop a  
11 plan.

12 Q. And when did you come to this realization?

13 A. After a lawsuit was filed.

14 Q. How does the act define a wild horse? What's your  
15 understanding of how the act defines a wild horse?

16 A. I think it says unbranded, unmarked, un-- I  
17 believe that's what it says. Unbranded, unmarked horses  
18 that are on public lands.

19 I don't remember exactly.

20 Q. To your knowledge, are there presently any  
21 unbranded, unmarked horses within the Black Mesa Ranger  
22 District?

23 A. I don't know.

24 Q. Have you ever tasked anybody to find that out?

25 A. No, not in any -- not in any formal manner, any

1 type of formal survey.

2 Q. Could you turn with me to tab 70 of the  
3 administrative record, please? Tab 70 contains an e-mail  
4 that was sent to Deb Bumpus, Robert Dyson, and yourself,  
5 from Mr. Payne, regarding an article from the Payson  
6 Roundup.

7 Do you remember receiving this article in this  
8 e-mail?

9 A. Yes.

10 Q. Do you recall reading the article when Mr. Payne  
11 sent it to you?

12 A. Yes.

13 Q. What did you think of the article?

14 A. I don't remember what I thought, to be honest.

15 Q. Fair enough.

16 I read lots of things that have that effect on me.

17 Could you turn to the second page of the article?

18 About four paragraphs down, there's a statement from Mr. Joe  
19 Wager.

20 Do you know Mr. Wager?

21 A. I do.

22 Q. What do you think of Mr. Wager?

23 A. I think he's a nice man. I don't know him real  
24 well.

25 Q. In your opinion does he have any experience with

1 horses?

2 A. I don't know.

3 Q. The quote attributed to Mr. Wager in this article  
4 is as follows: The Forest alleges that all the wild horses  
5 died, but everybody knows that's just a lie, he said.

6 Before the fire the fence was nothing, it was down  
7 everywhere, and the horses just ran back and forth.

8 Do you disagree with that statement from  
9 Mr. Wager?

10 A. Yes, I do.

11 Q. What portion -- do you disagree with all of it or  
12 just a portion of it?

13 A. I disagree with the part that says before the fire  
14 the fence was nothing, it was down everywhere, and the  
15 horses just ran back and forth.

16 And I disagree with the part that says that  
17 everybody knows that's just a lie.

18 Q. So pretty much all of it?

19 A. Pretty much.

20 Q. On what do you base your disagreement with  
21 Mr. Wager?

22 A. Well, regarding the fence, I've observed the fence  
23 in my time in the field, and I did not notice that it was  
24 down everywhere and that horses were running back and forth.

25 I never observed that. No one ever reported that

1 to me.

2 Q. Were there ever any gaps in the fence prior to the  
3 2002 fire?

4 A. Not that I saw, but I would guess there were.  
5 It's 50 some miles long, and trees die and fall on the  
6 fence, and elk try to jump the fence and miss and pull it  
7 down.

8 Yes, I think there probably were that had to be  
9 repaired throughout its history.

10 Q. And it's the Apache Tribe that has the  
11 responsibility to repair the fence; is that correct?

12 A. I'm uncertain. I had heard that we had an  
13 agreement at one time to share that maintenance. But I  
14 really don't know for sure.

15 I think our permittees repaired it some of the  
16 time and I think the tribe repaired it some of the time.

17 Q. Is the fence in your ranger district?

18 A. It's on the boundary between Black Mesa -- it's  
19 between the Sitgreaves National Forest and the White  
20 Mountain Apache tribal lines.

21 Q. Is all of the fence on that boundary or just a  
22 portion?

23 A. Is all the fence?

24 Q. I asked a bad question.

25 The fence borders the tribal lands and forest

1 lands; correct?

2 A. Yes.

3 Q. Are all of those forest lands associated with the  
4 fence in the Black Mesa Ranger District?

5 A. No.

6 Q. Approximately one percent, would you say, is in  
7 the Black Mesa District?

8 A. The fence, I guess it depends on which portion of  
9 the fence you're talking about.

10 I thought maybe I could ask a clarifying question.

11 Do you mean just the portion that's in the fire?

12 Q. No.

13 A. That was affected by the fire of the fence?

14 Q. Let's start there, the portion affected by the  
15 fire, how much of that is in the Black Mesa Ranger District?

16 A. I would guess probably two thirds of the length.

17 Q. And the fence as a whole?

18 A. Maybe a half is on Black Mesa. Maybe a third to a  
19 half. I really don't know exactly.

20 Q. But the fence in its entirety is within either  
21 Black Mesa or Lakeside?

22 A. No. The reservation is actually bounded by the  
23 Springerville Ranger District, the Lakeside Ranger District,  
24 the Black Mesa Ranger District, and then the, I believe,  
25 Pleasant Valley and Tonto National Forest.



1 Q. Would you turn to tab 71 in the administrative  
2 record for me, please.

3 Tab 71 is an e-mail from Ms. Bailey Williams, that  
4 was eventually routed to mailroomR3Apache-Sitgreaves@FSNOTES

5 Ms. Klein, do you recognize that e-mail address at  
6 fs notes?

7 A. That's our -- it's our Apache-Sitgreaves mail  
8 room. Yeah.

9 Q. Who reviews e-mails that go to that address?

10 A. I don't know.

11 Q. Have you ever seen this e-mail prior to your  
12 deposition today?

13 A. I don't remember seeing it, no.

14 Q. If you could drop with me to the middle of the  
15 page, the text that Ms. Williams stated, she states I am  
16 writing to encourage the reevaluation of the  
17 Apache-Sitgreaves horses. A census taken 14 years ago  
18 cannot be expected to accurately determine the current  
19 status of wild horses in the area. As this is a protected  
20 wild horse and burro refuge, I encourage you to reevaluate  
21 your status on this matter.

22 Do you disagree with that statement?

23 A. Well, it's her opinion.

24 What do you mean do I disagree with it?

25 Q. For example, she states a census taken 14 years

1 ago cannot be expected to accurately determine the status of  
2 wild horses in the area.

3 Do you agree with that or not?

4 A. If I had thought that the territory was still in  
5 place, and that we were still managing it, yes, I would  
6 agree with that.

7 Q. Has the Forest Service reevaluated its position  
8 with respect to the protected wild horse territory?

9 A. Since when?

10 Q. Since your letter in 1993.

11 A. Yes.

12 Q. And the Forest Service now recognizes the  
13 existence of the wild horse territory?

14 A. Yes.

15 Q. And what steps has the Forest Service taken to  
16 reflect that reevaluation?

17 A. What steps have we taken?

18 Q. For example --

19 A. We have recognized that Mr. Bedell did not  
20 withdraw the territory, or he was not able to do that. I  
21 think we recognize that now.

22 Q. Is the Forest Service presently compiling a  
23 management plan with respect to the wild horse territory?

24 A. We've started working on it, yes.

25 Q. And I take it you're involved in that process?

1 A. Yes.

2 Q. What is your level of involvement?

3 A. It will be an oversight role, I believe. There's  
4 an interdisciplinary team that has been put together to do  
5 the evaluation and develop the plan.

6 The deciding official is the forest supervisor, so  
7 I will be an oversight, coaching supervision of the team.

8 Q. Who's is on the team?

9 A. You want specific names?

10 Q. Yes.

11 A. Fred Green. Kendell Hughes. Brian Dykstra.

12 Chris Nelson. Bob Berkland.

13 I think that's it.

14 Q. What is Fred Green's position?

15 A. He's an assistant district ranger.

16 Q. Which district?

17 A. Black Mesa.

18 Q. And I know Kendell Hughes.

19 Brian Dykstra, what's his position?

20 A. He's a wildlife biologist.

21 Q. Is he employed by the Forest Service?

22 A. Yes.

23 Q. Does he pertain to a particular ranger district?

24 A. Black Mesa.

25 Q. And Chris Nelson, is that --

1 A. He's our forest soil scientist, hydrologist.

2 Q. And Bob Berkland?

3 A. Berkland.

4 Q. What's his position?

5 A. Game and fish representative.

6 Game and fish field manager, I think is his title.

7 Q. And, to your knowledge, how many times has this  
8 team met together with respect to drafting this new plan?

9 A. Twice, I think.

10 Q. Twice?

11 Do you know the dates of those meetings?

12 A. August and October of 2006. I don't know the day.

13 Q. Were you at any of those meetings?

14 A. I was at the one in August.

15 Q. What was discussed at the meeting in August?

16 A. It was really initiation of the project, where we  
17 went over the scope of the project and reviewed the project  
18 initiation letter.

19 Q. What is the scope of the project?

20 A. It is to develop a Heber wild horse territory  
21 management plan.

22 Q. And what action does the Forest Service plan to  
23 take in order to reach that goal?

24 A. Well, we'll conduct an environmental analysis  
25 under National Environmental Policy Act, the guidelines of

1 that act.

2 So we'll collect data. We'll involve the public.

3 I'm sure we'll read literature and gather  
4 information.

5 Q. Has any census or count been discussed with  
6 respect to determining what exactly is on the forest?

7 A. Yes. We have discussed -- not the whole forest,  
8 but within the wild horse territory.

9 Q. Just within the 1400 acres?

10 A. 14,000 an acres, yes.

**See Corrections/CMH**

11 Q. 14,000. Excuse me.

12 A. Yes.

13 Q. And horses that happen to be outside the 14,000  
14 acres, do they have any involvement? Are those horses  
15 considered at all in the plan?

16 A. I don't know.

17 Q. Has there been any talk -- was there any talk at  
18 this August meeting regarding determining what horses have  
19 brands on them and what horses don't?

20 A. At the August meeting, no, not that I remember.

21 Q. Have you heard any discussion with respect to  
22 trying to determine if horses presently on the forest are  
23 branded or unbranded?

24 A. Yes, we have discussed that.

25 Q. And with whom did you have those discussions?

1 A. Wow.

2 I have talked with Kendell.

3 I'm sure I've talked with Elaine Zieroth.

4 I think I have perhaps been involved in

5 conversations with the litigants about --

6 Q. This is all in the planning stages; correct?

7 No one's actually gone out to take the census?

8 A. No. It's planned, but we have not done a census.

9 Q. Do you know when it's planned for?

10 A. We are planning to do a census as soon as we can.

11 Q. Did the issue of the injunction that's in place  
12 come up at this August meeting?

13 A. I don't remember.

14 Q. Was elimination of the wild horse territory  
15 discussed at this August '06 meeting?

16 A. I don't know.

17 Q. Do you know -- I'm sorry.

18 A. I don't remember whether it was discussed.

19 Q. Has the elimination of the territory been  
20 discussed?

21 A. Yes, it has.

22 Q. And in what context has it been discussed?

23 A. As an option to evaluate in the NEPA analysis.

24 Q. So one of the options with respect to this new  
25 horse management plan would be elimination of the territory?

1           A.    It's possible that we would evaluate that,  
2 certainly.

3           Q.    And that will be part of the NEPA study?

4           A.    It's possible.

5                    I can't tell you right now.

6                    The study is just starting, and we develop  
7 alternatives as we go through the study.

8           Q.    To date has the Forest Service ever conducted a  
9 NEPA study in the Heber wild horse territory that you're  
10 aware of?

11           A.    Not for the horses.

12                    We've done environmental analysis for other  
13 things.

14           Q.    Such as --

15           A.    Certainly within that area.  For grazing,  
16 livestock grazing, cattle grazing.  I'm sure for forest  
17 thinning, possibly prescribed burning.

18           Q.    Do you know if any of those studies made reference  
19 to the existence of the Heber wild horse territory?

20           A.    There was -- no, not the territory.

21           Q.    Do you know if any of those studies ever made  
22 reference --

23           A.    Not that I know of.

24           Q.    Do you know if any of those studies ever made  
25 reference to wild horses?

1 A. No.

2 Q. Is there a 2006 forest plan revision, that you're  
3 aware of?

4 A. 2006? No.

5 Q. When was the last revision to the forest plan?

6 A. Depends on whether you're talking about a project  
7 specific provision or a general revision.

8 Q. A general revision.

9 A. I believe the last one was probably, it was  
10 probably in the late '90s sometime.

11 Q. Do you know of any current plans to make a general  
12 revision to the forest plan?

13 A. We were currently in the process of revising our  
14 forest plan, yes.

**See Corrections/CMH**

15 Q. Is that separate and apart from the horse  
16 management plan we discussed earlier?

17 A. Oh, yeah.

18 Q. Is the wild horse territory a consideration in the  
19 revisions to the current forest plan?

20 A. I don't know.

21 Q. Do you know, was there any public notice and  
22 comment period with respect to the decision in the summer of  
23 2006 to remove the horses?

24 A. 2005?

25 Q. 2005. I'm sorry.



1 A. Public notice and comment?

2 Q. Correct.

3 A. Not to my knowledge.

4 You're talking about under the provisions of  
5 National Environmental Policy Act?

6 Q. Correct.

7 A. Not to my knowledge.

8 Q. I want to see if you can identify a few people for  
9 me, if you don't mind.

10 Do you know who Warren Abbott is?

11 A. Yes.

12 Q. Who is Warren Abbott?

13 A. He's our forest contracting officer.

14 Q. Did he have any involvement with respect to the  
15 decision to remove the horses in the summer of 2005?

16 A. Not to my knowledge.

17 Q. I'm going to butcher this name. Do you know Anne  
18 Weiskircher?

19 A. Yes.

20 Q. Who is Anne?

21 A. Anne is a contract specialist with the forest.

22 Q. Did she work with Mr. Abbott?

23 A. Yes.

24 Q. Do you know if she had any role in the decision to  
25 remove the horses in the summer of 2005?

1           A.    Not to my knowledge.

2           Q.    Do you know a Kent Nelson?

3           A.    No.

4           Q.    Do you know Rocky Fuller?

5           A.    No.

6           Q.    Do you know Nick McDunna?

7           A.    No.

8           Q.    Do you know a Dr. Phil Blair?

9           A.    No.

10          Q.    Do you know John Teets?

11          A.    No.

12          Q.    Do you know David Stewart?

13          A.    Yes.

14          Q.    And who is David Stewart?

15          A.    He's our regional director of range management.

16          Q.    And where is he located?

17          A.    Albuquerque.

18          Q.    To your knowledge, did he have any involvement in

19 the decision to remove the horses in summer of 2005?

20          A.    No.

21          Q.    No, he didn't have any involvement?

22          A.    Not to my knowledge.

23          Q.    Do you know a Lowell Walker?

24          A.    No.

25          MR. MERRILL: That's all I have for now.

## E X A M I N A T I O N

BY MR. PATRICK:

Q. Ms. Klein, in response to one of counsel's questions, and I think I got this correct -- if not, the record will reflect otherwise -- I believe plaintiff's counsel asked you if you had made, over the course of your district ranger employment on the ARS, any management decisions with respect to the Heber wild horse territory, and I think your answer was no.

Do you recall that question and response?

A. I do. I think I said that the only decision that -- that I didn't actually make a decision. I made a recommendation to remove the -- withdraw the territory.

Q. The territory occupies approximately 14,000 acres within your district?

A. Yes.

Q. By your response to counsel's question, did you mean to imply that you make no management decisions and have since your employment that affects the 14,000 acres within the Heber wild horse territory?

A. No, I didn't mean to imply that.

Not at all.

MR. PATRICK: I have no further questions.

## FURTHER EXAMINATION

BY MR. MERRILL:

Q. To follow up counsel's question, with respect to the management decisions that have affected the 14,000 acres, have any of those decisions concerned horses?

A. No.

Really just the only thing is the decision to put together an interdisciplinary team to develop a plan which we've done currently or recently.

Q. And that decision was made after the lawsuit was filed; correct?

A. That's correct.

MR. MERRILL: That's all I have.

MR. PATRICK: We'll read and sign.

(Whereupon, the deposition concluded at 4:41 p.m.)

*Kathleen Klein*

KATHLEEN KLEIN

\* \* \* \* \*

1 STATE OF ARIZONA            )  
  )            ss.  
2 COUNTY OF MARICOPA        )

3            BE IT KNOWN that the foregoing deposition was  
4 taken before me, Marty Herder, a Certified Court Reporter,  
5 CCR No. 50162, State of Arizona; that the witness before  
6 testifying was duly sworn by me to testify to the whole  
7 truth; that the questions propounded to the witness and the  
8 answers of the witness thereto were reduced to typewriting  
9 under my direction; that the witness elected to read and  
10 sign the deposition transcript; that the foregoing 62 pages  
11 constitute a true and accurate transcript of all proceedings  
12 had upon the taking of said deposition, all done to the best  
13 of my skill and ability.

14            I FURTHER CERTIFY that I am in no way related to  
15 any of the parties hereto, nor am I in any way interested in  
16 the outcome hereof.

17            DATED at Chandler, Arizona, this 8th day of  
18 November, 2006.

19   
20 \_\_\_\_\_

21 C. Martin Herder, CCR  
22 Certified Court Reporter  
23 Certificate No. 50162  
24  
25



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U.S. ATTORNEY  
PHOENIX, AZ





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District of Arizona

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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 In Defense of Animals, et al.,

10 Plaintiffs,

11 v.

12 United States Government, Department  
13 of Agriculture, et al.

14 Defendants.

CIV-05-2754-PCT-FJM

**DEFENDANTS' RULE 26 INITIAL  
DISCLOSURE STATEMENT**

15 Pursuant to Rule 26(a), Federal Rules of Civil Procedure, defendants submit the following  
16 Initial Disclosure Statement:

17 **A. Rule 26(a)(1)(A): individuals likely to have discoverable information that the**  
18 **United States may use to support its claims or defenses:**

19  
20 **Elaine Zieroth, Forest Supervisor**  
Apache-Sitgreaves National Forests  
21 309 South Mountain Ave.  
22 Springerville, AZ 85938  
(520) 333-4301

23  
24 **CAN ATTEST TO:** decisions related to the Heber Territory post Rodeo-Chediski  
25 Fire from 2003 to present; approval for funding of feral horse gather contract

26 **John Bedell, Forest Supervisor (Retired), Apache-Sitgreaves National Forests**  
PO Box 15017  
27 Flagstaff, AZ 86011-5017  
28 928-639-0093

EXHIBIT # 1

*Klein*

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**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Deb Bumpus, Ecosystem Staff Officer**  
Apache-Sitgreaves National Forest  
309 South Mountain Ave.  
Springerville, AZ 85938  
(520) 333-6220

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory post-2003; information on associated allotments

**Michael Rising, Ecosystem Management Staff Officer (Retired), Apache-Sitgreaves National Forests**  
PO Box General Delivery  
Nutrioso, AZ 85932  
928-339-4349

**CAN ATTEST TO:** specific monitoring and reporting on the Heber Wild Horse Territory prior to 2003.

**Kate Klein, District Ranger, Black Mesa Ranger District**  
PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation

**Ed Collins, District Ranger, Lakeside Ranger District**  
2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** : decisions related to the management of the Heber Wild Horse Territory; issues with boundary fence maintenance; Rodeo-Chediski Fire Rehabilitation; draft MOU with White Mtn. Apache Tribe for fence replacement, repair, and maintenance

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**Kendell Hughes, Range Staff, Black Mesa Ranger District**  
PO Box 968  
2748 E. Highway 260  
Overgaard, AZ 85933  
928-535-4481

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

**Randall Chavez, Range Staff, Lakeside Ranger District**  
2022 W. White Mtn. Blvd.  
Lakeside, AZ 85929  
928-368-5111

**CAN ATTEST TO:** issues with boundary fence maintenance; contract to gather feral horses; conflicts with feral horses and other District allotments

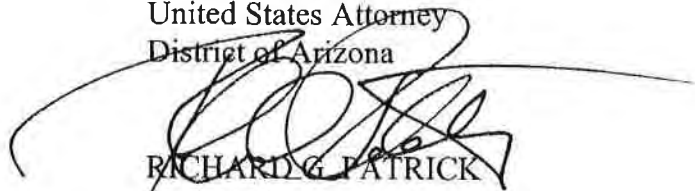
**Gene Onken, Invasive Plants and Planning, Regional Office**  
333 Broadway SE  
Albuquerque, NM 87102  
505-842-3227

**CAN ATTEST TO:** monitoring reports to Congress, historic reporting data for the Heber Wild Horse Territory; data on Region 3 Wild Horse Territory monitoring and reporting

**B. Rule 26(a)(1)(B): Documents**

See Administrative Record lodged and produced to plaintiffs this date.

Respectfully submitted this 21<sup>st</sup> day of April, 2006.

United States Attorney  
District of Arizona  
  
RICHARD G. PATRICK  
Assistant U.S. Attorney

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ORIGINAL mailed this 21<sup>st</sup> day of April, 2006 to:

Anthony W. Merrill  
Christine Elizabeth Broucek  
BRYAN CAVE LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406

  
\_\_\_\_\_  
Office of the U.S. Attorney

**M**

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2  
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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 In Defense of Animals, et al.,

10 Plaintiffs,

11 v.

12 United States Government, Department  
13 of Agriculture, et al.

14 Defendants.

CIV-05-2754-PCT-FJM

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' FIRST REQUEST  
FOR PRODUCTION OF  
DOCUMENTS**

15 Pursuant to Rule 34(b), Fed. R. Civ. P., defendants' response to plaintiffs' first request  
16 for production of documents is enclosed.

17 Respectfully submitted this 30<sup>th</sup> day of October, 2006.

18  
19 United States Attorney  
District of Arizona

20  
21   
22 RICHARD G. PATRICK  
Assistant U.S. Attorney  
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## **Production of Documents**

List from Black Mesa RD

10/24/06

### **REQUEST NO. 1**

1. Letter from Forest Supervisor Monighan to J.L. Porter; February 2, 1945
2. Memorandum of Agreement between US Forest Service, Apache-Sitgreaves National Forests and Bureau of Indian Affairs, Fort Apache Agency regarding responsibility for fence maintenance dated October 15, 1963; and map showing areas of responsibility dated 5/93.
3. Range Inspection Report, Gentry Allotment, 7/23-24/1974, noting presence of trespass horses and roundup.
4. Range Management Plan for Black Canyon Allotment, approved 3/4/1976
5. Letter from District Ranger, John S. Hart to Miles Hanrahan regarding Black Canyon Allotment, December 5, 1975
6. Stocking Record, CY 1975, Black Canyon Allotment
7. Stocking Record, CY 1976, Black Canyon Allotment
8. Stocking Record, CY 1977, Black Canyon Allotment
9. Letter from District Ranger, John S. Hart to Miles Hanrahan, regarding Production and Utilization Studies for Gentry Allotment, November 17, 1978
10. Range Report, including Wild and Free-Roaming Horses and Burros on Public Lands Report, 10/1/1981.
11. Range Report, including Wild and Free-Roaming Horses and Burros on Public Lands Report, 9/29/1982.
12. Range Report, including Wild and Free-Roaming Horses and Burros on Public Lands Report, 10/14/1983.
13. Range Report, including Wild and Free-Roaming Horses and Burros on Public Lands Report, 9/18/1984.
14. Range Report, including Wild and Free-Roaming Horses and Burros on Public Lands Report, 10/3/1989.
15. Speed Memo with Range Reports, 9/12/1990, reporting no change in Wild Horse reports from last year.
16. Wild and Free Roaming Horses and Burros on Public Lands Report for FY 1990.
17. Range Reports, including information on Wild Horse and Burro Management, 1/12/93.
18. Notice of Intent to Impound Unauthorized Livestock, Gentry and Buckskin Allotments, Heber Ranger District, Sitgreaves National Forest, 8/17/1984.
19. Range Inspection Report, Gentry Allotment, July 8, 1986, noting presence of trespass horses.
20. Range Inspection Report, Gentry-Buckskin Allotment, August 4-5, 1987, noting presence of trespass horses and plan to build a trap.
21. Letter from District Ranger Steve Egeline to Doy Reidhead, Permittee, regarding management issues on his allotments, including presence of unauthorized horses and plans to capture them, March 18, 1988.

22. Letter from Forest Supervisor Nick W. McDonough to Doy and Leone Reidhead, Permittees, regarding management of the Buckskin, Gentry, Heber and Mud Tank Allotments, 6/14/1988, with enclosures. Mentions removal of horses.
23. Range Inspection Report, Buckskin-Gentry Allotment, June 1988, referencing presence of approximately 200 head of Indian horses, and trapping of horses.
24. Agreement between Steven Bragg, Permittee, and Forest Supervisor, Nick W. McDonough, to capture horses roaming at large on the Gentry and Buckskin Allotments, May 10, 1989.
25. Request for Stocking Rate Increase for Bucksin, Gentry, Heber, and Mud Tank Allotments from Neil Braid, Ranch Manager, 1/14/1992. References removal of trespass horses.
26. Unsigned note to Kate, date 7/92 which reference removal of horses.
27. Letter from District Ranger, Kate Klein, to Stephen D. Bragg, Permitte, regarding management issues on Gentry, Buckskin, Heber and Mud Tank Allotments, 8/24/1992. References removal of horses.
28. Letter from Steve Bragg, Permitte, to Bruce Mortensen, with a list of fence maintenance and repair costs, 1/21/1992.
29. Undated Letter from Stephen Bragg, Permittee, to Kate Klein, District Ranger regarding management issues on the Buckskin, Gentry, Heber and Mud Tank Allotments. Mentions that all 200 horses were removed form the allotments by 1990.
30. Letter from District Ranger, Kate Klein, to Steve Bragg, Permittee, with transmittal of Annual Operating Plan. References about 8 head of unauthorized horses in the Phoenix Park unit, and acknowledges that Mr. Bragg will try to capture them.
30. Leteter from District Ranger Kate Klein to White Mountain Apache Reservation Tribal Lands Office, Ramos Albert, regarding reservation boundary fence issues, 6/3/1996.
31. Letter from District Ranger Kate Klein to Larry Gibson, Rancho Milagro, regarding reservation boundary fence maintenance responsibilities, 6/13/1996.
32. Habitat Enhancement and Wildlife Management Proposal, undated and unsigned, submitted by Kendell Hughes, Black Mesa Ranger District, and Randall Chavez, Lakeside Ranger District, for removal of trespass horses from Game Management Unit 3C.
33. Horse Tracking Summary, Kendell Hughes, through 9/3/2005.
34. Horse Tracking Summary, Kate Klein, through 11/10/2005.
35. Notes from conversation between Kate Klein and Mary Stuver, White Mountain Apache BAER team, regarding repair and maintenance of the reservation boundary fence, 2/6/2006. *(Some of the information in these notes was shared with me in confidence and Mary said that she didn't want the information about their horse roundups generally known. I would recommend that we only include the first page of my notes, or at least that we not include any of the info regarding their roundups)*
36. Notes from conversation between Kate Klein and Toni Strauss, regarding the Wild and Free-Roaming Horses and Burros Act of 1971, 7/12/2006.
37. Project Initiation Letter, Heber Wild Horse Territory Plan, from Forest Supervisor, Elaine Zieroth to Fred Green, Assistant Ranger, Black Mesa RD, 8/1/2006.



2/4/45  
JL

February 2, 1945

Q  
PERMITS-C&H-Sitgreaves  
Porter, J. L.

Mr. J. L. Porter  
Heber, Arizona

Dear Sir:

Reference is made to your grazing application of 12/28/44.

This application is being approved as submitted. However, it is noted that you have requested 5 head of saddle horses exempt. Since we are getting a closing order on horses for the Black Canyon Allotment and will make an effort to dispose of the trespassing horses on this allotment, I cannot approve the grazing of horses on a permit on this allotment for the 1945 season.

A letter of transmittal is enclosed for your convenience in paying the 1945 grazing fees.

Very truly yours,

F. J. MONIGHAN, Forest Supervisor

By:

  
R. I. BOONE, Acting

Enclosure

cc Heber ✓

2470

EQUAL EMPLOYMENT OPPORTUNITIES  
The nondiscrimination provisions contained in Executive Order 11246, and in Executive Order 11375, which prohibit discrimination on the basis of race, color, religion, sex, or national origin, and the implementing rules and regulations promulgated by the Secretary of Labor are incorporated herein.

Memorandum of Agreement  
U. S. Forest Service  
Sitgreaves National Forest  
Bureau of Indian Affairs  
Fort Apache Agency

The purpose of this agreement is to assign the responsibility for fence maintenance on the common boundary fence between the Fort Apache Reservation and the Sitgreaves National Forest.

This agreement shall in no way affect the present ownership of the fences to be maintained.

The attached map, which becomes a part of this agreement, by reference, delineates the approximate division points between the fence maintenance responsibilities for the Fort Apache Agency and the Sitgreaves National Forest.

An authorized representative for the Superintendent of the Fort Apache Agency and the Forest Officer in charge, as designated by the supervisor of the Sitgreaves National Forest will locate and establish the division points along the Boundary fence. The division markers will be red and green painted posts, the colors alternate at one foot intervals.

Nothing herein shall be construed as binding the U.S. Forest Service, Forest Permittee, Bureau of Indian Affairs, and the White Mountain Apache Tribe for payment of money in excess of appropriations authorized by law, and the White Mountain Apache Tribal Officials.

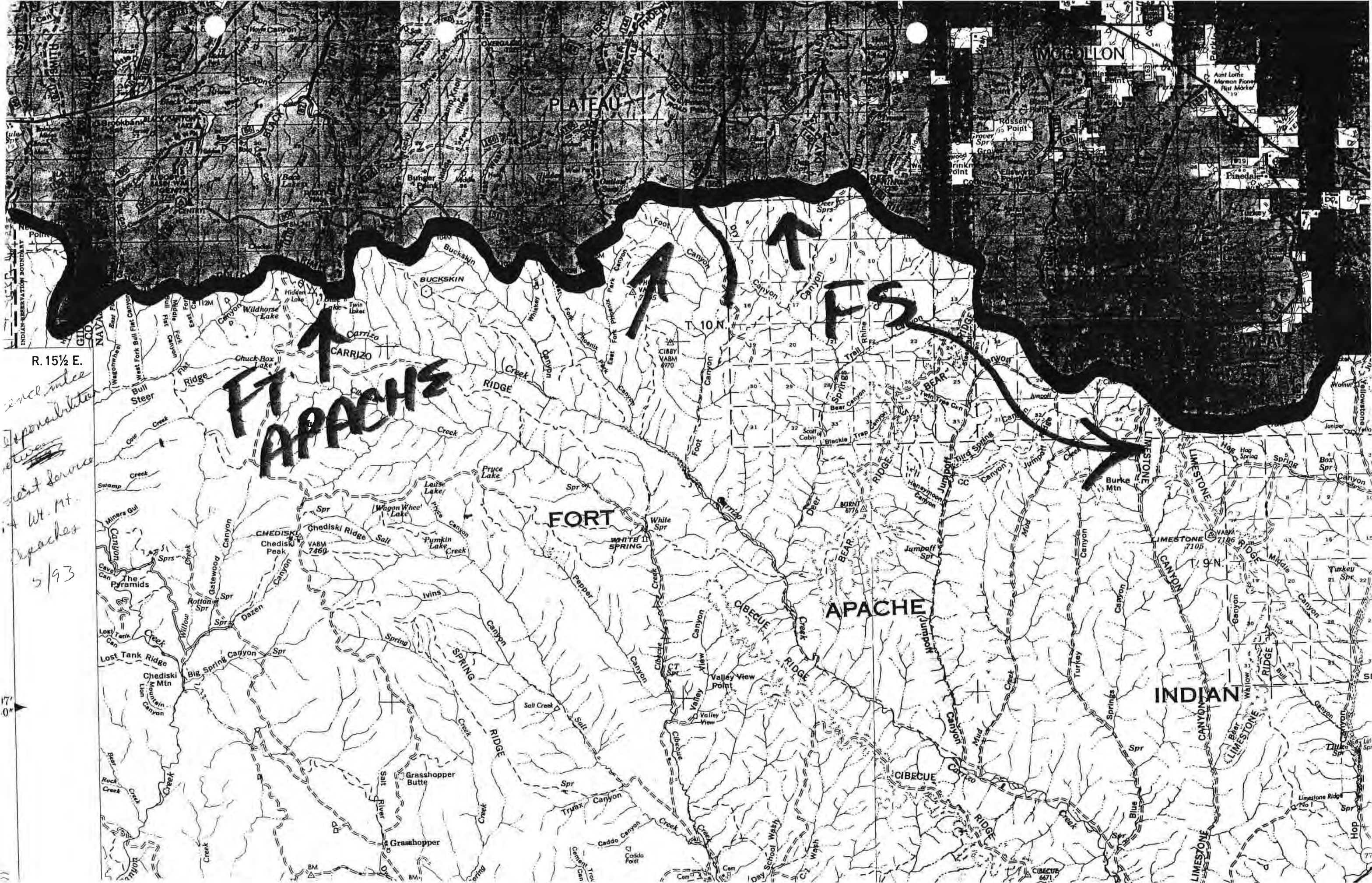
This agreement may be terminated by either party if notice is given 2 months in advance of the beginning of the fiscal year or by mutual agreement at any time by both parties.

Executed this 15 day of October 1963

[Signature]  
Forest Supervisor  
Sitgreaves National Forest

[Signature]  
Acting Superintendent  
Fort Apache Agency

[Signature]  
Chairman, White Mountain  
Apache Tribe



PLATEAU

MOGOLLON

ARIZONA

FT APACHE

FORT

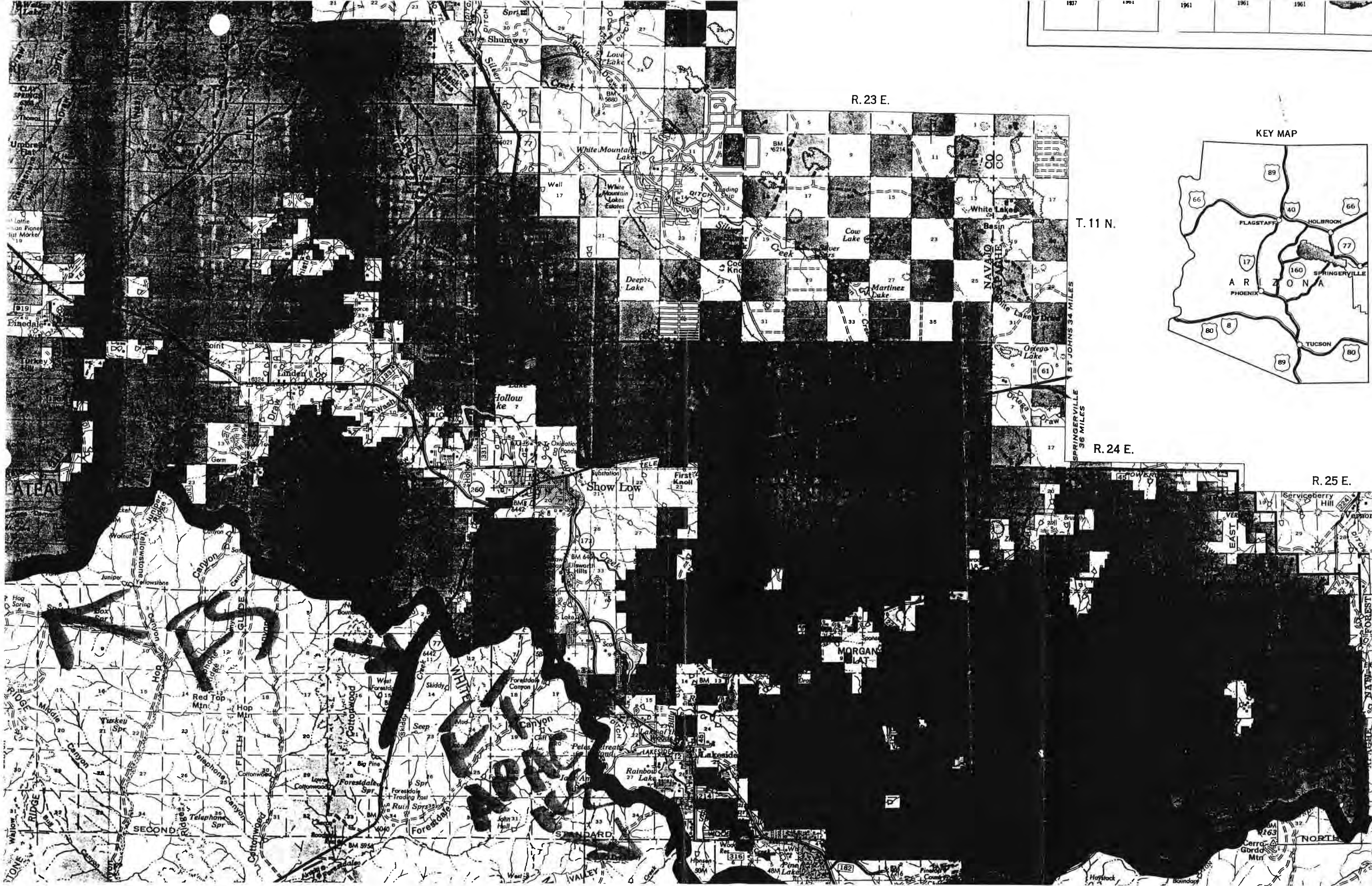
APACHE

INDIAN

R. 15 1/2 E.

2 mile miles  
Responsibilities  
West Service  
W. M.  
Apaches  
5/93

17' 0"



1961	1961	1961	1961
------	------	------	------



T. 11 N.

ST. JOHNS 34 MILES  
SPRINGVILLE 36 MILES

R. 24 E.

R. 25 E.

NORTH

Buckskin Allotment

Gentry ✓  
Mud Tank  
Heber

RANGE INSPECTION REPORT

Dates of Inspection 7-23 1974  
7-24 1974 Approx. % of range seen 50 %

1. Were weather conditions favorable or unfavorable for plant growth? Unfavorable  
Dry Spring, and very light Summer Rains
2. Was forage production average, above or below average? Below Average
3. Percent of current utilization of key species on primary range 40%
4. Utilization obtained by ocular estimate, plant count or clipping Ocular
5. General distribution of livestock over allotment Very Good - Permittee  
did excessive water hauling this year to scatter the cattle
6. Action taken to correct poor distribution —
7. Salting practice on feed or on water? On feed
8. Problem areas None observed
9. Permittee plan; status, use, changes needed w/dates (including improvements).  
Permittee has a new management plan and it is functioning quite well.
10. Calf Crop (% tallied on allotment during inspection) 90%
11. Excess (permittees) or trespass (not permittees) suspected? If yes, why; and what action is needed to correct? White Mountain Apache Horses Trespass  
Case written - Horses rounded up and sold at public Auction
12. Allotment analysis - give current status of preparation Needs Re-Analysis
13. Were conditions taken up with permittee? Yes; allotment ridden with permittee? Yes; his reaction: Favorable
14. Is season satisfactory? Yes
15. Wildlife conditions Only medium growth on browse - very little wildlife observed.

Complete reverse side  
Supplement w/memorandum if necessary  
Form R3-2200-9  
April 1959

Bruce J. Mortensen  
Forest Officer  
(Copy to SO; copy for Allot. File;  
copy to permittee when advisable)

RANGE MANAGEMENT PLAN

FOR

BLACK CANYON ALLOTMENT

HEBER RANGER DISTRICT

APACHE-SITGREAVES NATIONAL FOREST

Jointly Prepared By: Bruce J. Mortensen 6-27-75  
Bruce J. Mortensen Date  
District Range Staff

And: J. LaPorte 6/27/75  
Permittee Date

Approval Recommended By: John S. Hart 7/9/75  
John S. Hart Date  
District Ranger

Approved By: Robert B. Deppconic 3/4/76  
James L. Kimball Date  
Forest Supervisor

RANGE MANAGEMENT PLAN

BLACK CANYON ALLOTMENT

I. Objective

The objective of this plan is to maintain and improve the present system of grazing now being used on the allotment.

The Black Canyon Allotment has been operated under the rest-rotation system since 1968, and we feel it has improved itself steadily each year. It is our intent to maintain the present grazing system and with the development of a few more water facilities, improve the system through better distribution of the cattle.

This plan will basically cover five years and will be revised and updated at that time. It may also be modified at any time, if weather or other unforeseen conditions dictate.

II. Action Plan

A. Range Improvement Development Program

The following improvement work would be desirable for the five year period. Forest participation will depend on Forest priorities and availability of funds.

B. Water Development

Range Improvement Construction

<u>Priority Improvements</u>	<u>Unit</u>	<u>Cost</u>	<u>Responsibility</u>
1. North Fork Trick Tank	1 EA.	\$5000.	Permittee & F.S. Materials <i>Done</i>
2. Turkey Draw Pipeline	1 MI.	\$2500.	Permittee & F.S. Materials
3. Sharp Hollow Pipeline	1 MI.	\$1500.	Permittee & F.S. Materials <i>Done</i>
4. Nelson Trick Tank	1 EA.	\$5000	Permittee & F.S. Materials

The attached map will show the location of all proposed improvements.

III. Grazing System

A. Season and Stocking

3000  
6

The present obligation on the allotment is 213 cattle 5/1-10/31 Term. A 1.82 conversion to yearlings may be authorized on a year to year basis.

- B. The allotment has five separate grazing units. Basically the system will involve two separate herds, one being the cow-calf herd and the other being the yearling herd. It is planned for the cow-calf herd to use two of the grazing units on a deferred rotation system. The yearling herd will use the other three grazing units on a rest-rotation system.

There are three Sections with the allotment that are partially or totally owned by Southwest Land and Cattle Co. They are Sections 23 (220 acres), 27 (540 acres), and 35 (640 acres) T 12 N, R 16 E which is a total of 1400 acres. These lands are not considered in the capacity of the allotment, but if the permittee lost the use of these lands through Southwest land exchanges to private individuals, it would greatly effect the management of the allotment under the present system. It would totally ruin the Stermer Unit insofar as being able to use it in the rotation system. It would cut the pasture completely in half and isolate one full Section of National Forest land. This would reduce the yearling operation to a two pasture rotation system. The permittee then would probably be faced with the following three alternatives.

1. The permittee could retain the present system with a cow-calf and a yearling operation. In this event, term numbers would probably be reduced to fit a two pasture rotation system for the yearlings, mainly due to the lack of latitude you have in a two pasture system as compared to a three pasture rotation system.
2. The permittee could convert to a total yearling operation, doing away with the cow-calf operation and use a four pasture rotation system which may or may not reduce term numbers.
3. The permittee could convert to a total cow-calf operation, doing away with the yearling operation and use a four pasture rotation system which may or may not reduce term numbers. This alternative would only be available provided the permittee had sufficient land off Forest to care for the cattle during the time they are not grazing on National Forest.

The above alternatives are only suggestions in the event the permittee should lose the use of the Southwest lands mentioned above.



Following is description by years (Form 2218) of the management system that is planned. It is anticipated that minor changes will be necessary, depending on moisture and forage conditions. Any changes made in the rotation schedule will be approved by the District Ranger.

(See Following Page)

USDA—FOREST SERVICE <b>GRAZING SYSTEM</b> MANAGEMENT UNIT ALLOCATIONS	REGION 3	FOREST Apac Sitgreaves DATE PREPARED 06/24/75
DISTRICT Heber		

ALLOTMENT Black Canyon	PERMITTEE J. L. Porter
---------------------------	---------------------------

LEGEND:  Yearling Herd  
 Cow-Calf Herd

MANAGEMENT UNIT	MONTH												NO	
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.		
<b>First Year - 19 75</b>														
Sharp Hollow													287 Yearli	
King Phillip													287 Yearli	
Stermer						R	E	S	T					
Nelson													Cows	
Porter													Cows	
<b>Second Year - 19 76</b>														
Sharp Hollow													287 Yearli	
King Phillip						R	E	S	T					
Stermer													287 Yearli	
Nelson													Cows	
Porter													Cows	
<b>Third Year - 19 77</b>														
Sharp Hollow						R	E	S	T					
King Phillip													287 Yearli	
Stermer													287 Yearli	
Nelson													Cows	
Porter													Cows	
<b>Fourth Year - 19 78</b>														
Sharp Hollow													287 Yearli	
King Phillip													287 Yearli	
Stermer						R	E	S	T					
Nelson													Cows	
Porter													Cows	
<b>Fifth Year - 19 79</b>														
Sharp Hollow													287 Yearli	
King Phillip						R	E	S	T					
Stermer													287 Yearli	
Nelson													Cows	
Porter													Cows	

REMARKS:

#### IV. Management Practices

##### A. Salting

Salt will be placed on the higher forage producing areas where it is desirable to attract utilization, but not with  $\frac{1}{4}$  mile of water. It may become necessary to place salt near waters for a short period of time in order to locate cattle in certain areas. This will be provided for in the annual permittee instructions and mutually agreed to between the permittee and the District Ranger. All salting locations will be approved by the District Ranger or his representative. As soon as grazing patterns have been established on the grazing units, a salting map will be developed designating areas where salt will not be placed.

##### B. Water

It will be necessary for the permittee to haul water to supplement existing waters. Water haul locations will be placed in areas where utilization is desired and will be approved by the District Ranger or his representative. Controlling of waters will be used as a tool for obtaining desired utilization patterns.

##### C. Annual Permittee Management Plan

Each year the permittee and District Ranger will prepare an annual plan to supplement the five year plan management plan with detailed instructions for the current year. The annual plan will contain information such as, numbers, entrance and off dates, salting, water hauling, unit rotation, prescribed utilization intensity, improvement construction and maintenance and other management needs. The annual plan will become a part of this plan.

##### D. Range Inspections

Inspections will be made each year by the District Ranger of the grazing units. These inspections will be for the purpose of obtaining information to improve grazing patterns, utilization and to measure overall results as they effect the management system. Production and utilization studies will be scheduled for the grazed units in accordance with District priorities.

V. Correlation With Other Uses

A. Timber

Grazing use and timber harvest will be coordinated and integrated into all management plans and timber appraisals.

B. Recreation

Correlation of the recreation resource with range management and other uses is of increasing importance. The Heber Multiple Use Plan will be used as the basic guide.

C. Wildlife

Wildlife on the allotment consists mainly of deer, elk, black bear, turkey, small game animals and birds. All wildlife will be provided for when computing carrying capacities for the allotment.

In the construction of new water developments, all wildlife will be provided for and water made available during the periods the cattle are using the allotment.

D. Sheep Driveway

The Heber-Reno driveway crosses through the Sharp Hollow, King Phillip and Porter Units on alternating years. Any management practices in these units will have to consider the sheep driveway.

E. Wild Horse Herd

The Wild Horse Herd Management Unit is located on the allotment. To the best of our knowledge there are only 5 head still living. These horses will be provided for when computing the carrying capacity of the allotment.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

Heber RD

REPLY TO: 2230 Grazing Permits

SUBJECT: J. L. Porter Permit - Black Canyon Allotment

TO: Miles P. Hanrahan

DEC 8 '75	Copies Rec'd.....		Copies to RD'S.....		P.O. for .....	
	APACHE-SITGREAVES NF'S					
	A I			A I		
	Supervisor		Prof. Staff		J & F	
	Utility		R & L Asst.		Pera.	
	R & L		December 5, 1975		C & P	
	Timber		Timber Asst.		Shop	
	Range		Range Asst.		Radio	
	Fire		Wildlife		Lab.	
	Engineer		Watered			
M.D.		Soils				
L. U. Plan		Engineers				



filed

We are attempting to revise Mr. Porter's grazing permit so as to reduce the confusion that now exists. It is important that you know some of the past history of the permit so that you may better understand our recommendations.

In 1969, Mr. Porter held a Term Permit for 123 cattle 6/1 to 11/30 on the Black Canyon Allotment. In 1970 he was granted a temporary increase of 32 head of cattle for the same period. This was approved by Forest Supervisor W. R. Snyder in a letter dated 5/13/70. Also in 1970, Mr. Porter obtained an eight head Term Permit from 6/1 to 11/30 on the Heber Allotment. This permit was waived in his favor from a Mr. Laureld Bigler, so in 1970, Mr. Porter's permit was as follows:

123 Cattle	-	Term 6/1-11/30	Black Canyon Allotment
32 Cattle	-	Temp 6/1-11/30	" " "
8 Cattle	-	Term 6/1-11/30	Heber Allotment

In 1971, Mr. Porter requested to convert his 32 head of temporary cattle to yearlings. This was approved by Forest Supervisor W. R. Snyder in a letter dated 5/14/71 at 2.1 conversion ratio or 67 head of yearlings. Mr. Porter also requested to convert 71 of his 123 Term cattle to yearlings. This also was approved in the same letter, but at a conversion ratio of 1.82 or 129 yearlings. We are not sure why two different conversion ratios were used, as the files and correspondence do not explain it. Mr. Porter also requested to have his grazing season changed to 5/1 thru 10/31. This also was approved in the same letter as mentioned above. So in 1971 Mr. Porters permit was as follows:

52 Cattle	-	Term 5/1-10/31	Black Canyon Allotment
129 Yearlings	-	Term 5/1-10/31	" " "
67 Yearlings	-	Temp 5/1-10/31	" " "
8 Cattle	-	Term 5/1-10/31	Heber Allotment

Mr. Porter's permit remained this way until 1973, at which time he was granted another increase of 50 cattle from 5/1 to 10/31 temporary. This increase was based on production and utilization studies performed from 1970 thru 1972. (See Summary Sheets attached.) The increase was approved

by Forest Supervisor, J. S. Tixier in a letter dated March 30, 1973. Mr. Tixier also approved in the same letter to convert the 50 head of cattle to yearlings at a 1.82 conversion ratio or 91 head of yearlings. This now makes a total of 158 yearlings under a temporary permit with 91 of them converted from a 1.82 ratio and 67 of them converted from a 2.1 ratio. So in 1973, Mr. Porter's permit was as follows:

52 Cattle	-	Term 5/1-10/31	Black Canyon Allotment
129 Yearlings	-	Term 5/1-10/31	" " "
158 Yearlings	-	Temp 5/1-10/31	" " "
8 Cattle	-	Term 5/1-10/31	Heber Allotment

This is how the permit presently stands and we feel it is in dire need of revision and simplification before the new Ten Year Permit is renewed.

We would make the following recommendations to simplify Mr. Porter's permit.

Recommendation No. 1

Transfer the 8 head permit from the Heber Allotment to the Black Canyon Allotment. Except for the 8 head permit of Mr. Porters, the Heber Allotment is totally under permit to the White Mountain Livestock Co. We have recently gone into a rest-rotation system on the Heber Allotment. This poses an inconvenience to Mr. Porter, as he will have to move his 8 head around with the rotation system. This also poses another problem in that the two permittees rarely round-up at the same time and Mr. Porter will be faced with trying to cut his 8 head out of a pasture with 600 yearlings in it which are permitted to White Mountain Livestock Co.

In 1965, 290 acres of Section 26, T 12 N, R 16 E of the Heber Allotment became isolated from the main allotment due to land exchanges etc. It was determined that the Black Canyon Allotment could better use this area than could the permittee on the Heber Allotment. The area was transferred to Mr. Porter's permit on the Black Canyon Allotment with no increase in capacity recognized.

Again this year, 415 acres in Section 1, T 11 N, R 16 E and Section 36, T 12 N, R 16 E have become isolated from the Heber Allotment due to land exchanges. This area is better situated to be managed within the Black Canyon Allotment. This spring it will be fenced and transferred to Mr. Porter's permit on the Black Canyon Allotment. This makes a total of 705 acres that has been transferred from the Heber Allotment to the Black Canyon Allotment. We feel that these acres are sufficient enough to justify transferring Mr. Porter's 8 head permit from the Heber Allotment over to the Black Canyon Allotment where the rest of his cattle run. This acreage would allow for 14.6 acres/A.U.M.

It should be stated here that Mr. Porter does not totally agree with the above recommendation. He feels that he should get some kind of restitution for his 8 head permit or select an area of his choice on the Heber Allotment and fence it out for his 8 head of cattle.

The White Mountain Livestock Co. offered to buy his 8 head permit two years ago, but Mr. Porter would not sell it. The White Mountain Livestock Co. is totally against Mr. Porter being allowed to fence out another area in addition to the 705 acres he has already acquired from the Heber Allotment.

We now feel that it is time for us to make a decision in this matter that would be in the best interest of the management of the allotments.

#### Recommendation No. 2

Convert all of Mr. Porter's Temporary Permits to Term. We are confident the allotment can carry the numbers he has been grazing on his Term and Temporary Permits. The attached summary of production and utilization studies should bear this out. It should also be noted on the summary that we have set 40% average utilization as proper use on the allotment. Ordinarily a rest-rotation system such as this would sustain 50% average utilization, but we are withholding 10% to allow for wildlife and the 5 head of wild horses that roam the allotment. We have also reduced the capacity by 12% to allow for the 1400 acres within the allotment that belong to Southwest Land and Cattle Co.

We are very pleased with the improvement the allotment has made the past few years since the rest-rotation system was initiated. We only exceeded 40% average use one time in a six year period and that was only in one pasture. That particular year (1974) that pasture only received one very light rain for the entire summer.

#### Recommendation No. 3

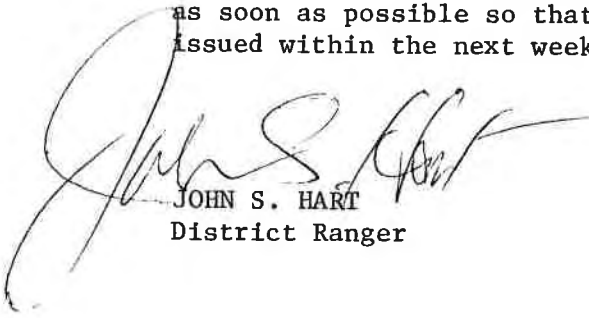
Rewrite Mr. Porter's Ten Year Permit for enough head of cattle that he may convert to yearlings on a 1.43 ratio and still run the same amount of yearlings that he now runs.

If Mr. Porter's Temporary Permits are converted to Term and if his 8 head permit is transferred from the Heber Allotment to the Black Canyon Allotment he would have a permit for 213 cattle 5/1 to 10/31. Mr. Porter has been converting 153 head of these cattle at an average

1.88 conversion ratio and running 287 yearlings in their place. We would like to get away from this high conversion and get in line with direction from your office to use only the 1.43 conversion. In order to do this and still run 287 yearlings, we would have to write his Term Permit to read 261 cattle 5/1-10/31. He would then convert 201 of these to yearlings at a 1.43 ratio which would give him 287 yearlings operating under a rest-rotation system on three pastures and 60 cows operating under a deferred rotation system on two pastures. This changes nothing on the ground from the way it is operating at the present time. It will only be a paper change on his permit.

Should the operation ever revert to a total cow-calf operation or a total yearling operation, we are confident it would carry the numbers quite easily on 5 pasture rest-rotation system.

We would appreciate having your decisions on our recommendations as soon as possible so that the new Ten Year Permit can be issued within the next week or two.



JOHN S. HART  
District Ranger



22-20

USDA FOREST SERVICE

STOCKING RECORD CY 19 75

FOREST Apache-Sitgreaves DISTRICT Heber ALLOTMENT Black Canyon C & H OR S & G

PERMITTEE	PERMITTED TO GRAZE (APPROVED)											ACTUAL USE												
	TERM	TEMP	TOTAL PAID		FREE		PRIVATE LAND PERMIT		NON-USE			PAID PERMIT			FREE		UNAUTHORIZED		PRIVATE LAND PERMIT		DEATH LOSSES			
			NO.	AM	NO.	AM	NO.	AM	NO.	AM	CLASS I OR II	NO.	DATE		AM	NO.	AM	NO.	AM	NO.	AM	POISON	PREDATORS	OTHER
											ON	OFF												
J. L. Porter	X		60	360									54	5/3	11/15	351								
" " "	X		129	774									129	5/3	10/31	774								
	X		158	948									146	5/3	10/31	888								
											Total			351 Cow Mo. 1662 Yearling Mo.										
														5 60 Wild Horse Herd										

USDA FOREST SERVICE

STOCKING RECORD CY 19 76

FOREST Apache-Sitgreaves DISTRICT Heber ALLOTMENT Black Canyon **(C&H)** OR S & G

PERMITTEE	PERMITTED TO GRAZE (APPROVED)										ACTUAL USE																				
	TERM	TEMP	TOTAL PAID		FREE		PRIVATE LAND PERMIT		NON-USE		PAID PERMIT			FREE		UNAUTHORIZED		PRIVATE LAND PERMIT		DEATH LOSSES											
			NO.	AM	NO.	AM	NO.	AM	NO.	AM	CLASS I OR II	NO.	DATE		AM	NO.	AM	NO.	AM	NO.	AM	POISON	PREDATORS	OTHER							
													ON	OFF																	
J.L. Porter	X		55	330									50	5/1	11/13	328															
	X		287	1722									* 120	5/1	10/22	700															
													* 80	5/8	10/22	448															
													* 87	5/15	10/22	466															
													Total --- - 328 Cow Mo. 1614 Yearling Mo.  560 Wild Horse Herd																		

\* Yearlings

USDA FOREST SERVICE

STOCKING RECORD CY 19 77

FOREST Apache-Sitgreaves DISTRICT Heber ALLOTMENT Black Canyon **(C&H)** OR S & G

PERMITTEE	PERMITTED TO GRAZE (APPROVED)											ACTUAL USE													
	TERM	TEMP	TOTAL PAID		FREE		PRIVATE LAND PERMIT		NON-USE			PAID PERMIT			FREE		UNAUTHORIZED		PRIVATE LAND PERMIT		DEATH LOSSES				
			NO.	AM	NO.	AM	NO.	AM	NO.	AM	CLASS I OR II	NO.	DATE		AM	NO.	AM	NO.	AM	NO.	AM	POISON	PRED-ATORS	OTHER	
													ON	OFF											
J.L. Porter	X		55	330								45	5/1	11/18	297										
" "	X		*231	1722								123	5/1	10/20	*689									5	
												100	5/14	10/20	*520										
												64	6/10	10/20	*282										
											560 Wild Horse Herd														
											Total - 297 Cow Months														
											1491 Yearling Months														

UNITED STATES DEPARTMENT OF AGRICULTURE  
 FOREST SERVICE  
 Heber RD

REPLY TO: 2210 Analysis and Plans

November 17, 1978

SUBJECT: Production and Utilization Studies  
 Gentry Allotment

to: Miles P. Hanrahan, Range Staff



The following is a summary of the Production and Utilization Studies done on the Gentry Allotment for the 1978 grazing season.

Baca Unit

This unit was used for a total of 236 A.U.M.s resulting in 19% average utilization. There were only two small areas that exceeded 45% utilization. These were the Baca Meadow which was utilized 50% and the sheep driveway along state highway 260 which received 70 and 90% utilization. It should be noted that almost half of the pasture (3378 acre) was only utilized 0 to 5%.

Highway Unit

This unit was used for a total of 123 A.U.M.s resulting in 19% average utilization. There were no areas that exceeded 45% utilization.

Allotment Summary

The entire allotment was used for a total of 359 A.U.M.s resulting in 19% average utilization. Studies would indicate proper use at 859 A.U.M.s to achieve 45% average utilization. Summer moisture on the allotment was below normal for the growing season.

Wildlife on the allotment consists of Elk, Mule Deer, Whitetail Deer Turkey and Bear. No allowances for the capacity of wildlife on the allotment have been made at this point. It will be necessary to conduct one to two more years of studies before this can be determined.

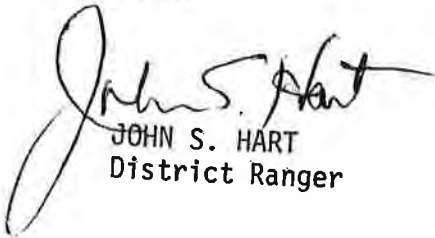
A portion of the Baca Unit is also Summer range for the five head of wildhorses that run on the District. Allowances for these horses will have to be made at such time as when capacities for the allotment are made.

Copies Rec'd.....		Copies to RD's.....		C. for.....	
APACHE-SITGREAVES NF'S					
	A	I	A	I	A
Supervisor			B & F		Watershed
Deputy			Pers.		Soils
R & L			Res.		LLL
Timber			C & P		Shop
Range			R & L Asst.		Radio
Fire			L. A.		Disp.
Engineer			Timber Asst.		File
A. O.			Range Asst.		
L. U. P.			Wildlife		

NOV 20 1978

The Twin Lakes and O. W. Units were rested this grazing season, although they received considerable use for about a one and a half mile strip clear along the rim by trespass Indian horses. Hopefully this problem will be resolved within the next year or two as they construct more boundary fence between us and the Indian Reservation and install cattle guards at the road crossings.

All improvements observed were in good condition with the exception of the allotment boundary fence which runs Southeast from State Highway 260 to the Reservation boundary. This fence is in need of considerable maintenance. This will be scheduled in the 1979 Annual Management Plan.



JOHN S. HART  
District Ranger

Heber RD

2270 Range Reports

October 1, 1981

Four Annual Reports

Forest Supervisor

Reply Due October 10

Attached for your review are the following annual reports for the Heber District.

1. Annual Grazing Statistical Report
2. Range Improvements Accomplishment Report
3. Range Management Status Report
4. Wild and Free-Roaming Horses and Burros on Public Lands Report.



CHARLES C. WILDES  
Heber District Ranger

ANNUAL GRAZING USE

(Reference FSM 2270; NOTE CODES ON BACK)

FILE RGE-MISC-USE

DISTRICT-NO (1) 05 STATE-NO (2) 04 FY (3) 811 REGION-NO (4) 03 FOREST-NO (5) 01 NATIONAL GRASSLAND-NO (6) LAND UTILIZATION PROJECT-NO (7)

ACREAGE IN ALLOTMENTS			LIVESTOCK GRAZING CAPACITY (OPEN SUITABLE) AUMs	
NFS OPEN FOR GRAZING	NFS CLOSED TO GRAZING	WAIVED PRIVATE LAND	LIVESTOCK GRAZING CAPACITY (OPEN SUITABLE) AUMs	
TOTAL (8) 375,849	TOTAL (10) 1,070	TOTAL (12)	NFS (14) 27,950	
SUITABLE (9) 285,830	SUITABLE (11) 1,070	SUITABLE (13)	24,818	WAIVED PRIVATE (15)

R	ACTION	PERMIT TYPE NO	NO. OF USERS	COUNT	U	RACE	SEX	LIVESTOCK			COUNT-L	KIND CODE	AUM FACTOR	ANIMAL MONTHS			LOSSES		
								AUTHORIZED NUMBER	ACTUAL NUMBER	NON-USE AUTHORIZED				AUTHORIZED USE	ACTUAL USE	NON-USE AUTHORIZED	POISON PLANTS	PREDATORS	OTHER
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)	(31)	(32)	(33)	(34)	
1	1/1			Y	3	2	4,000	4,000		Y	S	0.20	3,600	3,600					
2	1/1			W	3	2	14	14		Y	D	0.60	38	38					
3	1/1			Y	1	0	19	19		Y	C	1.3,2	20.1	20.1					
4	1/1			Y	1	1	90.7	90.7		Y	C	1.3,2	671.9	671.9					
5	1/1			M	1	1	200	200		Y	Y	0.70	840	840					
6	1/1			Y	0	0	3,47	3,47		Y	C	1.3,2	3664	3664					
7	1/1			Y	1	1	40	40		Y	C	1.3,2	634	634					
8	1/1			Y	1	0	43	43		Y	C	1.3,2	369	369					
9	1/1			M	1	0	240	240		Y	Y	0.70	840	840					
10	1/1			Y	1	1	88	88		Y	C	1.3,2	1394	1394					
11	1/1			Y	1	1	7	7		Y	C	1.3,2	111	111					
12	1/1			Y	1	2	62	62		Y	C	1.3,2	982	982					
13	1/1			Y	1	1	953	953		Y	Y	0.70	3002	3002					
14	1/1			Y	1	0	100	100		Y	C	1.3,2	792	792					
15	1/1			Y	1	1	80	80		Y	C	1.3,2	1267	1267					
16	1/1			Y	1	1	80	80		Y	C	1.3,2	1267	1267					
17	2/1			Y	1	1	4	4		Y	C	1.3,2	26	26					
18	2/1			W	1	1	31	31		Y	Y	0.70	108	108					
19					4	0		65		Y	H	1.20		936					
20	9/1			M				5		Y	W	1.20	7.2	7.2					
21	5/0			Y	1	2	10			Y	C	1.3,2	20						
22	5/0			Y	1	1	7			Y	H	1.20	8						
23	6/1			M	0	0	8000	8000		M	S	0.20	960	960					

RANGE ALLOTMENT MANAGEMENT STATUS REPORT

Pinedale Ranger District

1. Number of allotment management plans based on range analysis prepared as of September 30, 1981: 2 : 12
2. Number of allotments upon which improved management was started during the period October 1, 1980 through September 30, 1981: 1 2
3. Number of allotments upon which improved management was adequately maintained during period of October 1, 1980 through September 30, 1981: 9 12
4. Number of allotments on District as of September 30, 1981: 12

Number of Allotments on District

Livestock Kind	Total	NF	Number of Allotments	
			NG	LUP
Cattle	11	11	0	0
Horses	0	0	0	0
Sheep	1	1	0	0
Goats	0	0	0	0
Common Use	0	0	0	0
Other*	1	1	0	0
Total	13	13	0	0

\*Heber-Reno Sheep Driveway



Wild and Free Roaming Horses and Burros on Public Lands Report

1. Number of Territories within the District as of Sept. 30, 1981 1.
2. Number of Territory plans approved as of Sept. 30, 1981 on the District 0.
3. Number of Territory plans approved during the period Oct. 1, 1980, through Sept. 30, 1981 on the District 0.
4. Number of animals adopted during the period Oct. 1, 1980, through Sept. 30, 1981, on the district 0.
5. Excess management for Period Oct. 1, 1980, through Sept. 30, 1981:

Territory Heber

Number excess animals removed	<u>0</u>
a. Number Destroyed	<u>0</u>
b. Number Adopted	<u>0</u>
(1) Title Transferred	<u>0</u>
(2) Deaths	<u>0</u>
(a) Natural Cause	<u>0</u>
(b) Accidental Cause	<u>0</u>
(3) Remained Under Adoption	<u>0</u>

IMPROVEMENT DATA

(Ref. FSH 1309.13)

FSGIM FILES:

- 1. ID -IMPR
- 2. ID -IMPR-COST-ACCOMP

PART A	IMPROVEMENT IDENTIFICATION										OTHER-FUNC-NO(S)					
	DISTRICT -NO (1)	IMPR -TYPE -NO (2)	IMPR-NO (3)	IMPR -NO -EXT (4)	ACTION (5)	REGION -NO (6)	FOREST -NO (7)	PROC-UNIT -KIND-CODE (8)	STATE -NO (9)	PRI-FUNC -NO (10)	(11a)	(11b)	(11c)	(11d)	(11e)	(11f)
	059					030	10	10	4							
PART B	IMPR-STATUS-CODE (12)	UNITS-			FY-CONST (15)	OWNER-CODE (16)	MAINT-RESP-CODE (17)	COUNTY-NO (18)	FR-AREA-NO (19)		PROPOSED COST (20)					
		PROPOSED (TOTAL) (13)	EXISTING (14)	1ST AREA (19a)					2ND AREA (19b)							
PART C	IMPR-NAME (25 SPACES) (21)					LOCATION *						SIZE (27)				
						LAT-(LATITUDE) (22)			LONG-(LONGITUDE) (23)				RANGE-TYPE-CODE* (24)	ECO-SYSTEM-CODE* (25)	CONST-TYPE-CODE (26)	
PART D	FY-REPT (28)	UNITS-CONST-COMPLETED (THIS-FY) (29)	CONST-COST- (IMPROVEMENT CONSTRUCTION COST DATA)					MAINT-COST- (IMPROVEMENT MAINTENANCE COST DATA)								
			PRI-FUNC -APPR (30)	OTHER-FUNC -APPR (31)	PUBLIC-OTHER (32)	CONS-PR (33)	COOP-DEP (34)	COOP-UNDEP (35)	PRI-FUNC -APPR (37)	OTHER-FUNC -APPR (38)	PUBLIC-OTHER (39)	CONS-PR (40)	COOP-DEP (41)	COOP-UNDEP (42)		
	81	1000	7000	0	0	0	0	0	0	0	0	0	0			
PART E	USE OF PESTICIDES				REMARKS - 1 (58 SPACES) (47)											
	PESTICIDE -CODE (43)	PEST-CODE (44)	LB-AI (ACTIVE INGREDIENT) (45)	METHOD -CODE (46)												
					REMARKS - 2 (58 SPACES) (48)											

\* OPTIONAL FIELDS

Heber RD

2270 Range Reports

September 29, 1982

Annual Range Reports

Forest Supervisor

Enclosed for your review are the following annual range reports for the Heber District.

1. Annual Grazing Statistical Report.
2. Range Improvements Accomplishment Report.
3. Range Management Status Report.
4. Wild and Free Roaming Horses and Burros on Public Land Report.

*Charles C. Wildes*

CHARLES C. WILDES  
Heber District Ranger

BMortensen:dk 9/29/82

ANNUAL GRAZING USE

(Reference FSM 2270; NOTE CODES ON BACK)

FILE RGE-MISC-USE

DISTRICT-NO (1) 05 STATE-NO (2) 04 FY (3) 82 REGION-NO (4) 03 FOREST-NO (5) 01 NATIONAL GRASSLAND-NO (6)          LAND UTILIZATION PROJECT-NO (7)         

ACREAGE IN ALLOTMENTS			LIVESTOCK GRAZING CAPACITY (OPEN SUITABLE) AUMs		
NFS OPEN FOR GRAZING		NFS CLOSED TO GRAZING	WAIVED PRIVATE LAND	NFS (14)	
TOTAL (8)	<u>3,758.49</u>	TOTAL (10)	<u>1,070</u>	TOTAL (12)	<u>        </u>
SUITABLE (9)	<u>2,858.30</u>	SUITABLE (11)	<u>1,070</u>	SUITABLE (13)	<u>        </u>
			WAIVED PRIVATE (15)	<u>2,481.8</u>	

NO. (16)	ACTION (17)	PERMIT TYPE NO (18)	NO. OF USERS (19)	COUNT (20)	RACE (21)	SEX (22)	LIVESTOCK			COUNT (26)	KIND CODE (27)	AUM FACTOR (28)	ANIMAL MONTHS			LOSSES		
							AUTHORIZED NUMBER (23)	ACTUAL NUMBER (24)	NON-USE AUTHORIZED (25)				AUTHORIZED USE (29)	ACTUAL USE (30)	NON-USE AUTHORIZED (31)	POISON PLANTS (32)	PREDATORS (33)	OTHER (34)
1		11		1	Y	1	2	6.2	6.2		YC	1.32	9.82	9.82				
2		11		3	Y	1	1	1.35	1.35	4.0	YC	1.32	21.38	19.80	1.58			
3		11		1	Y	0	3	3.47	3.47		YC	1.32	3.664	3.664				
4		11		1	Y	1	1	1.9	1.9		YC	1.32	2.01	2.01				
5		11		2	Y	1	1	1.60	1.60		YC	1.32	2.534	2.534				
6		21		1	Y	1	1	3.7	3.7		YY	.70	1.30	1.30				
7		11		1	Y	1	1	1.00	1.00		YC	1.32	7.92	7.92				
8		11		1	Y	1	1	1.047	1.047		YC	1.32	8.554	7.840	6.90			.8
9		11		1	Y	1	1	9.53	9.53		YY	.70	3.002	2.989				4
10		11		1	Y	1	1	4.3	4.3		YC	1.32	3.41	3.41				
11		11		1	N	1	1	2.40	2.40		YY	.70	1.008	1.008				
12		11		1	Y	3	2	4.000	4.000		YS	.20	3.760	3.760				
13		11		1	N	3	2	1.4	1.4		YB	.60	3.9	3.9				
14		5.0		1	Y	1	2	1.0	1.0		YC	1.32	2.0	2.0				
15		5.0		1	Y	1	1	.7	.7		YH	1.20	.8	.8				
16		9.1		1	N			5	5		YW	1.20	7.2	7.2				
17				1		4	6	4.5	4.5		YH	1.20	6.48	6.48				

RANGE ALLOTMENT MANAGEMENT STATUS REPORT

Heber Ranger District

1. Number of allotment management plans based on range analysis prepared as of September 30, 1982: 12
2. Number of allotments upon which improved management was started during the period October 1, 1981 through September 30, 1982: 2
3. Number of allotments upon which improved management was adequately maintained during period of October 1, 1981 through September 30, 1982: 12
4. Number of allotments on District as of September 30, 1982: 13

Number of Allotments on District

Livestock Kind	Total	NF	Number of Allotments	
			NG	LUP
Cattle	12	12	0	0
Horses	0	0	0	0
Sheep	1	1	0	0
Goats	0	0	0	0
Common Use	0	0	0	0
Other*	1	1	0	0
Total	13	13	0	0

\*Heber-Reno Sheep Driveway

Wild and Free Roaming Horses and Burros on Public Lands Report

1. Number of Territories within the District as of Sept. 30, 1982 1.
2. Number of Territory plans approved as of Sept. 30, 1982 on the District 0.
3. Number of Territory plans approved during; the period Oct. 1, 1981, through Sept. 30, 1982, on the District 0.
4. Number of animals adopted during the period Oct. 1, 1981, through Sept. 30, 1982, on the District 0.
5. Excess management for period Oct. 1, 1981, through Sept. 30, 1982:

Territory Heber

Number excess animals removed	<u>0</u>
a. Number Destroyed	<u>0</u>
b. Number Adopted	<u>0</u>
(1) Title Transferred	<u>0</u>
(2) Deaths	<u>0</u>
(a) Natural Cause	<u>0</u>
(b) Accidental Cause	<u>0</u>
(3) Remained Under Adoption	<u>0</u>

**IMPROVEMENT DATA**

(Ref. FSH 1309.13)

FSGIM FILES:

- 1. ID - IMPR
- 2. ID - IMPR-COST-ACCOMP

PART A	IMPROVEMENT IDENTIFICATION										OTHER-FUNC-NO(S)					
	DISTRICT -NO (1)	IMPR -TYPE -NO (2)	IMPR-NO (3)	IMPR -NO -EXT (4)	ACTION (5)	REGION -NO (6)	FOREST -NO (7)	PROC-UNIT -KIND-CODE (8)	STATE -NO (9)	PRI-FUNC -NO (10)	(11a)	(11b)	(11c)	(11d)	(11e)	(11f)
	05	412				03	011	010	04							
PART B	IMPR- STATUS- CODE (12)	UNITS-				FY- CONST (15)	OWNER -CODE (16)	MAINT- RESP- CODE (17)	COUNTY- -NO (18)	FR-AREA-NO (19)		PROPOSED COST (20)				
		PROPOSED (TOTAL) (13)	EXISTING (14)	1ST AREA (19a)	2ND AREA (19b)											
PART C	IMPR-NAME (25 SPACES) (21)						LOCATION *			RANGE TYPE -CODE* (24)	ECO- SYSTEM CODE* (25)	CONST- TYPE- CODE* (26)	SIZE (27)			
							LAT- (LATITUDE) (22)							LONG- (LONGITUDE) (23)		
							DEG	MIN	SEC	DEG	MIN	SEC				
PART D	FY- REPT (28)	UNITS- CONST- COMPLETED (THIS-FY) (29)	CONST-COST- (IMPROVEMENT CONSTRUCTION COST DATA)													
			PRI-FUNC -APPR (30)	OTHER-FUNC -APPR (31)	PUBLIC- OTHER (32)	CONS-PR (33)	COOP-DEP (34)	COOP-UNDEP (35)								
	82	190	22	0	0	0										
		UNITS- MAINT- COMPLETED (THIS-FY) (38) *	MAINT-COST- (IMPROVEMENT MAINTENANCE COST DATA)													
			PRI-FUNC -APPR (37)	OTHER-FUNC -APPR (38)	PUBLIC- OTHER (39)	CONS-PR (40)	COOP-DEP (41)	COOP-UNDEP (42)								
PART E	USE OF PESTICIDES															
	PESTICIDE -CODE (43)	PEST- CODE (44)	LB-AI (ACTIVE INGREDIENT) (45)	METHOD -CODE (46)												
PART F	REMARKS - 1 *															
	(58 SPACES) (47)															
REMARKS - 2 *																
(58 SPACES) (48)																

\* OPTIONAL FIELDS

**IMPROVEMENT DATA**  
(Ref. FSH 1309.13)

FSGIM FILES:  
1. ID-IMPR  
2. ID-IMPR-COST-ACCOMP

PART A	IMPROVEMENT IDENTIFICATION										OTHER-FUNC-NO(S)					
	DISTRICT -NO (1)	IMPR -TYPE -NO (2)	IMPR-NO (3)	IMPR -NO -EXT (4)	ACTION (5)	REGION -NO (6)	FOREST -NO (7)	PROC-UNIT -KIND-CODE (8)	STATE -NO (9)	PRI-FUNC -NO (10)	(11a)	(11b)	(11c)	(11d)	(11e)	(11f)
	015	4113				030	1010	104								
PART B	IMPR- STATUS- CODE (12)	UNITS-				FY- CONST (15)	OWNER -CODE (16)	MAINT- RESP- CODE (17)	COUNTY- -NO (18)	FR-AREA-NO (19)		PROPOSED COST (20)				
		PROPOSED (TOTAL) (13)	EXISTING (14)	1ST AREA (19a)	2ND AREA (19b)											
PART C	IMPR-NAME (25 SPACES) (21)					LOCATION *										
						LAT- (LATITUDE) (22)			LONG- (LONGITUDE) (23)			RANGE -TYPE -CODE (24)	ECO- SYSTEM CODE (25)	CONST- TYPE CODE (26)	SIZE (27)	
PART D	FY- REPT (28)	UNITS- CONST- COMPLETED (THIS-FY) (29)	CONST-COST- (IMPROVEMENT CONSTRUCTION COST DATA)													
			PRI-FUNC -APPR (30)	OTHER-FUNC -APPR (31)	PUBLIC- OTHER (32)	CONS-PR (33)	COOP-DEP (34)	COOP-UNDEP (35)								
	82	60	30	0	0											
PART D		UNITS- MAINT- COMPLETED (THIS-FY) (38) *	MAINT-COST- (IMPROVEMENT MAINTENANCE COST DATA)													
			PRI-FUNC -APPR (37)	OTHER-FUNC -APPR (38)	PUBLIC- OTHER (39)	CONS-PR (40)	COOP-DEP (41)	COOP-UNDEP (42)								
PART E	USE OF PESTICIDES															
	PESTICIDE -CODE (43)	PEST- CODE (44)	LB-AI (ACTIVE INGREDIENT) (45)	METHOD -CODE (46)												
PART F	REMARKS - 1 * (58 SPACES) (47)															
PART F	REMARKS - 2 * (58 SPACES) (48)															

\* OPTIONAL FIELDS



**IMPROVEMENT DATA**  
(Ref. FSH 1309.13)

FSGIM FILES:  
1. ID-IMPR  
2. ID-IMPR-COST-ACCOMP

PART A	IMPROVEMENT IDENTIFICATION										OTHER-FUNC-NO(S)					
	DISTRICT-NO (1)	IMPR-TYPE-NO (2)	IMPR-NO (3)	IMPR-NO-EXT (4)	ACTION (5)	REGION-NO (6)	FOREST-NO (7)	PRO-C-UNIT-KIND-CODE (8)	STATE-NO (9)	PRI-FUNC-NO (10)	(11a)	(11b)	(11c)	(11d)	(11e)	(11f)
	05	916				030	101	04								

PART B	IMPR-STATUS-CODE (12)	UNITS-				FY-CONST (15)	OWNER-CODE (16)	MAINT-RESP-CODE (17)	COUNTY-NO (18)	FR-AREA-NO (19)		PROPOSED COST (20)
		PROPOSED (TOTAL) (13)	EXISTING (14)	1ST AREA (19a)	2ND AREA (19b)							

PART C	IMPR-NAME (25 SPACES) (21)	LOCATION *						RANGE-TYPE-CODE (24)	CO-OP-NO (25)	P-NO (26)	SIZE (27)
		LAT. (LATITUDE) (22)			LONG. (LONGITUDE) (23)						
		DEG	MIN	SEC	DEG	MIN	SEC				

PART D	FY-REPT (28)	UNITS-CONST-COMPLETED (THIS-FY) (29)	CONST-COST- (IMPROVEMENT CONSTRUCTION COST DATA)						
			PRI-FUNC-APPR (30)	OTHER-FUNC-APPR (31)	PUBLIC-OTHER (32)	CONS-PR (33)	COOP-DEP (34)	COOP-UNDEP (35)	
	82	70000	20000						

PART D	UNITS-MAINT-COMPLETED (THIS-FY) (36) *	MAINT-COST- (IMPROVEMENT MAINTENANCE COST DATA)				
		PRI-FUNC-APPR (37)	OTHER-FUNC-APPR (38)	PUBLIC-OTHER (39)	CONS-PR (40)	COOP-DEP (41)

PART E	USE OF PESTICIDES			
	PESTICIDE-CODE (43)	PEST-CODE (44)	LB-A1 (ACTIVE INGREDIENT) (45)	METHOD-CODE (46)

REMARKS - 1  
(57)

REMARKS - 2  
(48)

\* OPTIONAL FIELDS

Heber Ranger District

2270 Records and Reports

October 14, 1983

Annual Range Reports

Forest Supervisor

Enclosed for your review are the following annual range reports for the Heber District.

1. Annual Grazing Statistical Report
2. Range Improvements Accomplishment Report
3. Range Management Status Report
4. Wild and Free Roaming Horses and Burros Report



CHARLES C. WILDES  
Heber District Ranger

ANNUAL GRAZING USE  
(Reference FSM 2270; NOTE CODES ON BACK)

DISTRICT-NO (1) 05 STATE-NO (2) 04 FY (3) 83 REGION-NO (4) 03 FOREST-NO (5) 01 NATIONAL GRASSLAND-NO (6) \_\_\_\_\_ LAND UTILIZATION PROJECT-NO (7) \_\_\_\_\_

ACREAGE IN ALLOTMENTS			LIVESTOCK GRAZING CAPACITY (OPEN SUITABLE) AUMs	
NFS OPEN FOR GRAZING	NFS CLOSED TO GRAZING	WAIVED PRIVATE LAND	NFS (14)	WAIVED PRIVATE (15)
TOTAL (8) <u>3,758.49</u>	TOTAL (10) <u>1,070</u>	TOTAL (12) _____	_____	_____
SUITABLE (9) <u>2,858.30</u>	SUITABLE (11) <u>1,070</u>	SUITABLE (13) _____	_____	_____

LINE NO. (16)	ACTION (17)	PERMIT TYPE NO (18)	NO. OF USERS (19)	COUNT (20)	RACE (21)	SEX (22)	LIVESTOCK			COUNT-L KIND CODE (27)	AUM FACTOR (28)	ANIMAL MONTHS			LOSSES		
							AUTHORIZED NUMBER (23)	ACTUAL NUMBER (24)	NON-USE AUTHORIZED (25)			AUTHORIZED USE (29)	ACTUAL USE (30)	NON-USE AUTHORIZED (31)	POISON PLANTS (32)	PREDATORS (33)	OTHER (34)
1		2.1		1	Y	1		4		4	VC	1.32	2.0	2.0			
2		2.1		1	N	1		3.1		3.1	VC	1.0	1.24	1.24			
3		1.1		1	Y	1		8.0		8.0	VC	1.32	9.60	9.12			
4		1.1		1	Y	1		8.0		8.0	VC	1.32	9.60	9.50			
5		1.1		1	Y	1		10.0		10.0	VC	1.32	13.20	12.5			
6		1.1		1	Y	1		6.0		9.53	VC	1.0	4.77	4.57			2
7		1.1		1	Y	2		6.2		6.2	VC	1.32	7.44	5.50	1.86		
8		1.1		1	Y	1		7		7	VC	1.32	8.4	6.3	2.1		
9		1.1		1	N	1		8.8		8.8	VC	1.32	10.56	7.80	2.64		
10		1.1		1	Y	1		2.13		4.3	VC	1.32	2.78	2.50			
11		1.1		1	N	1		2.13		2.00	VC	1.0	1.278	1.175	2.40		
12		1.1		1	Y	2		4000		4000	VC	2.0	22400	22320		12	
13		1.1		1	N	1		1.4		1.4	VC	1.0	1.4	1.4			
14		1.1		1	Y	1		4.0		4.0	VC	1.32	4.80	3.48	1.20		
15		1.1		1	Y	0		3.47		3.47	VC	1.32	4.57	3.47			
16		1.1		1	Y	3		1047		1047	VC	1.32	1380	1040			
17		1.1		1	Y	3		19		19	VC	1.32	25.08	18.5			
18		2.1		1	Y	1		57.2		57.2	VC	1.0	57.2	57.2			
19		5.0		1	Y	1		1.0		1.0	VC	1.32	1.32	1.0			
20		5.0		1	Y	1		7		7	VC	1.0	7	7			
21		9.1		1	Y	1		5		5	VC	1.0	5	5			
22		8.0		1	Y	40		45		45	VC	1.0	45	45			

RANGE ALLOTMENT MANAGEMENT STATUS REPORT

Heber Ranger District

1. Number of allotment management plans based on range analysis prepared as of September 30, 1983: 12
2. Number of allotments upon which improved management was started during the period October 1, 1982 through September 30, 1983: 1
3. Number of allotments upon which improved management was adequately maintained during period of October 1, 1982 through September 30, 1983: 12
4. Number of allotments on District as of September 30, 1983: 13

Number of Allotments on District

Livestock Kind	Total	NF	Number of Allotments	
			NG	LUP
Cattle	12	12	0	0
Horses	0	0	0	0
Sheep	1	1	0	0
Goats	0	0	0	0
Common Use	0	0	0	0
Other*	1	1	0	0
Total	13	13	0	0

\*Heber-Reno Sheep Driveway

Wild and Free Roaming Horses and Burros on Public Lands Report

1. Number of Territories within the District as of Sept. 30, 1983 1.
2. Number of Territory plans approved as of Sept. 30, 1983 on the District 0.
3. Number of Territory plans approved during; the period Oct. 1, 1982, through Sept. 30, 1983, on the District 0.
4. Number of animals adopted during the period Oct. 1, 1982, through Sept. 30, 1983, on the District 0.
5. Excess management for period Oct. 1, 1982, through Sept. 30, 1983:

Territory Heber

Number excess animals removed	<u>0</u>
a. Number Destroyed	<u>0</u>
b. Number Adopted	<u>0</u>
(1) Title Transferred	<u>0</u>
(2) Deaths	<u>0</u>
(a) Natural Cause	<u>0</u>
(b) Accidental Cause	<u>0</u>
(3) Remained Under Adoption	<u>0</u>

Heber RD

2270 Records and Reports

September 18, 1984

Annual Range Reports-FY 84

Forest Supervisor, Apache-Sitgreaves N.F.s.

Enclosed for your review are the following annual range reports for the Heber District.

1. Annual Grazing Statistical Report
2. Range Improvements Accomplishment Report
3. Range Management Status Report
4. Wild and Free Roaming Horses and Burros Report.

*Charles C. Wildes*

CHARLES C. WILDES  
Heber District Ranger

Enclosures

BMORTENSEN/lq 9/18/84

**ANNUAL GRAZING USE**  
(Reference FSM 2270; Report FS-2200-J)

DISTRICT-NO (1) 05 STATE-NO (2) 04 FY (3) 84 REGION-NO (4) 03 FOREST-NO (5) 01 NATIONAL GRASSLAND-NO (6)      LAND UTILIZATION PROJECT-NO (7)     

ACREAGE IN ALLOTMENTS			LIVESTOCK GRAZING CAPACITY (OPEN SUITABLE) AUMs
NFS OPEN FOR GRAZING	NFS CLOSED TO GRAZING	WAIVED PRIVATE LAND	
TOTAL (8) <u>3,758.49</u>	TOTAL (10) <u>1,070</u>	TOTAL (12) <u>    </u>	NFS (14) <u>2,108.9</u>
SUITABLE (9) <u>2,858.30</u>	SUITABLE (11) <u>1,070</u>	SUITABLE (13) <u>    </u>	WAIVED PRIVATE (15) <u>    </u>

LINE NO. (16)	PERMIT TYPE NO (17)	COUNT-U1 (18)	NO. OF USERS (19)	COUNT-U2 (20)	RACE (21)	SEX (22)	LIVESTOCK					ANIMAL MONTHS			LOSSES					
							PERMITTED NUMBER (23)	COUNT-L1 (24)	ACTUAL NUMBER (25)	COUNT-L2 (26)	NON-USE AUTHORIZED (27)	RND CODE (28)	AU FACTOR (29)	PERMITTED USE (30)	ACTUAL USE (31)	NON-USE AUTHORIZED (32)	POISON PLANTS (33)	PREDATORS (34)	OTHER (35)	
1	2	Y		1	Y	3		4	Y	4	Y		C	193.2	2.0	2.0				
2	1	Y		1	Y	3		8.0	Y	8.0	Y		C	193.2	9.6	9.5				
3	1	Y		1	Y	3		8.0	Y	8.0	Y		C	193.2	9.6	9.5			2	
4	1	Y		1	Y	3		1.8	Y	1.8	Y		C	193.2	4.6	4.6			1	
5	2	Y		1	Y	3		1,047	Y	1,047	Y		C	193.2	164.8	164.5			16	
6	2	Y		1	Y	3		3,900	Y	3,900	Y		C	193.2	19.5	19.4			1	
7	1	Y		1	N	3		1,500	Y	1,200	Y	3.0	C	193.2	13.2	13.2			1	
8	1	Y		1	Y	3		7	Y	5	Y		2	C	193.2	5.5	4.5			1
9	1	Y		1	Y	3		40	Y	32	Y		8	C	193.2	3.5	3.1			1
10	1	Y		1	Y	0		3,470	Y	3,470	Y			C	193.2	27.7	27.6			2
11	1	Y		1	Y	3		9	Y	9	Y			C	193.2	1.5	1.5			2
12	1	Y		1	Y	3		3.9	Y	3.9	Y			C	193.2	2.1	2.1			
13	1	N		1	N	3		2,480	Y	2,480	Y			C	193.2	13.6	13.5			
14	1	Y		1	Y	3		4,000	Y	4,000	Y		S	12.0	2,240	2,232.5		1.0	4	
15	5	Y		1	Y	3		10	Y	10	Y			C	193.2	2.0	2.0			
16	5	Y		1	Y	3		7	Y	7	Y			H	192.0	7	7			
17	9	Y		1	Y	3		5	Y	5	Y			H	192.0	6	6			
18	1	N		1	N	3		1.4	Y	1.4	Y			B	196.0	7.8	7.8			
19	8	Y		1	Y	4			Y	16.6	Y			H	192.0	7.2	7.2			
20	1	N		1	N	3		3.1	Y	3.1	Y			C	197.0	1.5	1.5			

Previous edition is obsolete.

# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION										IMPR-NAME <i>Mud Tank Well</i>	
ACTION	DISTRICT NO	IMPR TYPE	IMPR-NO	IMPR EXT	REGION NO	FOREST NO	PROC UNIT KIND	IMPR STATE	IMPR COUNTY		(25 SPACES)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)		
	05412				030	1104					

ALLOTMENT				LOCATION								NAT FOR BODY (15)
ALLOT-1	ALLOT-2	LAT- (LATITUDE) (13a)	LONG- (LONGITUDE) (13b)	SE-TW-RG-BM (14)								
(12a)	(12b)	DEG   MIN   SEC	DEG   MIN   SEC	¼	¼	SE	TW	RG	BM	(15)		

IMPR OWNER	MAINT RESP	IMPR STATUS	FY CONST	UNITS-IN-PLACE	TOTAL-VALUE	FY REPT	UNITS-COMPLETED (THIS-FY)	CONST TYPE	IMPR-SIZE
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
						84	10		

IMPR RANGE TYPE	IMPR ECOSYSTEM	IM -FC -SP -UNIT -1	IM -FC -SP -UNIT -2	IMPR -FLMP -TIE	TARGET SPECIES	RANGE FUNC	FUND-AMOUNT	
		(28)	(29)	(30)	(31)		RGE-FUNC-APPR	RGE-BET-FUND
(26)	(27)	(28)	(29)	(30)	(31)	(32)	(33)	(34)
								3,172.0

OTHER-FUNC(S)						FUND-AMOUNT				FORM DATE (41)			
FUNC						FUND-AMT	PUBLIC-OTHER	CONS-PR	PER-MOD-DEP	PER-MOD-UNDEP	MO	DA	YR
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	APPR							

(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)

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(43) SIGNATURE (Prepared By)

(44) NOTES: NON-KEYPUNCHED INFORMATION:



# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION											IMPR-NAME <i>Mud Tank well</i>		
ACTION	DISTRICT NO	IMPR TYPE	IMPR-NO	IMPR-EXT	REGION-NO	FOREST NO	PROC-UNIT-KIND	IMPR STATE	IMPR COUNTY	(25 SPACES)			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)			
	05	2.3.3			03	01	104						
ALLOTMENT				LOCATION									
ALLOT-1	ALLOT-2	LAT- (LATITUDE) (13a)			LONG- (LONGITUDE) (13b)			SE-TW-RG-BM (14)				NAT FOR BDY (15)	
(12a)	(12b)	DEG	MIN	SEC	DEG	MIN	SEC	¼	¼	SE	TW		RG
IMPR OWNER	MAINT RESP	IMPR STATUS	FY CONST	UNITS-IN-PLACE	TOTAL-VALUE	FY REPT	UNITS-COMPLETED (THIS-FY)	CONST TYPE	IMPR-SIZE				
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)				
						84	2.0						
IMPR-RANGE TYPE (26)	IMPR-ECOSYSTEM (27)	IM -FC -SP -UNIT -1 (28)	IM -FC -SP -UNIT -2 (29)	IMPR -FLMP -TIE (30)	TARGET -SPECIES (31)	RANGE FUNC (32)	FUND-AMOUNT						
		RGE-FUNC-APPR (33)	RGE-BET-FUND (34)										
								5,60.3					
OTHER-FUNC(S)						FUND-AMOUNT				FORM DATE (41) MO   DA   YR			
FUNC						FUND-AMT APPR (36)	PUBLIC-OTHER (37)	CONS-PR (38)	PER-MOD-DEP (39)		PER-MOD-UNDEP (40)		
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	(36)	(37)	(38)	(39)	(40)			
										1,00.0			
(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)													
(43) SIGNATURE (Prepared By)													
(44) NOTES: NON-KEYPUNCHED INFORMATION:													

Wild and Free-Roaming Horses and Burros on Public Lands Report  
 (Report FS-2200-E), FY 1984. Report management of Wild Horse and  
 Burro Territories and animals as of September 30, 1984, as follows:

Part I. Territory Record. Submit the following information for each  
 Wild Horse and Burro Territory.

Name Heber District  
 National Forest Apache-Sitgreaves  
 State Arizona  
 Size (in acres) by ownership

FS 14000  
 BLM \_\_\_\_\_  
 Other \_\_\_\_\_

Management Plan Status \_\_\_\_\_ Date \_\_\_\_\_  
 Approved \_\_\_\_\_

Current Population 1/

	<u>Number of Animals</u>			<u>Animal Months Actual Use</u>		
	<u>FS</u>	<u>BLM</u>	<u>Other</u>	<u>FS</u>	<u>BLM</u>	<u>Other</u>
Horse	<u>5</u>	_____	_____	<u>5</u>	_____	_____
Burro	_____	_____	_____	_____	_____	_____

Management Plan Population Level 1/ 2/

	<u>Number of Animals</u>			<u>Animal Months Actual Use</u>		
	<u>FS</u>	<u>BLM</u>	<u>Other</u>	<u>FS</u>	<u>BLM</u>	<u>Other</u>
Horse	_____	_____	_____	_____	_____	_____
Burro	_____	_____	_____	_____	_____	_____

1/ Do not duplicate animals or animal months. If animal grazed on FS  
 and BLM prorate actual use estimate.

2/ Population level as established in territory plan or based on best  
 estimate from existing information.

Part II. Excess Animal Removal. Submit the following information summarized by Region for the current fiscal year. Count mare or jenny with foal less than 6 months at side as one. Count weaned foals or foals more than 6 months as one.

	<u>Horses</u>	<u>Burros</u>
1. Total number captured and removed from territories (This will be the sum of items 1a, 1b, 1c, and 1d.	0	
a. Number Excess Destroyed		
(1) Old, sick, lame	0	
(2) Unadoptable		
b. Deaths after removal		
(1) Natural Causes	0	
(2) Accidental		
c. Animals transferred BLM. <u>1/</u>	0	
d. Excess animals adopted through FS or BLM programs but remain responsibility of FS. <u>2/</u>	0	
<u>1/</u> Include those excess animals where followup including adoption, monitoring, and title assignments is BLM responsibility.		
<u>2/</u> Include only those animals removed from National Forest System lands and processed by FS or BLM Adopt-a-Horse Program but remain responsibility of the FS.		

Part III. Status of adoptees that remain Forest Service Responsibility.

	<u>Horses</u>	<u>Burros</u>
1. Number of adopted animals that remain responsibility of FS.	0	
2. Number of titles granted this fiscal year.	0	
3. Number of deaths after adoption this fiscal year.	0	
4. Number of adopted animals eligible for granting title, but no title issued.	0	

RANGE ALLOTMENT MANAGEMENT STATUS REPORT

Heber Ranger District

1. Number of allotment management plans based on range analysis prepared as of September 30, 1984: 12

2. Number of allotments upon which improved management was started during the period October 1, 1983 through September 30, 1984: 0

3. Number of allotments upon which improved management was adequately maintained during period of October 1, 1983 through September 30, 1984: 12

4. Number of allotments on District as of September 30, 1984: 13

Number of Allotments on District

Livestock Kind	Total	NF	Number of Allotments	
			NG	LUP
Cattle	12	12	0	0
Horses	0	0	0	0
Sheep	1	1	0	0
Goats	0	0	0	0
Common Use	0	0	0	0
Other	0	0	0	0
Total	13	13		

U.S. DEPARTMENT OF AGRICULTURE

SPEED MEMO

PART NUMBER

DATE

FROM S.O.

3

10-03-89

Pat Hanrahan

SUBJECT

2270

TO Heber

Range Reports

Bruce Matensen

MESSAGE

Pat - Attached are the Range Reports  
as per your request.

SIGNATURE

Bruce Matensen

REPLY

SIGNATURE

DATE

RETURN TO SENDER

Wild and Free-Roaming Horses and Burros on Public Lands Report  
 (Report FS-2200-E), FY 1984. Report management of Wild Horse and  
 Burro Territories and animals as of September 30, 1984, as follows:

Part I. Territory Record. Submit the following information for each  
 Wild Horse and Burro Territory.

Name Heber District  
 National Forest Apache-Sitgreaves  
 State Arizona  
 Size (in acres) by ownership

FS 14000  
 BLM \_\_\_\_\_  
 Other \_\_\_\_\_

Management Plan Status  
 Approved \_\_\_\_\_

Date \_\_\_\_\_

Current Population 1/

	Number of Animals			Animal Months Actual Use		
	FS	BLM	Other	FS	BLM	Other
Horse	<u>5</u>	_____	_____	<u>60</u>	_____	_____
Burro	_____	_____	_____	_____	_____	_____

Management Plan Population Level 1/ 2/

	Number of Animals			Animal Months Actual Use		
	FS	BLM	Other	FS	BLM	Other
Horse	_____	_____	_____	_____	_____	_____
Burro	_____	_____	_____	_____	_____	_____

1/ Do not duplicate animals or animal months. If animal grazed on FS and BLM prorate actual use estimate.

2/ Population level as established in territory plan or based on best estimate from existing information.

Part II. Excess Animal Removal. Submit the following information summarized by Region for the current fiscal year. Count mare or jenny with foal less than 6 months at side as one. Count weaned foals or foals more than 6 months as one.

	<u>Horses</u>	<u>Burros</u>
1. Total number captured and removed from territories (This will be the sum of items 1a, 1b, 1c, and 1d.	0	
a. Number Excess Destroyed (1) Old, sick, lame (2) Unadoptable	0	
b. Deaths after removal (1) Natural Causes (2) Accidental	0	
c. Animals transferred BLM. <u>1/</u>	0	
d. Excess animals adopted through FS or BLM programs but remain responsibility of FS. <u>2/</u>	0	

1/ Include those excess animals where followup including adoption, monitoring, and title assignments is BLM responsibility.

2/ Include only those animals removed from National Forest System lands and processed by FS or BLM Adopt-a-Horse Program but remain responsibility of the FS.

Part III. Status of adoptees that remain Forest Service Responsibility.

	<u>Horses</u>	<u>Burros</u>
1. Number of adopted animals that remain responsibility of FS.	0	
2. Number of titles granted this fiscal year.	0	
3. Number of deaths after adoption this fiscal year.	0	
4. Number of adopted animals eligible for granting title, but no title issued.	0	

RANGE ALLOTMENT MANAGEMENT STATUS REPORT

Heber Ranger Station

1. Number of allotment management plans based on range analysis prepared as of September 30, 1988 : 12
2. Number of allotments upon which improved management was started during the period October 1, 1988 through September 30, 1989: 4
3. Number of allotments upon which improved management was adequately maintained during period of October 1, 1988 through September 30, 1989: 12
4. Number of allotments on District as of September 30, 1989: 13

Number of Allotments on District

Livestock Kind	Total	NF	Number of Allotments	
			NG	LUP
Cattle	12	12		
Horses				
Sheep	1	1		
Goats				
Common Use				
Other				
Total	13	13		



# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION											IMPR-NAME (11)	
ACTION (1)	DISTRICT-NO (2)	IMPR TYPE (3)	IMPR-NO (4)	IMPR-EXT (5)	REGION-NO (6)	FOREST-NO (7)	PROC UNIT-KIND (8)	IMPR STATE (9)	IMPR COUNTY (10)	(25 SPACES)		
	05413				03	01104					ANTELOPE TANK	
ALLOTMENT				LOCATION								NAT FOR BOD (15)
ALLOT-1 (12a)	ALLOT-2 (12b)	LAT- (LATITUDE) (13a) DEG MIN SEC			LONG- (LONGITUDE) (13b) DEG MIN SEC			SE-TW-RG-BM (14) % % SE TW RG BM				
IMPR OWNER (16)	MAINT RESP (17)	IMPR STATUS (18)	FY CONST (19)	UNITS-IN-PLACE (20)	TOTAL-VALUE (21)	FY REPT (22)	UNITS-COMPLETED (THIS-FY) (23)	CONST TYPE (24)	IMPR-SIZE (25)			
						89	10					
IMPR NAME TYPE (26)	IMPR ECOSYSTEM (27)	IM -FC -SP -UNIT -1 (28)	IM -FC -SP -UNIT -2 (29)	IMPR -FLMP -TIE (30)	TARGET SPECIES (31)	FRANGT FUNC (32)	FUND-AMOUNT					
		RGE-FUNC-APPR (33)		RGE-BET-FUND (34)								
									9.00			
OTHER-FUNC(S)						FUND-AMOUNT					FORM DATE (41) MO DA YR	
FUNC						FUND-AMT	PUBLIC-OTHER (37)	CONS-PR (38)	PER-MOD-DEP (39)	PER-MOD-UNDEP (40)		
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	APPR (36)						
											10 03 89	
(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)												
(43) SIGNATURE (Prepared By)												
<i>Bruce J. Montross</i>												
(44) NOTES: NON-KEYPUNCHED INFORMATION:												

- No entry required

- Entry Optional

- Entries should be made when applicable

(OVER)

FS-2200-127 (9/82)

# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION											
ACTION	DISTRICT-NO	IMPR TYPE	IMPR-NO			REGION-NO	FOREST NO	PROC UNIT-KIND	IMPR STATE	IMPR COUNTY	IMPR-NAME
(1)	(2)	(3)	(4)			(6)	(7)	(8)	(9)	(10)	(25 SPACES)
(11)											
	05413					03	011	04			Fringe Tank

ALLOTMENT				LOCATION								NAT FOR BDU		
ALLOT-1	ALLOT-2	LAT- (LATITUDE)			LONG- (LONGITUDE)			SE-TW-RG-BM						
(12a)	(12b)	(13a)			(13b)			(14)						
		DEG	MIN	SEC	DEG	MIN	SEC	1/4	1/4	SE	TW	RG	BM	(15)

IMPR OWNER	MAINT RESP	IMPR STATUS	FY CONST	UNITS-IN-PLACE	TOTAL-VALUE	FY REPT	UNITS-COMPLETED (THIS-FY)	CONST TYPE	IMPR-SIZE
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
						89	10		

IMPR-RANGE TYPE	IMPR ECOSYSTEM	IM -FC	IM -FC	IMPR -FLMP	TARGET SPECIES	RANGE FUNC	FUND-AMOUNT	
		-SP	-SP	-TIE			RGE-FUNC-APPR	RGE-BET-FUND
(26)	(27)	(28)	(29)	(30)	(31)	(32)	(33)	(34)
		-1	-2					6.00

OTHER-FUNC(S)						FUND-AMOUNT					FORM DATE (41)		
FUNC						FUND-AMT	PUBLIC-OTHER	CONS-PR	PER-MOD-DEP	PER-MOD-UNDEP	MO   DA   YR		
						APPR							
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	(36)	(37)	(38)	(39)	(40)			
											10   03   89		

(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)

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(43) SIGNATURE (Prepared By)

*Bruce G. Mortensen*

(44) NOTES: NON-KEYPUNCHED INFORMATION:

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# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION											IMPR-NAME (25 SPACES)	(11)	
ACTION (1)	DISTRICT-NO (2)	IMPR TYPE (3)	IMPR-NO (4)	IMPR EXT (5)	REGION-NO (6)	FOREST-NO (7)	PROC UNIT-KIND (8)	IMPR STATE (9)	IMPR-COUNTY (10)				
	05413					0301104					Shallow Tank		
ALLOTMENT				LOCATION								NAT FOR BDY (15)	
ALLOT-1 (12a)	ALLOT-2 (12b)	LAT- (LATITUDE) (13a) DEG MIN SEC			LONG- (LONGITUDE) (13b) DEG MIN SEC			SE-TW-RG-BM (14) % % SE TW RG BM					
IMPR OWNER (16)	MAINT-RESP (17)	IMPR STATUS (18)	FY CONST (19)	UNITS-IN-PLACE (20)	TOTAL-VALUE (21)	FY REPT (22)	UNITS-COMPLETED (THIS-FY) (23)	CONST TYPE (24)	IMPR-SIZE (25)				
						89	10						
IMPR RANGE TYPE (26)	IMPR ECOSYSTEM (27)	IM -FC -SP -UNIT -1 (28)	IM -FC -SP -UNIT -2 (29)	IMPR -FLMP -TIE (30)	TARGET SPECIES (31)	IMPR RANGE FUNC (32)	FUND-AMOUNT						
							RGE-FUNC-APPR (33)	RGE-BET-FUND (34)					
									6.00				
OTHER-FUNC(S)						FUND-AMOUNT					FORM DATE (41)		
FUNC						FUND-AMT APPR (36)	PUBLIC-OTHER (37)	CONS-PR (38)	PER-MOD-DEP (39)	PER-MOD-UNDEP (40)	MO	DA	YR
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	(36)	(37)	(38)	(39)	(40)			
													100389
(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)													
(43) SIGNATURE (Prepared By) <i>Russell G. Mathisen</i>													
(44) NOTES: NON-KEYPUNCHED INFORMATION:													

# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

IMPROVEMENT IDENTIFICATION											LOCATION										
ACTION	DISTRICT-NO	IMPR TYPE	IMPR-NO	IMPR EXT	REGION NO	FOREST NO	PROC UNIT KIND	IMPR STATE	IMPR COUNTY	(25 SPACES)											IMPR-NAME
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)												(11)
	05413				0301	104				Short Tank											
ALLOTMENT					LOCATION																
ALLOT-1	ALLOT-2	LAT- (LATITUDE)			LONG- (LONGITUDE)			SE-TW-RG-BM						NAT FOR BDY							
(12a)	(12b)	(13a)			(13b)			(14)						(15)							
		DEG	MIN	SEC	DEG	MIN	SEC	%	%	SE	TW	RG	BM								
IMPR OWNER	MAINT RESP	IMPR STATUS	FY CONST	UNITS-IN-PLACE	TOTAL-VALUE	FY HELPT	UNITS-COMPLETED (THIS-FY)	CONST TYPE	IMPR-SIZE												
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)												
						89	10														
IMPR RANGE TYPE	IMPR ECOSYSTEM	IM -FC -SP -UNIT -1	IM -FC -SP -UNIT -2	IMPR -FLMP -TIE	TARGET SPECIES	RANGE FUNC	FUND-AMOUNT														
		(28)	(29)	(30)	(31)		(32)	RGE-FUNC-APPR	RGE-BET-FUND												
									6.00												
OTHER-FUNC(S)						FUND-AMOUNT						FORM DATE (41)									
FUNC						FUND-AMT	PUBLIC-OTHER	CONS-PR	PER-MOD-DEP	PER-MOD-UNDEP	MO   DA   YR										
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	APPR					(36)	(37)	(38)	(39)	(40)						
													10	03	89						
(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)																					
(43) SIGNATURE (Prepared By)																					
(44) NOTES: NON-KEYPUNCHED INFORMATION:																					

# RANGE IMPROVEMENT DATA

(Reference FSH 2209.12, Report FS-2200-B)

ACTION	IMPROVEMENT IDENTIFICATION				REGION-NO	FOREST NO	PROC UNIT-KIND	IMPR STATE	IMPR COUNTY	IMPR-NAME
	DISTRICT-NO	IMPR TYPE	IMPR-NO	IMPR EXT						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	05413				0301104					Hanks Tank

ALLOTMENT		LOCATION										NAT FOR BID	
ALLOT-1	ALLOT-2	LAT- (LATITUDE)			LONG- (LONGITUDE)			SE-TW-RG-BM					
(12a)	(12b)	DEG	MIN	SEC	DEG	MIN	SEC	%	%	SE	TW		RG

IMPR OWNER	MAINT RESP	IMPR STATUS	FY CONST	UNITS-IN-PLACE	TOTAL-VALUE	FY-REPT	UNITS-COMPLETED (THIS-FY)	CONST TYPE	IMPR-SIZE
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
						89	10		

IMPR RANGE TYPE	IMPR ECOSYSTEM	IM -FC -SP -UNIT -1	IM -FC -SP -UNIT -2	IMPR -FLMP -TIE	TARGET SPECIES	IMPR RANGE FUNC	FUND-AMOUNT	
		(28)	(29)	(30)	(31)	(32)	RGE-FUNC-APPR	RGE-BET-FUND
(26)	(27)	(28)	(29)	(30)	(31)	(32)	(33)	(34)
								1200

OTHER-FUNC(S)						FUND-AMOUNT				FORM DATE (41) MO DA YR		
FUNC						FUND-AMT	PUBLIC-OTHER	CONS-PR	PER-MOD-DEP		PER-MOD-UNDEP	
(35a)	(35b)	(35c)	(35d)	(35e)	(35f)	APPR						(36)

(42) IMPROVEMENT-REMARKS (50 spaces per line - 2 lines)

(43) SIGNATURE (Prepared By)

*Bruce G. Montrose*

(44) NOTES: NON-KEYPUNCHED INFORMATION:

U.S. DEPARTMENT OF AGRICULTURE

**SPEED MEMO**

PART NUMBER

DATE

FROM *Chas Whitlow*

**3**

*9-12-90*

*30*

SUBJECT

*2270*

TO *L. S. Mortensen*

*Range Reports*

*Heber*

MESSAGE

*Chas - Enclosed are the Range Improvement Reports for FY 90. There is no change in the Allotment status or the Wild Horse reports from last year.*

*Bruce*

SIGNATURE

REPLY

SIGNATURE

DATE

RETURN TO SENDER

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*[Handwritten Signature]*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	2109	

Action	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
-	Twin Lakes Tank	413	-	90	04	017	-

!Allot-1 (C261): 015  
Allot-2 (C262):

\*Allot-1-Name (C205): Gentry

!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	100						1.0

.....Se-Tw-Rg-Bm.....				Latitude			Longitude				
C267				C268			C268				
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
-	-	-	-	-	-	-	-	-	-	-	-

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1 Kind	Improvement FC Special Unit 2 Kind	Improvement FC Special Unit 2 Number	Impr FLMP Tie
C272	C273	C275	C269	C276	C270
9/12/1990	/ /19				C265

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
-	90	1.0	600.00

Fund Amount	Other Function C778:						
	A	B	C	D	E	F	G
Range Funds C771:	-	-	-	-	-	-	-
Range Betterment C772:	-	-	-	-	-	-	-
Other Funds C777:	-	-	-	-	-	-	-
Public Other C773:	-	-	-	-	-	-	-
Conservation Practice C774:	-	-	-	-	-	-	-
Permit Modification Dep C775:	-	-	-	-	-	-	-
Permit Modificat'n Undep C776:	-	-	-	-	-	-	-
*Current FY Cost C703:	-	-	-	-	-	-	-

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce G. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	2108	--

Act- ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
	Upper Big Canyon	413	--	90	04	017	-

!Allot-1 (C261): -- 015 \*Allot-1-Name (C205): Gentry  
Allot-2 (C262): -- --

!Impr Owner	!Maint Resp	Maint Pntee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	60	--	--	--	--	--	L.0

.....Se-Tw-Rg-Bm.....				Latitude			Longitude				
C267				C268			C268				
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
--	--	--	--	--	--	--	--	--	--	--	--

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1 Kind	Improvement FC Special Unit 2 Kind	Impr FLMP Tie
C272	C273	C275	C276	C265
9/12/1990	1/19	C269	C270	

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
	90	L.0	1000.00

Range Funds C771:	---	6000.00	Other Function C778:
Range Betterment C772:	---	.00	A B C D E F G
Other Funds C777:	---	.00	
Public Other C773:	---	.00	
Conservation Practice C774:	---	.00	
Permit Modification Dep C775:	---	.00	
Permit Modificat'n Undep C776:	---	.00	
*Current FY Cost C703:	---	1000.00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_



RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*[Handwritten Signature]*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	2107	--

Act- ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
-	Big Canyon Tanks	413	--	90	04	017	-

!Allot-1 (C261): -- 0 1 ✓ \*Allot-1-Name (C205): Gentry

Allot-2 (C262): -- -- --

!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	60	--	--	--	--	--	L.0

.....Se-Tw-Rg-Bm.....					Latitude			Longitude			
					C268			C268			
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
--	--	--	--	--	--	--	--	--	--	--	--

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1	Improvement FC Special Unit 2	Impr FLMP Tie
C272	C273	Kind Number	Kind Number	C265
9/12/1990	1/19	C275 C269	C276 C270	

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
-	90	1.0	1500.00

Range Funds C771:	1500.00	Other Function C778:
Range Betterment C772:	.00	A B C D E F G
Other Funds C777:	.00	
Public Other C773:	.00	
Conservation Practice C774:	.00	
Permit Modification Dep C775:	.00	
Permit Modificat'n Undep C776:	.00	
*Current FY Cost C703:	1500.00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce J. [Signature]*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	2106	--

Act- ion	Improvement Name	!Impr	Impr	!FY	!Impr	!Impr	Nat For
	(25 Char's)	Type	Status	Const	State	County	Bdy
	C201	C202	C212	C214	C263	C264	C274
	<u>Nelson Tank</u>	<u>413</u>	--	<u>90</u>	<u>04</u>	<u>017</u>	--

!Allot-1 (C261): -- 012 \*Allot-1-Name (C205): Wildcat  
Allot-2 (C262): -- --

!Impr	!Maint	Maint	Impr	Impr	Const	Impr	!Units
Owner	Resp	Pmtee	Insptd	Cond	Type	Size	In Place
C215	C216	C217	C279	C280	C231	C232	C213
<u>01</u>	<u>60</u>	--	--	--	--	--	<u>L.0</u>

.....Se-Tw-Rg-Bm.....				Latitude			Longitude				
C267				C268			C268				
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
--	--	--	--	--	--	--	--	--	--	--	--

Basin	Water	Target	Impr	Impr
No.	Right	Species	Range	Eco Sys
C278	C277	C222	Type	C266
--	--	--	C221	--

Impr	*Impr	Improvement FC		Improvement FC		Impr
Form Date	As-of-Date	Special Unit 1	Kind	Special Unit 2	Kind	FLMP
C272	C273	Kind	Number	Kind	Number	Tie
<u>9/12/1990</u>	<u>1/19</u>	C275	C269	C276	C270	C265

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
--	<u>90</u>	<u>L.0</u>	<u>1000.00</u>

Fund Amount

Range Funds C771:	-- 1000.00	Other Function C778:
Range Betterment C772:	-- .00	A B C D E F G
Other Funds C777:	-- .00	
Public Other C773:	-- .00	
Conservation Practice C774:	-- .00	
Permit Modification Dep C775:	-- .00	
Permit Modificat'n Undep C776:	-- .00	
*Current FY Cost C703:	-- 1000.00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGES IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce J. Mortenson*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	2105	--

Act-ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
-	Aspen Tank	413	--	90	04	017	-

!Allot-1 (C261): -- 012 \*Allot-1-Name (C205): Wildcat  
Allot-2 (C262): -----

!Impr Owner	!Maint Resp	Maint Pmt	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	00						L.0

.....Se-Tw-Rg-Bm.....					Latitude			Longitude			
C267					C268			C268			
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
---	---	---	---	---	---	---	---	---	---	---	---

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266
---	---	---	---	---

Impr Form Date	*Impr As-of-Date	Improvement Special Unit 1	Improvement Special Unit 2	Impr FLMP Tie
C272	C273	Kind Number	Kind Number	C265
9/12/1990	1/19	C275 C269	C276 C270	C265

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
-	90	1.0	2222.00

Fund Amount		Other Function C778:						
		A	B	C	D	E	F	G
Range Funds C771:	2000.00							
Range Betterment C772:	.00							
Other Funds C777:	.00							
Public Other C773:	.00							
Conservation Practice C774:	.00							
Permit Modification Dep C775:	.00							
Permit Modificat'n Undep C776:	.00							
*Current FY Cost C703:	2000.00							

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce G. Mortenson*

ID (C4)	Proclaimed Unit	Improvement
#Region #Forest #District	!Kind #Number	#Number #Ext
C4 C4 C1	C2 C3	C203 C204
03 01 05	1 0028	2110

Act-ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
	210 Tank	413		90	04	017	

!Allot-1 (C261): 012 \*Allot-1-Name (C205): Wildcat  
Allot-2 (C262):

!Impr Owner	!Maint Resp	Maint Pntee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	60						L.0

.....Se-Tw-Rg-Bm.....	Latitude	Longitude
C267	C268	C268
1/4 1/4 SE TW RG BM	DEG MIN SEC	DEG MIN SEC

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1	Improvement FC Special Unit 2	Impr FLMP Tie
C272	C273	C275 C269	C276 C270	C265
9/12/1990	1/19			

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
	90	L.0	700.00

Range Funds C771:	Fund Amount	Other Function C778:
Range Betterment C772:	700.00	A B C D E F G
Other Funds C777:	.00	
Public Other C773:	.00	
Conservation Practice C774:	.00	
Permit Modification Dep C775:	.00	
Permit Modificat'n Undep C776:	.00	
*Current FY Cost C703:	700.00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

**RANGE IMPROVEMENT DATA**  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce G. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
<u>03</u>	<u>01</u>	<u>05</u>	<u>1</u>	<u>0028</u>	<u>2002</u>	<u>---</u>

Act-ion	Improvement Name	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	(25 Char's)	C202	C212	C214	C263	C264	C274
	<u>Black Canyon Wildcat Fence</u>	<u>232</u>					

!Allot-1 (C261): 014 \*Allot-1-Name (C205): Black Canyon  
 Allot-2 (C262): ---

!Impr Owner	!Maint Resp	Maint Pntee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
<u>01</u>	<u>60</u>						<u>2.0</u>

.....Se-Tw-Rg-Bm.....							Latitude			Longitude		
C267							C268			C268		
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC	
<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement Special Unit 1	Improvement Special Unit 2	Impr FLMP Tie
C272	C273	C275	C276	C265
<u>9/12/1990</u>	<u>1/19</u>			

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
	<u>90</u>	<u>2.0</u>	<u>4000.00</u>

Fund Amount	
Range Funds C771:	----- .00
Range Betterment C772:	----- <u>2000.00</u>
Other Funds C777:	----- .00
Public Other C773:	----- .00
Conservation Practice C774:	----- .00
Permit Modification Dep C775:	----- .00
Permit Modificat'n Undep C776:	----- <u>2000.00</u>
*Current FY Cost C703:	----- .00

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce J. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
C3	01	05	1	0028	2724	

Improvement Name	!Impr	Impr	!FY	!Impr	!Impr	Nat For
(25 Char's)	Type	Status	Const	State	County	Bdy
C201	C202	C212	C214	C263	C264	C274
<u>Wildcat-Heber Fence</u>	232	--	90	04	017	-

!Allot-1 (C261): 016 \*Allot-1-Name (C205): Wildcat Heber  
Allot-2 (C262):

!Impr	!Maint	Maint	Impr	Impr	Const	Impr	!Units
Owner	Resp	Pntee	Inspdt	Cond	Type	Size	In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	60						2.0

.....Se-Tw-Rg-Bm.....						Latitude			Longitude		
C267						C268			C268		
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC

Basin	Water	Target	Impr	Impr
No.	Right	Species	Range	Eco Sys
C278	C277	C222	C221	C266

Impr	*Impr	Improvement FC		Improvement FC		Impr
Form Date	As-of-Date	Special Unit 1	Special Unit 2	Special Unit 1	Special Unit 2	FLMP
C272	C273	Kind	Number	Kind	Number	Tie
9/12/1990	/ / 19	C275	C269	C276	C270	C265

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
	90	2.0	6000.00

Fund Amount		Other Function C778:
Range Funds C771:	1000.00	A B C D E F G
Range Betterment C772:	3200.00	
Other Funds C777:	.00	
Public Other C773:	.00	
Conservation Practice C774:	.00	
Permit Modification Dep C775:	.00	
Permit Modificat'n Undep C776:	2000.00	
*Current FY Cost C703:	.00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.00

Signature

Date: 9/12/1990

*Bruce Y. Mortenson*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
<u>03</u>	<u>01</u>	<u>05</u>	<u>1</u>	<u>0028</u>	---	---

Act- ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
-	<u>Clay Springs PJ Burning</u>	<u>9L2</u>	--	<u>90</u>	<u>04</u>	<u>017</u>	-

!Allot-1 (C261): -- 028 \*Allot-1-Name (C205): Clay Springs  
Allot-2 (C262): -----

!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
<u>1</u>	<u>60</u>	---	---	---	---	---	<u>400.0</u>

.....Se-Tw-Rg-Bm.....				Latitude			Longitude				
C267				C268			C268				
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
---	---	---	---	---	---	---	---	---	---	---	---

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1	Improvement FC Special Unit 2	Impr FLMP Tie
C272	C273	Kind Number	Kind Number	C265
<u>9/12/1990</u>	<u>1/19</u>	C275 C269	C276 C270	---

Action	#FY Rept	!Units Completed	!Total Value
---	C701	C702	C705
-	<u>90</u>	<u>400.0</u>	<u>3000.00</u>

Fund Amount

Range Funds C771:	-----	.00	Other Function C778:
Range Betterment C772:	-----	<del>100</del> 2.00	A B C D E F G
Other Funds C777:	-----	.00	-----
Public Other C773:	-----	.00	-----
Conservation Practice C774:	-----	.00	-----
Permit Modification Dep C775:	-----	.00	-----
Permit Modificat'n Undep C776:	-----	.00	-----
*Current FY Cost C703:	-----	.00	-----

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

Wild and Free-Roaming Horses and Burros on Public Lands Report (Report FS-2200-E), FY 1990. Report management of Wild Horse and Burro Territories and animals as of September 30, 1990, as follows:

I. Territory

Name - Heber District  
 National Forest - Apache-Sitgreaves  
 State - Arizona  
 Acres -  
     FS - 14000  
     BLM - 0  
     Other - 0  
 Management Plan Status  
     Approved Date -  
     No Plan -  
 Current Population 1/

	Animals		AM's (Actual Use)	
	<u>FS</u>	<u>BLM</u>	<u>FS</u>	<u>BLM</u>
Horse	5		60	
Burro				

Management Plan Level 1/ 7/

	Animals		AM's (Actual Use)	
	<u>FS</u>	<u>BLM</u>	<u>FS</u>	<u>BLM</u>
Horse				
Burro				

II. Excess Animals

	<u>FS 2/</u>		<u>FS/BLM 3/</u>	
	Horses	Burros	Horses	Burros

1. Number captured and removed from territories. 5/

a. Number Destroyed	
(1) Old, sick, lame	0
(2) Unadoptable	0
b. Deaths	
(1) Natural Causes	0
(2) Accidental	0
c. Animals transferred to BLM. <u>6/</u>	0
d. Excess animals adopted through FS program.	0



- 2. Number of adoptees that remain responsibility of FS. 0
  
- 3. Number of titles granted of those animals under FS care and maintenance agreement.
  - a. Horses 0
  - b. Burros 0
  
- 4. Number of deaths after adoption of those animals under FS care and maintenance agreements.
  - a. Horses 0
  - b. Burros 0
  
- 5. Adopted animals from prior years remaining under care and maintenance agreement that are eligible for granting title, but no title issued
  - a. Horses 0
  - b. Burros 0

General Information

Number of territories discontinued by name. 4/ 0

Number of territory boundary adjusted by name. 4/ 0

General Rules

- 1. Count mare or jenny with foal less than 6 months at side as one.
  - 2. Weaned foals or foals more than 6 months count as one.
- 
- 1/ Do not duplicate animals or AM's. If animal grazed on both, prorate by actual use estimate.
  - 2/ Include only those animals removed from National Forest lands and processed by FS.
  - 3/ Include those animals removed from National Forest lands and processed through BLM Adopt-a-Horse Program but remain responsibility of Forest Service.

- 4/ Report only those that have been approved through Forest Land Management Planning process.
- 5/ Lines 1a + 1c + 1d = 1
- 6/ Include those excess animals where followup including adoption, monitoring and title assignment is BLM responsibility.
- 7/ As established in territory plan or based on best estimation from existing information.

1/12/93

WILD HORSE AND BURRO MANAGEMENT - MASTER LIST

1

(22/10) 1992

!Reg	!For	!Dist	Proclaimed Unit	!Admin.	#Territory
03	01	05	!Kind	Respons.	No.
			1	FS	00005

!Territory Name	!No. of Animals	No. Removed
HEBER	5	0

	NFS Acres	BLM Acres	Other Acres
!State 1 04	14000	0	0
State 2 00	0	0	0

!Does this territory have an approved plan? N Herd Objective 0

Is the plan in compliance with the forest plan? N

!Has this territory been monitored this fiscal year? Y

4  
Improvement  
Resource  
Data  
(New Measures  
Reports)

-----

IMPROVEMENT RESOURCE DATA MASTER LIST

Rev. 2.00

Date 1/21/93

!Reg	!For	!Dist	Proclaimed Unit		Improvement		Improvement Name		
			!Kind	!Number	#Number	#Ext	(25 Char)		
03	01	05	1	0028	005900		RED KNOLL CHAINING		
--	--	--	-	----	-----	--	-----		

!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy	!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd
911	--	92	04	017	-	1	22	-----	--
---	--	--	--	---	-	--	--	-----	--

Impr Cond	Const Type	Impr Size	!Units In Place	!Allot-1:	00016	Allot-2:
--	--	-----	2000.0	*Allot-1 Name:	HEBER	(30 Char)
---	--	-----	-----	-----	-----	-----

.....Se-Tw-Rg-Bm.....					Latitude			Longitude			User	
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC	
--	--	--	--	--	--	--	--	--	--	--	--	-----

Basin No.	Water Right	Target Species	Range Type	Impr Eco Sys	Impr Form Date	Impr As-of-Date
-----	-----	-----	---	---	/ /19	10/28/1992
---	-----	-----	---	---	-----	-----

Improvement FC Special Unit 1		Improvement FC Special Unit 2		Impr FLMP Tie	!FY Rept	!Units Completed	!Total Value
Kind	Number	Kind	Number	-----	92	350.0	30000.00
---	-----	---	-----	-----	--	-----	-----

Fund Amount		Other Function:						
Range Funds:	.00	A	B	C	D	E	F	G
Range Betterment:	.00	-----						
Other Funds:	.00	-----						
Public Other:	.00	-----						
Conservation Practice:	.00	-----						
Permit Modification Dep:	.00	-----						
Permit Modificat'n Undep:	30000.00	-----						
*Current FY Cost:	30000.00	-----						

Remarks-1:

Remarks-2:

! - Required Field

# - KEY Field

\* - System Generated Field

IMPROVEMENT RESOURCE DATA MASTER LIST

Rev. 2.00

Date 1/12/93

!Reg	!For	!Dist	Proclaimed Unit		Improvement		Improvement Name		
			!Kind	!Number	#Number	#Ext	(25 Char)		
03	01	05	1	0028	005901		<i>Ancient Crush</i>		
--	--	--	--	----	-----	--	-----		

!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy	!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd
911		92	04	017		1	22		
---	---	---	---	---	---	---	---	---	---

Impr Cond	Const Type	Impr Size	!Units In Place	!Allot-1:	00017	Allot-2:
			350.0			
---	---	-----	-----	-----	-----	-----

\*Allot-1 Name: (30 Char)  
BUCKSKIN

.....Se-Tw-Rg-Bm.....					Latitude			Longitude			User	
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC	
---	---	---	---	---	---	---	---	---	---	---	---	---

Basin No.	Water Right	Target Species	Range Type	Impr Eco Sys	Impr Form Date	Impr As-of-Date
					/ /19	10/28/1992
---	---	---	---	---	---	---

Improvement FC Special Unit 1 Kind Number	Improvement FC Special Unit 2 Kind Number	Impr FLMP Tie	!FY Rept	!Units Completed	!Total Value
			92	350.0	10121.00
---	---	---	---	-----	-----

Fund Amount		Other Function:						
		A	B	C	D	E	F	G
Range Funds:	10121.00							
Range Betterment:	.00							
Other Funds:	.00							
Public Other:	.00							
Conservation Practice:	.00							
Permit Modification Dep:	.00							
Permit Modificat'n Undep:	.00							
Current FY Cost:	10121.00							

Remarks-1:

Remarks-2:

IMPROVEMENT RESOURCE DATA MASTER LIST

Rev. 2.00

Date 1/12/93

!Reg	!For	!Dist	Proclaimed Unit		Improvement		Improvement Name (25 Char)		
			!Kind	!Number	#Number	#Ext			
03	01	05	1	0028	005902		<i>Halter Cross Burn &amp; Seed</i>		

!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy	!Impr Owner	!Maint Resp	Maint Pmtee	Impr Insptd
911		92	04	017		1	22		

Impr Cond	Const Type	Impr Size	!Units In Place	!Allot-1: 00017	Allot-2:
			700.0.0	*Allot-1 Name: (30 Char) BUCKSKIN	

.....Se-Tw-Rg-Bm.....						Latitude			Longitude			User
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC	

Basin No.	Water Right	Target Species	Range Type	Impr Eco Sys	Impr Form Date	Impr As-of-Date
					/ /19	10/28/1992

Improvement FC Special Unit 1 Kind Number	Improvement FC Special Unit 2 Kind Number	Impr FLMP Tie	!FY Rept	!Units Completed	!Total Value
			92	1.0	10000.00

*2000.0*  
*Corrected*

	Fund Amount
Range Funds:	.00
Range Betterment:	.00
Other Funds:	10000.00
Public Other:	.00
Conservation Practice:	.00
Permit Modification Dep:	.00
Permit Modification Undep:	.00
Current FY Cost:	10000.00

Other Function:  
A B C D E F G

Remarks-1:

Remarks-2:

OPTION 3 - Add/Edit WILD\_HB Records

Select this option to add new or edit existing records in the WILD\_HB database. Data entry is done using 1 FES screen. Following is an example of the screen.

WILD HORSE AND BURRO MANAGEMENT		(! - Required Field # - KEY Field)	
Screen 1 of 1			
!Reg	!For	!Dist	Proclaimed Unit
<u>3</u>	<u>1</u>	<u>5</u>	!Kind
			!Admin. Respons.
			<u>FS</u>
!Territory Name		!No. of Animals	
<u>Heber District</u>		<u>5</u>	
		#Territory No.	
		<u>05</u>	
		or <u>01</u>	
		No. Removed	
		<u>0</u>	
		NFS Acres	BLM Acres
!State 1	<u>4</u>	<u>14000</u>	_____
State 2	_____	_____	_____
!Does this territory have an approved plan? <input checked="" type="checkbox"/> Herd Objective _____			
Is the plan in compliance with the forest plan? <input checked="" type="checkbox"/>			
!Has this territory been monitored this fiscal year? <input checked="" type="checkbox"/>			

\* Should be same as data base

Following are specific data entry instructions for each field in the WILD HORSE and BURRO MANAGEMENT screen. The key field for the database (WILD\_HB) is the territory number. The number and letter in parentheses after each field name indicates the size of the field and whether it is numeric or alphanumeric. For example 'Reg (2n)' indicates that field Reg will accept 2 numeric characters. You will not need to enter leading zeros in any field. They will automatically be added where required.

Screen 1 of 1

Reg (2n) - Enter region number for the reporting region.

For (2n) - Enter forest number for the reporting forest.

Dist (2n) - Enter district number for the reporting district. If the territory boundary overlaps administrative boundaries the reporting district will be the district that has been assigned the territory reporting responsibilities.

Proclaimed Unit Kind (1n) - Enter one of the following codes:

Code	Abbreviation	Name	Description
1	NF	National Forest	Proclaimed National Forest
2	NGL	National Grasslands	Acquired NFS Lands
3	LUP	Land Utilization Projects	Acquired NFS Lands

RANGE IMPROVEMENT DATA  
Rev. 1.03

Signature

Date: 1/21/1992

*Eric J. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
<u>03</u>	<u>01</u>	<u>05</u>	<u>1</u>	<u>0028</u>	<u>5115</u>	<u>---</u>
					<u>5900</u>	

Act: ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
-	<u>John Doe</u> <i>Red Knoll Chaining</i>	<u>911</u>	<u>--</u>	<u>92</u>	<u>04</u>	<u>017</u>	<u>-</u>
!Allot-1 (C261): <u>016</u>		*Allot-1-Name (C205): <u>Heber</u>					
Allot-2 (C262): <u>---</u>							

!Impr Owner	!Maint Resp	Maint Pntee	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
<u>01</u>	<u>22</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>20000</u>

.....Se-Tw-Rg-Bm.....						Latitude			Longitude		
C267						C268			C268		
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266
<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1	Improvement FC Special Unit 2	Impr FLMP Tie
C272	C273	Kind Number	Kind Number	C265
<u>/ / 19</u>	<u>/ / 19</u>	<u>C275 C269</u>	<u>C276 C270</u>	<u>---</u>

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
<u>-</u>	<u>92</u>	<u>350.00</u>	<u>30000.00</u>

Fund Amount		Other Function C778:
		A B C D E F G
Range Funds C771:	<u>00</u>	
Range Betterment C772:	<u>00</u>	
Other Funds C777:	<u>00</u>	
Public Other C773:	<u>00</u>	
Conservation Practice C774:	<u>00</u>	
Permit Modification Dep C775:	<u>00</u>	
Permit Modificat'n Undep C776:	<u>30000</u>	
*Current FY Cost C703:	<u>00</u>	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_



RANGE IMPROVEMENT DATA  
Rev. 1.03

Signature

Date: 0/21/1992

*Bruce J. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
#Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	<del>5116</del> 5901	--

Act: ion	Improvement Name (25 Char's)	!Impr Type	Impr Status	!FY Const	!Impr State	!Impr County	Nat For Bdy
		C202	C212	C214	C263	C264	C274
	<i>Ancient Crush</i>	911	--	92	04	012	-

!Allot-1 (C261): 042 \*Allot-1-Name (C205): Buckskin  
Allot-2 (C262): -----

!Impr Owner	!Maint Resp	Maint Pmt	Impr Insptd	Impr Cond	Const Type	Impr Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C213
01	22	---	---	---	---	---	350.0

Se-Tw-Rg-Bm				Latitude			Longitude				
C267				C268			C268				
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC
1/4	1/4	SE	TW	RG	BM	---	---	---	---	---	---

Basin No.	Water Right	Target Species	Impr Range Type	Impr Eco Sys
C278	C277	C222	C221	C266
---	---	---	---	---

Impr Form Date	*Impr As-of-Date	Improvement FC Special Unit 1	Improvement FC Special Unit 2	Impr FLMP Tie
C272	C273	Kind Number	Kind Number	C265
___/___/19__	___/___/19__	C275 C269	C276 C270	---

Action	#FY Rept	!Units Completed	!Total Value
	C701	C702	C705
---	92	350.0	10121.00

Fund Amount		Other Function C778:						
		A	B	C	D	E	F	G
Range Funds C771:	10121.00							
Range Betterment C772:	.00							
Other Funds C777:	.00							
Public Other C773:	.00							
Conservation Practice C774:	.00							
Permit Modification Dep C775:	.00							
Permit Modificat'n Undep C776:	.00							
*Current FY Cost C703:	.00							

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_

RANGE IMPROVEMENT DATA  
Rev. 1.03

Signature

Date: 1/21/1992

*Bruce J. Mortensen*

ID (C4)			Proclaimed Unit		Improvement	
*Region	#Forest	#District	!Kind	#Number	#Number	#Ext
C4	C4	C1	C2	C3	C203	C204
03	01	05	1	0028	5117	--
					5922	

✓  
Salary will find what H is what assigned to improve these H's (0302) until I can be added

Act: ion	Improvement Name (25 Char's)	!Imp Type	Imp Status	!FY Const	!Imp State	!Imp County	Nat For Bdy
	C201	C202	C212	C214	C263	C264	C274
	Halter Cross Run & Seed	911	--	92	04	027	--

!Allot-1 (C261): 017 \*Allot-1-Name (C205): Buckskin  
Allot-2 (C262):

!Imp Owner	!Maint Resp	Maint Pntee	Imp Insptd	Imp Cond	Const Type	Imp Size	!Units In Place
C215	C216	C217	C279	C280	C231	C232	C218
01	22						700.0

Se-Tw-Rg-Bm							Latitude			Longitude		
C267							C268			C268		
1/4	1/4	SE	TW	RG	BM	DEG	MIN	SEC	DEG	MIN	SEC	
1/4	1/4	SE	TW	RG	BM							

Basin No.	Water Right	Target Species	Imp Range Type	Imp Eco Sys
C278	C277	C222	C221	C266

Imp Form Date	*Imp As-of-Date	Improvement Special Unit 1 Kind	Improvement Special Unit 2 Kind	Improvement FC Number	Improvement FC Number	Imp FLMP Tie
C272	C273	C275	C276	C269	C270	C265
/ / 19	/ / 19					

Action	*FY Rept	!Units Completed	!Total Value
	C701	C702	C705
	92	2000.0	10000.00

Fund Amount		Other Function C778:
		A B C D E F G
Range Funds C771:	00	
Range Betterment C772:	00	
Other Funds C773:	10000.00	
Public Other C773:	00	
Conservation Practice C774:	00	
Permit Modification Dep C775:	00	
Permit Modificat'n Undep C776:	00	
*Current FY Cost C703:	00	

Remarks-1 C704: \_\_\_\_\_

Remarks-2 C704: \_\_\_\_\_



# NOTICE

## OF INTENT TO IMPOUND UNAUTHORIZED LIVESTOCK

(Ref: FSM 5330)

Notice is hereby given that pursuant to Regulation of the Secretary of Agriculture, 36 C.F.R. 262.2, all unauthorized livestock found upon National Forest System lands or other lands under Forest Service control within the following area:

TOPOGRAPHIC UNIT, LEGAL SUBDIVISION OR ALLOTMENT BUCKSKIN AND GENTRY ALLOTMENTS	RANGER DISTRICT HEBER
NATIONAL FOREST OR GRASSLAND SITGREAVES NATIONAL FOREST	STATE ARIZONA

May be impounded by the United States Forest Service on or after September 4, 1984, if the same be not previously removed permanently from the above described lands.

Any unbranded livestock, or any livestock bearing brands of previously unauthorized livestock which are found to be making continuing or subsequent unauthorized use within twelve months after publication of this notice may be impounded without further notice.

After the impoundment, owners of unauthorized livestock may regain possession thereof only by first showing proof of ownership and reimbursing the United States in full for the expense incurred in impounding, feeding, and care of such livestock, or if impoundment costs exceed fair market value, by a payment equal to the fair market value of the impounded livestock. All impounded animals not redeemed within 5 days after notice of sale of impounded livestock has been published in a local newspaper, posted in the county court house and in one or more local post offices, will be offered for sale at public auction.

Livestock not sold at public sale may be sold at private sale or condemned and destroyed, or otherwise disposed of as provided by Regulation 36 C.F.R. 262.2(f).

Approximately 60 head of mixed horses, unbranded, including a mixture of bays, blacks, duns, sorrels, greys, browns, one white stallion and including horses, mares and colts.

SIGNED AT

SPRINGVILLE, ARIZONA

THIS 17th DAY OF August, 19 84

NAME AND SIGNATURE

*Nick W. McDonough*

NICK W. MCDONOUGH

TITLE

FOREST SUPERVISOR

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

2200-28 (4/78)

GPO 928-760

Gentry Allotment

RANGE INSPECTION REPORT

Dates of Inspection July 8 1986  
19

Approx. % of range seen 80 %

1. Were weather conditions favorable or unfavorable for plant growth? Feed in Fair condition. Not much Tank Water
2. Was forage production average, above or below average? Below
3. Percent of current utilization of key species on primary range 25%
4. Utilization obtained by ocular estimate, plant count or clipping Ocular
5. General distribution of livestock over allotment Poor in some areas due to lack of Tank Water
6. Action taken to correct poor distribution Ask permittee to move Cattle out of Boca and Black Can Lake area and try to hold them on the rim.
7. Salting practice on feed or on water? Feed
8. Problem areas \_\_\_\_\_
9. Permittee plan; status, use, changes needed w/dates (including improvements). Analysis started. Plan to finish in FY 87
10. Calf Crop (& tallied on allotment during inspection) 60%
11. Excess (permittees) or trespass (not permittees) suspected? If yes, why; and what action is needed to correct? ~~Yes~~ Lot of trespass Indian horses.
12. Allotment analysis - give current status of preparation Same as 9.
13. Were conditions taken up with permittee? Yes; allotment ridden with permittee? No; his reaction Would like something done about trespass horses.
14. Is season satisfactory? Yes
15. Wildlife conditions Fair

Use reverse for additional notes or for marking route of travel.

Bruce J. Mortensen  
Forest Officer

(Copy to SO; copy for Allot. File; copy to permittee when advisable)

Gentry-Buckskin Allotment

RANGE INSPECTION REPORT

Dates of Inspection Aug. 4<sup>th</sup> - 5<sup>th</sup> 1987  
19

Approx. % of range seen 70 %

1. Were weather conditions favorable or unfavorable for plant growth? Rains have just started. Grass is fair. No water in tanks yet.
  2. Was forage production average, above or below average? Forage Production was good from moisture received in May & June
  3. Percent of current utilization of key species on primary range Gentry rested this year. Budget Unit showing 15% use.
  4. Utilization obtained by ocular estimate, plant count or clipping Ocular
  5. General distribution of livestock over allotment Fair. Many tanks are very low or dry.
  6. Action taken to correct poor distribution Advised permittee to advise weekly keeping cattle scattered.
  7. Salting practice on feed or on water? On feed
  8. Problem areas None
  9. Permittee plan; status, use, changes needed w/dates (including improvements). Will be writing a new management plan in FY 1988
  10. Calf Crop (& tallied on allotment during inspection) \_\_\_\_\_
  11. Excess (permittees) or trespass (not permittees) suspected? If yes, why; and what action is needed to correct? Indian Horses were building traps this summer. Hope to start trapping horses this winter.
  12. Allotment analysis - give current status of preparation Current
  13. Were conditions taken up with permittee? yes; allotment ridden with permittee? yes; his reaction Permittee willing to help trap horses.
  14. Is season satisfactory? yes
- Wildlife conditions Good

Use reverse for additional notes or for marking route of travel.

[Signature]  
Forest Officer

(Copy to SO; copy for Allot. File; copy to permittee when advisable)

United States  
Department of  
Agriculture

Forest  
Service

Heber  
Ranger  
District

P.O. Box 168  
Overgaard, AZ  
85933

Caring for the Land and Serving People

---

Reply to: 2230

Date: March 18, 1988

Mr. Doy Reidhead  
HC 66, Box 64  
Holbrook, AZ 86025

Dear Doy:

Here's my record of the meeting between you, me, Bruce Mortensen of my office, Pat Hanrahan of the Supervisor's Office, Jim Webb, Duane Patterson and Joe Getzwiler, held in my office on February first.

The primary concern you and Duane expressed, is that parties interested in acquiring your Forest grazing permit have been reluctant to do so because of information given them by me and my office. Your basic interest is what is the bottom line as far as your permit is concerned.

There is also a concern that certain actions on our part, i.e., removal of unauthorized horses and treatment of Pinyon-Juniper, have not taken place, or at least not progressing at a rapid enough rate, and as a result, you are not sure where your permit stands as a transferable asset. We also discussed the increases in elk numbers we have experienced over the past several years.

As we discussed, be assured I understand your position, and I hope the answers we gave (and listed in the remainder of this letter) are straightforward and honest.

The figure of a 25% reduction given you about a year ago was predicated on the removal of the unauthorized horses, the treatment of about 6000 acres of Pinyon-Juniper on the allotments, and the added flexibility of keeping the 4 allotments together. Obviously, as you pointed out, this hasn't happened overnight. We have built 5 corrals. Pat is checking on funding possibilities for starting the horse capturing this coming spring.

As far as the P-J treatments go, we have about 400 acres presently under contract for fuelwood, with about another 2000 acres identified for treatment. The rapidity of treatment of these acres will depend on some variables which we have little influence over, such as funding levels and contractor performance. We are still confident we could treat additional areas to come up to the 6000 acres originally discussed, but the effectiveness of these treatments in alleviating the grazing problem will be some time in the future.

The bottom line is this: if I were to turn livestock out this spring, as the situation exists on the ground today, a reasonable number would be 40% fewer than presently permitted, or 628 head. As improvements came on line and productive, this could be increased up to 785 head, or 25% less than presently permitted.

In order to implement this, I would be willing to recommend the Forest issue a permit for 785 head, with 157 head held in non-use for resources protection, resulting in an actual grazing season for 628 head. Such a permit would provide for converting the 157 head in non-use status to a use status as range improvements became effective.

as we also talked about, I would be willing to convert the present cow/calf operation to a yearling operation at a 1.43:1 ratio, providing the work necessary (i.e., fence maintenance and riding) to make such a conversion viable was forthcoming. This would translate to a permit for 1123 head of yearlings with an actual grazing of 898 head and 225 head held in non-use to be reinstated in the future as described above.

I hope this gives you the information you need to deal with the situation. If you have any questions, please let me know.

Sincerely,

  
STEVE EGELINE  
District Ranger

cc: S.O.







DECISION NOTICE

BUCKSKIN, GENTRY for the HEBER-KUD-TANKS ALLOTMENT  
AND  
FINDING OF NO SIGNIFICANT IMPACT

U.S. Department of Agriculture--Forest Service


An Environmental Analysis was done for the Buckskin Gentry and Heber-Kud-Tank Allotments. This analysis began in 1983 for Heber-Kud-Tank and was extended to include Buckskin and Gentry since 1986. The overall result indicates a needed reduction in the permittees permitted numbers. This has been brought about largely because of the encroachment of the Pinyon-Juniper woodland, of which 90% of the area is in 40% + dense canopy cover. Coupled with the above, elk numbers are increasing and approximately 200 trespass horses are running on the allotments. The horses are currently being trapped.

There has been a decided change in range condition and trend. All of the range trend transects indicate a downward trend with the exception of three on the Buckskin allotment which indicate static or no change in trend.

For these reasons and based on the Rangers recommendation dated March 18th, 1988 I am reducing the present permits which total 1047 head to 785, with 157 head held in non-use status for resource protection, resulting in an actual grazing season for 628 from 5/1 - 10/31. Restoration of the 157 head will be considered as range improvements become effective.

Concerning the Pinyon-Juniper encroachment, it would be desirable to have a much higher percentage in openings both for grazing and wildlife. The Forest Service will continue creating openings through fuelwooding, wildlife and range projects. We have recently completed 400 acres and have an additional 2000 acres identified for treatment.

The permittee was advised of the pending reductions on March 18, 1988. He was also advised that we would make any non-use allotments available on a priority basis, to offset the impact of the reductions, at least for the first few years. The reduction of 262 head and non-use for 157 head will take place 30 days following receipt of this notice.

  
NICK McDONOUGH, Forest Supervisor

6-14-88

Date



United States  
Department of  
Agriculture

Forest  
Service

Heber  
Ranger  
District

P.O. Box 168  
Vergaard, AZ  
85933

Caring for the Land and Serving People

---

Reply to: 2230

Date: March 18, 1988

Mr. Doy Reidhead  
HC 66, Box 64  
Holbrook, AZ 86025

Dear Doy:

Here's my record of the meeting between you, me, Bruce Mortensen of my office, Pat Hanrahan of the Supervisor's Office, Jim Webb, Duane Patterson and Joe Getzwiler, held in my office on February first.

The primary concern you and Duane expressed, is that parties interested in acquiring your Forest grazing permit have been reluctant to do so because of information given them by me and my office. Your basic interest is what is the bottom line as far as your permit is concerned.

There is also a concern that certain actions on our part, i.e., removal of unauthorized horses and treatment of Pinyon-Juniper, have not taken place, or at least not progressing at a rapid enough rate, and as a result, you are not sure where your permit stands as a transferable asset. We also discussed the increases in elk numbers we have experienced over the past several years.

As we discussed, be assured I understand your position, and I hope the answers we gave (and listed in the remainder of this letter) are straightforward and honest.

The figure of a 25% reduction given you about a year ago was predicated on the removal of the unauthorized horses, the treatment of about 6000 acres of Pinyon-Juniper on the allotments, and the added flexibility of keeping the 4 allotments together. Obviously, as you pointed out, this hasn't happened overnight. We have built 5 corrals. Pat is checking on funding possibilities for starting the horse capturing this coming spring.

As far as the P-J treatments go, we have about 400 acres presently under contract for fuelwood, with about another 2000 acres identified for treatment. The rapidity of treatment of these acres will depend on some variables which we have little influence over, such as funding levels and contractor performance. We are still confident we could treat additional areas to come up to the 6000 acres originally discussed, but the effectiveness of these treatments in alleviating the grazing problem will be some time in the future.

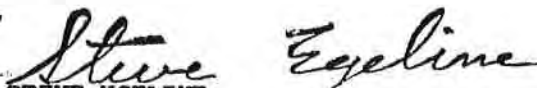
The bottom line is this: if I were to turn livestock out this spring, as the situation exists on the ground today, a reasonable number would be 40% fewer than presently permitted, or 628 head. As improvements came on line and productive, this could be increased up to 785 head, or 25% less than presently permitted.

In order to implement this, I would be willing to recommend the Forest issue a permit for 785 head, with 157 head held in non-use for resourcs protection, resulting in an actual grazing season for 628 head. Such a permit would provide for converting the 157 head in non-use status to a use status as range improvements became effective.

as we also talked about, I would be willing to convert the present cow/calf operation to a yearling operation at a 1.43:1 ratio, providing the work necessary (i.e., fence maintenance and riding) to make such a conversion viable was forthcoming. This would translate to a permit for 1123 head of yearlings with an actual grazing of 898 head and 225 head held in non-use to be reinstated in the future as described above.

I hope this gives you the information you need to deal with the situation. If you have any questions, please let me know.

Sincerely,

  
STEVE EGELINE  
District Ranger

cc: S.O.

Buckskin-Gentry Allotment

RANGE INSPECTION REPORT

Dates of Inspection June 1958  
19

Approx. % of range seen 50 %

1. Were weather conditions favorable or unfavorable for plant growth? Rains last week of June will help growth in the next few weeks
2. Was forage production average, above or below average? Average
3. Percent of current utilization of key species on primary range 70%
4. Utilization obtained by ocular estimate, plant count or clipping Ocular
5. General distribution of livestock over allotment Good
6. Action taken to correct poor distribution \_\_\_\_\_
7. Salting practice on feed or on water? Feed
8. Problem areas \_\_\_\_\_
9. Permittee plan; status, use, changes needed w/dates (including improvements).  
Current
10. Calf Crop (& tallied on allotment during inspection) 50%
11. Excess (permittees) or trespass (not permittees) suspected? If yes, why; and what action is needed to correct? Still have approx 200 head of Indian Trespass Horses on allot. Started trapping trespass horses this year
12. Allotment analysis - give current status of preparation Current
13. Were conditions taken up with permittee? yes; allotment ridden with permittee? yes; his reaction yes
14. Is season satisfactory? Yes
15. Wildlife conditions Good

Use reverse for additional notes or for marking route of travel.

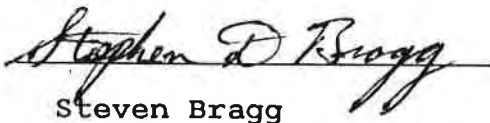
Bruce J. Mothman  
Forest Officer

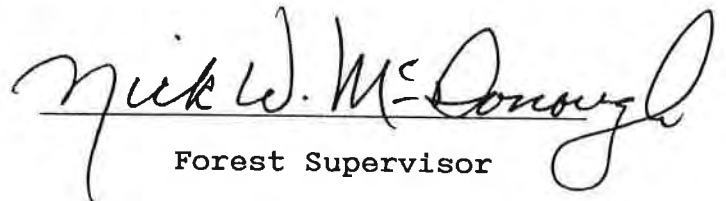
(Copy to SO; copy for Allot. File; copy to permittee when advisable)

AGREEMENT

MAY 10, 1989

This agreement authorizes Steven Bragg to capture horses roaming at large on the Gentry and Buckskin Allotments, and transfer them to the Sun Valley Auction after May 12, 1989. For these services Steven Bragg will be paid \$100.00 per horse captured, plus reimbursement of feed and water at \$2.00 per head per day while horses are held, pending disposal by the U. S. Forest Service. For services received, Steven Bragg will be paid from, either receipts from horses sold, or from the Forest Service account when receipts are not sufficient to cover expenses. The Forest Service will arrange for sale of horses in lots of 10 or more. During trapping periods which will be prescheduled by Bruce Mortensen on the Heber District, traps will be checked daily.

  
Steven Bragg

  
Forest Supervisor

STOCKING RATE INCREASE FOR BOOKSKIN/BENTLEY  
AND HEBLER MUD TANK ALLOTMENTS

It is the desire of Rancho Milagro (Steve Bragg) to regain a portion of the non-use stocking rate on the above allotments in proportion to improved conditions and management techniques. The non-use is currently 157 head and the current allowable stocking rate is 628. These figures are based on the decision notice dated June 14, 1988.

The original stocking rate of 1047 head was reduced due to pinon juniper encroachment, elk numbers, and roughly 200 trespass horses. Although the brush invasion was the primary concern, with the removal of nearly all of the trespass horses and the current evidence that elk and cattle are not competing for as much of the grazing season as originally thought on these ranges, it appears that more cattle could be grazed with no negative effects on current range trend or condition.

Concerning pinon juniper invasion, there has been progress in creating openings in the 6000 acres mentioned as being identified for treatment in the decision notice. There was 400 completed as of the date of the decision notice and as of August 1990 Rancho Milagro completed roughly 1400 acres of mechanical control in the Halter Cross with the help of the Arizona Game and Fish. Fuel wood cuts have been on going and total acres of openings should now exceed 2000. New forage establishment is in the early stages on most of these areas, but it has been observed that current forage vigor and production of palatable weeds and forbs in these areas has increased due to more available sunlight and moisture.

Needless to say, actual year to year cattle numbers are subject to rain fall as well as maximum stocking rate. With this in mind, it is apparent that when rainfall is merely adequate, overall forage availability has greatly exceeded demand. The problem has been in grazing distribution and the resulting uneven forage utilization. With more emphasis on grazing distribution, along with the above mentioned factors, an increased stocking rate of 47 head is desired and can be justified at this time. This would bring the numbers to 675 head and the non-use would be reduced to 110.

It is apparent that the Forest Service recognizes the importance of flexibility in grazing management and that flexibility and monitoring of conditions are essential to successful grazing management no matter what the environment. With these thoughts in mind, I am sure the increase of 47 head can be accomplished with mutual satisfaction to all.

*Neil Braid*

Neil Braid, Ranch Manager

*January 14, 1992*

Date

Kate -

Concerning Steve Braggs letter, Allotment analysis completed on the Heber-Mud Tank and the Buckskin allotments in 1986 show the following <sup>Range</sup> conditions.

<u>Good Condition</u>	<u>Fair Condition</u>	<u>Poor to Very Poor Condition</u>
551 Ac.	12589 Ac.	96602 Ac.

These condition ratings are based on 25 permanent Transects established in 1955. Most all of the transects showed a downward trend in range and soil conditions. These range and soil conditions still exist on the ground and this was the main reason for the big reduction in numbers.

There is no doubt we have helped utilization by removal of the horses, but it probably has not changed range conditions. Range conditions are based on Plant species composition, density and bare soil.

The above acreage figures do not include the Gentry pasture, as it was a separate allotment at the time of the analysis.

As for the the juniper pushing, Bragg furnished a cat and operator in 1990 to assist us in ~~clearing~~ chaining 700 acres in the Halter Cross pasture. This was a



United States  
Department of  
Agriculture

Forest  
Service

Heber Ranger  
District

P.O. Box 968  
Overgaard AZ 85933  
(602) 535-4481

FILE COPY

Reply to: 2720  
Date : August 24, 1992

Stephen D. Bragg  
Rancho Milagro, Inc.  
37235 Painted Pony Road  
Temecula, CA 92592

Dear Mr. Bragg;

We would be happy to meet with you to discuss your concerns relating to the conversions of "non-use" to "use" status on your Buckskin, Gentry, Heber and Mud Tank allotments. Please contact Bruce Mørtensen to set up a meeting.

I would also like to take this opportunity to further explain the reasons for the original assignment of "non-use" and the conditions that are necessary to re-instate that use.

Allotment analysis was completed on the Heber, Mud Tank, and Buckskin allotments in 1986. The analysis showed the following range conditions: Good Condition - 551 acres; Fair Condition - 12,589 acres; Poor to Very Poor Condition - 96,602 acres. These conditions are based on 25 permanent transects established in 1955. Almost all of the transects showed a downward trend in range and soil conditions. These range and soil conditions still exist on the ground and are the main reason for the original assignment of "non-use" to 157 head.

There is no doubt that we have helped utilization by removal of the horses, but it probably has not improved range conditions, which are based on plant species composition, density and bare soil.

In 1990, Rancho Milagro furnished a dozer and operator to assist in chaining 700 acres in the Halter Cross pasture. This was a small portion of the total acres treated in that pasture. Those 700 acres were burned and seeded during May 1992, and will not be in full production for 2 to 3 years. Until ground cover is well established, we do not feel that we can accurately assess total forage production on the portion to be allocated to livestock.

In summary, improvement in range conditions is necessary before the "non-use" can be reinstated. Because most of the chaining in your allotments is recent (from 1990-1992) we do not feel that range conditions will have improved significantly until the burning and seeding has been done, and the areas have 2 to 3 years to reach full production.





As I mentioned earlier, please call Bruce to set up a meeting to discuss this further.

Sincerely,

A handwritten signature in cursive script that reads "Kate Klein".

KATE KLEIN  
Heber District Ranger

September 21, 1992

Department of Interior  
United States Forest Service  
Heber Ranger District  
P.O. Box 968  
Overgaard, AZ 85933

Attention: Mr. Bruce Mortensen

Dear Sir:

The following pages reflect the costs incurred by Rancho Milagro over the period September 1990 to present for heavy fence maintenance and construction.

At this time we also present our costs for chaining at Halter Cross and Red Knoll pastures.

We were unaware of our responsibility during the time frame that we were removing the wild horses from the permit, that cost incurred should be reported to the Forest Service. We will endeavor to evaluate what this number should be and will inform you of the cost at a later date.

Sincerely,

Steve Bragg  
Rancho Milagro

BIGLER/SQUAW FENCE REPAIR      September 1990

Construction Costs:  
1 man at \$134.00 per day for 19 days=      \$2,546  
1 truck at 37.00 per day for 10 days=      \$ 370  
2 new corner posts installed at  
\$12.50 per post=      \$ 25  
2 new tall posts installed at 25.00  
per post=      \$ 50  
Total cost incurred by Rancho Milagro=      \$2,991

BIGLER WELL PULLED      May 1991

Purchase of new 5hp pump and cable  
plus labor=      \$3,100  
Total cost incurred by Rancho Milagro=      \$3,100

SQUAW PIPELINE: 2 miles of pipe, 3 drinkers, and one new  
storage site.      June 1991

1 man at \$134.00 per day for 5 days=      \$ 670  
1 truck at \$37.00 per day for 4 days=      \$ 148  
4 valves at \$39.00 each=      \$ 156  
4 floats at \$21.00 each=      \$ 84  
6 adapters for plastic to galvanized  
steel at \$14.00 each=      \$ 84  
5 treated 2" x 6" boards each 12 ft.  
long at \$.58 per foot=      \$ 35  
Total cost incurred by Rancho Milagro=      \$1,177

SQUAW TANK TRAP: 400 feet square. Wire supplied by  
forest service.      August 1991

1 man at \$134.00 per day for 8 days=      \$1,072  
1 truck at \$37.00 per day for 4 days=      \$ 148  
2 tall posts installed at \$25.00 per  
post=      \$ 50  
12 corner posts installed at \$12.50  
per post=      \$ 150  
10 cross braces installed at \$3.00 per  
brace=      \$ 30  
90 steel posts installed at \$2.20 per  
post=      \$ 198  
270 stays installed at \$.50 each=      \$ 135  
Total cost incurred by Rancho Milagro=      \$1,783

MU. TANK TRAP: Includes internal wing and loading area.  
May 1992

1 man at \$134.00 per day for 5 days=	\$ 670
1 man at \$134.00 per day and 1 truck \$37.00 per day for 1 day each to collect used wire removed from Richard's Ranch=	\$ 171
Compressor rental for 1 day at \$95.00	\$ 95
120 ft. of 1" heavy wall pipe for braces at \$1.00 per foot=	\$ 120
1 man at \$134.00 per day for 1 day and 1 truck at \$37.00 per day for 1 day to remove 89 steel posts from forest property=	\$ 171
320 stays at \$.50 each=	\$ 160
Total cost incurred by Rancho Milagro	\$1,387

BITUMAL TRICK TANK TRAP June 1992

1 man at \$134.00 per day for 2.5 days=	\$ 335
1 truck at \$37.00 per day for 2.5 days=	93
2 tall post installed at \$50.00 per post=	\$ 100
4 brace posts installed at \$5.00 per brace=	\$ 20
8 angle braces installed at \$3.00 per brace=	\$ 24
1 float at \$21.00=	\$ 21
1 valve at \$39.00=	\$ 39
2 galvanized steel adapters at \$14.00 each=	\$ 28
18 feet of treated 2" x 6" wood at .58 per foot=	\$ 10
1 man at \$134.00 per day at .5 days and 1 truck at \$37.00 per day at .5 days to remove 40 steel posts for forest=	\$ 86
60 stays at \$.50 per stay =	\$ 30
1 man at \$134.00 per day at .5 days and 1 truck at \$37.00 per day at .5 days to accumulate 1600 feet of used wire=	\$ 86
Total cost incurred by Rancho Milagro=	\$ 872

TRAP BELOW HOLCOMBE RANCH IN PHOENIX PARK July 1992

1 man at \$134.00 per day for 4 days=	\$ 536
1 truck at \$37.00 per day for 3 days=	\$ 111
10 corner posts installed at \$12.50 per post=	\$ 125
14 angle posts installed at \$3.00 per post=	\$ 42
80 stays installed at \$.50 per stay=	\$ 40
1 man at \$134.00 per day for .5 days and 1 truck at \$37.00 per day for .5 days to remove 56 steel posts from forest=	\$ 86
1 man at \$134.00 per day for .5 days and 1 truck at \$37.00 per day for .5 days to accumulate 2000' used wire=	\$ 86
Total cost incurred by Rancho Milagro=	\$1,026

WINGS ON HORSE TRAPS IN PHOENIX PARK: 2 100 foot wings.  
July 1992

1 man at \$134.00 per day for 1 day for construction=	\$ 134
1 man at \$134.00 per day for .5 days for accumulating used wire and posts=	\$ 67
2 corner posts installed at \$12.50 per post=	\$ 25
2 angle braces installed at \$3.00 per brace=	\$ 6
42 stays installed at \$.50 per stay=	\$ 21
Total cost incurred by Rancho Milagro=	\$ 253

DRINKER ON PIPELINE IN OIL WELL PASTURE July 1992

1 man at \$134.00 per day at 1.2 days to move drinker and repair bullet holes in storage building, and to connect drinker to pipeline=	\$ 161
1 valve at \$39.00	\$ 39
1 float at \$21.00	\$ 21
2 plastic to galvanized steel adapters at \$14.00 each=	\$ 28
Material necessary to fix holes in storage building=	\$ 3
Total cost incurred by Rancho Milagro=	\$ 252

DRINKER NORTH OF KENDALL RANCH ON EXISTING STORAGE  
July 1992

1 man at \$134.00 per day for .7 days to repair holes in drinker move to site and connect to storage=	\$ 94
1 truck at \$37.00 per day for .25 days=	\$ 9
2 plastic to galvanized steel adapters at \$14.00 each=	\$ 28
1 valve at \$39.00=	\$ 39
1 float at \$21.00=	\$ 21
Total cost incurred by Rancho Milagro=	\$ 191

TRAP ON TURKEY TANK IN NELSON PASTURE July 1992

1 man at \$134.00 per day for 6 days=	\$ 804
1 man at \$134.00 per day for 1 day to accumulate 4000 ft of wire and to posts=	\$ 134
1 truck at \$37.00 per day for 3 days=	\$ 111
1 truck at \$37.00 per day for 1 day to accumulate wire and posts=	\$ 37
3 tall posts installed at \$25.00 per post=	\$ 75
4 corner posts installed at \$12.50 per post=	\$ 50
8 angle braces installed at \$3.00 per brace=	\$ 24
180 stays installed at \$.50 per stay=	\$ 90
Total cost incurred by Rancho Milagro=	\$1,325

HALTER CROSS - CHAINING July 1991

1 man at \$134.00 per day for 14 days=	\$1,876
1 dozer at \$363.63 per day at bare rental rate for 14 days=	\$5,091
1 truck at \$37.00 per day for 14 days=	\$ 518
Total Cost incurred by Rancho Milagro=	\$7,485

RED KNOLL - CHAINING June - August 1992

2 men at \$134.00 per day for 20.5 days=	\$5,494
2 dozers at \$660.00 per day at bare rental rate for 20.5 days=	\$27,060
2 men at \$134.00 per day for 1 day for dozer preparation=	\$ 268
freight expense for delivery of one dozer from TT's Ranch to Rancho Milagro=	\$ 800
Unusual damage: replacement of radiator in 1 dozer=	\$3,500
1 truck at \$37.00 per day for 20.5 days=	\$ 759
Total cost incurred by Rancho Milagro=	\$37,881

# STEPHEN D. BRAGG

37235 PAINTED PONY RD.  
TEMECULA, CA 92592  
(714) 767-7615

---

To Kate Klein  
District Ranger  
US Forest Service  
Heber Rancho District

Dear Ms. Klein

This is in reply to your letter NO 2230 with regards to the grazing leases on the Buckskin, Gentry, Heber and Mudtank allotments.

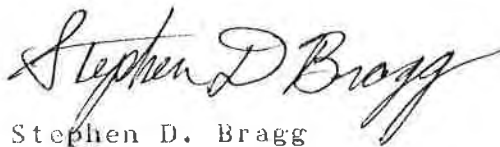
At the time the decision was made to non-use 157 head of cattle in 1988, there were, according to the Forest Service calculations, 200 head of feral horses considered in the decision, as well as pinon and juniper encroachment. All 200 horses were removed from the above mentioned allotments by 1990. Also, Rancho Milagro, at great expense removed junipers during the years of 1990 and 1991. Consequently, I cannot understand your reason for delaying increases in AC's starting in 1993 as I had foreseen.

I acknowledge the need for forage studies on allotments where we have removed trees more recently. But using normal Forest Service multipliers that one horse grazing is equivalent to 1.75 cows grazing, we should be rewarded for the number of horses removed.

If you suggest 30 % of the forage increase would be allocated for livestock, we respectfully submit that we have improved total grazing conditions for roughly 350 AC's season long and deserve a 30 % (105 head) increase for 1993 grazing season.

Please contact me at your earliest convenience so we can discuss the matter further.

Sincerely,



Stephen D. Bragg

cc: Bruce Mortensen  
Neil Eraid

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United States  
Department of  
Agriculture

Forest  
Service

Heber  
Ranger  
District

P.O. Box 968  
Overgaard, AZ  
85933

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Reply to: 2230

Date: March 10, 1994

Rancho Milagro  
% Steve Bragg  
44031 N. Black Canyon Hwy.  
Suite B  
New River, AZ. 85027

Dear Steve:

Attached is a copy of your 1994 Annual Operating Plan and grazing authorization.

You had quite a visit with Noe and discussed several topics. Two that were not discussed were re-analysis of the Gentry, Bunger, and Phoenix Park units and utilization levels for Goshawk management territories. We are looking at completing an ecosystem management plan for the Baca Analysis Area by the end of the fiscal year in 1995. The plan should provide us long-term management direction for several resources including range and wildlife management. The initial work for this plan will involve gathering background data to determine range condition and trend, watershed condition, stocking capacity, and riparian conditions to name a few. You are welcomed to participate in this process if you so desire.

Utilization levels within Goshawk territories have been included in previous annual operating plans as well as in 1994's. The standards have not changed, but we will strive to monitor the use levels more closely. We will try to plan our monitoring trips well in advance to give you or Larry time to plan for the trips.

FILE  
COPY



Steve Bragg

Page 2

We have observed unauthorized horses in the Phoenix Park unit this spring. You will try to capture them, if you can, in hopes to eliminate the few horses that are left this year, which is about eight head.

If you have any questions please contact Noe.

Sincerely,

*Noe*  
*Kate Klein*  
you KATE KLEIN  
District Ranger

Enclosure 2:  
AOP  
Annual Application

cc: Larry Gibson, Ranch Manager

ANNUAL OPERATING PLAN  
5/1/94 - 10/31/94

Number and Season, RANCHO MILAGRO (Permittee)

840 Cattle, cow/calf	Heber Allot.	5/1-10/31	5040 am's	
77 "	NONUSE	Heber Allot.	5/1-10/31	462 am's RES.RESTORATION

Allotment stocked at 93% of permitted numbers.

Grazing Schedule, Heber Allotment

Nelson		05/01 - 10/31/94	130 HD.
Phoenix Park		05/01 - 10/31/94	260 HD.
Bigler		05/01 - 10/31/94	190 HD.
Oil Well		05/01 - 10/31/94	130 HD.
Mud Tank		05/01 - 10/31/94	130 HD.
Gentry	(RESTED)	05/01 - 10/31/94	
Bunger	(RESTED)	05/01 - 10/31/94	
Halter Cross	(RESTED)	05/01 - 10/31/94	
Squaw	(RESTED)	05/01 - 10/31/94	
Red Knoll	(RESTED)	05/01 - 10/31/94	
N. Ancient	(RESTED)	05/01 - 10/31/94	
S. Ancient	(RESTED)	05/01 - 10/31/94	

The pasture dates are estimates and are dependent on total forage production and livestock utilization patterns. The allotment will be inspected and utilization monitored to determine proper use.

Improvement Maintenance

The permittee will maintain all assigned improvements as needed to Forest Service standards. High priority maintenance structures are Mud Trick Tank, Bigler Trick Tank, Fences 3301 (Mud Tank-Wildcat Allot. Bdry. Fence) and 3745 (Nelson-Wildcat ABF), and Bitimul Tank. Other stock tank maintenance will be done as needed.

Distribution and Utilization

The desired utilization of forage species is 45%. To achieve this, consider the following management practices to improve livestock distribution: herding; salting at least a 1/4 mile from water, out of drainages and sensitive meadows; maintaining improvements to proper standards; and if necessary, water hauling will be done to existing or temporary troughs to obtain proper cattle distribution. Key areas will be monitored for proper use usually drainages and juniper clearings. Goshawk management territories will also be monitored for proper use. If proper use is achieved before the end of the season or precipitation is insufficient to sustain further grazing use, livestock will be removed from the area.

Goshawk Territories


There are Goshawk foraging areas located in the Phoenix Park, Nelson, and Mud Tank pastures. You should have a copy of the maps indicating the respective boundaries of the territories. Utilization will be monitored in these areas to not exceed 20% average use with no more than 40% in any one area. If utilization has been achieved, livestock will need to be moved to other areas or off the pasture.

Inspections

The Forest Service will conduct periodic inspections to insure proper distribution, utilization, and cattle movements from one pasture to another. The permittee is encouraged to attend these inspections.

Modifications

Any changes to this operating plan require prior Forest Service approval.

  
Kate Klein  
District Ranger

AUTHORIZED USE RESOURCE DATA MASTER LIST  
Rev. 2.41

Date Page 8  
12/10/93

RANCHO MILAGRO  
C/O STEVEN BRAGG  
P.O. BOX 1009  
BLACK CANYON CITY AZ 85324

Recommended by:  
Approved by: Steve Bragg  
Title: Ranch Manager  
Date: 3/10/1994

I request that my grazing use be changed as indicated.  
Change in Base Property: YES  NO   
Split Bill: YES  NO   
Date: 3/10/1994  
Permittee Signature: Stephen D Bragg

IReg	IFor	IDist	IProc	Unit Number	#Permittee Number
03	01	05		0028	05003
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#Permit No.	#Permit Line No.	#Auth Line No.	#Auth Graz CY	#Grazing Allot No.	Grazing Allot Name
05003	001	001	94	00016	HEBER

IAuth Permit Type	IAuth Lvstk No.	IAuth Count L	IAuth Lvstk Kind	IAuth AU Factor
11	<del>905</del> 840	Y	C	1.32

Auth** Date On MM/DD	Auth** Date Off MM/DD	*Authorized HMs	*Authorized AUMs	Non-Use No.	Non-Use Class	Non-Use HMs	Select Auth	Auth As-of-Date
5/ 1	10/31	5551	7327	77	RR			3/10/1994

I - Required Field # - KEY field  
\*\*NOTE - REQUIRED UNLESS TOTAL NON-USE

\* - System Generated Field (See Handbook)

United States  
Department of  
Agriculture

Forest  
Service

Heber  
Ranger  
District

P.O. Box 968  
Overgaard, AZ  
85933

Reply to: 1580

Date: June 3, 1996

White Mountain Apache Reservation  
Tribal Lands Office  
% Ramos Albert  
P.O. Box 700  
Whiteriver, AZ 85941

Dear Mr. Albert:

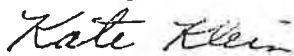
Attached is a copy of the White Mountain Apache-Sitgreaves National Forest Boundary fence map contained in the Memorandum of Understanding. The areas we are most concerned with are the drainages that the fence crosses at the headwaters of Buckskin and Phoenix Park Canyons.

This area is distant from Forest Service Road 300 and is difficult to access and maintain. Nonetheless, Forest Service permitted cattle eventually find their way into the canyons along elk trails and enter the reservation. These are also areas where reservation horses may enter the National Forest.

I would greatly appreciate your attention to this problem area. Your efforts in maintaining an effective boundary fence would certainly benefit the management of both Tribal and National Forest lands. Our grazing permittees will also be reminded as to where their area of fence maintenance responsibility is and will be expected to complete their annual maintenance.

If you have any questions or comments, please contact Noe Gonzalez at the Heber Office.

Sincerely,



KATE KLEIN  
District Ranger

CC: Steve Bragg  
Larry Gibson  
Gordon Thornhill

FILE COPY

United States  
Department of  
Agriculture

Forest  
Service

Heber  
Ranger  
District

P.O. Box 968  
Overgaard, AZ  
85933

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Reply to: 2230

Date: June 13, 1996

Rancho Milagro  
& Larry Gibson  
P.O. Box 608  
Heber, AZ 85928

Dear Larry:

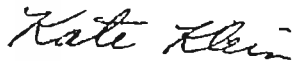
Attached is a copy of a letter to the White Mnt. Apache Reservation, reminding them of the need to maintain their portion of the boundary fence. The map is from a formal agreement between the FS and the Tribe showing the area of responsibility. Your permits reflect the FS responsibility for maintenance, which has been assigned to you to perform.

Maintenance of the boundary fence, as well as other fences, need to be performed annually, regardless of whether you graze the pasture or not. This is to insure that your neighbor's cattle do not enter a rested or deferred pasture. Maintenance is to occur in compliance with FS standards. Failure to maintain fences violates the terms of the Permit and AOP, resulting in administrative action on the permit.

Please be familiar with your assigned portion of the reservation boundary, as we will periodically inspect its condition.

If you have any questions, please contact Noe Gonzalez.

Sincerely,



KATE KLEIN  
District Ranger

cc: S. Bragg

FILE COPY

Habitat Enhancement Project Proposal  
Game/Development Branch

**ARIZONA GAME AND FISH DEPARTMENT  
HABITAT PARTNERSHIP PROGRAM  
HABITAT ENHANCEMENT AND WILDLIFE MANAGEMENT PROPOSAL**

**PROJECT INFORMATION**

**Project Title:** Trespass Horse Removal

**Project No.** 05-106

**Region/GMU:** Region 1/GMU 3C

**HPC:** Show Low

**Project Type:** Removal of trespass animals

**Project Description:** Since the Rodeo-Chediski fire of 2002, there has been a large influx of trespass feral horses into Hunt unit 3C, due to fences burned in the fire. Since then fences have been reconstructed, but the trespass horse problem will continue and get worse unless these trespass horses are gathered. Feral horse populations in 3C, are currently estimated between 280 and 400. This project would be for contracting horse removal.

**Wildlife Species to Benefit:** Elk 75%, Deer 25%

**Possible Funding Partners:**

**Implementation Schedule:**

**Beginning:** Summer/Fall 2005

**Completed:** Summer /Fall 2007

**PROJECT FUNDING**

**SBG Funds Requested:** \$ 40,000

**Cost Share Funds:** \$40,000

**Total Project Costs:** \$80,000

**PARTICIPANT INFORMATION**

**Applicant:** Kendell Hughes/Black Mesa RD  
Randall Chavez/Lakeside RD  
**Telephone:** (928) 535-4481

**Address:** P.O. Box 968  
Hwy 260  
Overgaard, AZ 85933

**AGFD Contact and Phone No.**  
(If applicant is not AGFD personnel) **Bob Birkeland**

**Coordinated with:** Bob Birkeland

**Applicant's signature:**

**Date:**

**SEND COMPLETED APPLICATIONS TO:  
Pat Barber, Game Branch  
2221 W. Greenway Rd.**

Phoenix, AZ 85023  
pbarber@azgfd.gov

**NEED STATEMENT/PROBLEM ANALYSIS:**

It is currently estimated that the population of feral horses is around 280 and 400, on the Black Mesa and Lakeside Ranger Districts (Sitgreaves National Forest). The populations will continue to grow exponentially, on a yearly basis. These horses currently are causing localized resource damage, and competing with wildlife for available forage. As the feral horse population grows, resource damage will spread and competition for forage will become greater.

**PROJECT OBJECTIVES:**

The objectives for this project would be to round-up and remove trespass feral horses from the Sitgreaves National Forest.

**PROJECT STRATEGIES:**

The Forest will contract for the removal of these animals. The Forest will coordinate with the Arizona Department of Agriculture.

**PROJECT LOCATION:**

Project Location is basically on the Sitgreaves National Forest between the White Mountain Apache Indian Reservation and State Highway 260. (see attached map)

**LAND OWNERSHIP AT PROJECT SITE (Please state specifically if PRIVATE PROPERTY and provide landowner's name):**

All activities will occur on Forest Service lands.

**IF PRIVATE PROPERTY, IS THERE A STEWARDSHIP AGREEMENT BETWEEN THE LANDOWNER AND THE DEPARTMENT? N/A**

**HABITAT DESCRIPTION:**

The habitat of the area varies from ponderosa pine to pinyon-juniper and also includes large areas that were severely burned in the Rodeo Chediski Fire.

**ITEMIZED USE OF FUNDS:**

Funds will be used to contract horse round-ups.

Estimated cost of the round-up varies from \$100 per horse to \$300 per horse (or possibly more depending on the bids). Therefore, costs could range from \$28,000 to \$120,000. Other grants may be sought to cover the remaining amounts if bids are higher than expected.



**LIST COOPERATORS AND DESCRIBE POTENTIAL PARTICIPATION:**

Cooperators include the USFS, and potential other grantees such as the Eastern Arizona Resource Advisory Committee (RAC)

**PROJECT MONITORING PLAN:**

Monitoring success of the roundups include future reports or counts of horses remaining in the area.

**PROJECT MAINTENANCE:**

Hopefully there will be no maintenance needed, but further roundups may be needed, depending on monitoring counts.

**PROJECT COMPLETION REPORT TO BE FILED BY:**

Kendell Hughes

**WATER DEVELOPMENT PROJECTS (see attached worksheet):**

N/A

**TREE SHEARING (AGRA-AXE, PUSH) PROJECTS (see attached worksheet):**

N/A

<b>SHOWLOW HPC - 2005</b>							
<b>Prop #</b>	<b>Project Name</b>	<b>Grant Request</b>	<b>Banquet RMEF</b>	<b>AES</b>	<b>Funds Needed</b>	<b>Project No.</b>	<b>Funded (Yes, No, or Partial and comments)</b>
05-106	Trespass Horse Removal	\$40,000			\$40,000		NO - Need more info - costs
05-107	Scott Grassland Maintenance	\$6,940	\$3,470	\$3,470	\$0	05-107	YES
05-110	South Marsh Antelope Habitat Restoration	\$27,500			\$27,500		NO - Antelope folks out of money; bad match





The more I give myself permission to live in the moment and enjoy it without feeling guilty or judgmental about any other time, the better I feel about the quality of my work.  
—Wayne Dyer

6

Monday  
February 2006

Daily Notes

37th Day 328 Left Week 6

Mary Sturven - BAEP Team

1. gates in fence
2. dead trees along the fence

Tribal forestry program - going in front of council Wed to get approval to set up a permanent crew.

Planning to field a Type II crew

Planting 400 acres in the fall of '05 - 67% survival the first month. Last year 95% survival

Recognize problems w/ fence that Tribal Realty Dept - working on overall plan - assessing conditions - all the way around. For each section have identified problems & possible partners.

Tribal 1st priority along Rim Road in Pinedrop Lakeside. Shd. low

RMEF or NACS funding? Put in 14 cattleguards

2/6/06

Conversation w/ Mary Stawer  
Want to close a number  
of roads w/in the Border Glades  
or put gates w/ locks.

Thinks they would want to  
leave open the Churchtop road as  
an access from Cibecue to Haber

namabaer@wmonline.com

RMEF interested in funding all  
crossings

Sent a proposal to Senator McCain  
\$80 million - over 20 years - for  
R-C Fire rehab

Have been paying \$200 per horse  
to remove horses. Still ~~allowing~~  
allowing him to capture for  
what he can get at the auction in Halbrook

Consider that the horses were  
relayed by the military, & a few  
of horses have a brand  
Ten 10 or 20 on tribal lands  
to a brand & they return to the  
livestock association.

Wildlife, livestock & feral horses

1996 - started a feral horse removal program

96-98 - 700 horses & 200 maverack  
cattle removed from tribal lands

Don't trap around Cibecue - a lot  
of reverence for horses

bring at  
building of  
the  
Cibola

Have moved 450 horses since  
the burn

Keep track of demographics of  
capture - colt, filly, mare, stud  
When they get to the point of  
capturing just studs, they think  
they will be getting a handle on the  
population.

7/12/06

questions for Toni Strauss

1. According to the Act, wild free-roaming horses will be "protected from capture, branding, harassment or death; ... and they are to be considered in the area where presently found, as an integral part of the natural system of the public lands."

- "wild free-roaming horses and burros means all unbranded and unclaimed horses & burros on public lands of the United States"

Given this, do we have to consider mgmt of all the unbranded / unclaimed horses or foals, even outside of the Hiber Wild Horse Territory?

No, because Act says we won't - See Section 10.  
Our CFR says progeny of horses here in 1971

2. Has the Research Study mandated in the Act been completed?  
Not aware that this has been done

3. What are court ordered environmental impact statements as defined in Sec 2 of PRIA of 1978. Don't see them referenced there?

Don't worry about this right now

4. Wild Horse Range vs Wild Horse Territory  
Territory - where horses found in 1971  
Range - territory that has been determined to be managed specifically for horses. We don't have a...



5. What does minimum feasible level of mgmt activities mean - as stated in the Act?

no clear definition

Going to do as little as possible to manage horses without having a breeding program.

Does mean we aren't going to supplemental feed



United States  
Department of  
Agriculture

Forest  
Service

Apache-Sitgreaves  
National Forests

P.O. Box 640  
Springerville, AZ 85938-0640  
(928) 333-4301 FAX: 333-5966  
TTY: (928) 333-6292

File Code: 1950/2260

Date: August 1, 2006

Route To:

Subject: Project Initiation Letter, Heber Wild Horse Territory Plan

To: Fred Green, Assistant District Ranger, Black Mesa RD

**Interdisciplinary Team Assignments.** You are assigned as interdisciplinary (ID) team leader for the Heber Wild Horse Territory Plan environmental analysis. Other members assigned to the team are: Kendell Hughes, range management specialist; Brian Dykstra, wildlife biologist; and Chris Nelson, soil scientist. In addition, the following people are assigned to provide support to the team as needed: Steve Richardson, GIS specialist; and Jeremy Haines, archaeologist.

**Purpose and Need.** The Heber Wild Horse Territory (see enclosed map) was established in 1971, under the authority of the Wild Horses and Burros Protection Act of 1971. Implementing regulations of the Act require the Forest Service to: "Analyze each wild horse or burro territory and, based on the analysis, develop and implement a management plan...". The territory management plan is to address population level, consultation and coordination considerations, and plans for removal or disposal of excess animals in compliance with any regional and Forest Plan guidelines for management of wild horses.

To date, analysis has not been completed nor a management plan developed for this territory. The analysis is being undertaken at this time to comply with these requirements.

The following items need to be addressed in the analysis: objectives for managing animal, vegetation and soil resources in conformance with the Forest land and resource management plan; forage production; range capacity; existing livestock and wildlife needs; forage requirements of all grazing animals within the territory; habitat needs for threatened, endangered and sensitive species; retention of the wild horse population in ecological balance; grazing capability; ecological condition and trend; and associated resources and resource use activities within the territory.

**Proposed Action.** In general, the proposed action is to develop a management plan for the Heber Wild Horse Territory. The ID team is responsible for developing a site specific proposal that includes: appropriate management level (AML) for wild horses in the territory; special consultation and coordination considerations; plans for removal or disposal of horses excess to the AML; other actions needed to achieve management objectives; and monitoring plan for assessing progress in meeting management plan objectives.

I will review and approve the Proposed Action prior to it being sent out for Scoping.

**Public Involvement.** Public contacts to be made with the proposed action should include: grazing permittees; David Tenney, Navajo County Board of Supervisors; White Mountain Conservation League; Center for Biological Diversity; In Defense of Animals; private landowners within and adjacent to the analysis area; Arizona Game and Fish Department;



Arizona Department of Agriculture; Bureau of Land Management; White Mountain Apache Tribe. The team may identify others who need to be contacted. Please check with archaeologist Jeremy Haines to ensure proper consultation with American Indian Tribes.

At a minimum, public contacts should be made at the following points in the analysis: 1) Scoping; 2) During development of issues and alternatives; 3) During the 30-day Environmental assessment comment period.

**Timeline.** The timeline for this project is:

Existing and Desired Conditions identified: November 2006

Proposed Action: January 2007

Scoping: February 2007

Alternatives developed: April 2007

Environmental Assessment out for 30-Day Comment: September 2007

Decision: December 2007

**Project Record:** Maintain an official project record under the 1950 file code. The record is to include an index and documents used and/or generated during the analysis, filed in chronological order.

Please let me know of any concerns as you proceed with the analysis.



ELAINE J. ZIEROTH  
Forest Supervisor

Enclosure

bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the sale. Agreements may be made with State agencies whereby livestock of unknown ownership and livestock of known ownership, which are not redeemed by the owner, are released to the agency for disposal in accordance with State law, *Provided*, That remuneration of proceeds from the sale of said animals in excess of costs of impoundment and to arrange for disposal of livestock of known ownership will be refunded to the former owner.

[42 FR 2961, Jan. 14, 1977, as amended at 43 FR 36245, Aug. 16, 1978. Redesignated at 48 FR 26605, June 9, 1983]

#### § 262.11 Impounding of dogs.

Any dog found running at large in a part of the National Forest System, which has been closed to dogs running at large, may be captured and impounded by Forest officers. Forest officers will notify the owner of the dog, if known, of such impounding, and the owner will be given five days to redeem the dog. A dog may be redeemed by the owner submitting adequate evidence of ownership and paying all expenses incurred by the Forest Service in capturing and impounding it. If the owner fails to redeem the dog within five days after notice, or if the owner cannot be ascertained within 10 days from the date of impounding, the dog may be destroyed or otherwise disposed of at the discretion of the Forest officer having possession of it.

[42 FR 2961, Jan. 14, 1977. Redesignated at 48 FR 26605, June 9, 1983]

#### § 262.12 Impounding of personal property.

(a) Automobiles or other vehicles, trailers, boats, and camping equipment and other inanimate personal property on National Forest System lands without the authorization of a Forest officer which are not removed therefrom within the prescribed period after a

warning notice as provided in this regulation may be impounded by a Forest officer. Whenever such Forest officer knows the name and address of the owner, such impoundment may be effected at any time five days after the date that written notice of the trespass is mailed by registered mail or delivered to such owner.

(b) In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

(c) Personal property impounded under this regulation may be disposed of at the expiration of 90-days after the date of impoundment. The owner may redeem the personal property within the 90-day period by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, moving, impounding, storing, and otherwise caring for the property, and also for the value of the use of the site occupied during the period of the trespass.

(d) If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. If no bid is received, the property, or portions thereof, may, in the discretion of the responsible Forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When personal property is sold pursuant to this regulation, the Forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(e) The provisions of this section shall not apply to the impoundment or disposal of beached logs in Alaska if deemed abandoned under State law.

[42 FR 2961, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981. Redesignated at 48 FR 26604, June 9, 1983]

## § 262.4

payments in excess of \$400 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) *Limitations.* Purchase of evidence under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for evidence to further investigations of petty offenses as classified in title 18 U.S.C., section 1, are not authorized under this section.

[48 FR 26605, June 9, 1983; 48 FR 34262, July 28, 1983]

## § 262.4 Audit of expenditures.

The Chief of the Forest Service shall, through appropriate directives to agency personnel, assure the accountability of all funds spent in carrying out the provisions of this subpart and safeguard the identity of those wishing to remain anonymous.

[48 FR 26605, June 9, 1983]

## § 262.5 Disposal of purchased property.

All evidence purchased under the authority of this subpart shall be maintained in accordance with all laws, regulations, and rules applicable to the care, custody, and control of evidence. Evidence purchased under this subpart shall be disposed of in accordance with laws, regulation, rules, and Forest Service policy applicable to the disposal of evidence.

[48 FR 26605, June 9, 1983]

## Subpart B—Impoundments and Removals

### § 262.10 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock or livestock in excess of those authorized by a grazing permit on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein.

(a) When a Forest officer determines that such livestock use is occurring, has definite knowledge of the kind of livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after

## 36 CFR Ch. II (7-1-06 Edition)

written notice of intent to impound such livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When a Forest officer determines that such livestock use is occurring, but does not have complete knowledge of the kind of livestock, or if the name of the owner is unknown, such livestock may be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will identify the area in which it will be effective.

(c) Unauthorized livestock or livestock in excess of those authorized by a grazing permit on National Forest System which are owned by persons given notice under paragraph (a) of this section, and any such livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice any time within the 12-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of livestock, a notice of sale of impounded livestock will be published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will describe the livestock and specify the date, time, and place of the sale. The date shall be at least five days after the publication and posting of such notice.

(e) The owner may redeem the livestock any time before the date and time set for the sale by submitting proof of ownership and paying for all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. However, when the impoundment costs exceed fair market value a minimum acceptable redemption price at fair market value may be established for each head of livestock.

(f) If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be sold at public sale to the highest bidder, providing this bid is at or above the minimum amount set by the Forest Service. If a

bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the sale. Agreements may be made with State agencies whereby livestock of unknown ownership and livestock of known ownership, which are not redeemed by the owner, are released to the agency for disposal in accordance with State law, *Provided*, That remuneration of proceeds from the sale of said animals in excess of costs of impoundment and to arrange for disposal of livestock of known ownership will be refunded to the former owner.

[42 FR 2961, Jan. 14, 1977, as amended at 43 FR 36245, Aug. 16, 1978. Redesignated at 48 FR 26605, June 9, 1983]

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Any dog found running at large in a part of the National Forest System, which has been closed to dogs running at large, may be captured and impounded by Forest officers. Forest officers will notify the owner of the dog, if known, of such impounding, and the owner will be given five days to redeem the dog. A dog may be redeemed by the owner submitting adequate evidence of ownership and paying all expenses incurred by the Forest Service in capturing and impounding it. If the owner fails to redeem the dog within five days after notice, or if the owner cannot be ascertained within 10 days from the date of impounding, the dog may be destroyed or otherwise disposed of at the discretion of the Forest officer having possession of it.

[42 FR 2961, Jan. 14, 1977. Redesignated at 48 FR 26605, June 9, 1983]

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(b) In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

(c) Personal property impounded under this regulation may be disposed of at the expiration of 90 days after the date of impoundment. The owner may redeem the personal property within the 90-day period by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, moving, impounding, storing, and otherwise caring for the property, and also for the value of the use of the site occupied during the period of the trespass.

(d) If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. If no bid is received, the property, or portions thereof, may, in the discretion of the responsible Forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When personal property is sold pursuant to this regulation, the Forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(e) The provisions of this section shall not apply to the impoundment or disposal of beached logs in Alaska if deemed abandoned under State law.

[42 FR 2961, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981. Redesignated at 48 FR 26604, June 9, 1983]

the date of submission shall be deemed approved.

## PART 1b—NATIONAL ENVIRONMENTAL POLICY ACT

### Sec.

1b.1 Purpose.

1b.2 Policy.

1b.3 Categorical exclusions.

1b.4 Exclusion of agencies.

**AUTHORITY:** 5 U.S.C. 301; 42 U.S.C. 4321 *et seq.*; E.O. 11514, 3 CFR, 1966-1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

**SOURCE:** 48 FR 11403, Mar. 18, 1983, unless otherwise noted.

#### § 1b.1 Purpose.

(a) This part supplements the regulations for implementation of the National Environmental Policy Act (NEPA), for which regulations were published by the Council on Environmental Quality (CEQ) in 40 CFR parts 1500 through 1508. This part incorporates and adopts those regulations.

(b) This part sets forth Departmental policy concerning NEPA, establishes categorical exclusions of actions carried out by the Department and its agencies, and sets forth those USDA agencies which are excluded from the requirement to prepare procedures implementing NEPA.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

#### § 1b.2 Policy.

(a) All policies and programs of the various USDA agencies shall be planned, developed, and implemented so as to achieve the goals and to follow the procedures declared by NEPA in order to assure responsible stewardship of the environment for present and future generations.

(b) Each USDA agency is responsible for compliance with this part, the regulations of CEQ, and NEPA. Compliance will include the preparation and implementation of specific procedures and processes relating to the programs and activities of the individual agency, as necessary.

(c) The Under Secretary, Natural Resources and Environment (NR&E), is responsible for ensuring that agency

implementing procedures are consistent with CEQ's NEPA regulations and for coordinating NEPA compliance for the Department. The Under Secretary, NR&E, through the Agricultural Council on Environmental Quality, will develop the necessary processes to be used by the Office of the Secretary in reviewing, implementing, and planning its NEPA activities, determinations, and policies.

(d) In connection with the policies and requirements set forth in this part, all USDA agencies are responsible for compliance with Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." Compliance will include the preparation and implementation of specific procedures and processes relative to the programs and activities of the individual agencies, as necessary. Agencies shall consult with the Department of State; the Council on Environmental Quality; and the Under Secretary, NR&E, prior to placing procedures and processes in effect.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

#### § 1b.3 Categorical exclusions.

(a) The following are categories of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of environmental assessment (EA's) or environmental impact statement (EIS's), unless individual agency procedures prescribed otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

**Office of the Secretary, USDA**

**§ 1c.101**

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation;

(7) Activities related to trade representation and market development activities abroad.

(b) Agencies will identify in their own procedures the activities which normally would not require an environmental assessment or environmental impact statement.

(c) Notwithstanding the exclusions listed in paragraphs (a) of this section and § 1b.4, or identified in agency procedures, agency heads may determine that circumstances dictate the need for preparation of an EA or EIS for a particular action. Agencies shall continue to scrutinize their activities to determine continued eligibility for categorical exclusion.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

**§ 1b.4 Exclusion of agencies.**

(a) The USDA agencies and agency units listed in paragraph (b) of this section conduct programs and activities that have been found to have no individual or cumulative effect on the human environment. The USDA agencies and agency units listed in paragraph (b) of this section are excluded from the requirements of preparing procedures to implement NEPA. Actions of USDA agencies and agency units listed in paragraph (b) of this section are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect.

- (b)(1) Agricultural Marketing Service
- (2) Economic Research Service
- (3) Extension Service
- (4) Federal Corp Insurance Corporation
- (5) Food and Consumer Service
- (6) Food Safety and Inspection Service
- (7) Foreign Agricultural Service
- (8) Grain Inspection, Packers and Stockyards Administration
- (9) National Agricultural Library
- (10) National Agricultural Statistics Service
- (11) Office of the General Counsel

(12) Office of the Inspector General  
[60 FR 66481, Dec. 22, 1995]

**PART 1c—PROTECTION OF HUMAN SUBJECTS**

- Sec.
- 1c.101 To what does this policy apply?
  - 1c.102 Definitions.
  - 1c.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
  - 1c.104-1c.106 [Reserved]
  - 1c.107 IRB membership.
  - 1c.108 IRB functions and operations.
  - 1c.109 IRB review of research.
  - 1c.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
  - 1c.111 Criteria for IRB approval of research.
  - 1c.112 Review by institution.
  - 1c.113 Suspension or termination of IRB approval of research.
  - 1c.114 Cooperative research.
  - 1c.115 IRB records.
  - 1c.116 General requirements for informed consent.
  - 1c.117 Documentation of informed consent.
  - 1c.118 Applications and proposals lacking definite plans for involvement of human subjects.
  - 1c.119 Research undertaken without the intention of involving human subjects.
  - 1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
  - 1c.121 [Reserved]
  - 1c.122 Use of Federal funds.
  - 1c.123 Early termination of research support: Evaluation of applications and proposals.
  - 1c.124 Conditions.

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).

SOURCE: 56 FR 28012, 28018, June 18, 1991, unless otherwise noted.

**§ 1c.101 To what does this policy apply?**

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department



**N**

**Determination of Whether Horses Inhabiting the  
USFS Heber Wild Horse Territory are  
“Wild Free-Roaming Horses”**

**Prepared**

**by**

**Mary Ann Simonds**

**March 5, 2007**

## Table of Contents

<b>Introduction .....</b>	<b>Page 1</b>
<b>Summary of Findings .....</b>	<b>Page 2</b>
<b>Wild Free Roaming Horses and Burros Act ....</b>	<b>Page 4</b>
<b>Determination of Horses Inhabiting the Heber Wild Horse Territory .....</b>	<b>Page 5</b>
<b>Methods .....</b>	<b>Page 5</b>
<b>Field Investigation .....</b>	<b>Page 5</b>
<b>Habitat .....</b>	<b>Page 5</b>
<b><i>Wild vs. Feral Horses</i> .....</b>	<b>Page 6</b>
<b>Historical Records .....</b>	<b>Page 7</b>
<b>Map Names</b> <b>Historical Literature</b>	
<b>Social Research .....</b>	<b>Page 8</b>
<b>Appendix .....</b>	<b>See Tabs</b>

**Introduction**

This report documents the investigation and determination of the status of horses inhabiting the "Heber Wild Horse Territory" along the Mogollon Rim of the USFS Apache-Sitgreaves National Forest in Arizona.

Historically horses have inhabited the area for several hundred years dating as far back as the Spanish Missionaries in 1699. Conflict as to the status of horses currently inhabiting the area have resulted in the removal, harassment and death of several horses.

The USFS claims the horses currently on the Forest may be from the neighboring Apache Indian Reservation, as they feel there are no wild free-roaming horses in the Heber Wild Horse Territory, while others state that horses inhabiting the Mogollon Rim and Heber Wild Horse Territory resemble horses that have been there since 1971. Although no accurate estimates of horses have been made, it is thought that horses number approximately 400.

Field investigations were conducted October 3-6, 2006 of the area. Historical and social research was also conducted and assisted in the findings of this report.

## **Summary of Findings**

Wild free-roaming horses are inhabiting the Heber Wild Horse Territory on the Mogollon Rim of Apache-Sitgreaves Forest as documented from field investigations, photographic records, social and historical research. Data indicates that horses of similar ancestry have inhabited the area prior to the formation of the Heber Wild Horse Territory 1971, and are still inhabiting the area today as of October, 2006.

Although there is no accurate ecological or population data on the horses, it appears at least two or more distinct bands exist in this area. One group with a dominant buckskin stallion numbering from 15- 30 horses and at least one with a dominant black/ bay stallion of approximately the same number of horses. Although some pictures indicate these bands may mix, most of the photo documentation shows the bands as fairly well defined groups with normal stallion-like behavior of either a stallion standing slightly off from the group watching or a stallion demonstrating herding/moving behavior. Typical of wild horse bands, the photos used as reference for this report, indicate a mix of mares with foals at their sides, yearlings and two-year olds, as well as other young stallions with small harems moving within a larger band led by an older lead stallion. ( See Appendix- Photos)

Based on the historical and social data as well as photo and field documentation of horses located near "Buckskin Wash -Horse Ridge- Black Canyon in the Overgaard-Heber area, the horses appear to be a mixed herd of predominantly "buckskin" horses, some with dun stripes in one group and dark brown/black and bays in an another group. Sorrels and palominos are evident in the groups but do not appear to be dominant. The buckskin with dun stripes and the dark brown/ black colorations along with the apparent confirmation of the photographed horses are characteristic of wild free roaming horses and typical of "Spanish" ancestry. Photographic records from both Pamela Reed and Cheryl Crandel document these groups. Records of these horses can be documented dating back to Father Keno and the Spanish Missionaries traveling though this area in 1699. Observations by local residents indicate buckskin horses have been sited on numerous occasions in the same area over the last 10-30 years.

The dark brown, black group was photo documented between July 2003 and Oct 2005 near the Rim Road near Fort Apache Reservoir, along Joe Tank Ridge and West of Forest Road 140 on several different occasions by different Forest Service employees. Field observations from October, 2006 support these findings as fresh manure and hoof prints were observed throughout the area and especially near water sources.

Behaviorally, field observations indicate that horses in the Pinedale area also are free-roaming wild horses, although there is not sufficient data to make a determination as to the ancestry of these horses. Observations from local residents indicate horses have been in the area as long as residents "can remember" and have been sited on

2

numerous occasions. Based on behavioral and observational records and discussions with local residents, the horses in this area seem to be mostly young stallions or bachelors with small family bands.

No data was observed or obtained that indicated in any way that the horses inhabiting the Mogollon Plateau and the Heber Wild Horse Territory were recent feral released horses. No horses were observed with brands or with horse shoes and it is unlikely there is much permanent migration of horses from surrounding areas. The Mogollon Rim is a geographic barrier known to support wild horses through the last century. All data indicates the horses were living in stable natural family based groups mixing into

larger herds at times or bachelor groups with a few young lone stallions characteristic of wild horse behavior.

Further investigations into the behavioral ecology of the horses in this area should be made to develop baseline data and determine best management practices in order to preserve the wild free-roaming horses representing the "living symbols of the historic and pioneer spirit of the West", as well as their contribution as an "integral part of the natural system of the public lands".

## **Wild Free-Roaming Horses and Burros Act of 1971**

The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) was passed to protect the wild and free roaming horses and burros of the United States of America existing on public lands. The Act specifically states :

***“ Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing***

***from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the are where presently found, as an integral part of the natural system of the public lands.”***

“Public lands” were defined as “any lands administered by the Secretary of Interior through the Bureau of Land Management (BLM) or by the Secretary of Agriculture through the Forest Service (USFS).” The BLM designated lands inhabited with wild free-roaming horses were referred to as “Herd Management Areas”, while the USFS referred to these lands as “Wild Horse Territories”.

## **Determination of Horses Inhabiting the Heber Wild Horse Territory**

### **Methods**

A combination of data was used in determining the status of horses in the Heber Wild Horse Territory. Area maps were reviewed and historical records researched. A field investigation was made in October 2006 riding, driving and hiking through the area. Social data was obtained from people residing in the area with knowledge about the horses, their behavior and observations. Data was collected with the help of long-time

resident in the area Joseph Wager who provided documentation of interviews with local residents as well as photographs of the horses in the area.

### **Field Investigation:**

A field investigation was made during Oct 3-6, 2006 by driving roads, hiking to waterholes and riding the washes and ridges within the Heber Wild Horse Territory and the Mogollon Ridge area. ( Appendix for maps) Areas where recent observations of horses had been made were transected several times by driving on the roads in the area. Washes and rims were observed by riding horses across these areas. Field data collected included habitat assessment, photo documentation of horse prints on roads and at water sources, and observation of stud piles along roads and washes.

### **Habitat**

Horses appeared to use a variety of habitats including the burned forest area and ponderosa pine forest. Manure and hoof prints were observed in both areas. Horse habitat also included the draws and washes with water, open grass meadows, sandy areas and along roads. Although the Rodeo-Chediski fire of 2002 burned a considerable portion of the habitat, sufficient habitat exists to support the number of horses in the area. Most of the habitat viewed as of Oct 4, 2006 was in good to excellent range condition, with the exception being near water sources. In some areas, cattle were grazing the area and erosion was evident in and around water holes.

Based on field observations using manure and hoof prints as well as horse hair marks on trees, it appears that the horses move throughout the area observed and may inhabit one area for several days to a couple of weeks before moving to another area. Because water sources in the area were plentiful both natural and manmade, the horses have the ability to find food, water and cover over a variety of habitats.

5

Based on stud piles deposited at main roads, it appears that stallions respect each other's "markings" as most stud piles amounted to only one or two droppings on opposite sides of the road. This is not unusual for horses to use roads or fence lines as delineation of "territories". Although wild free roaming horses are not particularly territorial compared to other wildlife species, they will often mark water holes and special areas so that other stallions do not challenge the existing herd.

The Pinedale area exhibited a difference in that there were more stud piles observed at the roads viewed with more droppings. This can be more characteristics of young stallions or stallions who do not have well formed harems and are more interested in marking territory rather than caring for their herds. Bachelor stallions are also known to mark more often.

It is unlikely the horses would migrate up and down the plateau as horses seem to stay in the area they feel most comfortable and usually do not move unless they are searching for food and water or being pursued and must flee. It is likely that if the



horses moved as a result of the fire, that the herds associated with the area before the fire returned to their home habitat.

Recent fences and cattle guards in the area may limit horse migration to some areas, but there was not sufficient data to make any determinations of habitat use based on recent fence locations.

Seasonal ability to find and utilize forage, water and cover are the key components to investigate in order to evaluate habitat use in the area. Although wild horses may prefer grassy meadows near water, they are known to adapt to a variety of habitats from forest zones and rocky outcrops to high desert and ocean saltgrass marches. Based on field data of hoof prints, grazed areas, trails, manure droppings and observations, it appears the horses like to use ridges for viewing, washes and draws for protection and watering and forest with grass/shrubs for grazing/browsing. Migration patterns seem to have varied from up and down washes, through forest slopes and along roads in some cases. This is typical of other wild horse herds familiar with their habitat.

### ***Wild vs. Feral Horses***

Since it is thought most horses in the Western United States today were at one time domesticated, wild horses have been referred to as "feral or free-roaming". From a horse's perspective, if it was born in the wild and learned the social ecology of a herd, then it is not a feral domesticated horse, but a wild creature.

Although it has not been uncommon for ranchers to release domestic horses or for domestic horses living near wild horses to escape, these horses may be at an adaptive disadvantage compared to wild adapted horses. Since most horse behavior is learned behavior, feral horses who have learned to find food and water in a corral with friends

6

may try to return to corals with food and water unless they are accepted into a stable herd with good leadership. Feral domestic horses returned to the "wild" often do not survive droughts, or cold winters because they do not have the "behavioral herd wisdom" to know how to survive.

Horses have a strong need to "belong" to a social group and to most wild horses this means their friends and the herd. Although wild horses usually prefer to find food and water in their habitat, if forage is limited or water not available, they will look for sources even if it means using human related habitat. The other exceptions when wild, non-feral horses encroach upon human habitat usually are related to either a young or bachelor stallion smelling domestic mares or a lone horse with no herd looking for friends. Otherwise wild horses prefer to be safely in their stable bands with good leadership usually characterized by a lead stallion and often a lead mare with other less status mares and associated lesser stallions and small family bands as observed in both the Buckskin and Dark Brown/Bay/Black bands.

Based on habitat use, photo observations of the groups, the direct sightings and accounts of various people observing the Buckskin band and at least one Dark Brown/Black/Bay

group, these bands demonstrate wild horse characteristics. Their coloring, behavior, intelligence, adaptation and their ability to utilizing the full extent of their habitat and maintain a stable and sustainable population of various aged and sexed members all contribute to this conclusion.

## **Historical Records**

### **Map Names**

Investigation of current maps ( Maps M-1) revised in 1996, with the original dating back possibly as far back as 1920s, indicate many of the geological features in the area contain horse names. It was characteristic for people to refer to features based on the what they observed in the area, a person who lived there or the activity taking place at the time of naming. Names found in the area where horses are located today, such as Buckskin Wash, Dead Horse Point, and Horse Canyon most likely were named because there were Buckskins in Buckskin Wash, a dead horse at Dead Horse Point and horses in Horse Canyon. Today, there are still buckskin horses residing near Buckskin Wash and horses in Horse Canyon.

### **Historical Literature**

Historical records were reviewed and indicate the area has had wild horse documentation since Father Keno's travels in 1699. (see Appendix). More recent documentation,(1922) of wild horses include *Hashknife Cowboy, Recollections of Mack*

*Huhges* by Stella Hughes. In a section on "wild horses" she states. " There were bands of wild horses running all the way from Mormon Lake, out of Flagstaff, clear to Heber on the Mogollon Rim." In an article from Arizona Highways in January 1988, the author states. " I gained respect for the feral horses when I lived on an old homestead near Deer Springs on the Mogollon Rim. " She goes on to tell stories of a black stallion which she encountered several times on the Rim and the other bands of horses.

It appears from historical literature that Black/Buckskin horses have inhabited the Rim since at least the early 1900s and most likely since 1699.

The US Forest Service map indicates that in 1971-72 they defined an area as the Heber Wild Horse Territory and began implementing a management plan. It appears that no Wild Horse Management Plan was ever implemented. ( See Appendix – Administrative Record)

Historical data indicates horses have inhabited the area very likely since the Spanish Missionaries travels continuously up to today. Although, ranch horses and other feral horses may have been introduced into the original population of horses, the "wild and free roaming horses" appear to have a sustainable population indicated by the color, markings and confirmation of the horses photographed recently ( See Appendix)

## **Social Research**

Interviews and information conducted by Joe Wager and others obtained through direct conversations, indicate that local residents have on numerous occasions observed horses on the Rim from campgrounds and fire towers to roads and near their homes. Trail riders, hunters, campers, and other recreational users have also observed horses and signs of horses.

Human population in the area appears to have been relatively sparse in the early 1970s but has continued to grow since that time. Hence, there are more field observations of wild horses recently in the last 10-15 years than from 1971- 1990.

Social data also supports that a fairly stable population of various bands of black/dark brown/bay horses and buckskin horses exist on the Rim within and near the original Heber Wild Horse Territory. This is based on numerous visual observations of the similar bands by various people in the same area as well as photo documentation. Bachelor stallions have also been documented particularly in the Pinedale area. (See Appendix). There is insufficient data to make any scientific findings concerning the horses in the Pinedale area, but clearly there is sufficient data to support findings of at least two or more stable groups of wild horses in or near the Heber Wild Horse Territory.

8

# **Appendix**

## **Photographic Records**

- P-1 Lakeside RD- Horse Photos ( Forest Service), 10/25/06
- P-2 Horse Photos provided by Anthony Merrill/ In Defense of Animals ( IDA 000140-000250) Photographed by Pamela Reed September 2005.
- P-3 Photographs by Joe Wager/Cheryl Crandel Sept 2006
- P-4 Photographs by Mary Ann Simonds, Oct 2006
- P-5 Pinedale horses –before and after shootings
- P-6 Television Channel 12 News –Dec, 2005

## **Maps**

- M-1 Apache-Sitgreaves, National Forests, Arizona – USFS-USDA Revised 1996
- M-2 USFS –Heber Wild Horse Plan, Black Mesa R.D., Apache Sitgreaves N.F.s –Wild Horse Territory General Area, Oct. 4, 2006.
- M-3 Heber Wild Horse Territory – Original Map
- M-4 Field Survey Area Map

### **Literature**

- L-1 Historical Literature
- L-2 Administrative Record

### **Author's Information**

- A-1 Curriculum Vitae
- A-2 Publications
- A-3 Expert Cases in Last Four Years
- A-4 Compensation

## **L-1 Historical Literature Reviewed**

Baeza, Jo. Jan. 1988. Horses of Arizona. *Arizona Highways*, pp 4-13.

Bolton, Herbert Eugene. \_\_\_\_\_. *Rim of Christendom: A Biography of Eusebio Francisco Kino Pacific Coast Pioneer*. Tucson, Arizona, The University of Arizona Press.

Hughes, Stella. \_\_\_\_\_. *Hashknife Cowboy: Recollections of Mack Hughes*. Tucson, Arizona. The University of Arizona Press.

Kino, Eusebio Francisco. 1699. *A Kino Keepsake: Facsimile of an original Eusebio Francisco Kino Field Diary*, Preserved at the University of Arizona Library, Describing Southern Arizona.

Polzer, Charles, W. 1998. *KINO A Legacy: His Life, His Works, His Missions, His Monuments*. Tucson, Arizona. Jesuit Fathers of Southern Arizona.

**L-2      Administrative Record**

## A-1 Author's Curriculum Vitae

**Mary Ann Simonds, MA**, has worked professionally in the horse industry for over 30 years, riding, training, and teaching. Obtaining her B.S. degree from the University of Wyoming in 1976 in Wildlife Biology with a minor in Range Management she focused her research on wild horse behavior and ecology. Her research efforts earned her an appointment to the 1990-1992 US Wild Horse and Burro Advisory Board making recommendations to the BLM and Congress. Mary Ann received her Masters degree in 1988 in Interdisciplinary Consciousness Studies with emphasis in Human-Animal Interaction and Healing and a specialization in Organizational Development and Leadership. Working in the fields of the horse industry, mining reclamation, organizational development, wildlife biology, animal awareness, and human-animal interaction and healing, Mary Ann has conducted research and given papers on a variety of subjects from Eco-tourism and horse behavior to stress management of animals.

Mary Ann has been a guest lecturer and clinician for such organizations as USCTA, USDF, SPCA, EQUITANA, the University of California, Davis, Nippon Animal Science and Veterinary University (Japan), and Washington State University. She founded the Whole Horse Institute in 1985 and the Equestrian Science Institute in 2000 to provide educational classes for the horse industry on topics from marketing and sales to health care and behavior. In cooperation with Washington State University, Extension, Mary Ann has sponsored the Horse Symposium at WSU, Vancouver since 1996 teaching hundreds of local horse enthusiasts. Mary Ann donates numerous hours to horse-related youth and non-profit organizations such as the Phoenix Foundation, the Youth Equestrian Science Studies (YESS), the International Society for the Protection of Mustangs and Burros, the Livestock Advisors and 4 H. She has also been instrumental in developing equine assisted therapy programs.

Mary Ann has had numerous articles on horse behavior and other related subjects published in a variety of magazines. Outdoor Life and ESPN II television featured her 22 part horse behavior and natural health series on *Horsing Around*. Mary Ann is well published both here and in Germany and has two new books coming out in German. She is the developer of Toklat Originals' *Natural Vibrations* line of magnetic therapy and stress management remedies for

horses and riders and a co-founder of Mystic Horse which is a sales support company for Mary Ann's educational and stress management products. Mary Ann continues to research equine behavior and health care, while she conducts clinics, consults and writes internationally. She has a book on *Herbs for Horses*, several CDs on horse behavior, as well as 4 videos/DVDS: *The Art of Buying a Horse*, *Herbs and Aromatherapy for Horses*, *Think Like a Horse* and *My Space Your Space: Understanding Horse Culture*.

As an "Expert Witness", Mary Ann has worked for both plaintiff and defense. Her cases have involved "horse behavior" and "standards and practices for the industry". Cases have ranged from auto/horse incidents to horse/rider/people related injuries. She has testified in court on several occasions and other cases have been settled after arbitration proceedings.

## A-2 Publications By Author

### Videos, CDs, Books

*Stress bei Pferden: Erkennen und Behavndeln*, book Kosmos, 2007

*Was Pferd Wirklich Brauchen*, book, Kosmos, 2006

*My Space, Your Space-Understanding Horse Culture*, DVD MH Productions 2004

*Wild Horse Wisdom: Lessons from the Wild*, Mystic Horse Productions, 2002 (Audio CD)

*Giving Up Freedom-Finding Friendship: Wild to Domestic Stress Free*, MH Productions, 2002 ( Audio CD)

*Herbs and Aromatherapy for Horses*, Painted Pony Productions, 1999 (video)

*Herbs for Horses*, Belvoir Publishing, 1998 (book)

*Think Like a Horse*, Communication Arts, 1993 (video)

*The Art of Buying a Horse*, Glenn-Craig Production, 1985 (video)

### Magazine Articles

*The author has published numerous articles over the last ten years and has written regularly for the following magazines. There are too many articles to list.*

The Holistic Horse

Equine Wellness



Natural Horse

Flying Changes

Articles either about the author or by her have been printed in the following international magazines in the last two years.

Planet Cheval au naturel  
Cavallo  
Reiter Revue

### **A-3 Author's Expert Witness Cases in the Last Four Years**

The author has periodically accepted cases through TASA –Technical Advisory Services for Attorneys over the last 10 years.

Peter Moote Law Firm October 2005. Freeland, Washington  
Gaumer v. Hardie

Reber Ranch, Horse Evaluation –March 2003, Washington  
Steger

## **A-4 Compensation**

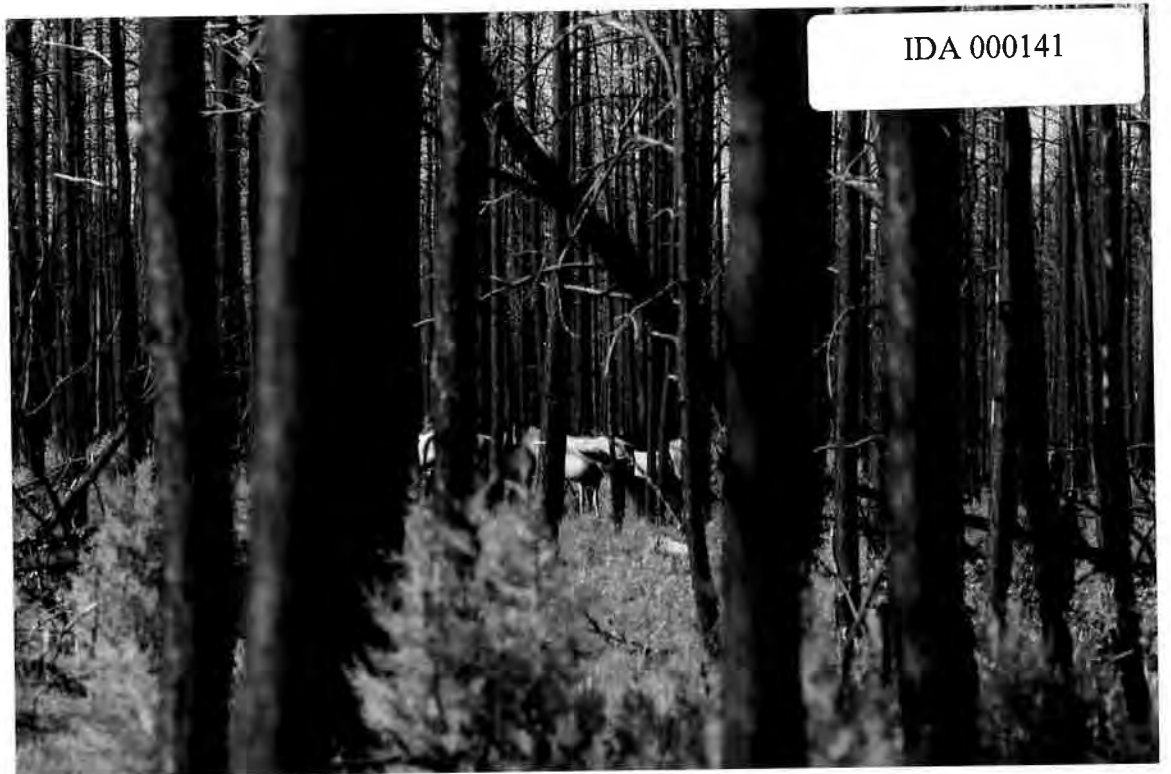
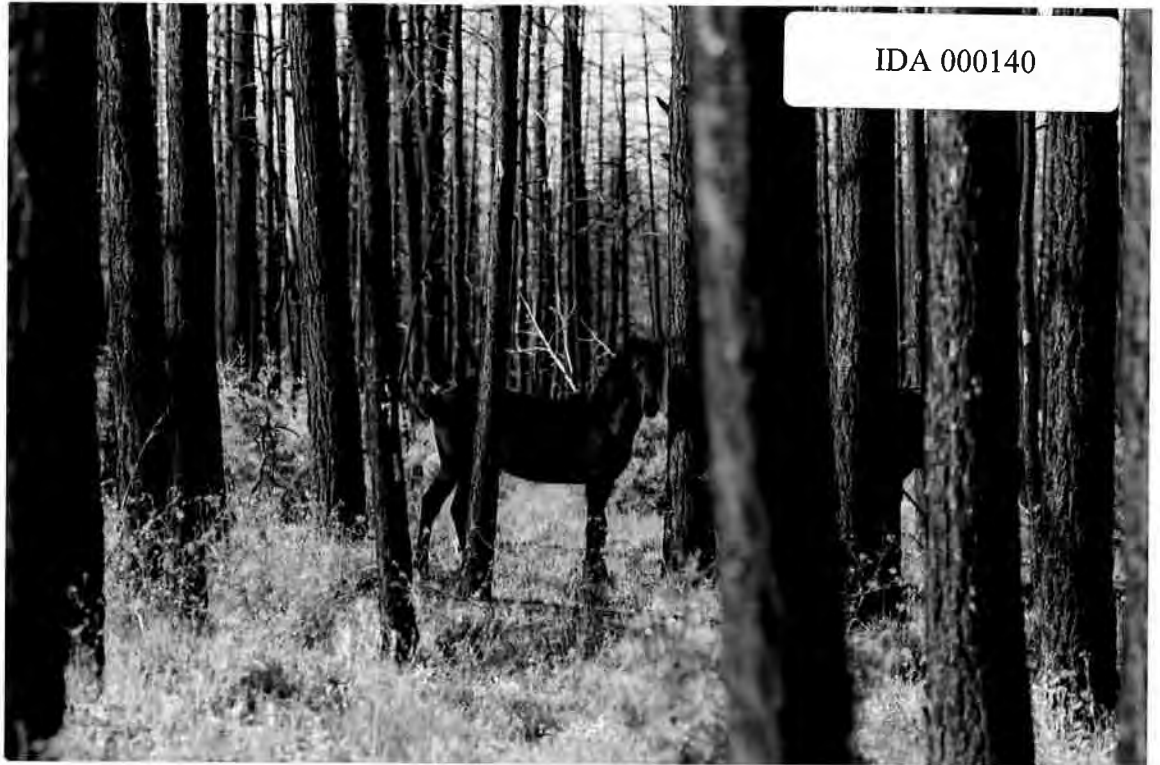
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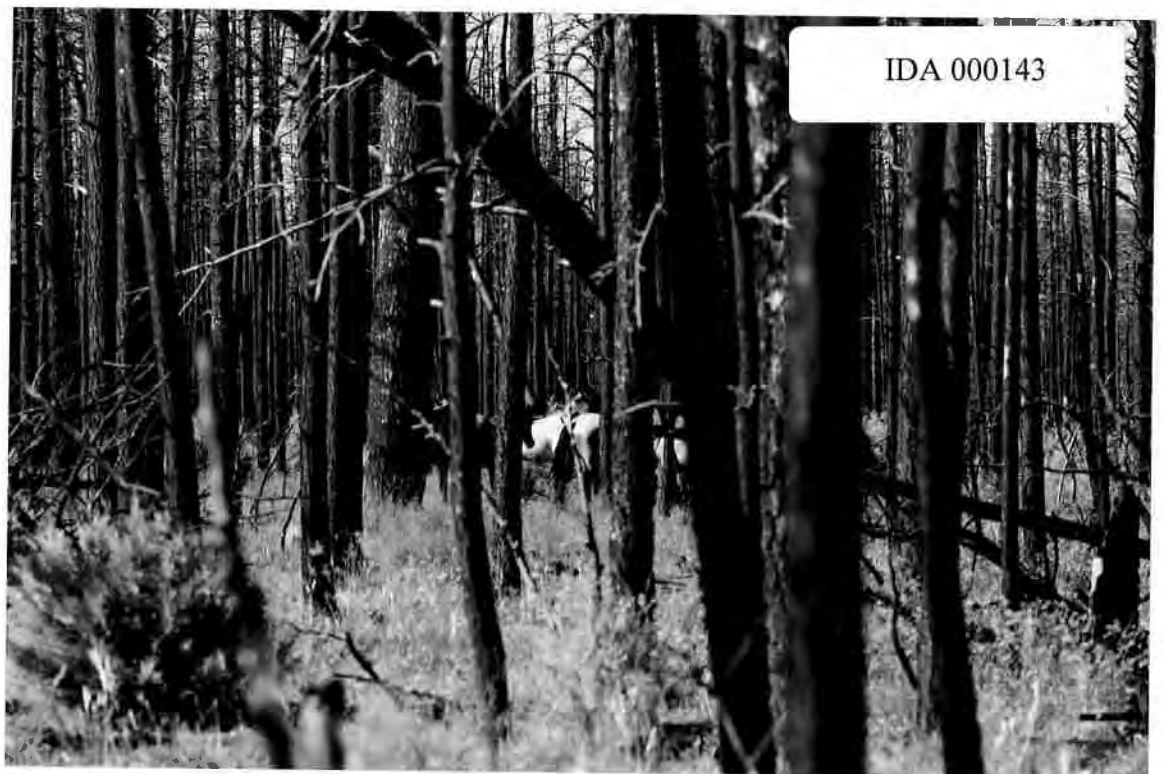
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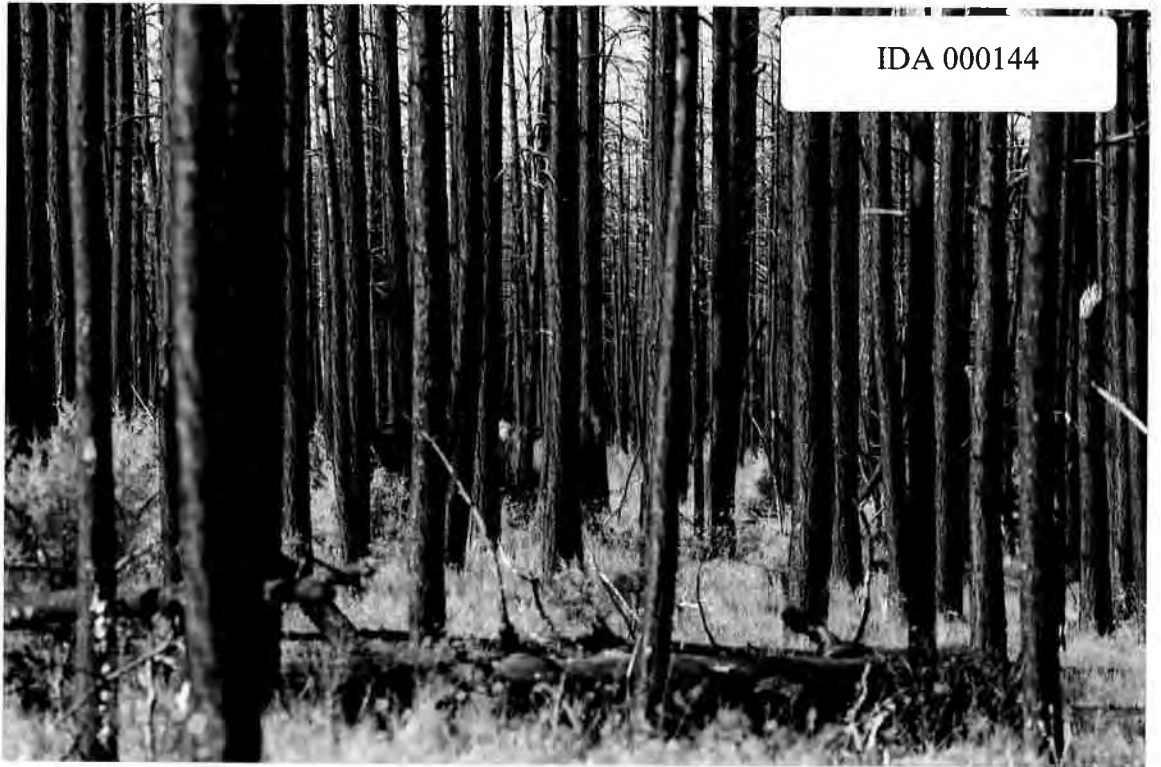
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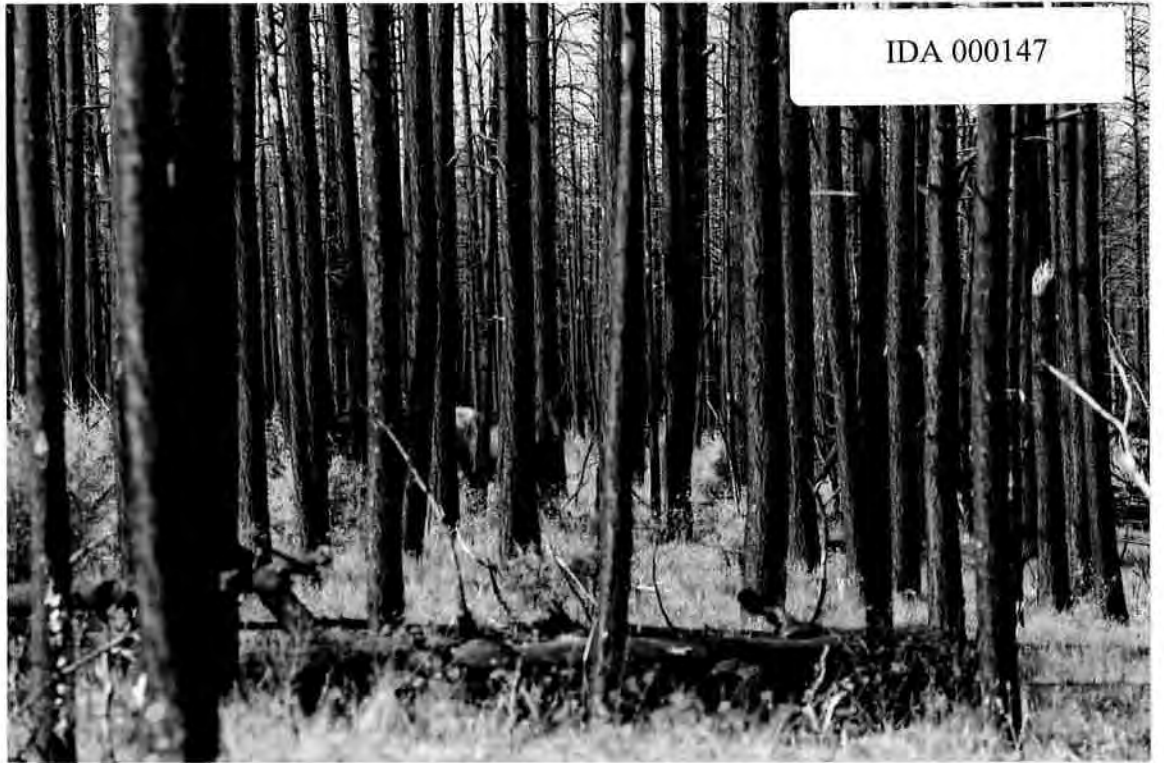




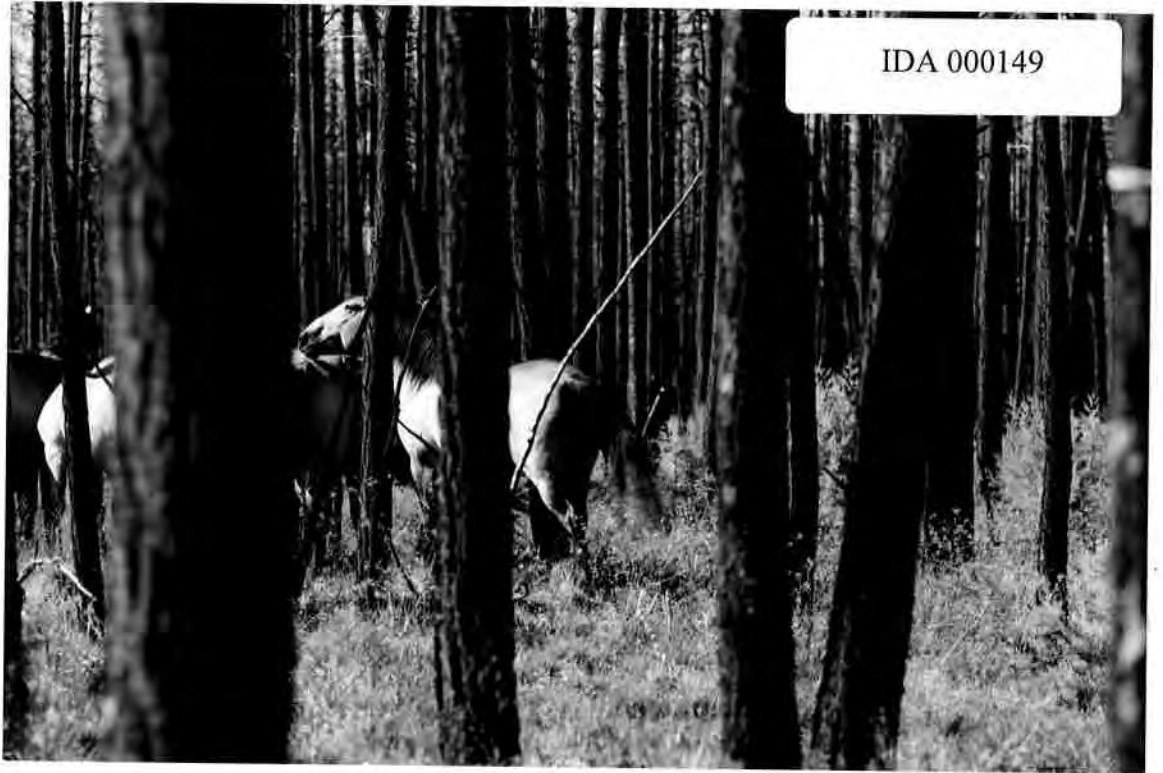
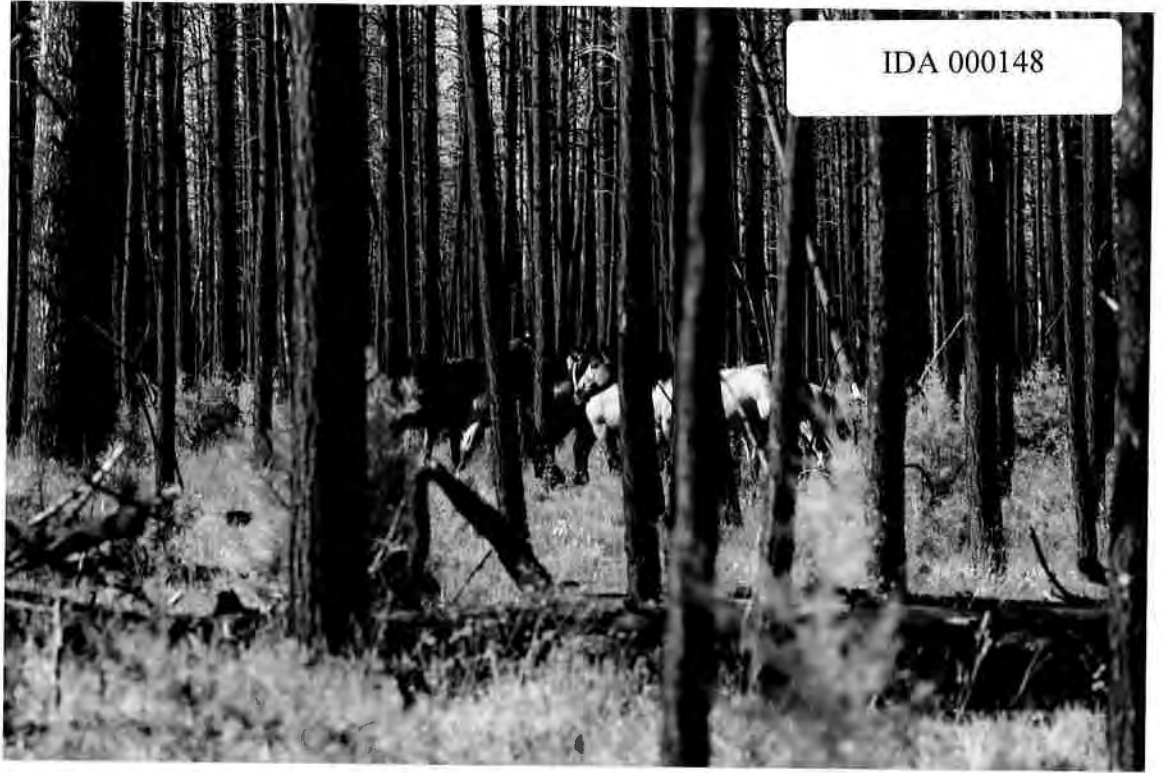






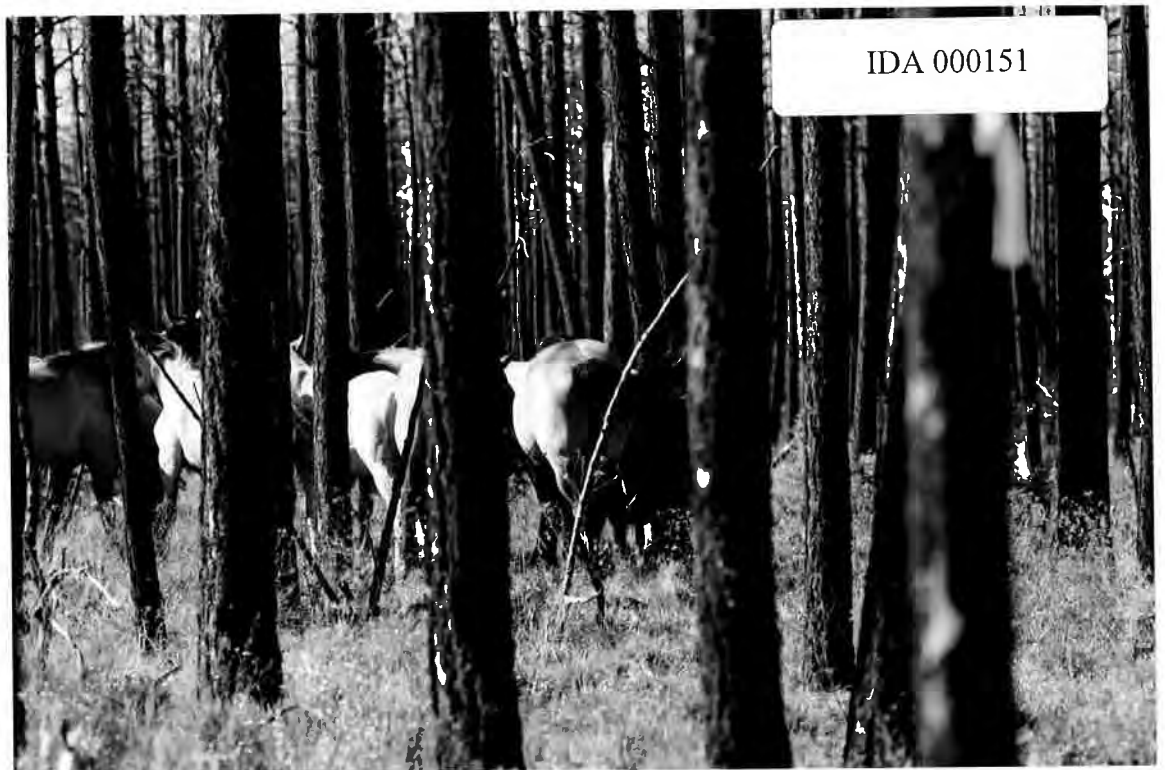




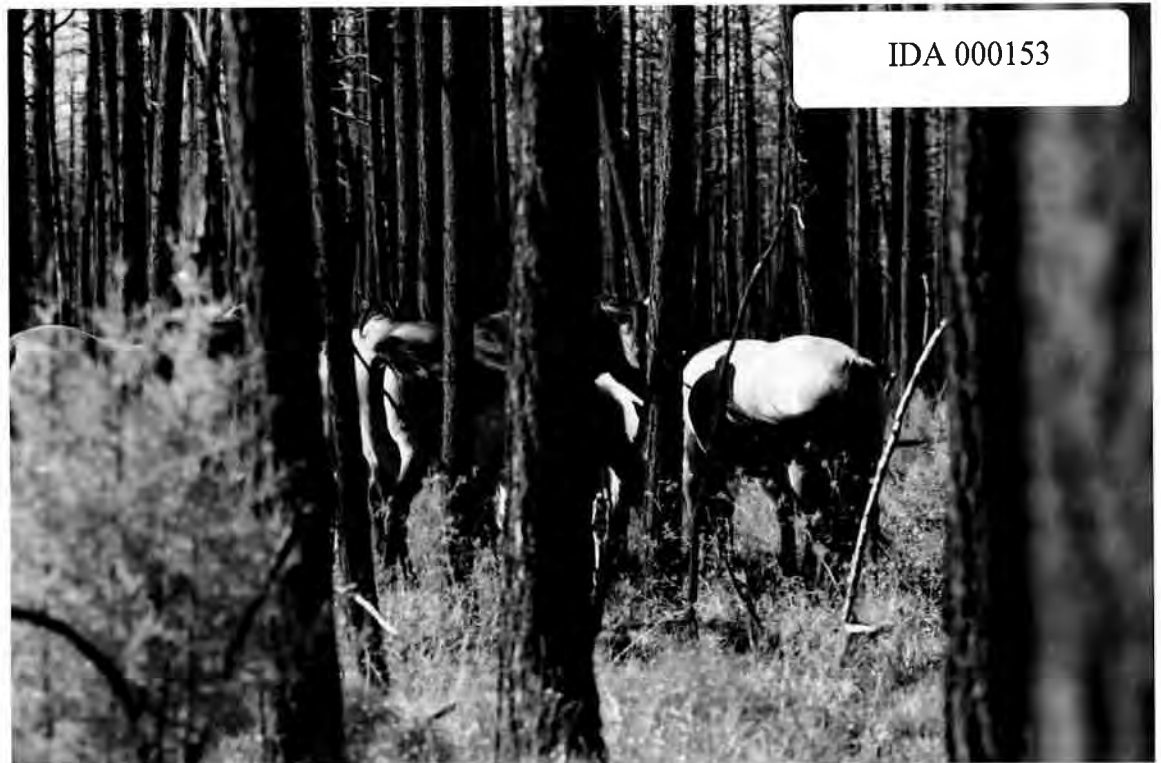




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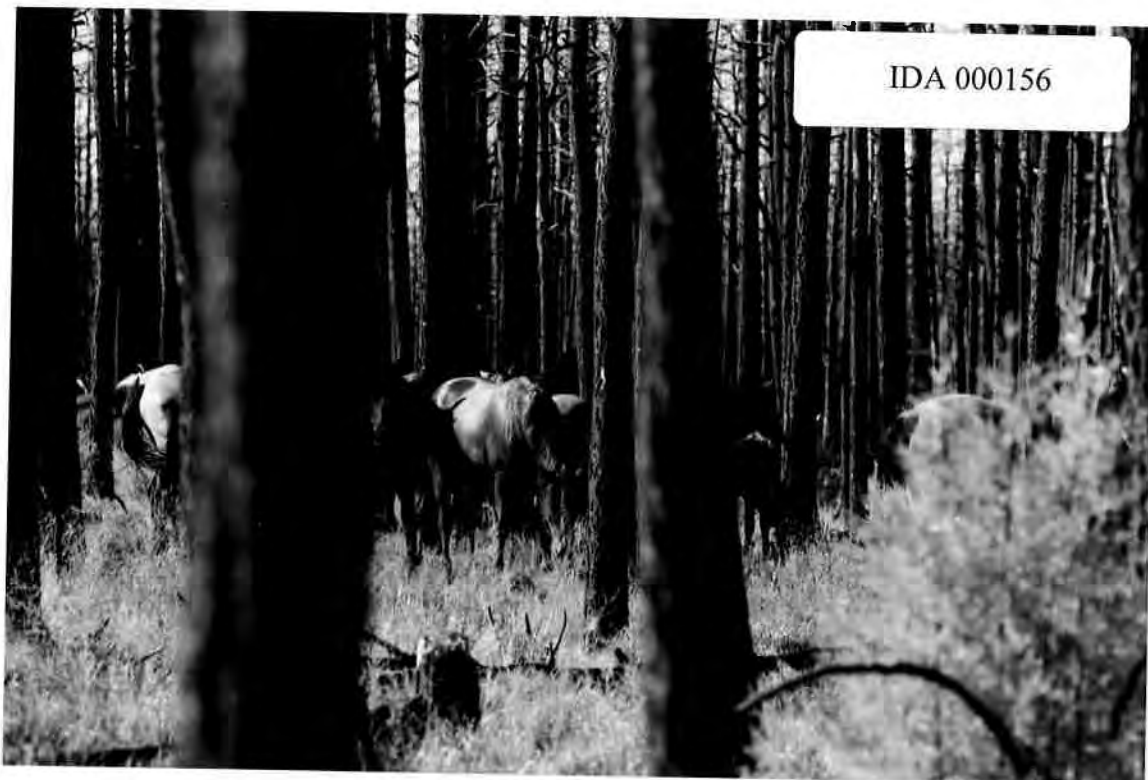


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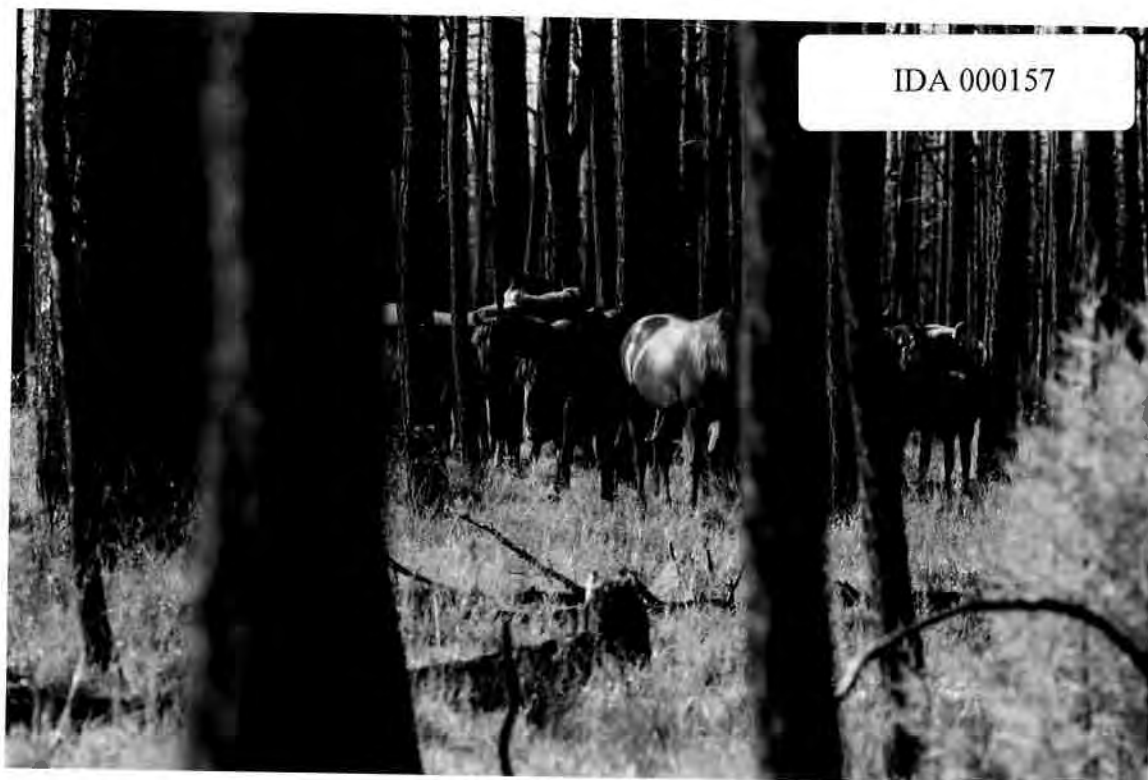


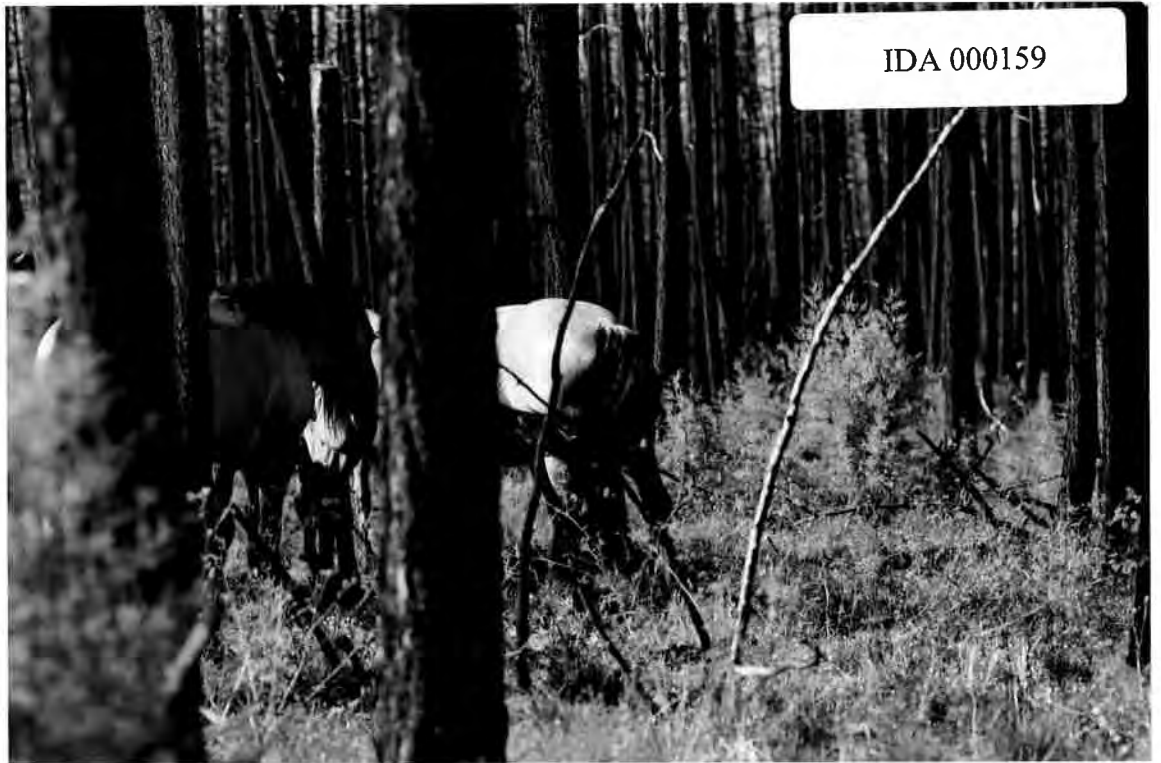
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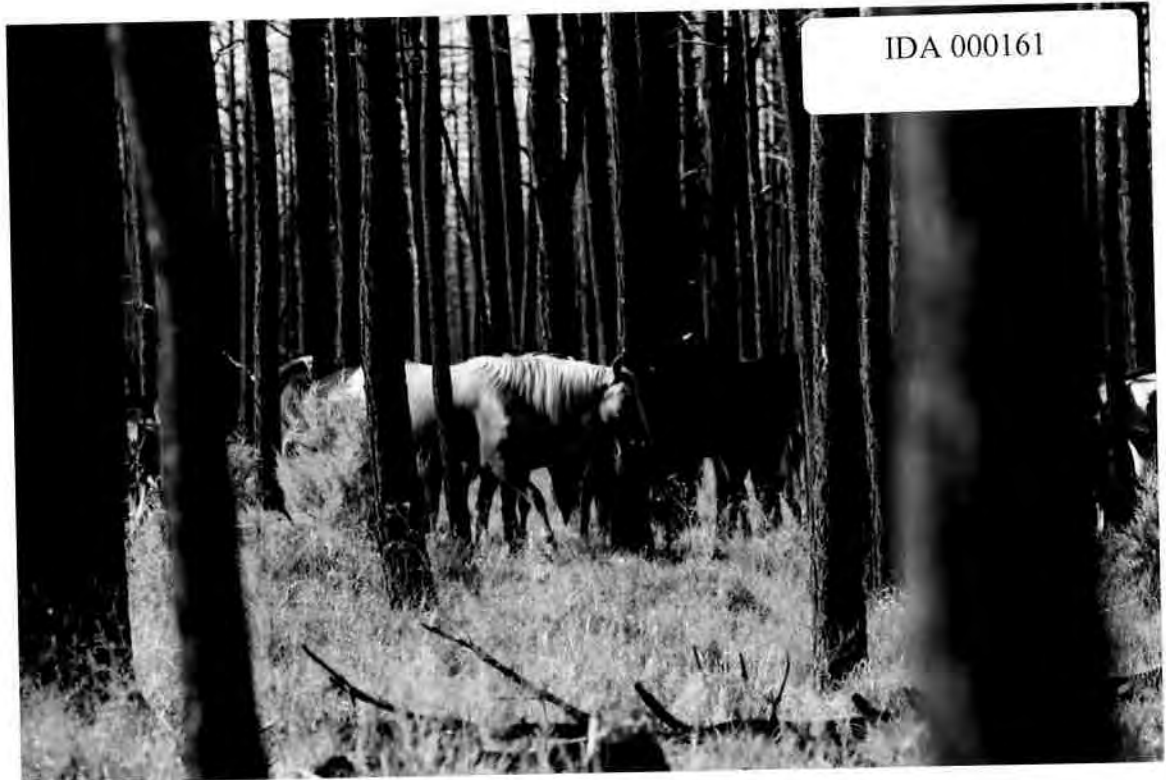
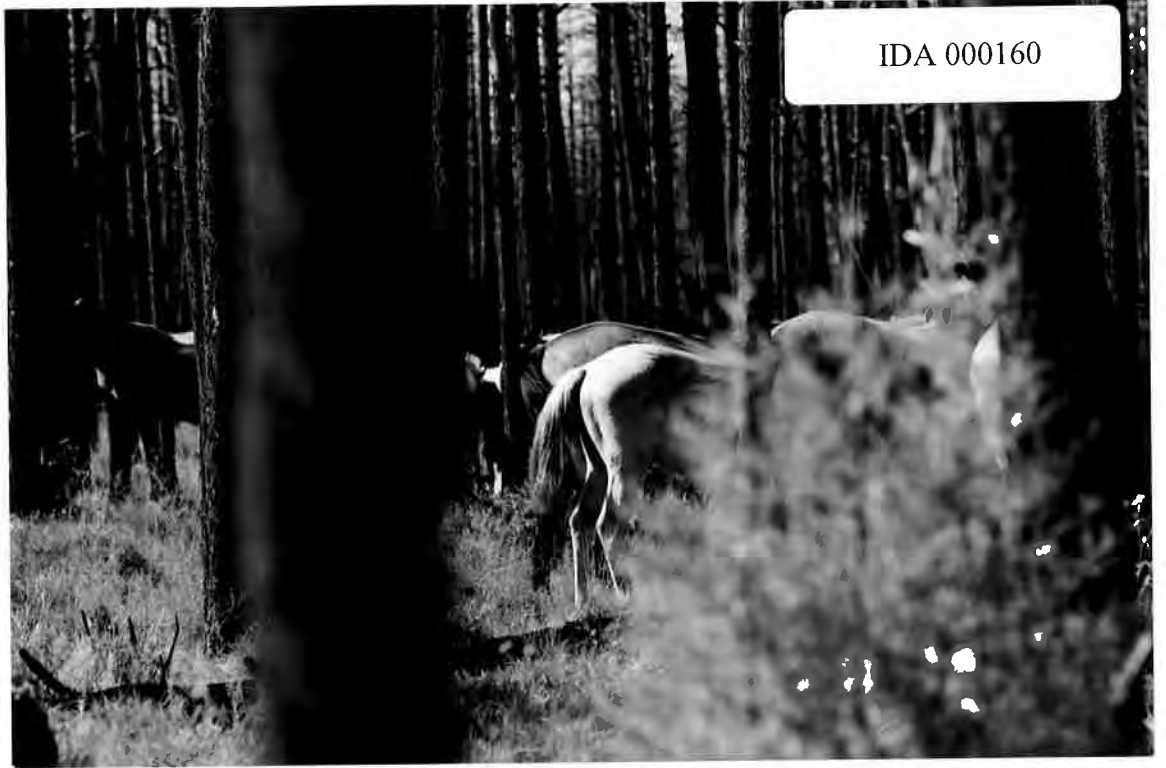
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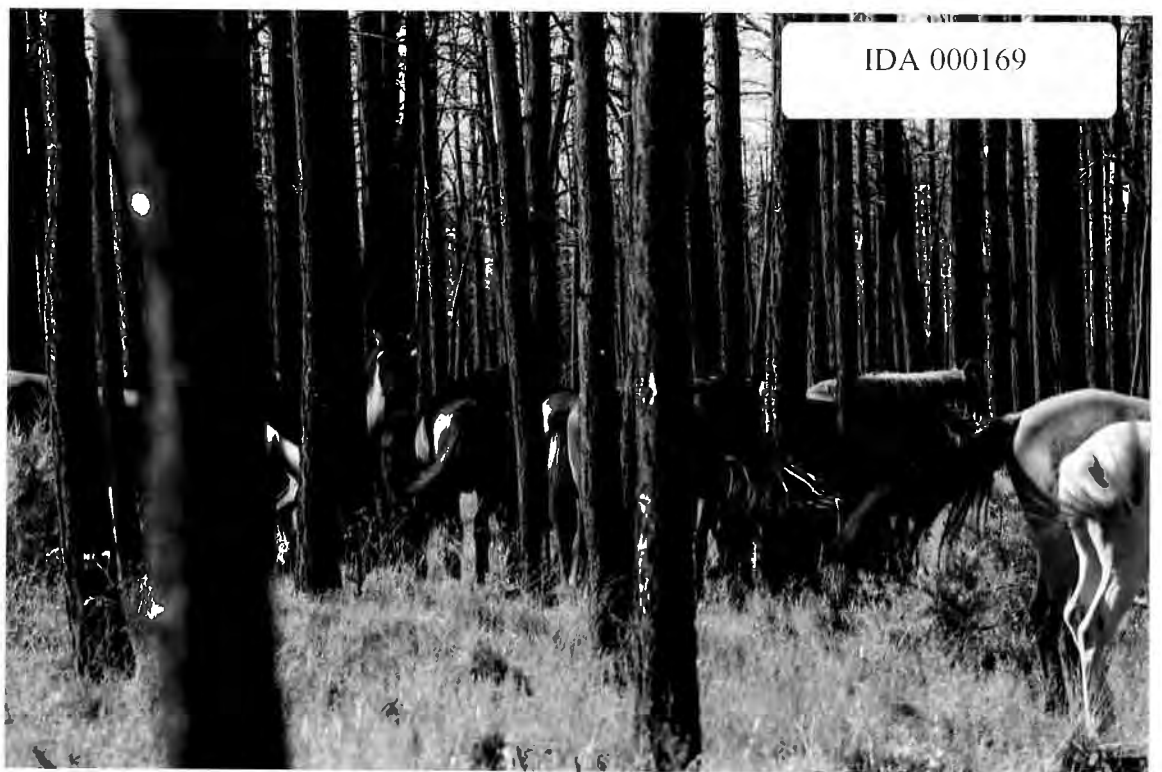


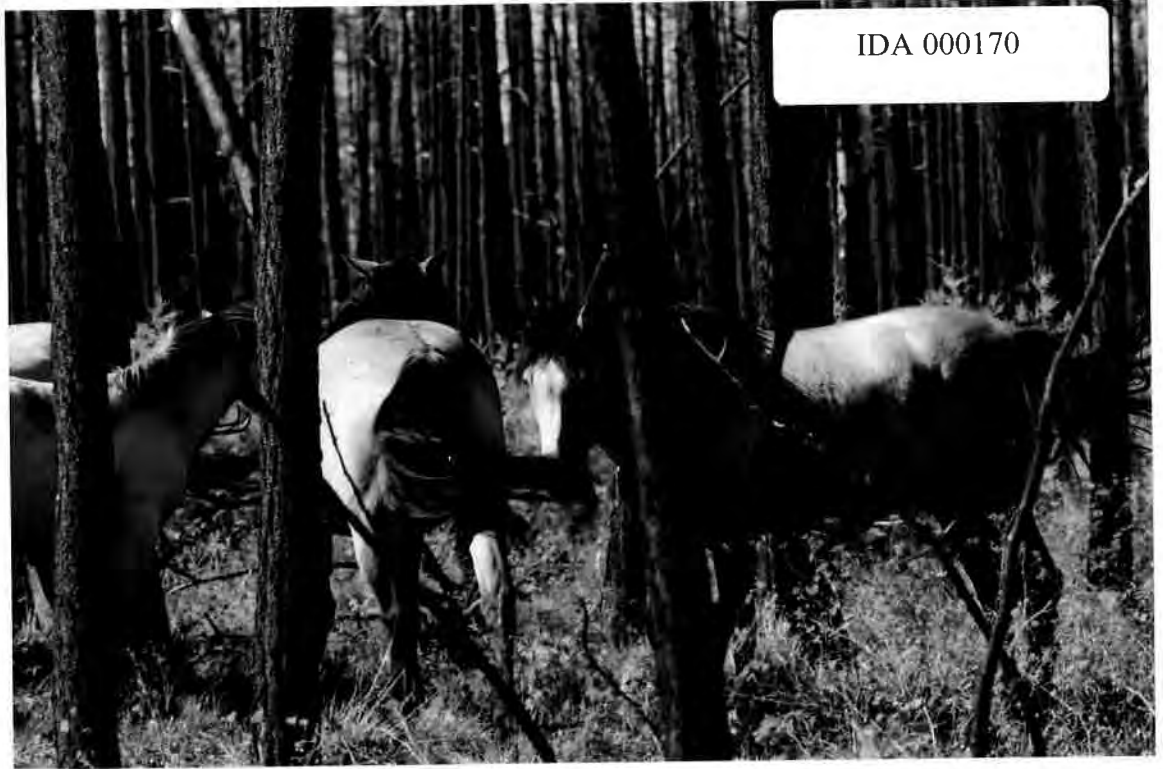


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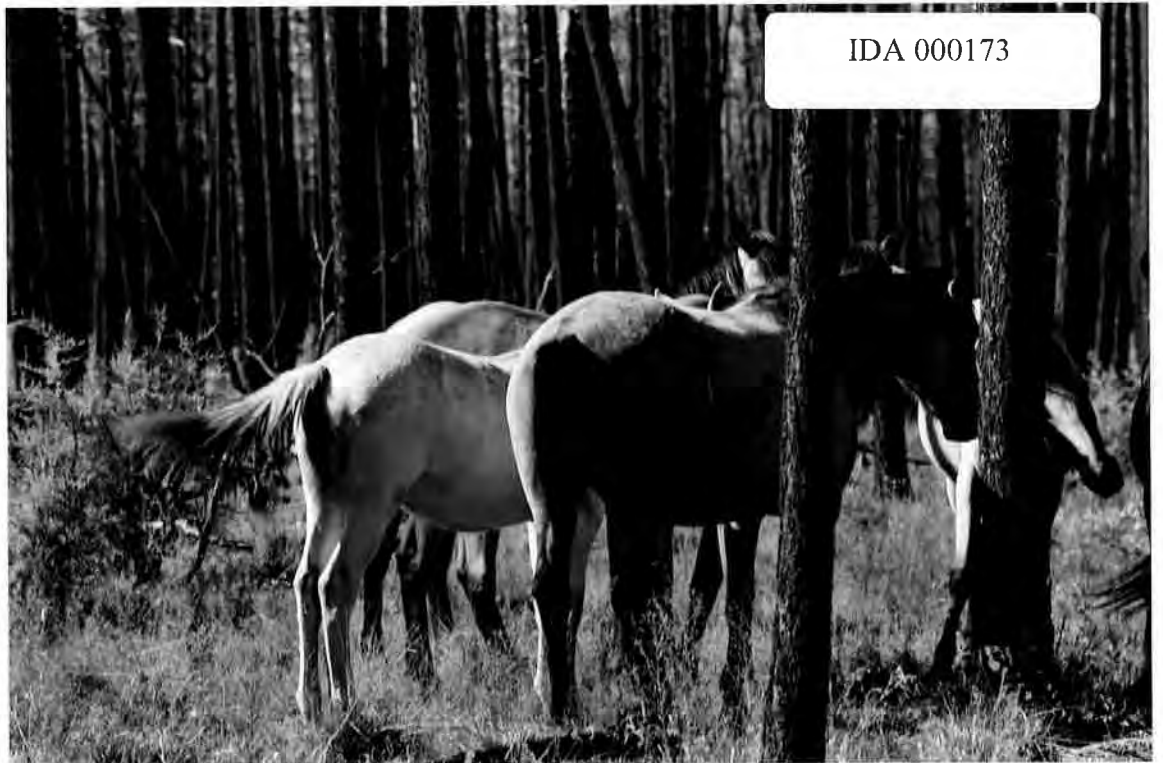




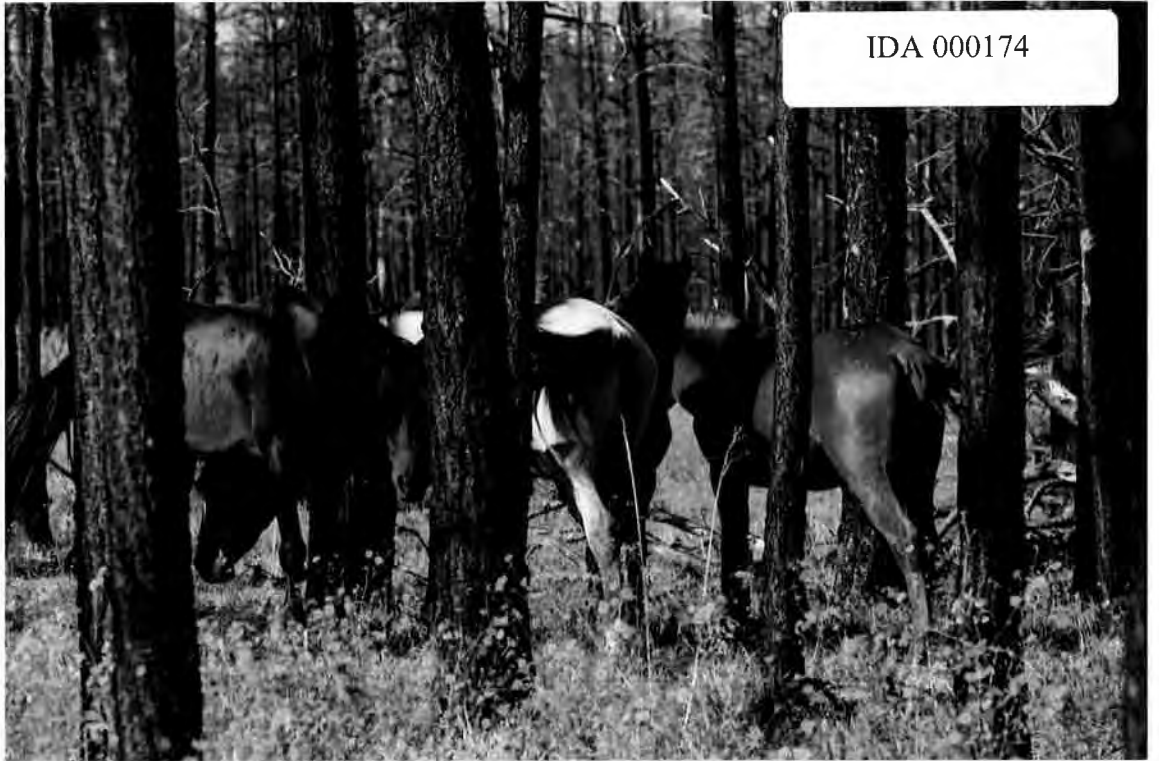
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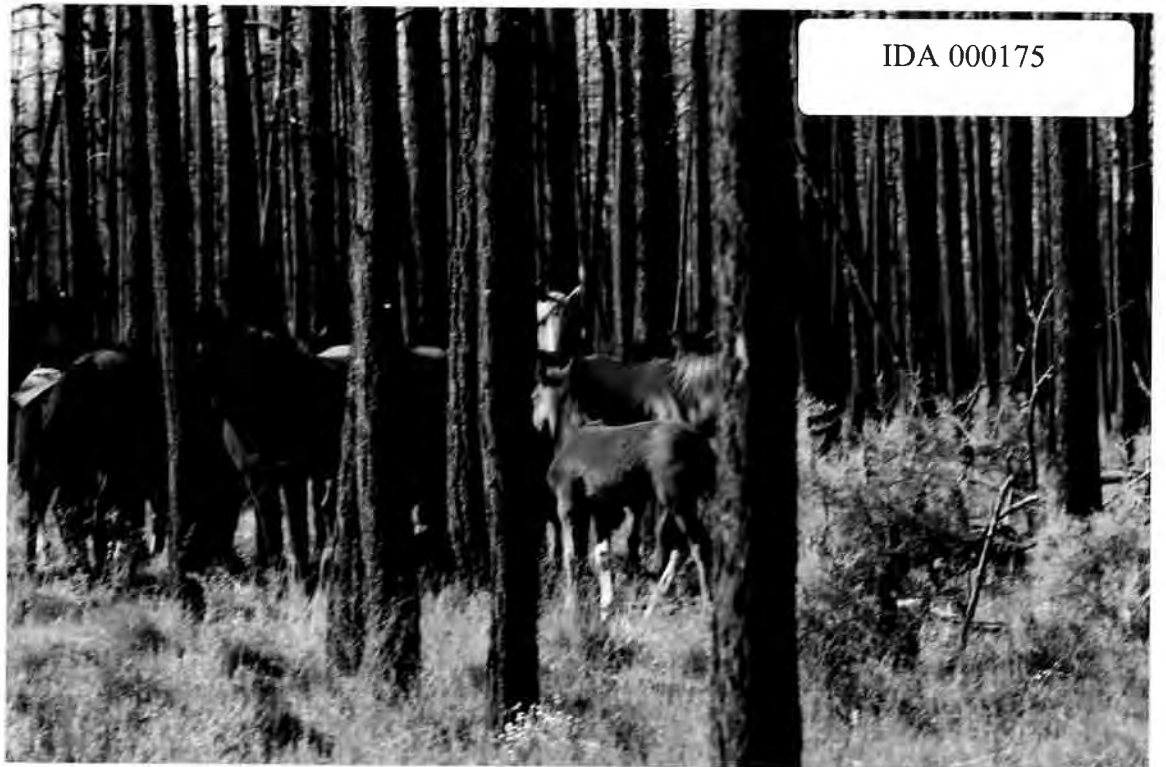
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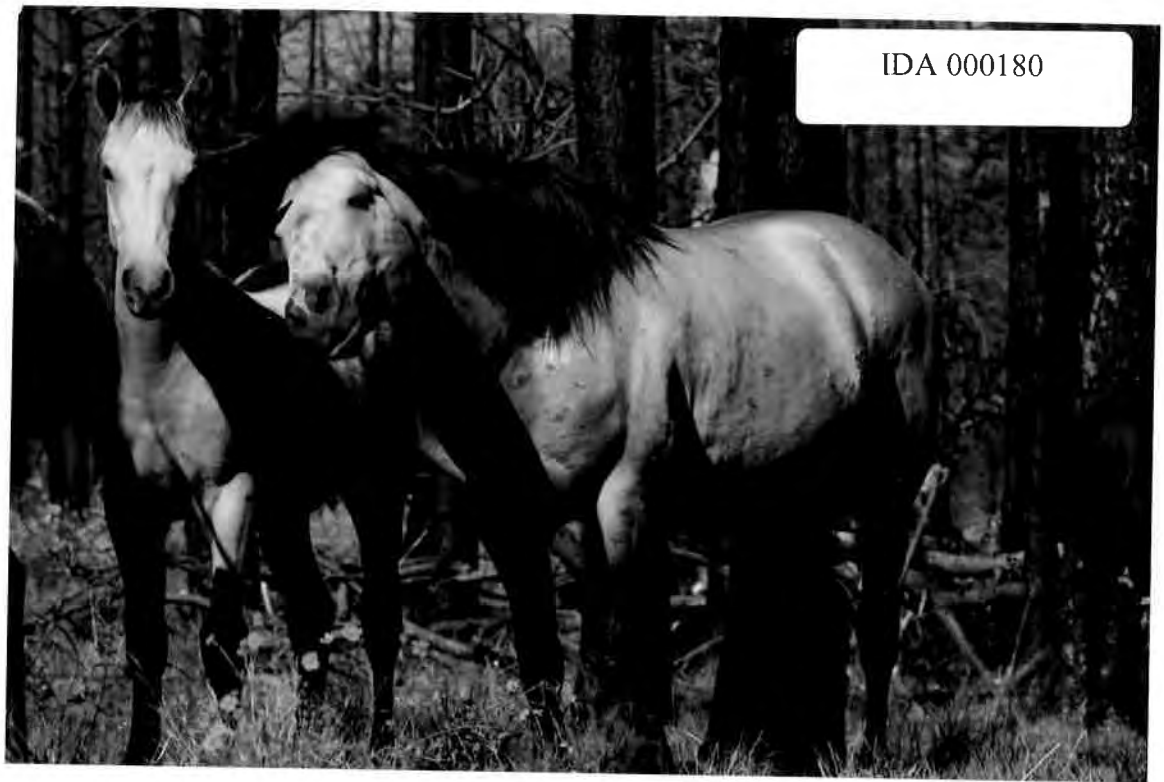
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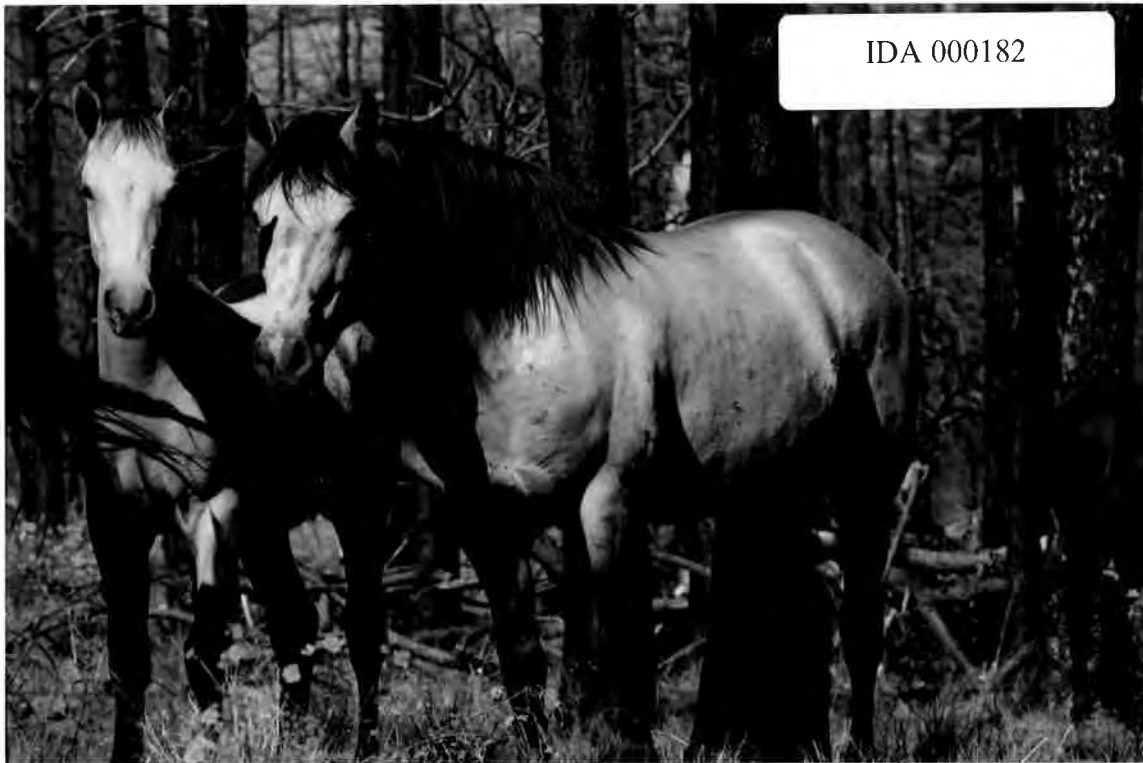
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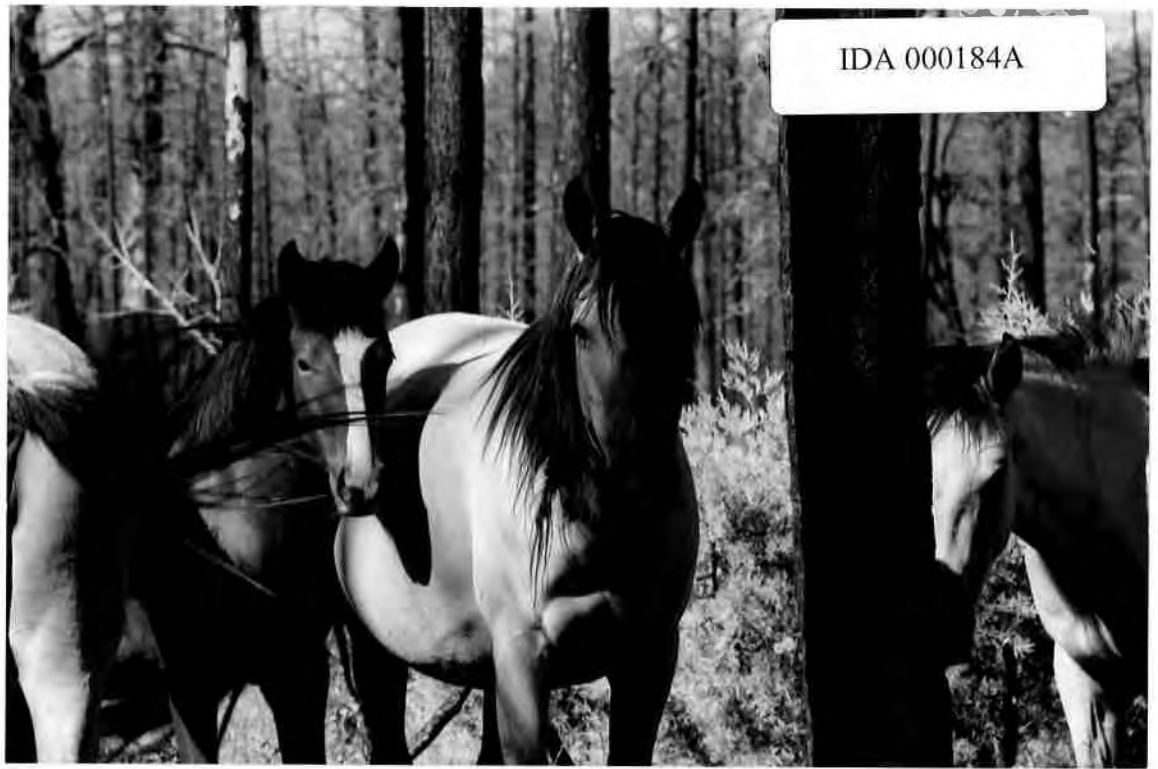


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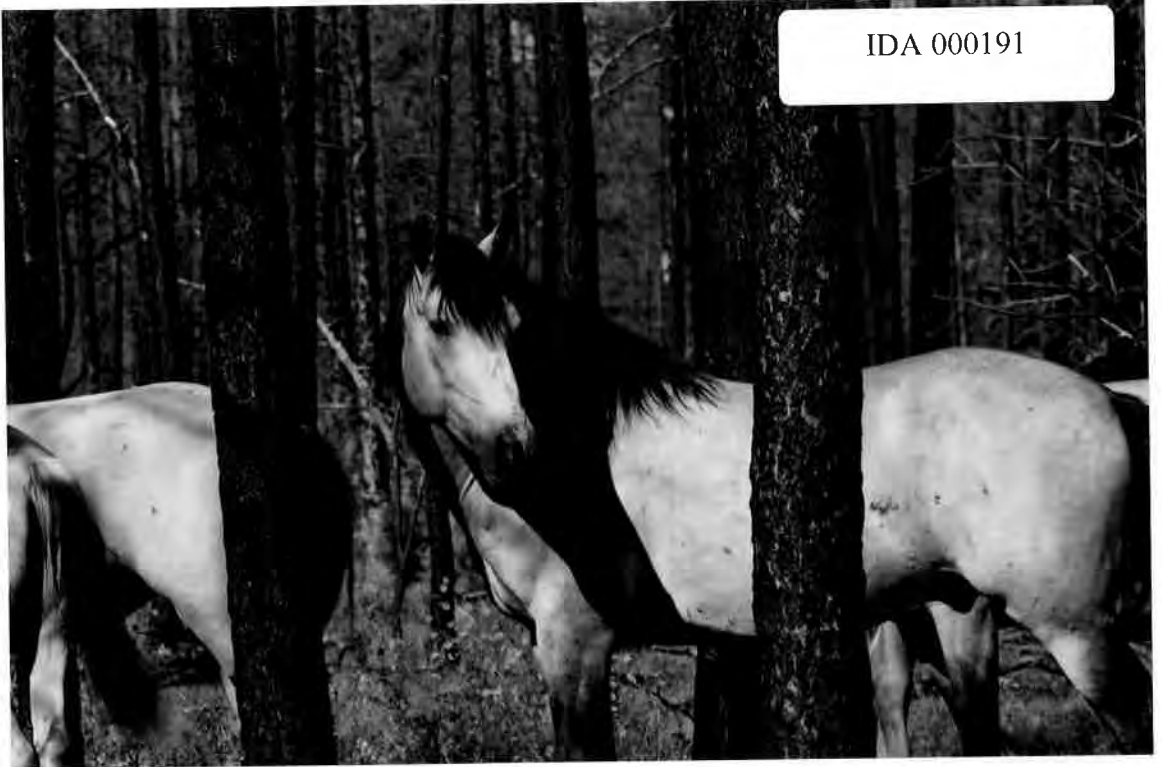


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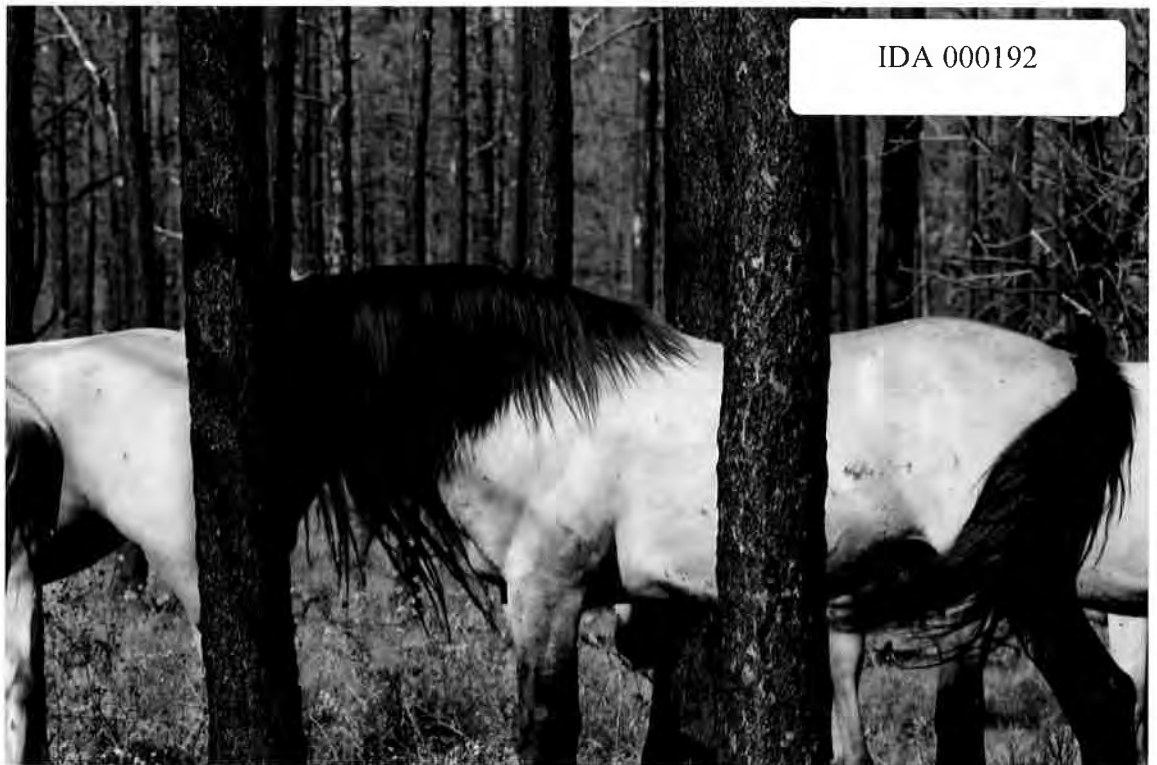


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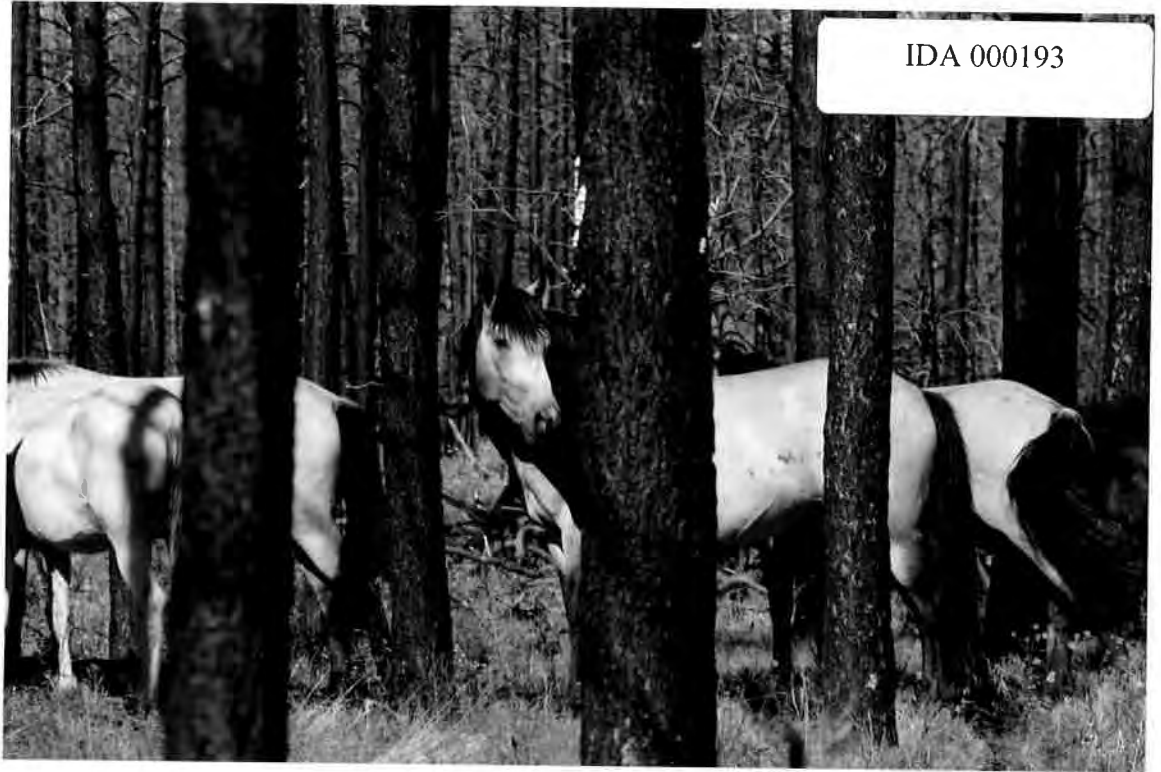


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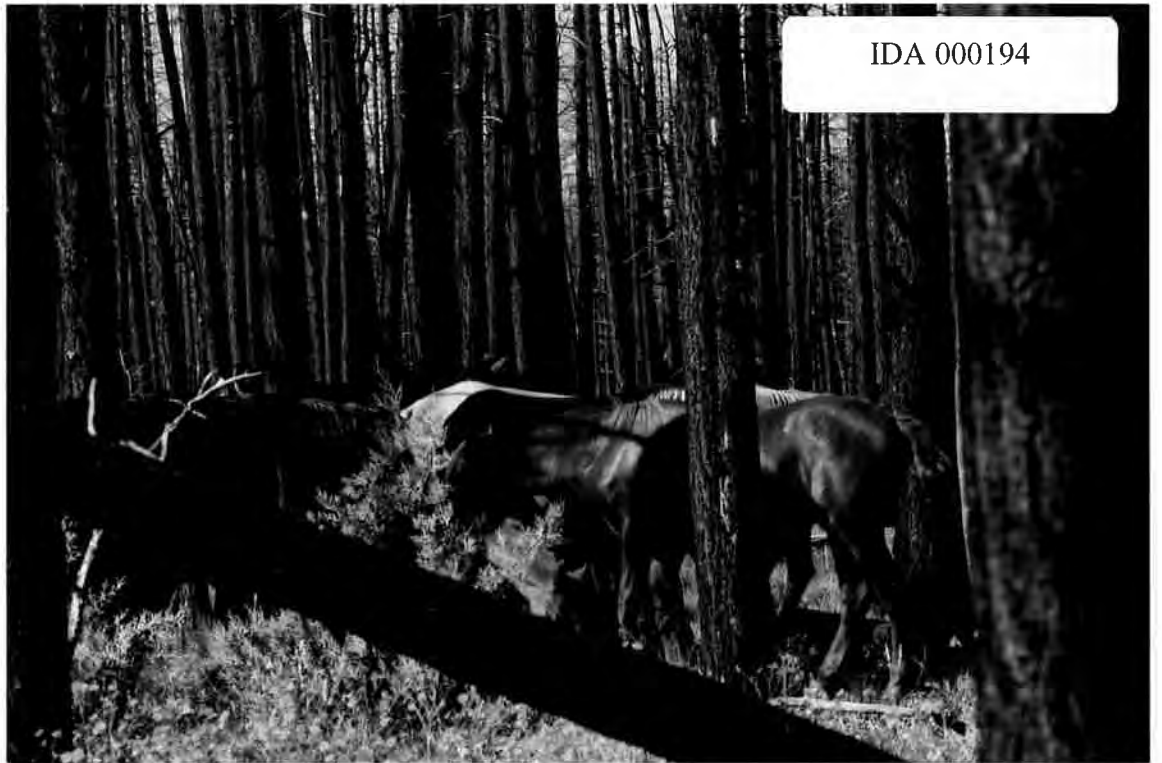




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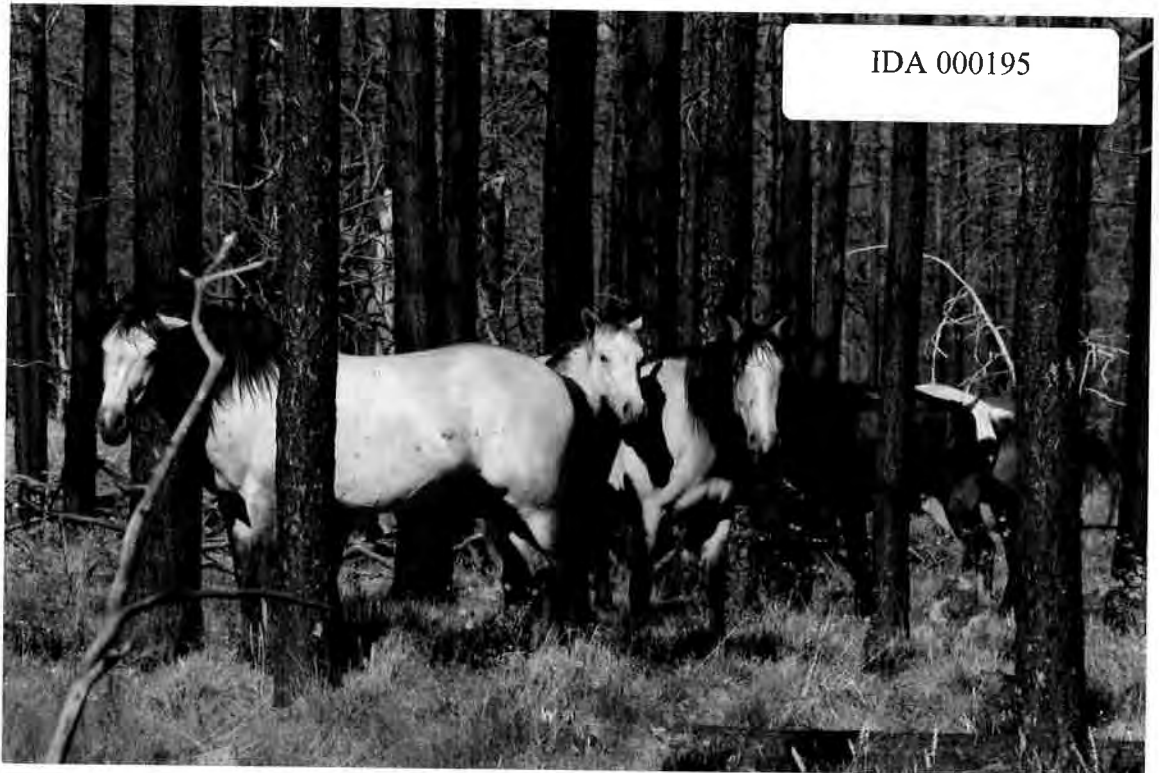


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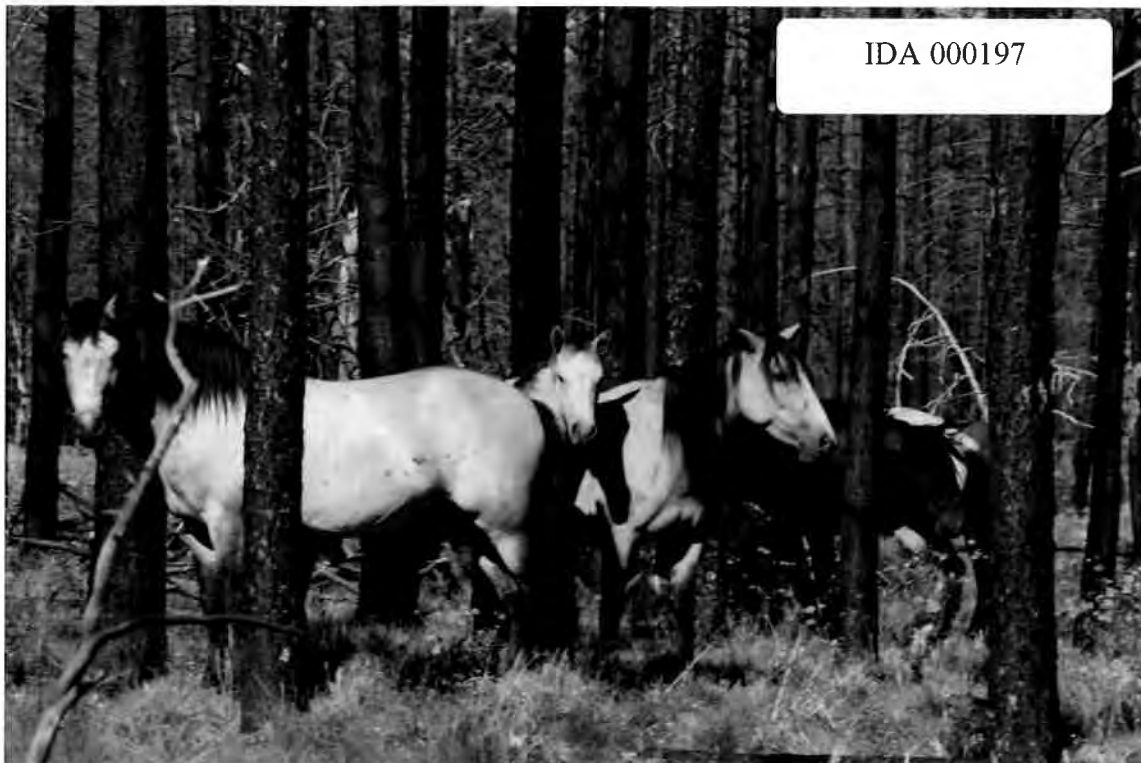


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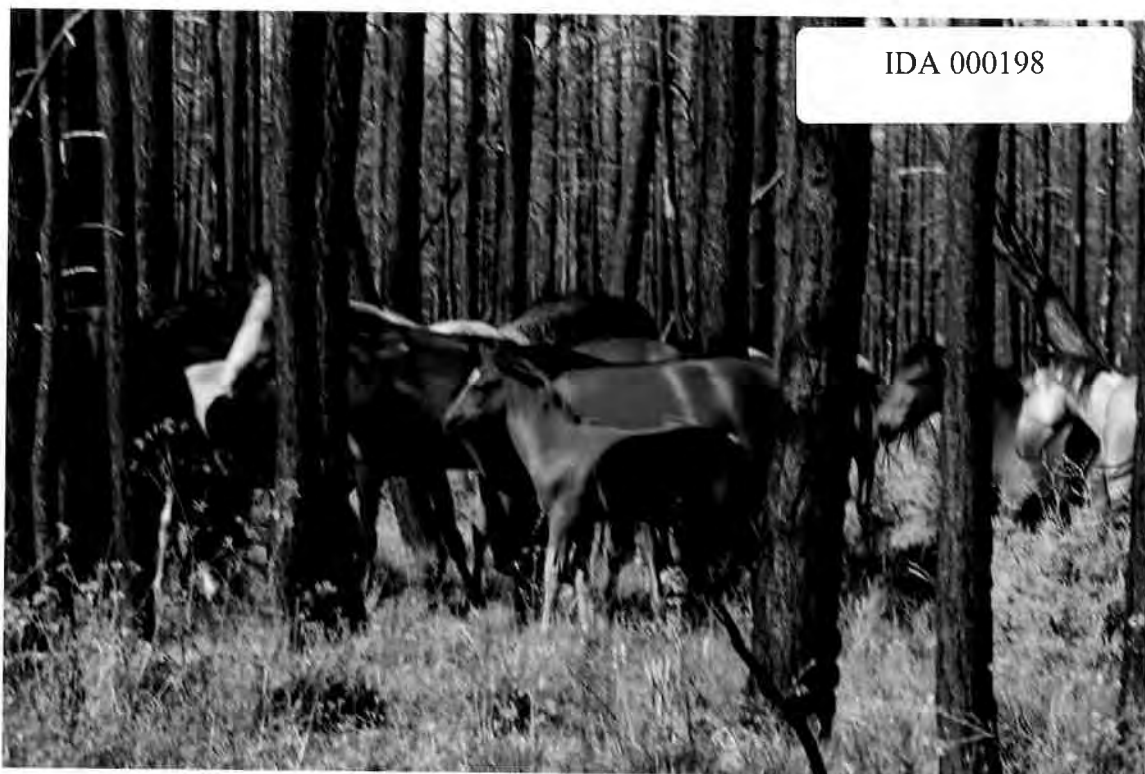


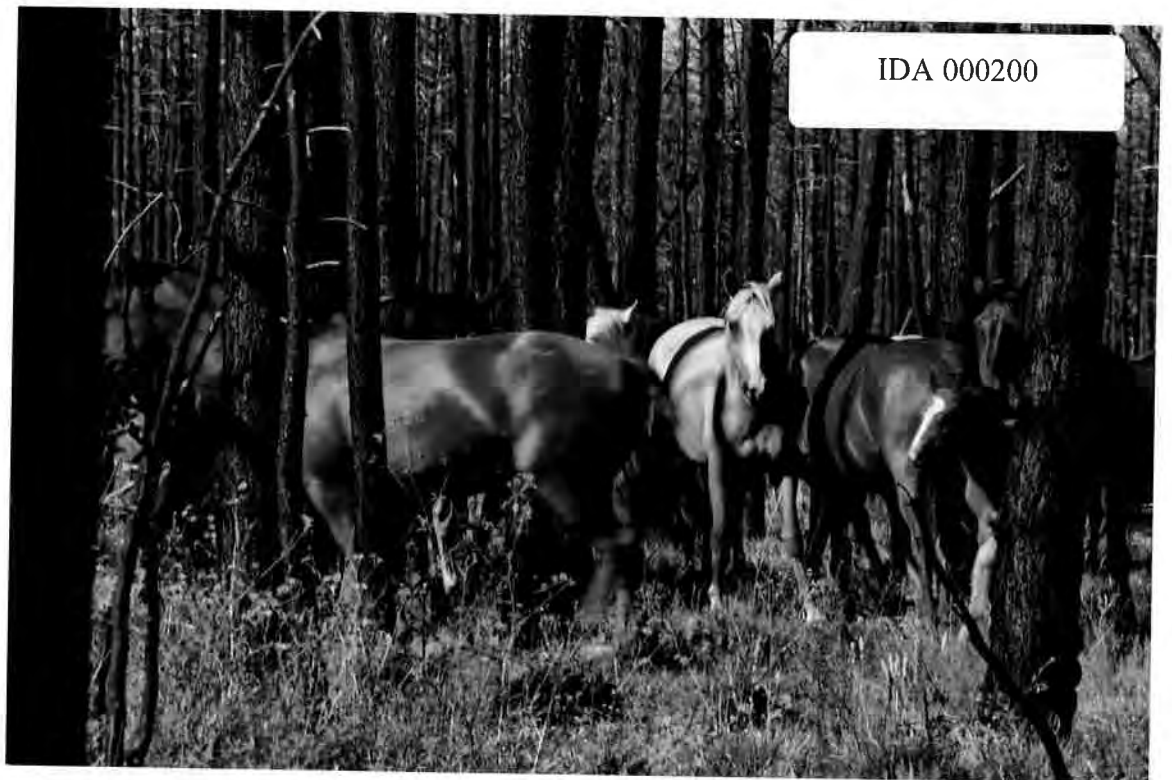
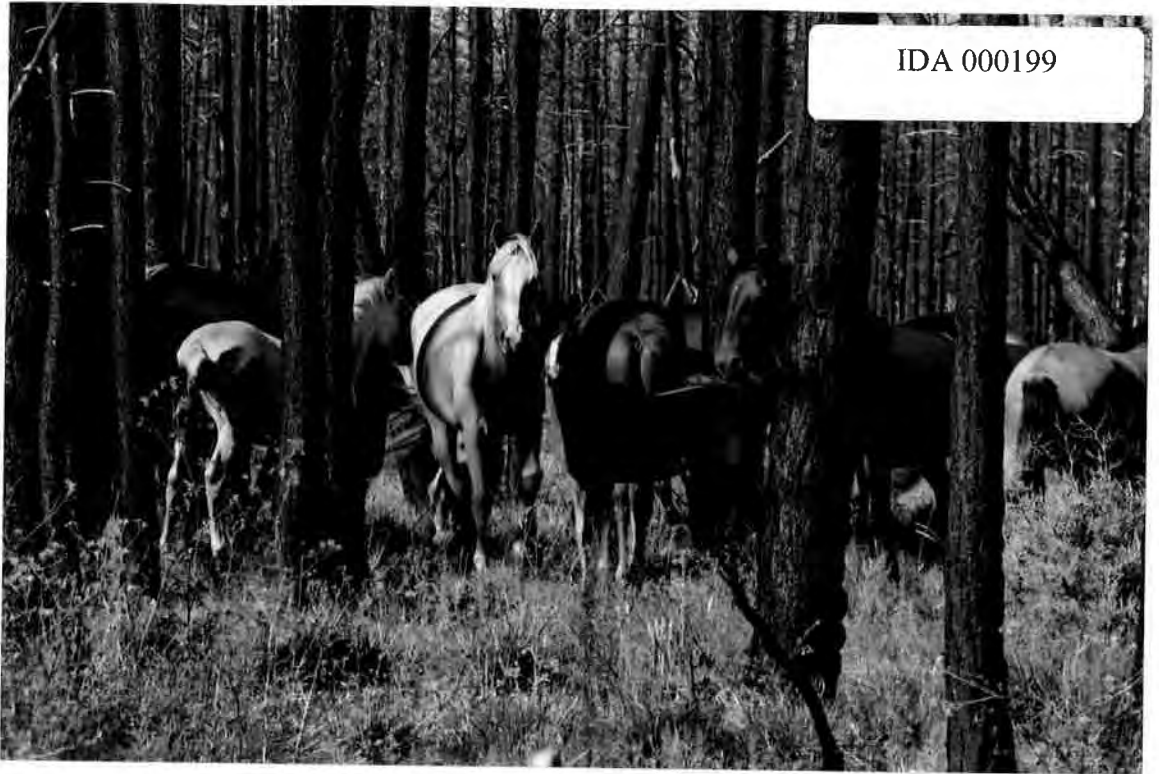
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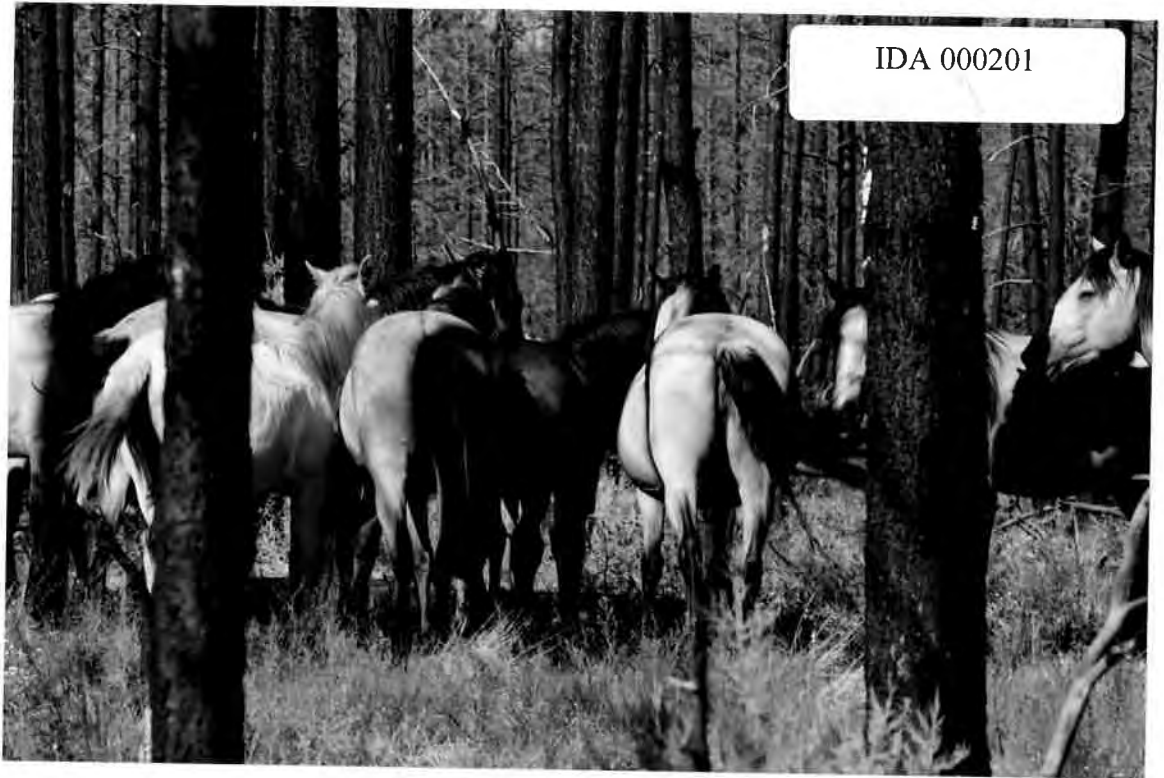


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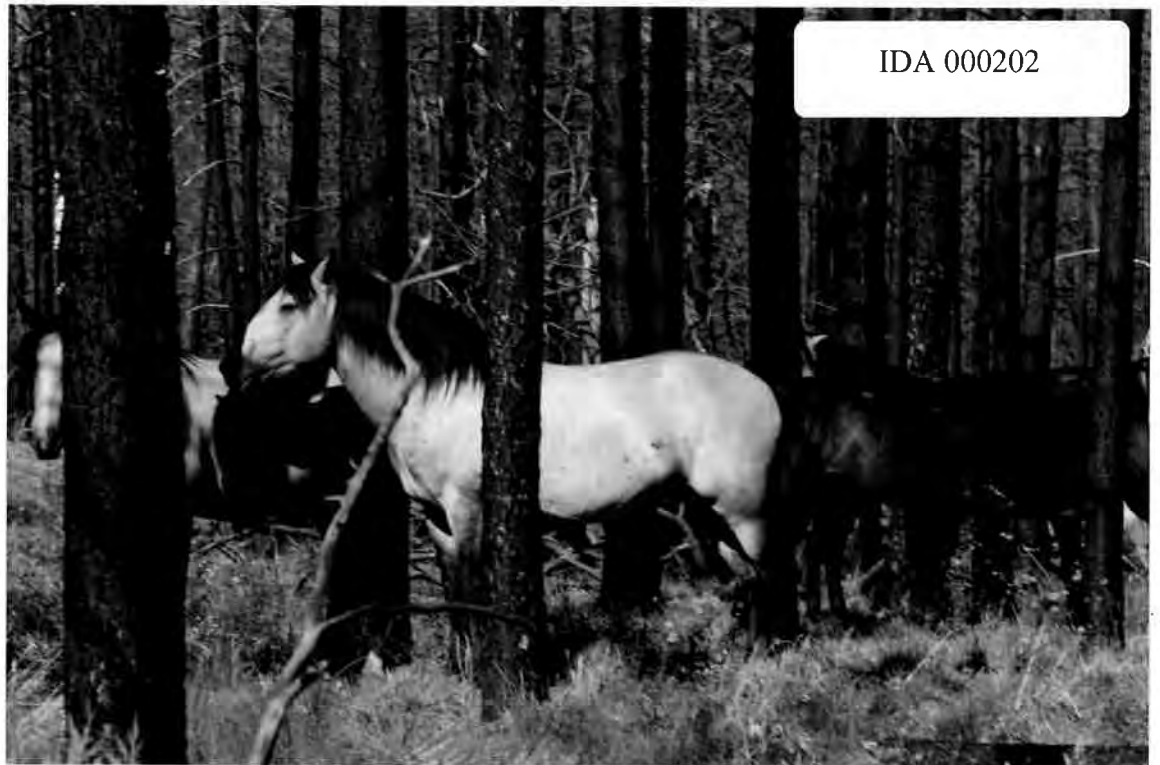




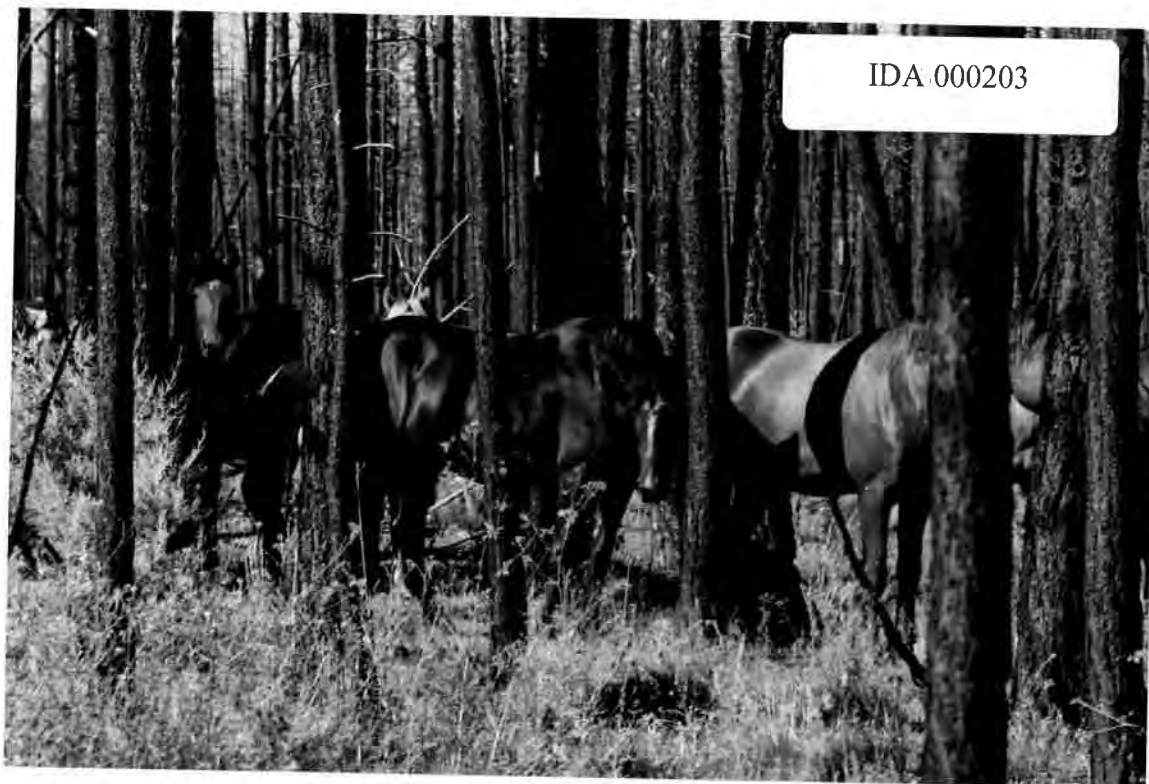
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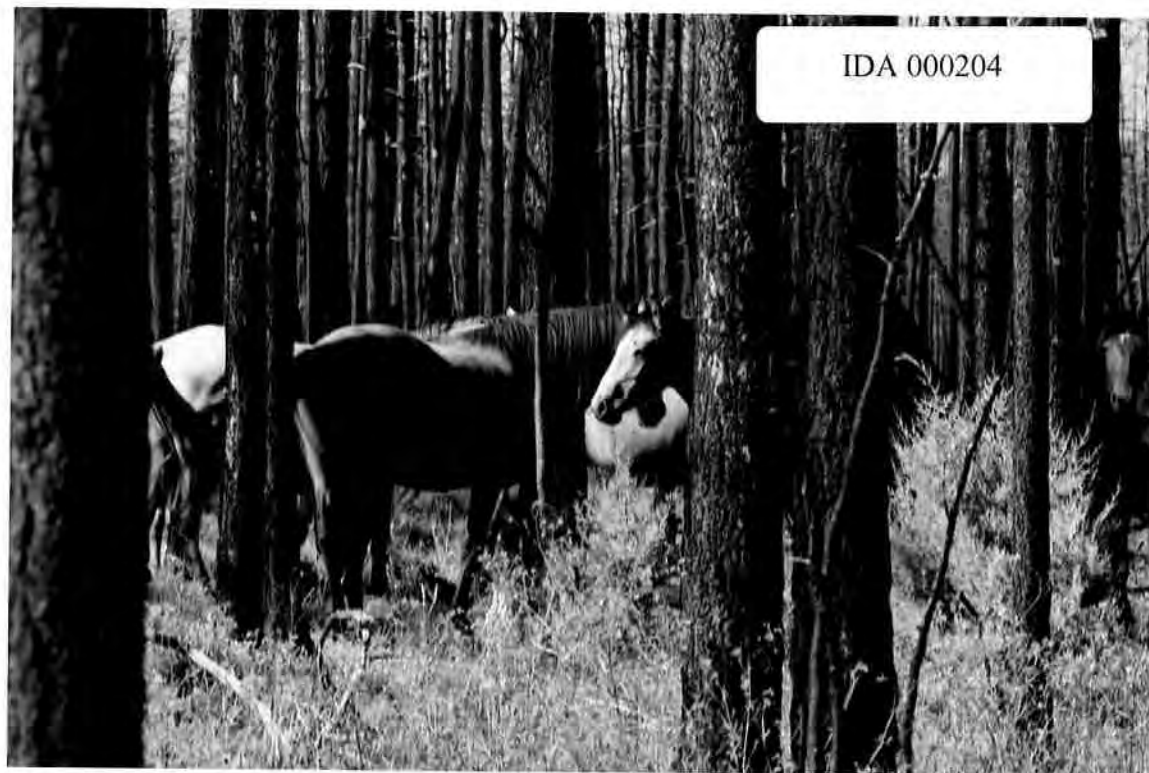
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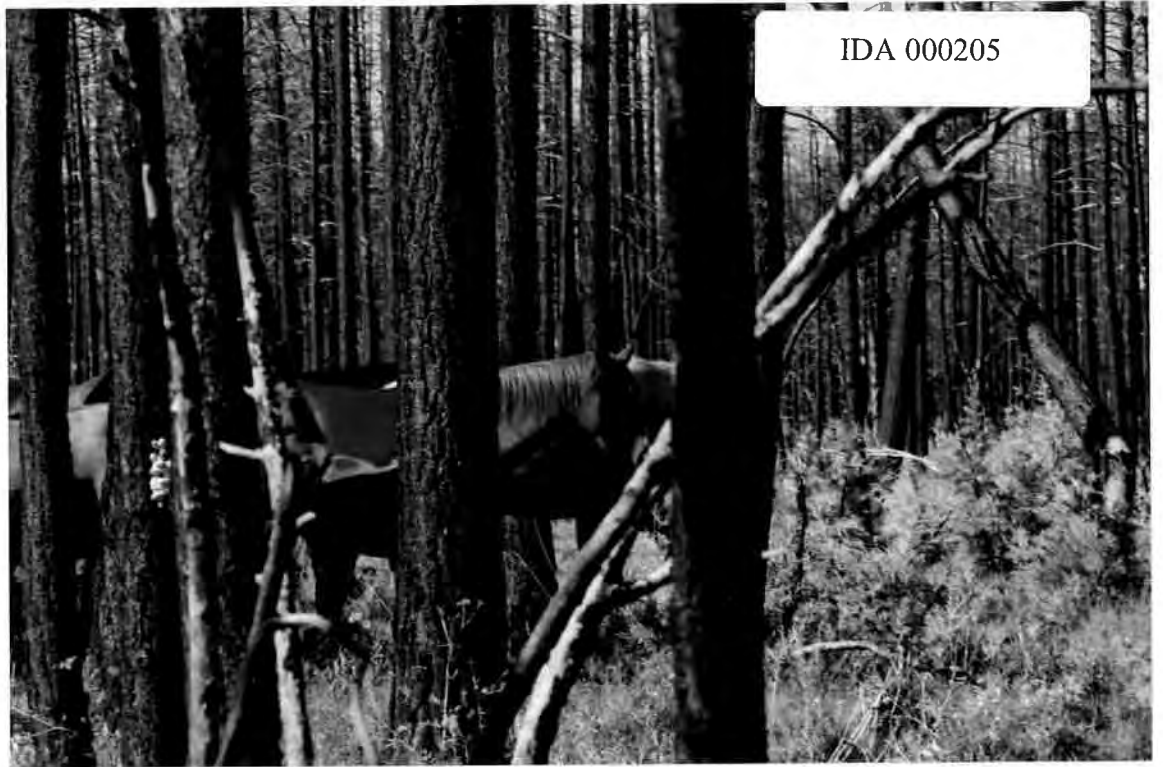


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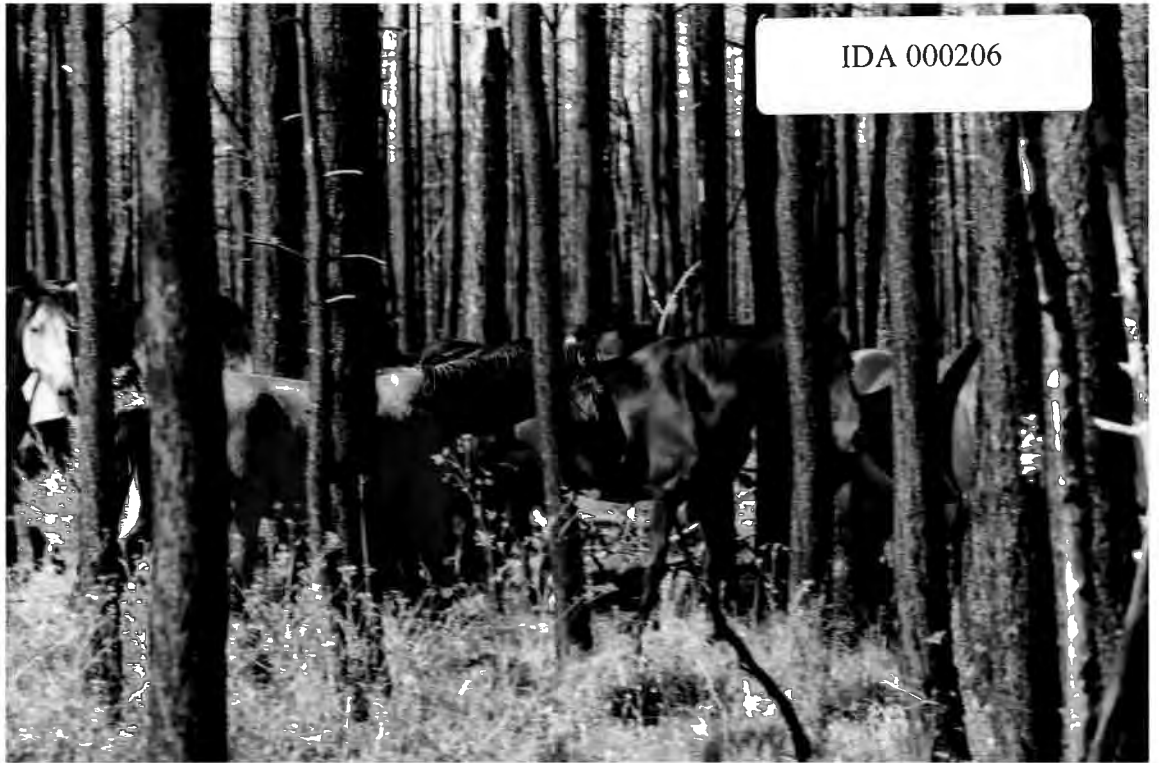


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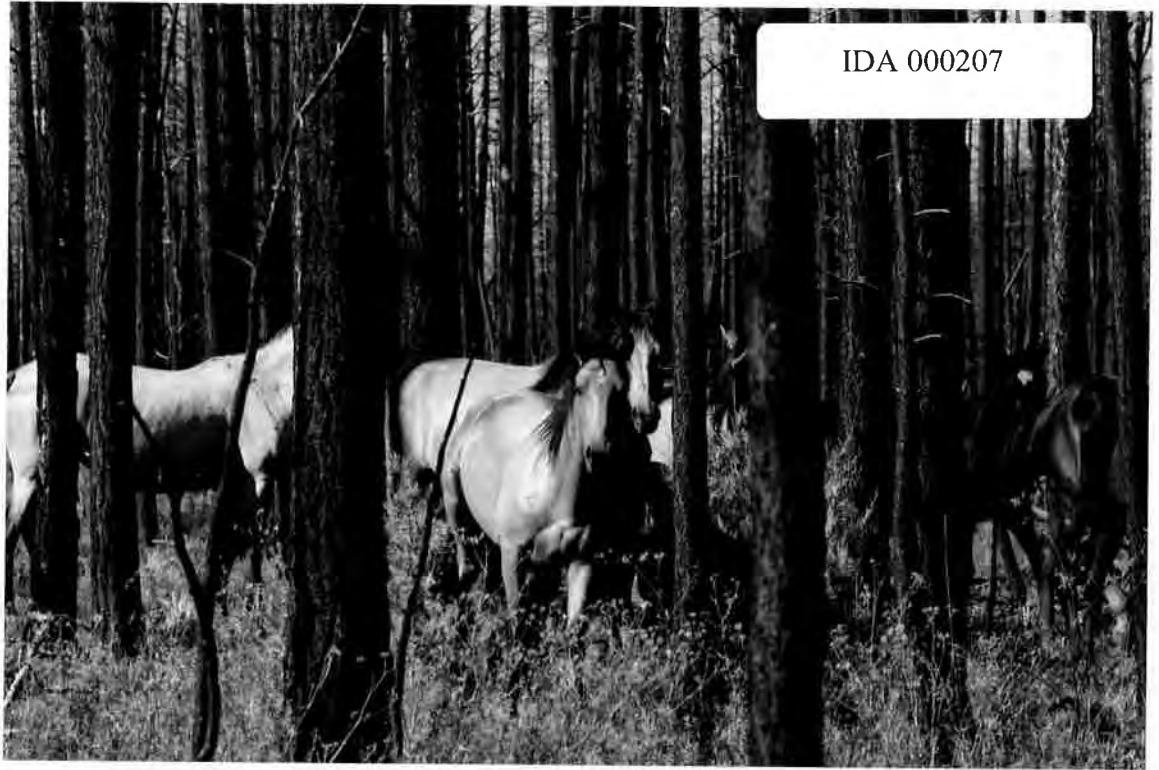


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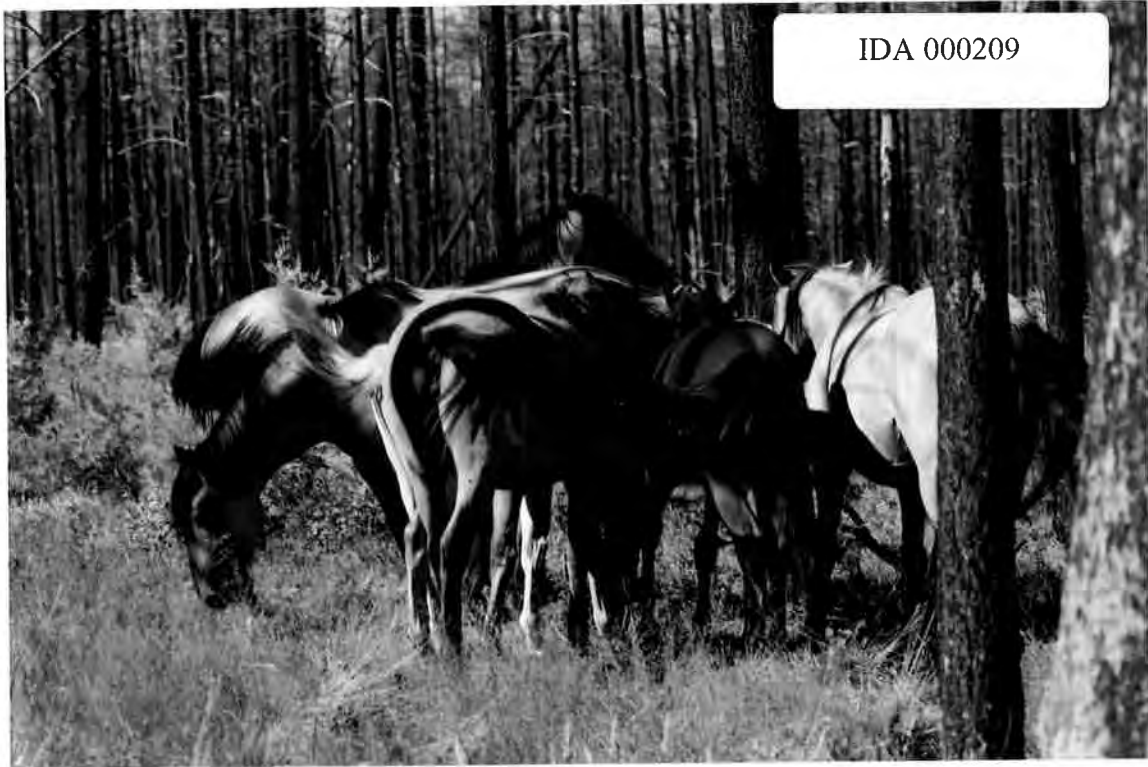


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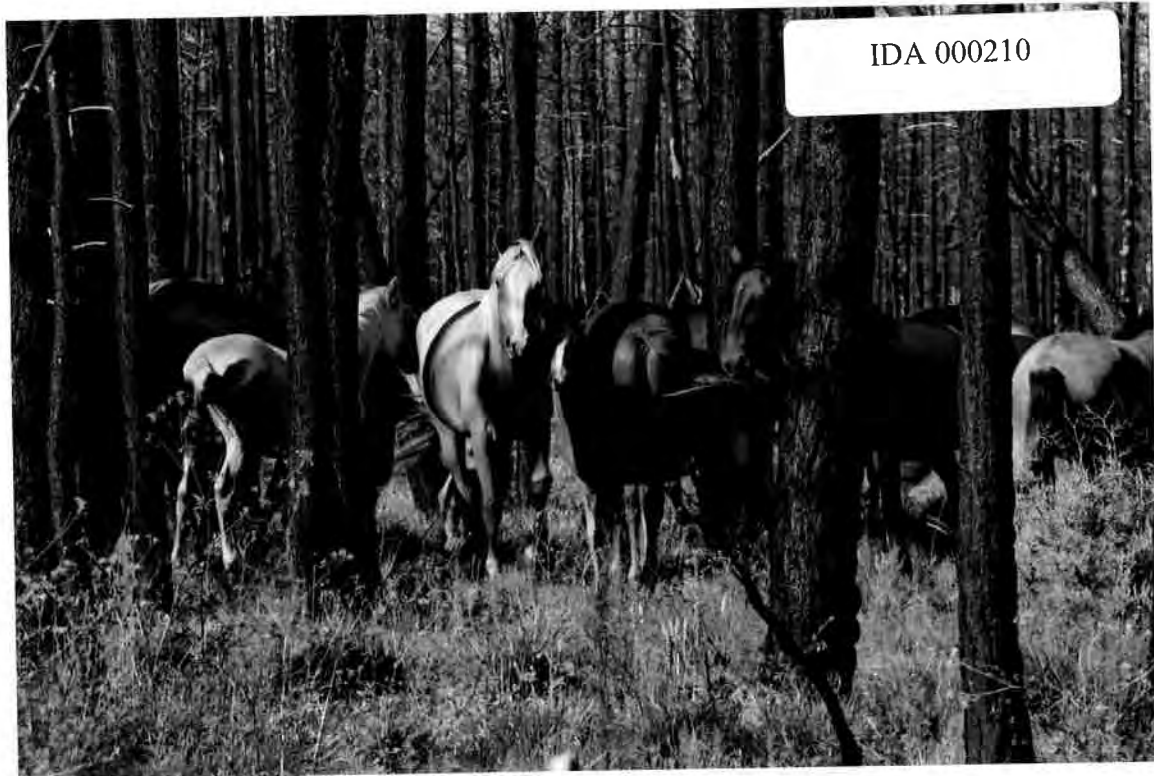




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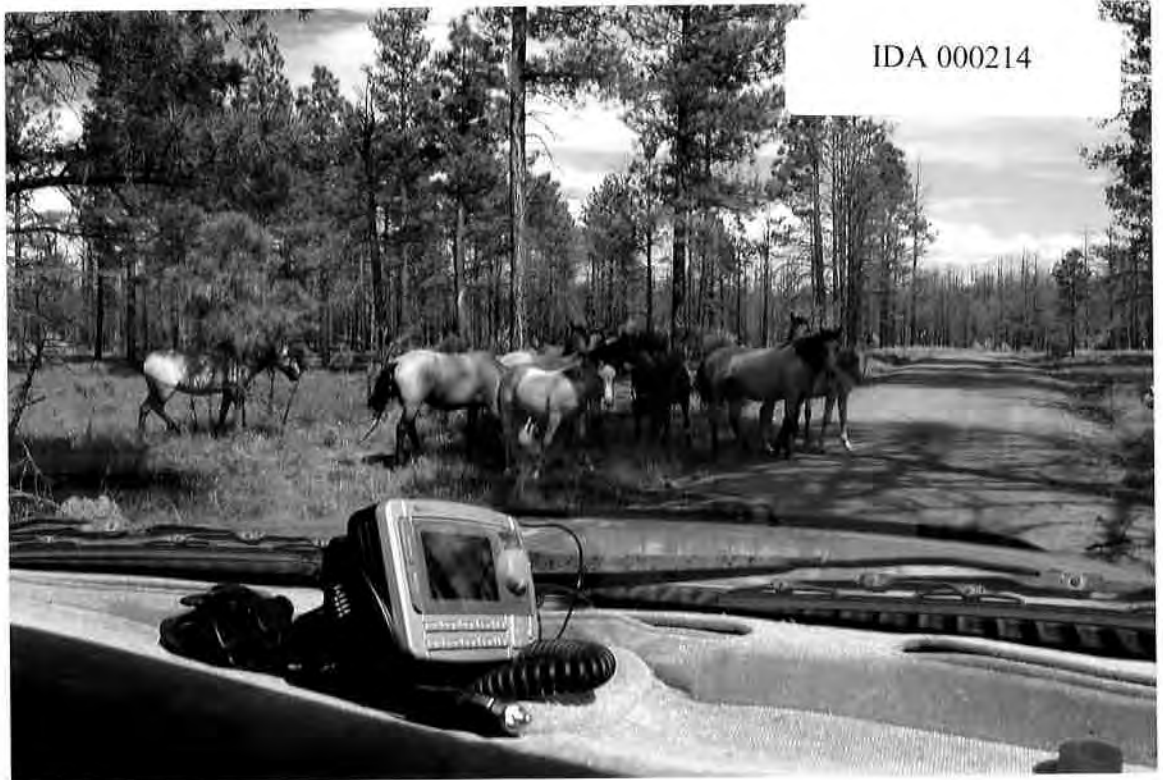




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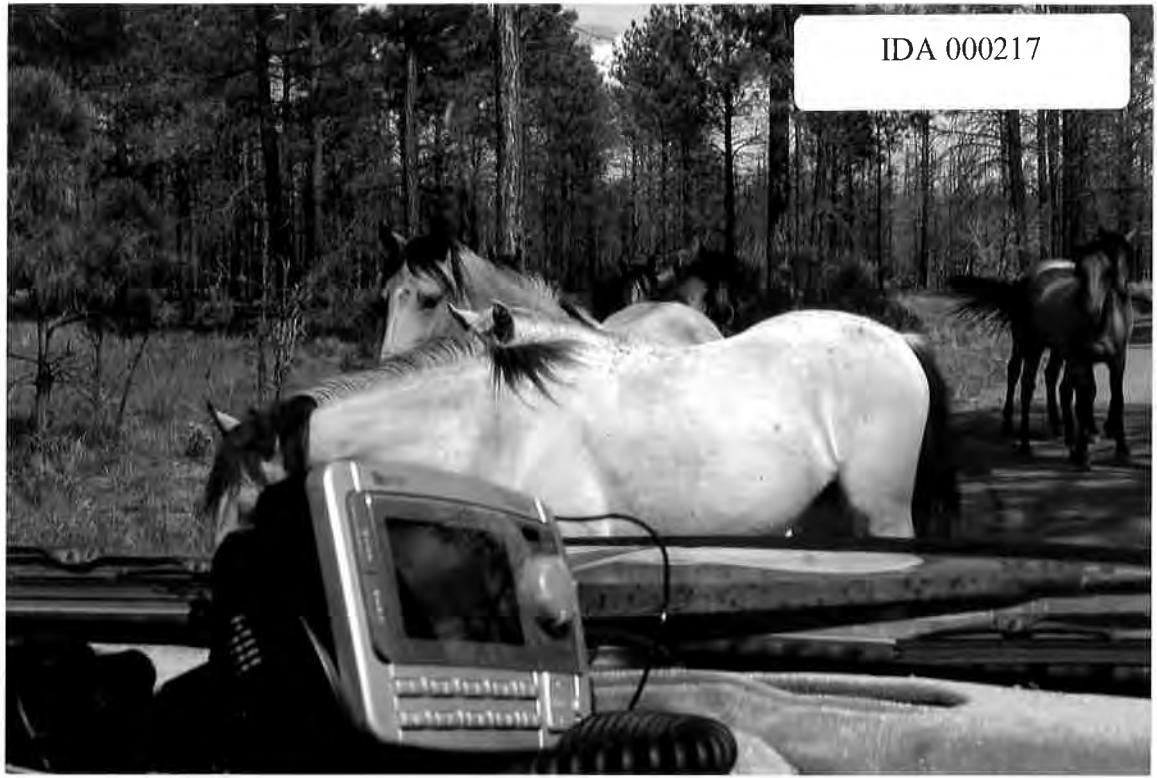
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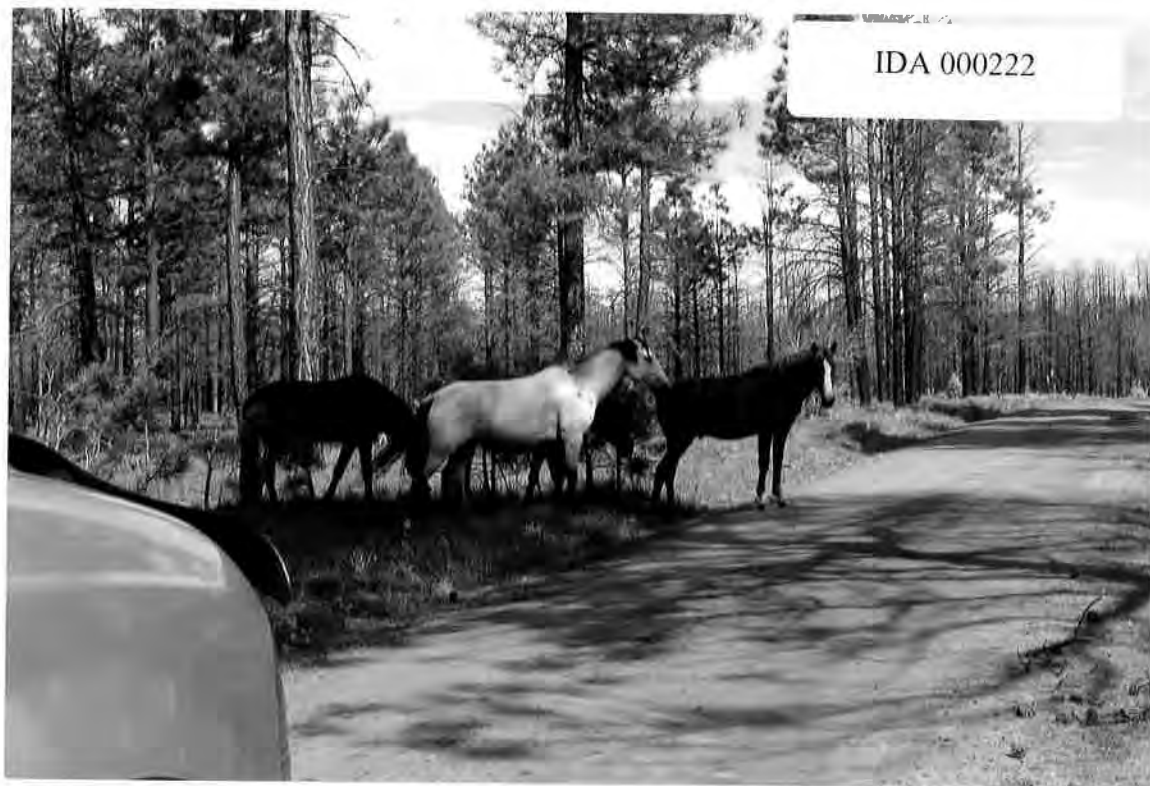




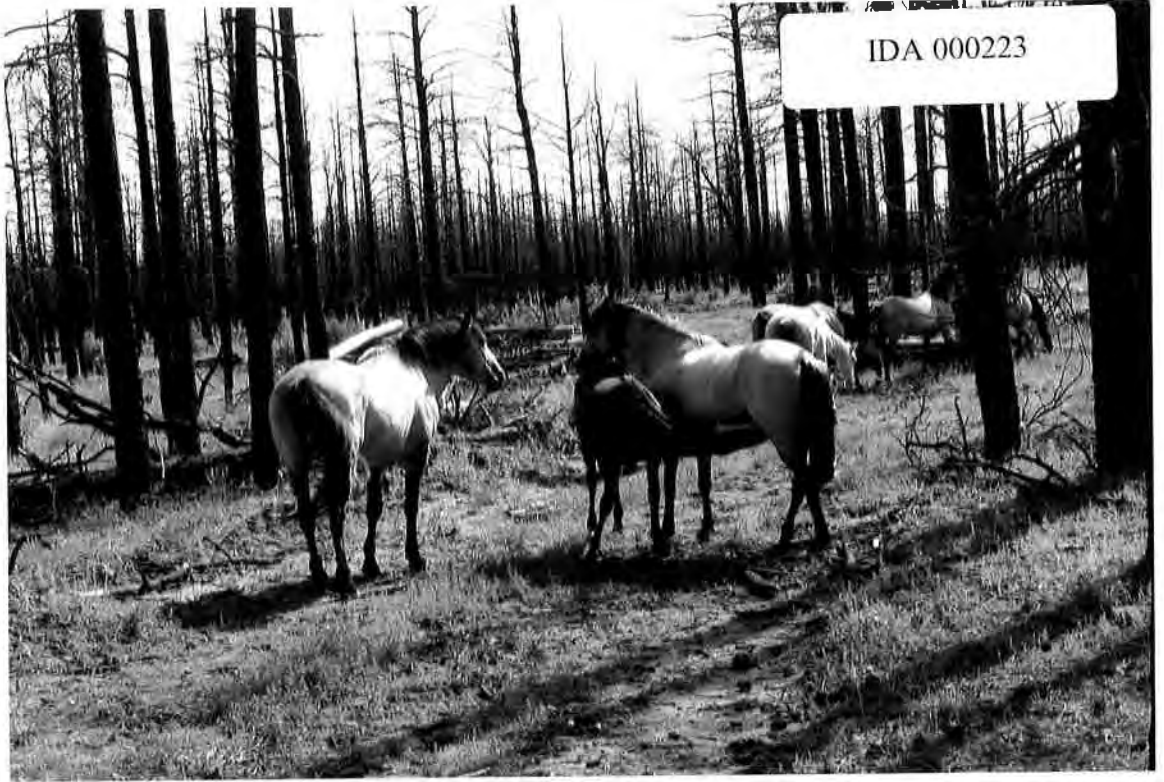
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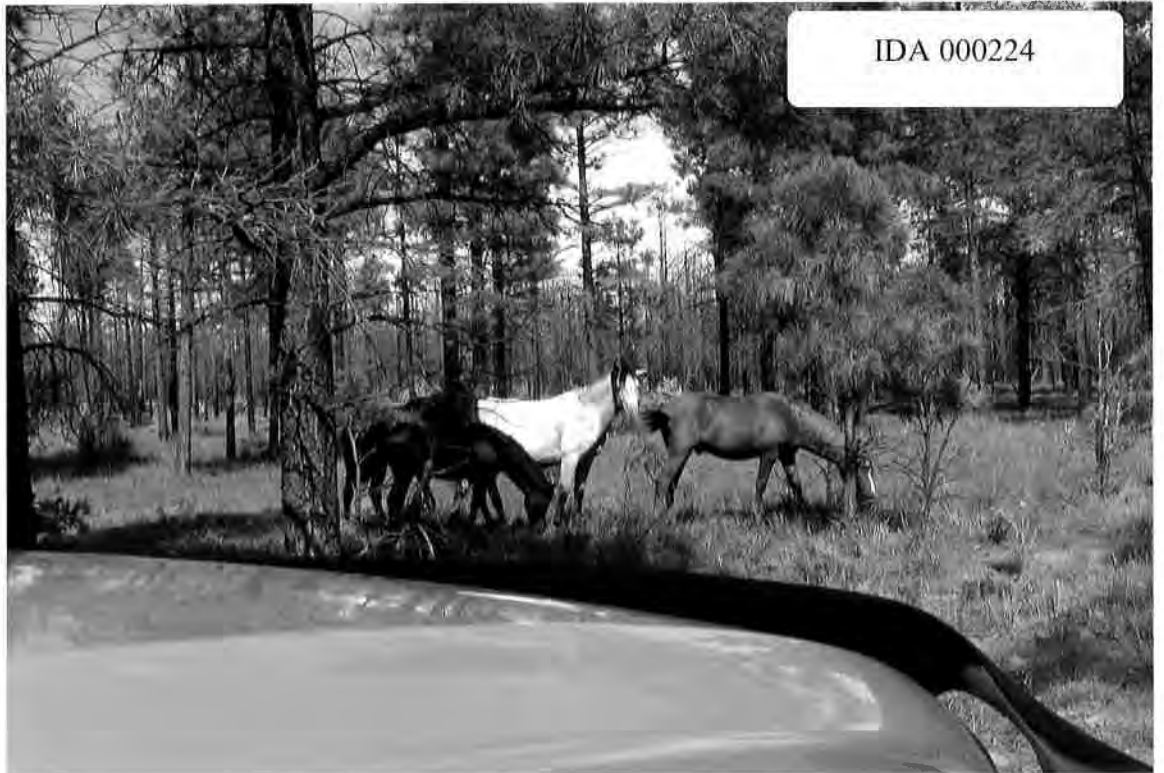
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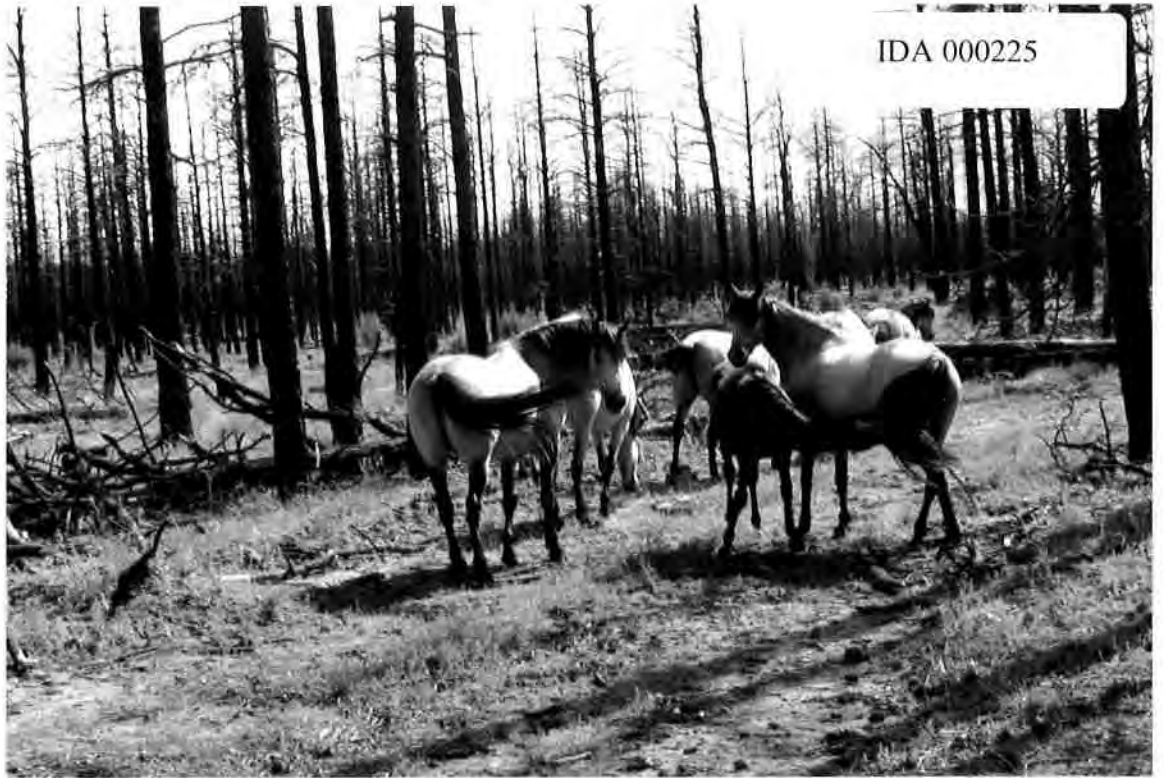


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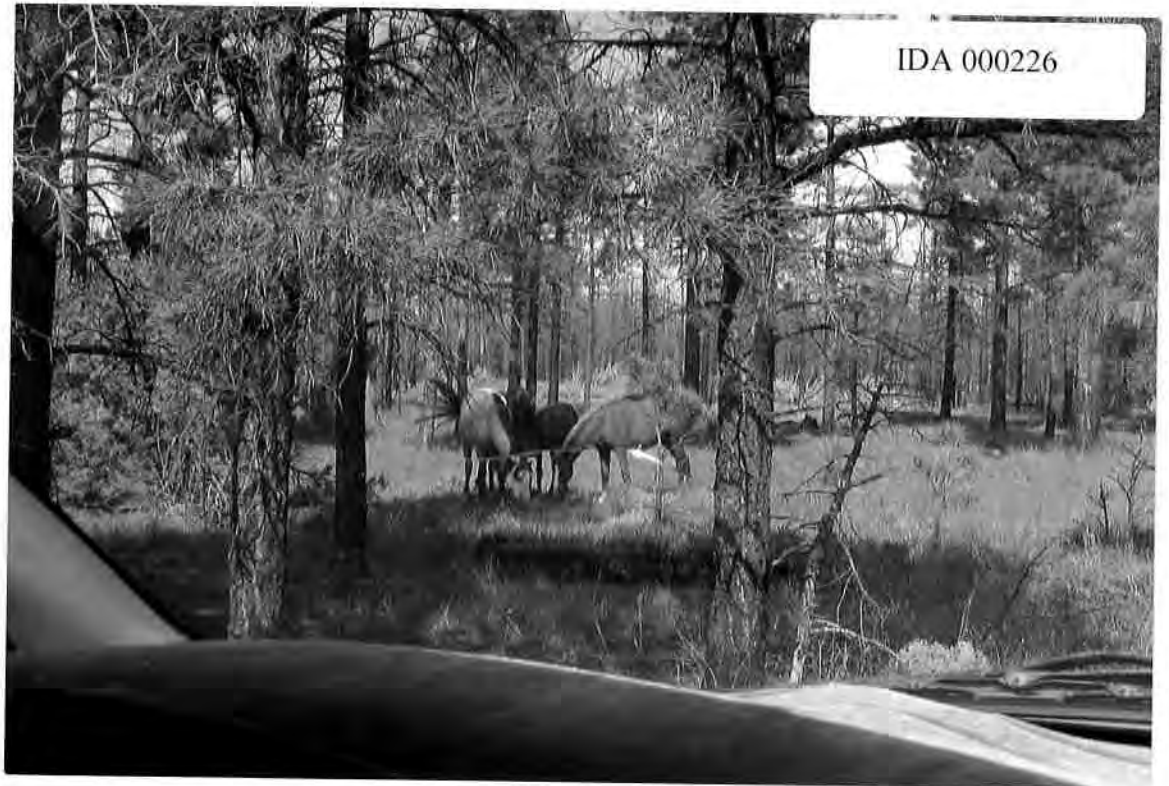




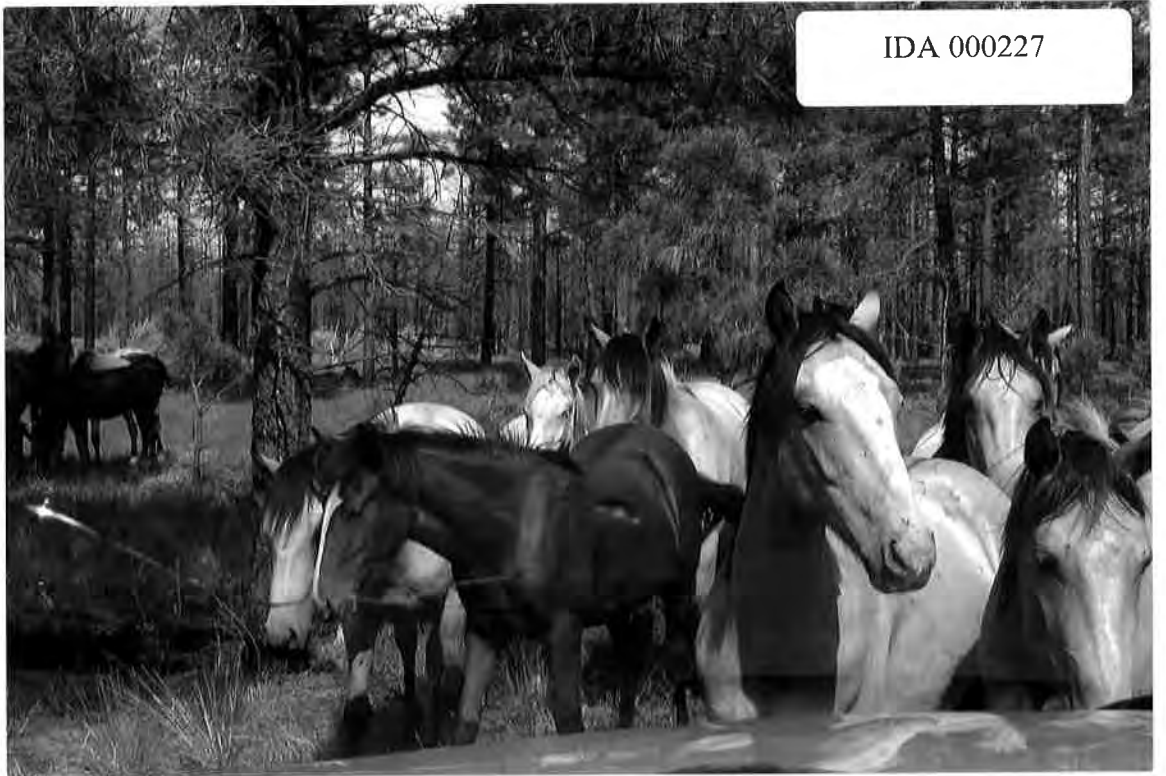
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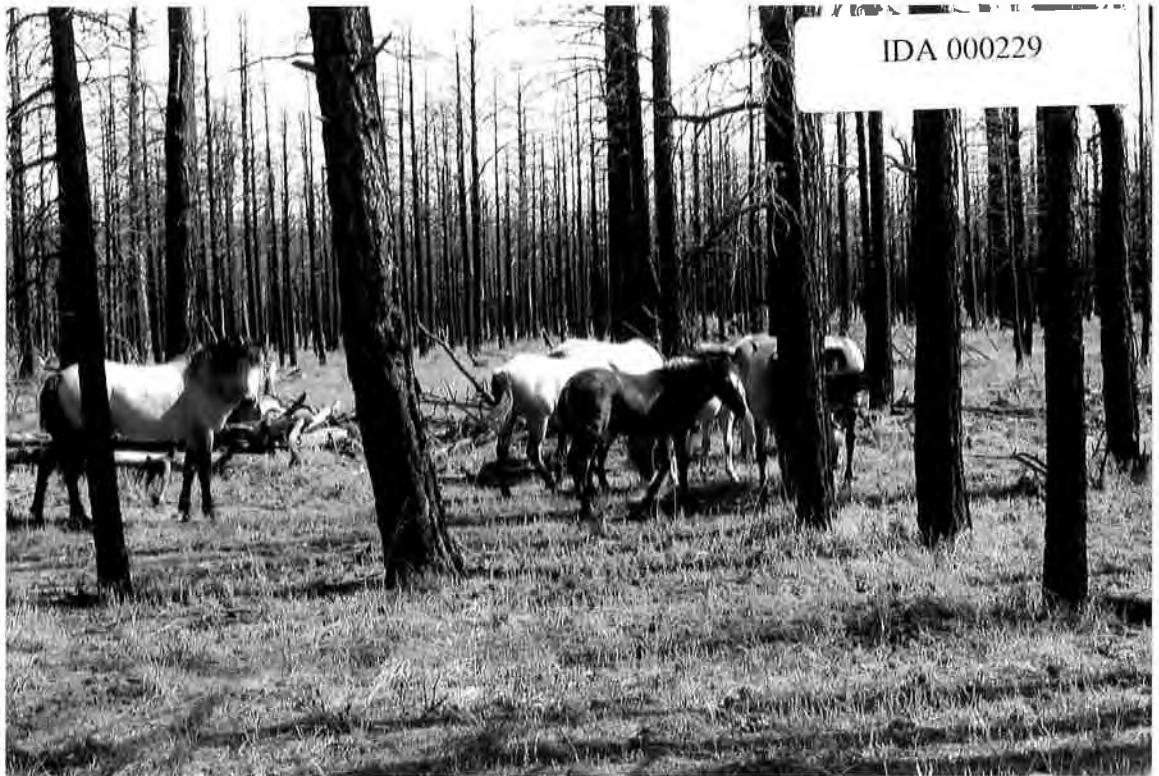


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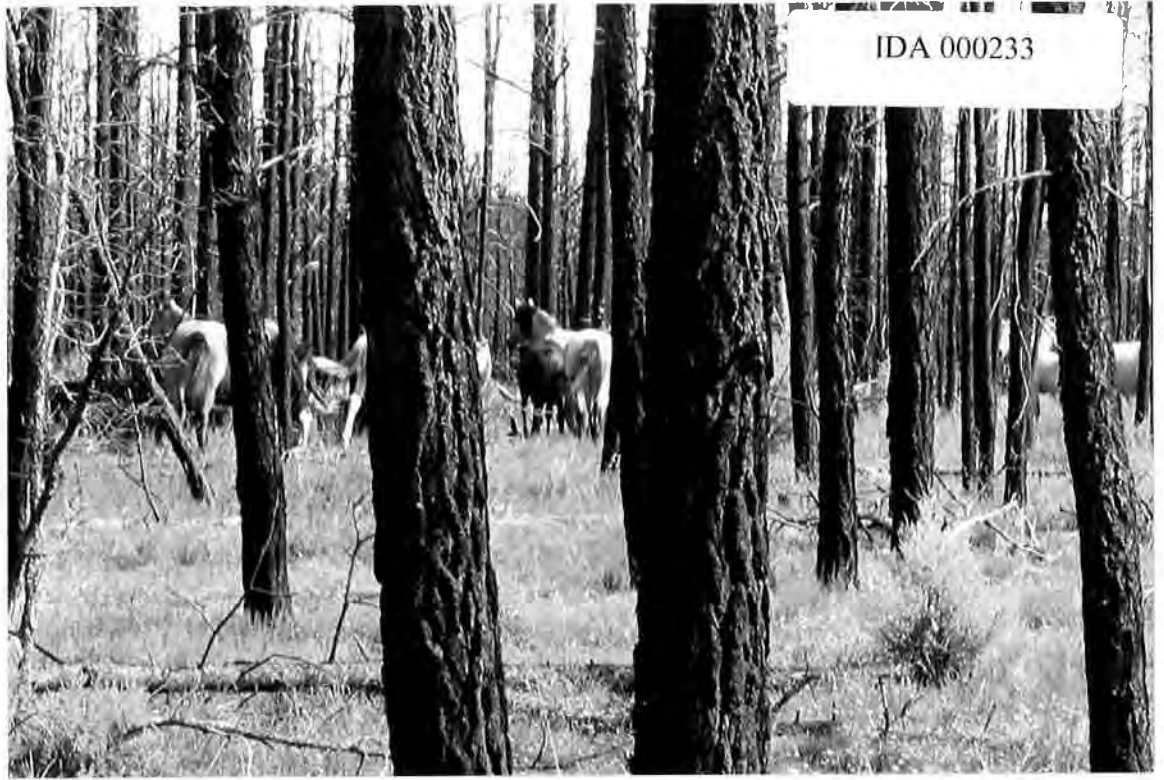
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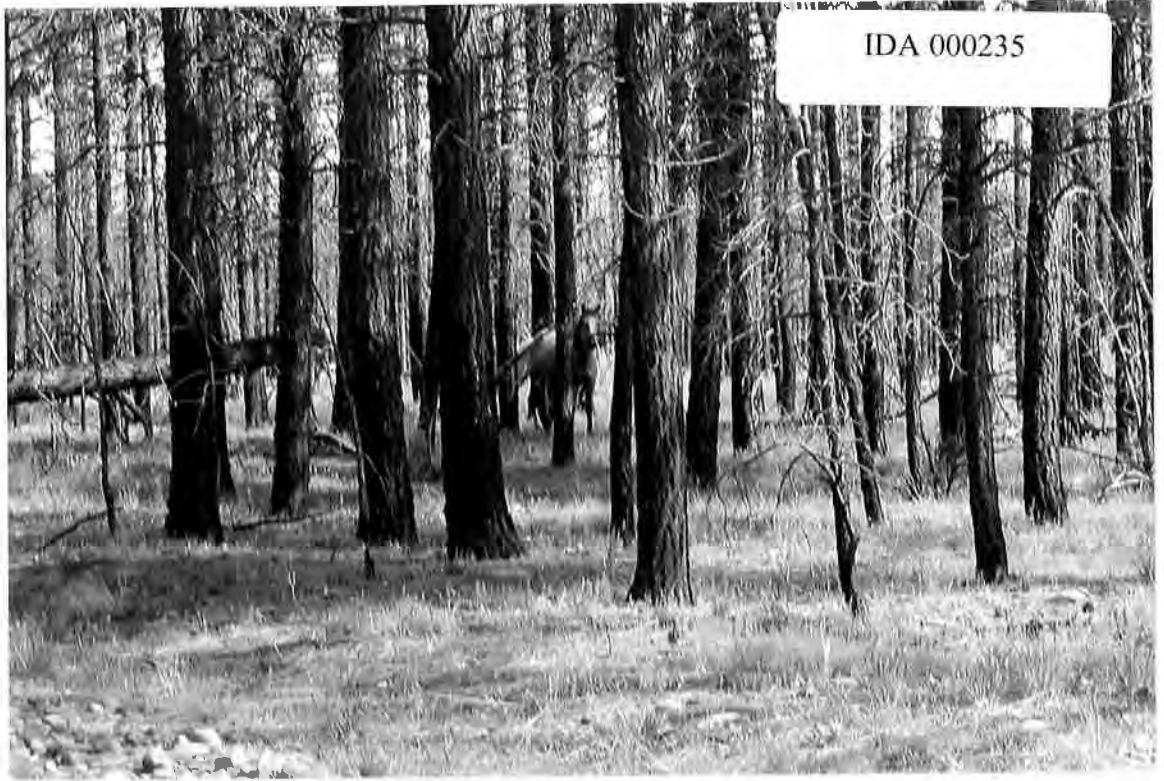


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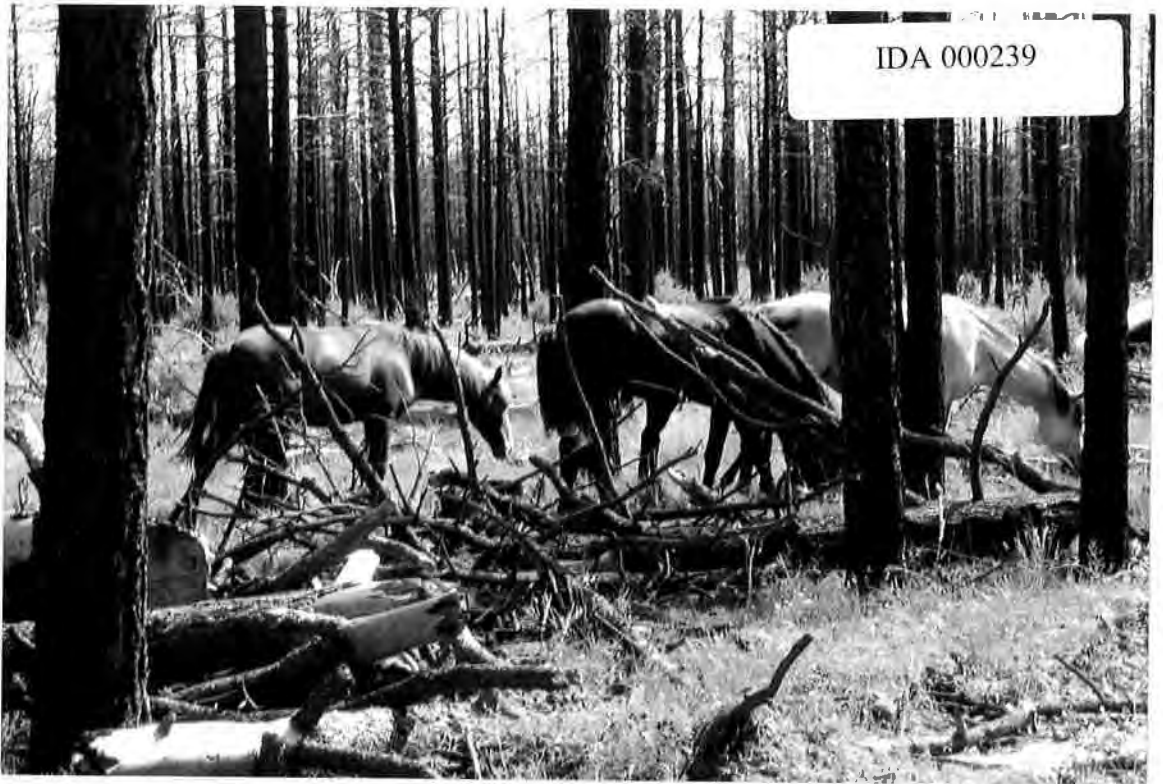


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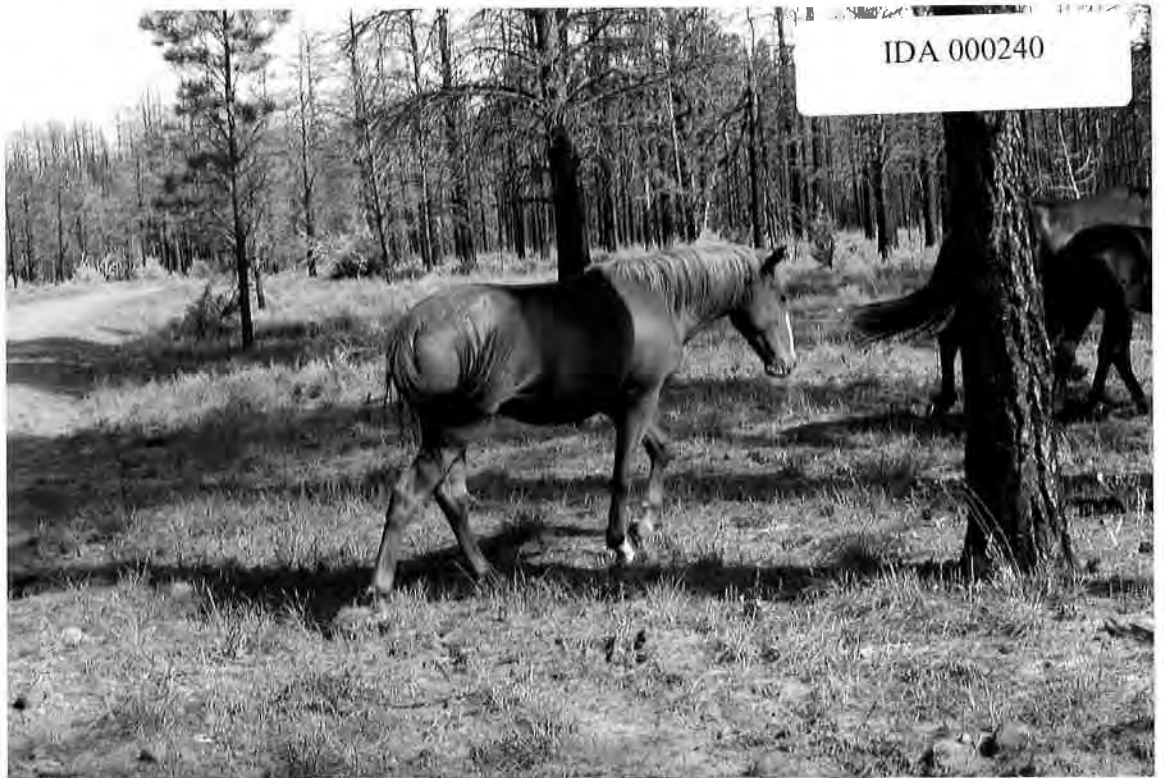


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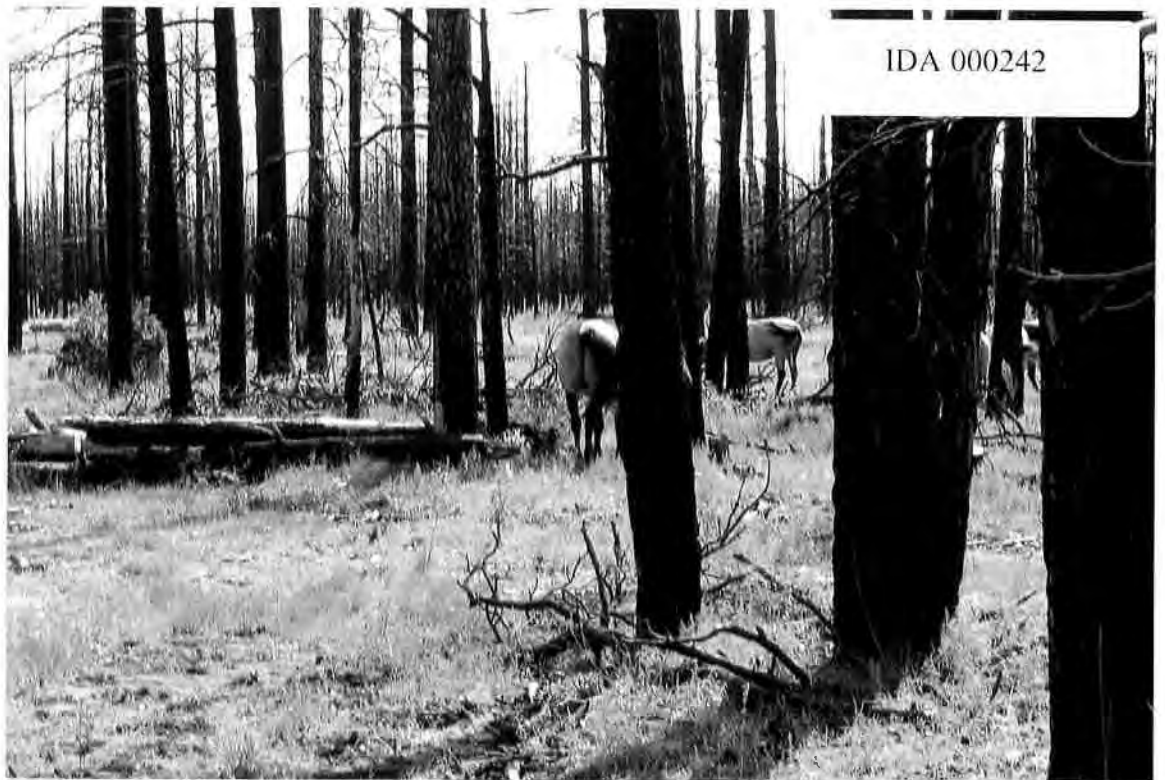


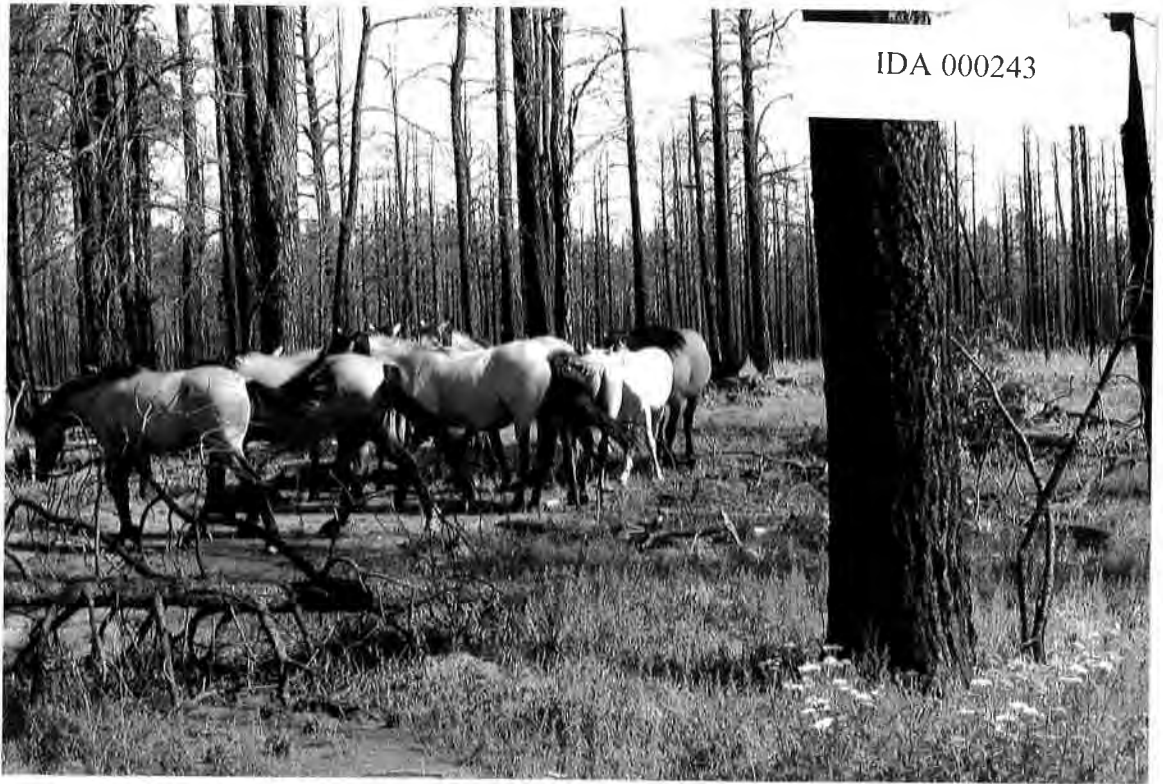
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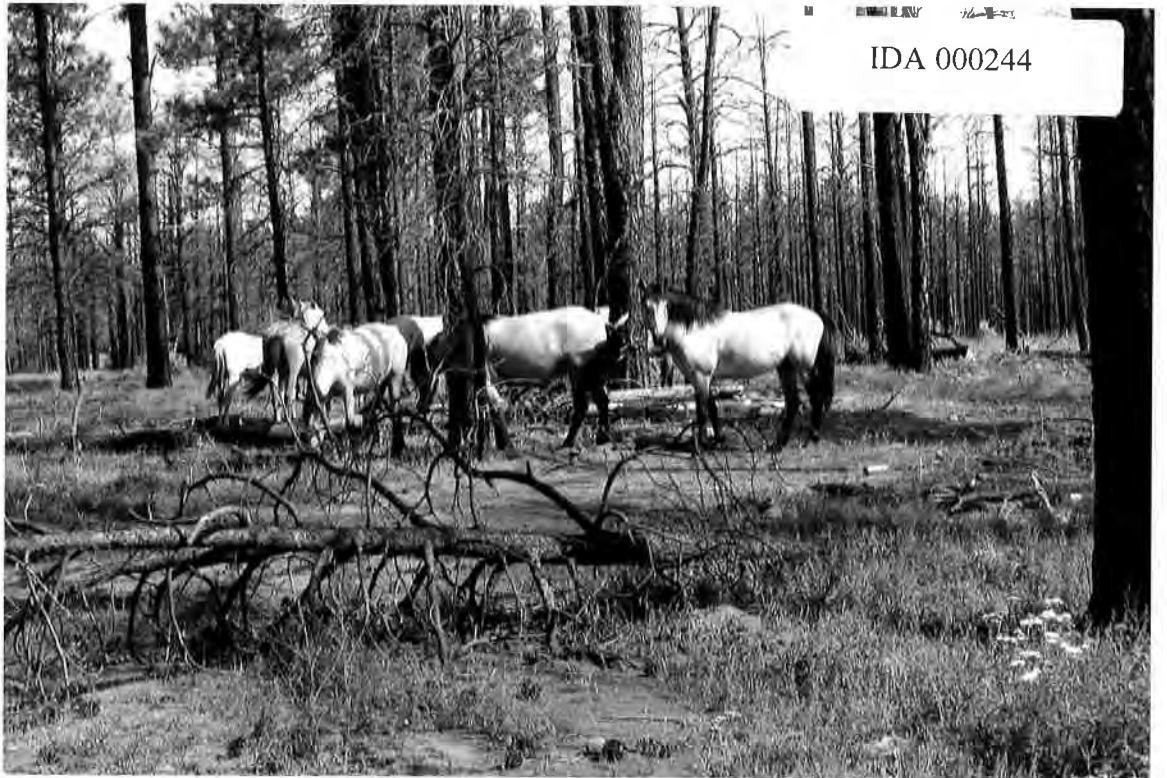
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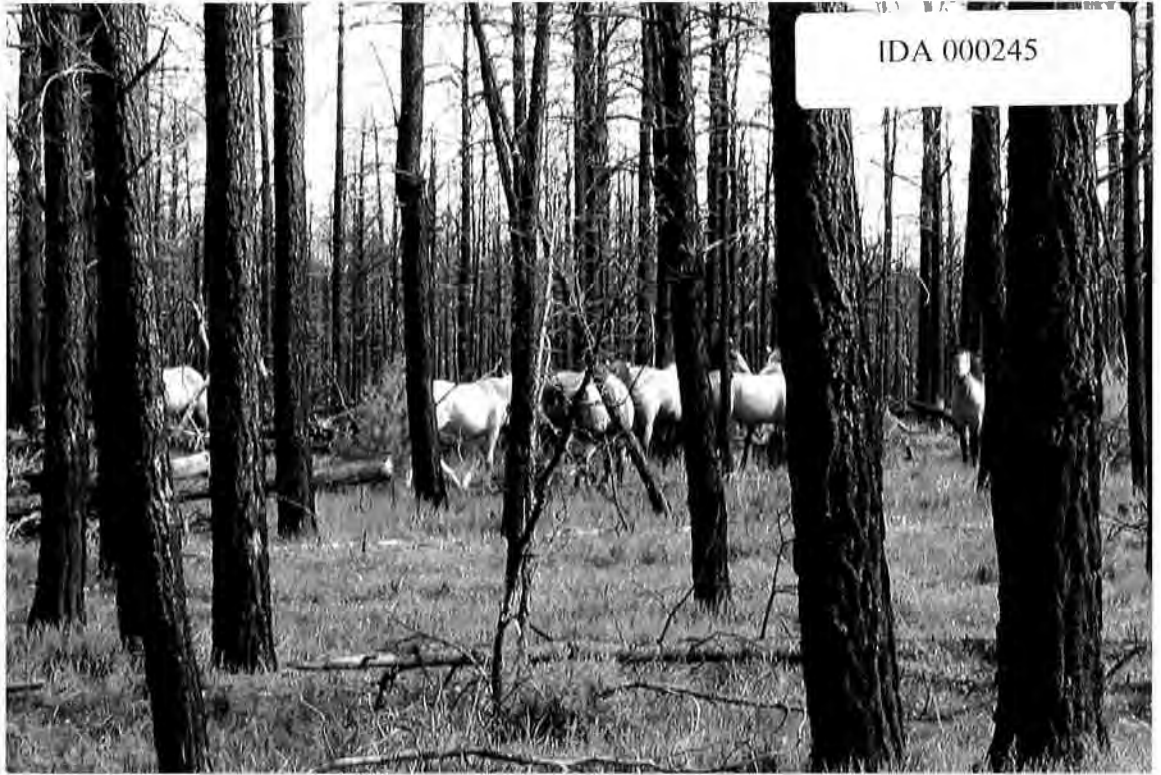


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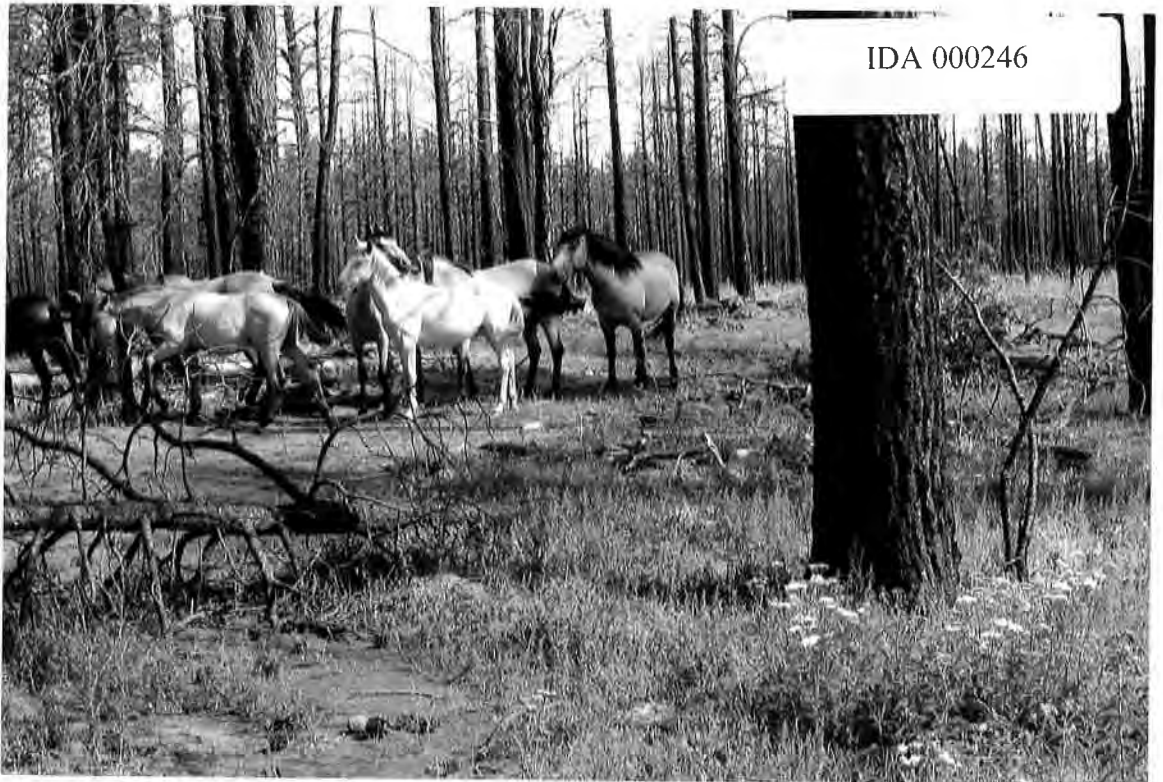


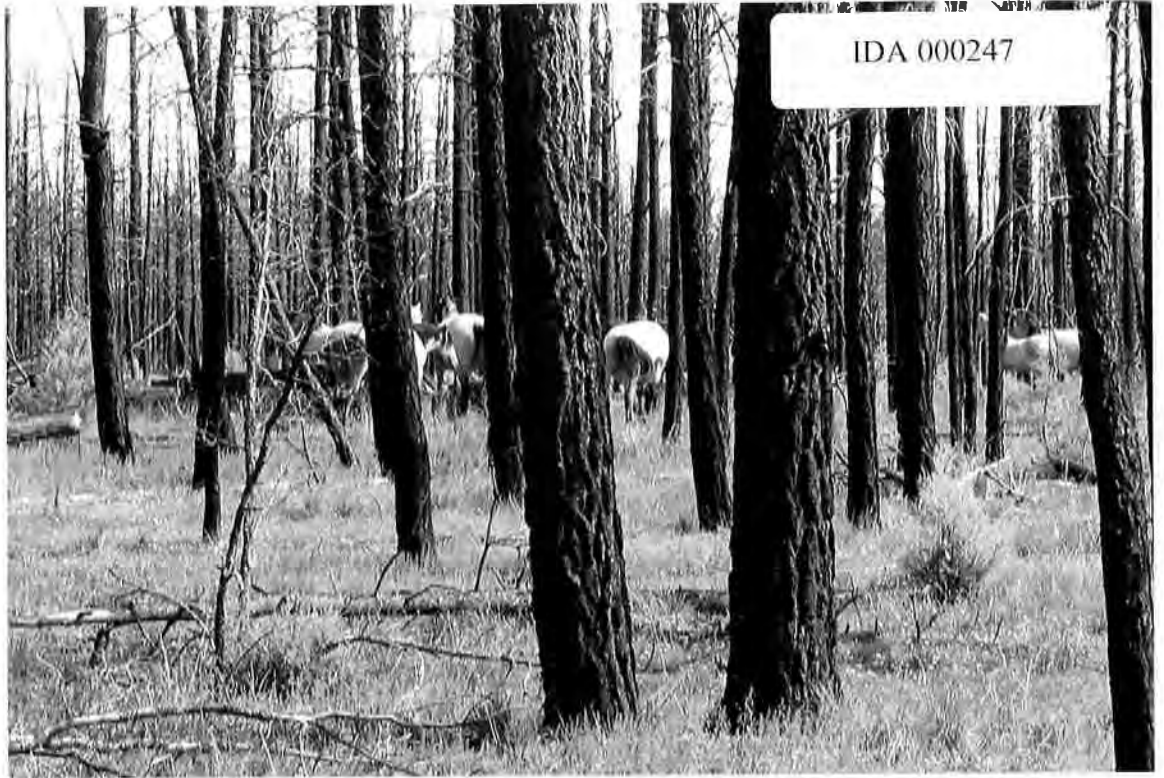
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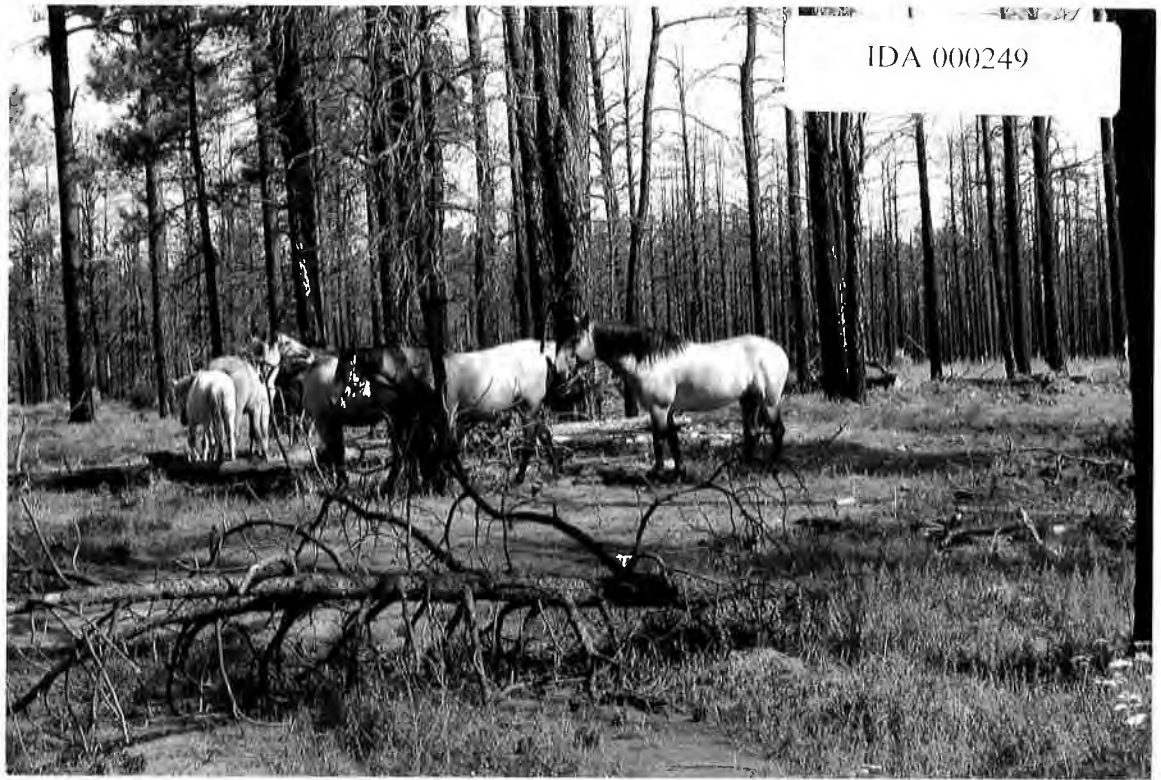


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**P**

The congressional district I represent would not be such a wonderful place without organizations such as this one, many of which are inspired by the Sikeston American Legion Auxiliary. Most notably, the Sikeston American Legion Auxiliary takes a keen interest in enriching the lives of young people. By sponsoring participants in Missouri Girls State and contributing to programs like Sikeston's Teacher Appreciation Week and the YMCA, the Sikeston American Legion Auxiliary makes a profound investment in our future leaders. Neither does the Sikeston American Legion Auxiliary forget those who served, supporting efforts at the Missouri Veterans Home, the John J. Pershing Veterans Hospital, the Missouri State Veterans Cemetery, and conducting an annual drive to benefit local disabled veterans. There are so many other ways in which the Sikeston American Legion Auxiliary lends its support to our community, they are too numerous to list today.

Ultimately, the Sikeston American Legion Auxiliary embodies the virtues of service. They are an active organization which is well-known throughout the region for its year-in, year-out commitment to the care, enrichment and betterment of the Sikeston community.

As a way of recognizing and honoring the important contributions of the Sikeston American Legion Auxiliary, I am proud to commend them for 80 years of philanthropy in the Eighth Congressional District of Missouri and to wish them all the best as they continue to endeavor in the charitable service of our community.

CELEBRATING THE ACCOMPLISHMENTS AND RETIREMENT OF  
ALETTE LUNDEBERG

**HON. MICHAEL M. HONDA**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 6, 2007*

Mr. HONDA. Madam Speaker, today I rise to recognize the contributions and well-deserved retirement of Ms. Alette Lundeberg. Alette has served the County of Santa Clara for 23 years, and has worked tirelessly for decades as an advocate for poor and indigent peoples, founding numerous programs for the underserved population in the community. Alette has been a leading figure on welfare and refugee issues at the local, state, and national levels.

Alette Lundeberg began demonstrating her leadership ability through teaching in the 1970s as an instructor at San Jose State University and De Anza College in Cupertino. She taught a graduate-level social science course focusing on public service. In addition to teaching, Alette worked as the Community School Director for the Sunnyvale Elementary School District, where she established city-wide community education programs for women.

From 1977 to 1979, Alette worked in the County Executive's Office of Santa Clara as an Associate Management Analyst. She investigated and mediated complaints of discrimination, analyzed legislation, and prepared funding proposals.

In the 1980s, Alette started working with the Social Services Agency's Refugee program. She was responsible for the \$16 million dollar annual budget and managed 130 staff mem-

bers while collaborating with local counties and states on legislation issues.

In the late 1990s, Alette was appointed as Administrator of Benefit Services for the Santa Clara County Social Services Agency. She has been responsible for the Agency's Employment Support Initiative, which has been the planning arena for the California Work Opportunity and Responsibility to Kids, a welfare program that assists California families through services and cash aid. Aside from working as the Administrator of Benefit Services, Alette has also been a Board Member for numerous local community groups including the San Jose Development Corporation, Planned Parenthood of Santa Clara County, and Asian Americans for Community Involvement.

Madam Speaker, I rise today to honor this wonderful role model and mentor: Alette was my teacher on women's issues. Alette has spent countless years enriching the community through her leadership and dedication. Alette Lundeberg's work has been inspirational to many in the community and I offer her my best wishes for her much deserved retirement and thank her once again for her work serving the people of Santa Clara County.

HONORING GEORGE E. STEPP

**HON. TOM DAVIS**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 6, 2007*

Mr. TOM DAVIS of Virginia. Madam Speaker, I rise today to honor Mr. George E. Stepp for 38 years of dedicated service to the youth of Fairfax, VA.

Mr. Stepp began his career in 1969 as a social studies teacher with Fairfax County Public Schools. He quickly and eagerly made the transition to the administrative side when he was promoted to become assistant principal at Falls Church High School. Mr. Stepp went on to serve as principal at West Springfield High School for 6 years and Lake Braddock Secondary School for 3 years. In 1989, he became the superintendent of schools for area IV in the Fairfax County Public School system. He served in this position until he retired to become superintendent of schools for the city of Fairfax.

Over his career, Mr. Stepp has demonstrated an interest in his students, a desire to help them succeed, and the ability to put these aspirations into policies that create positive tangible outcomes. All students, faculty and parents who have been through one of his school's have expressed their heartfelt appreciation for the tireless work he has undertaken on their behalf.

Madam Speaker, in closing, I would like to commend and congratulate Mr. George E. Stepp for all of his accomplishments. His legacy of success is found in each and every student who has traveled through his halls, taken his tests, and is now a contributing member of our community. While he will be greatly missed, his retirement is well deserved. I call upon my colleagues to join me in applauding George for these past accomplishments and in wishing him continued success in the years to come.

HONORING ARIZONA'S WILD HORSES

**HON. RAÚL M. GRIJALVA**

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 6, 2007*

Mr. GRIJALVA. Madam Speaker, I rise today to honor Arizona's wild horses living in the Apache-Sitgreaves National Forests.

The residents of the State of Arizona deeply value these magnificent wild horses.

These beautiful wild horses are truly the "Living Symbols of the West," as described by the Wild Horse and Burro Act passed by Congress in 1971 to protect the wild horses of the United States.

The Rim Country wild horses date back to mounts brought by Father Eusebio Kino, who began his 1653 mission to eastern Arizona by setting out from the lands of my constituency in southern Arizona and traveling across our State northeast to the "borders of the lands of the Apacheria which border on New Mexico."

These original Spanish horses are the great ancestors of the Mogollon Rim country wild horses. They were the mighty Andalusian war horse, whose origins go back more than 28,000 years to the original Iberian horse; the magnificent Spanish Barb; and the graceful and fluid Spanish Jennet, the mount of many of the great kings of Europe; and the strong bloodlines of these original horses appear almost unchanged in our Rim wild horses 400 years later.

Our Arizona Rim wild horses are the direct descendants of the Spanish horses prized by the conquistadors so highly that the foals were carried in hammocks to protect their legs until they were old enough to travel on the forced marches; and prized by the early cattlemen for their endurance and heart and were the very mounts of the U.S. Cavalry as they rode to protect and expand the American west.

The Arizona Rim Country wild horses living in Apache-Sitgreaves National Forests are a most precious natural resource to be preserved for our children and grandchildren who will be able to see them for generations to come.

THE PGA OF AMERICA/DISABLED SPORTS USA MILITARY GOLF PROGRAM

**HON. RON KLEIN**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 6, 2007*

Mr. KLEIN of Florida. Madam Speaker, I rise today to recognize an excellent new project to improve the lives of American soldiers who were wounded serving our country: the Disabled Sports USA Military Golf Program. The Wounded Warrior Project, Disabled Sports USA, America Supports You and the PGA of America have created a new program that aims to help rehabilitate veterans severely wounded in Iraq and Afghanistan. By instructing these wounded warriors how to play golf, the PGA and Disabled Sports USA teaches our disabled veterans a fulfilling recreation pursuit.

These organizations provide invaluable services to our veterans. Wounded Warriors

Q



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8 Attorneys for Plaintiffs

9 Paul K. Charlton  
10 United States Attorney  
11 Richard Patrick  
12 Assistant U.S. Attorney  
13 Two Renaissance Square  
14 40 North Central Avenue, Suite 1200  
15 Phoenix, Arizona 85004-4406  
16 (602) 514-7500  
17 Attorneys for Federal Defendants

18 **UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 IN DEFENSE OF ANIMALS, a non-profit  
21 organization; the ANIMAL WELFARE  
22 INSTITUTE, a non-profit organization; and  
23 the INTERNATIONAL SOCIETY FOR THE  
24 PROTECTION OF MUSTANGS and  
25 BURROS, a non-profit organization;  
26 PATRICIA HAIGHT, an individual;  
27 RICHARD POTTS, an individual,

28 Plaintiffs,

vs.

UNITED STATES GOVERNMENT,  
DEPARTMENT OF AGRICULTURE, MIKE  
JOHANNNS, as acting UNITED STATES  
SECRETARY OF AGRICULTURE;  
UNITED STATES FOREST SERVICE;  
ELAINE J. ZIEROTH, as the acting UNITED  
STATES FOREST SUPERVISOR,

Case No. CV-05-2754- PHX -FJM

**STIPULATION AND JOINT  
MOTION FOR ENTRY OF ORDER  
ADOPTING STIPULATION AND  
DISMISSING CLAIMS**

Defendants.

1  
2  
3 Plaintiffs In Defense of Animals, a non-profit organization, the Animal Welfare  
4 Institute, a non-profit organization, the International Society for the Protection of  
5 Mustangs and Burros, a non-profit organization, Dr. Patricia Haight, and Richard Potts  
6 (collectively "Plaintiffs"), and Defendant United States Government, Department of  
7 Agriculture, Mike Johanns as United States Secretary of Agriculture, United States Forest  
8 Service, Elaine J. Zieroth, as the United States Forest Supervisor (collectively "Forest  
9 Service")<sup>1</sup> hereby STIPULATE and JOINTLY MOVE for entry of an order dismissing  
10 the above-captioned action without prejudice on the terms and conditions set forth in this  
11 Stipulation.

12 Plaintiffs commenced Civil Action 05-2754 PHX-FJM against the Forest Service,  
13 on September 9, 2005, alleging violations of the Wild Free Roaming Horses and Burros  
14 Act of 1971, 16 U.S.C. Section 1331, *et seq.* (the "Act"); the National Environmental  
15 Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"); and the Administrative Procedure Act, 5  
16 U.S.C. § 701, *et seq.* ("APA"), in connection with the issuance of a Solicitation for Bid  
17 for the capture, relocation, and eventual sale of approximately 120 trespass horses, from  
18 an unknown number of horses residing on public lands.

19 IT IS STIPULATED by and between the parties as follows:

20 1. The Parties agree that settlement of the Civil Action on the conditions  
21 stated below is in the public interest and is an appropriate way to resolve the present  
22 dispute between them.

23 2. The undersigned representatives of Plaintiffs and the Forest Service certify  
24 that they are fully authorized by the party or parties whom they represent to enter into this  
25 Stipulation and legally bind the Parties to the terms and conditions contained herein.

26  
27  
28 <sup>1</sup> Mike Johanns is substituted for Ann M. Veneman pursuant to Rule 25(d), Fed. R. Civ. P.

1           3.     The Parties hereby agree that the Heber Wild Horse Territory still exists  
2 and has not been dissolved.

3           4.     The Parties hereby agree that wild horses are by law an integral part and  
4 component of the natural system of the public lands, as expressed by Congress in the  
5 Wild Free-Roaming Horses and Burros Act of 1971 as amended. The Forest Service will  
6 work with the public, including Plaintiffs, in the development of a written Heber Wild  
7 Horse Territory Management Strategy in accordance with the provisions of the Act.

8           5.     The Forest Service agrees to refrain from any gathering or removing of  
9 horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and  
10 Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until the  
11 Forest Service completes, with public involvement, an analysis and appropriate  
12 environmental document pursuant to NEPA and develops a written Heber Wild Horse  
13 Territory Management Strategy. The Forest Service will involve the public, including the  
14 Plaintiffs, in scoping for this analysis. The Forest Service will provide Plaintiffs with  
15 specific notice of the document and consider Plaintiffs' comments on the same, however,  
16 Plaintiffs' comments are not entitled to any different weight or consideration than any  
17 other member of the public.

18           6.     The Forest Service will continue to coordinate with the White Mountain  
19 Apache Tribe for repair and maintenance of the boundary fence.

20           7.     Plaintiffs reserve the right to object to any provision, term, or condition  
21 contained in the Management Strategy and/or the results of any study, assessment, or  
22 evaluation used to support the Management Strategy. Nothing in this Stipulation shall  
23 bar Plaintiffs from filing a new civil action in the future should there be a dispute  
24 involving this Stipulation, the NEPA process or final NEPA document, and/or the  
25 Management Strategy.

26           8.     Upon approval of this Stipulation and granting of this Joint Motion by the  
27 Court, all counts of Plaintiffs' Complaint in Civil Action 05-2754 PHX-FJM shall be  
28 dismissed without prejudice and parties will agree to vacate the injunction.

1 9. Upon dismissal of this civil action, the Forest Service will pay the Plaintiffs  
2 a total of \$3,000.00 in full and complete satisfaction of any and all claims for attorneys'  
3 fees and costs of litigation by Plaintiffs for pursuing Civil Action 05-2754 PHX-FJM.

4 10. Plaintiffs agree that receipt of this payment from the Forest Service shall  
5 operate as a release of any and all claims for attorneys' fees and costs that Plaintiffs may  
6 seek to pursue in Civil Action 05-2754-PHX-FJM.

7 11. The Parties agree and understand that the Forest Service's obligations under  
8 this Stipulated Settlement Agreement, with exception of those listed in Paragraph 10, are  
9 contingent upon the availability of appropriate funds, and that nothing in this Agreement  
10 shall be construed as a commitment or requirement that the Forest Service obligate or pay  
11 funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable  
12 law.

13 12. Nothing in this Stipulation and Joint Motion constitutes an admission by  
14 any Party to any fact, claim, or defense at issue in this lawsuit.

15 DATED: this 13th day of March, 2007.

16 s/ Paul K. Charlton  
17 PAUL K. CHARLTON  
United States Attorney

18 s/ Richard Patrick  
19 RICHARD PATRICK  
20 Assistant U.S. Attorney  
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21 40 North Central Avenue, Suite 1200  
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22 (602) 514-7500

23 Attorneys for Federal Defendants

24 s/ Anthony W. Merrill  
25 ANTHONY W. MERRILL, ESQ.  
BRYAN CAVE LLP  
26 Two North Central Avenue, Suite 2200  
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27 (602) 364-7000

28 Attorney for Plaintiffs

**Patrick, Sheri**

---

**From:** azddb\_responses@azd.uscourts.gov

**Sent:** Wednesday, March 21, 2007 3:55 PM

**To:** azddb\_nefs@azd.uscourts.gov

**Subject:** Activity in Case 3:05-cv-02754-FJM In Defense of Animals, et al. vs. US Department of Agriculture, et al. Order Dismissing Case

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**U.S. District Court**

**DISTRICT OF ARIZONA**

**Notice of Electronic Filing**

The following transaction was entered on 3/21/2007 at 3:54 PM MST and filed on 3/21/2007

**Case Name:** In Defense of Animals, et al. vs. US Department of Agriculture, et al.

**Case Number:** 3:05-cv-2754

**Filer:**

**WARNING: CASE CLOSED on 03/21/2007**

**Document Number:** 55

**Docket Text:**

ORDER DISMISSING CASE granting stipulation and joint motion [54]; ORDERED ADJUDGED AND DECREED adopting the terms set forth in the parties' stipulation and joint motion for entry of order; dismissing the above-captioned litigation without prejudice and vacating the preliminary injunction entered on 12/13/05. Signed by Judge Frederick J Martone on 3/21/2007. (LAD, )

**3:05-cv-2754 Notice has been electronically mailed to:**

Richard Glenn Patrick richard.patrick@usdoj.gov, USAAZ.ECFPCivil@usdoj.gov,

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pxdoCKET@bryancave.com

**3:05-cv-2754 Notice will be sent by other means to those listed below who are affected by this filing:**

The following document(s) are associated with this transaction: 1

**Document description:**Main Document

3/21/2007

**Original filename:**n/a

**Electronic document Stamp:**

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**R**

Statement for the 109th Congress (1st Session) in support of H.R. 297  
A Bill in the House of Representatives  
House Committee on Resources  
Introduced January 25, 2005

To restore the prohibition on the commercial sale and slaughter of wild free-roaming horses and burros.

#### Wild Horses as Native North American Wildlife

By Jay F. Kirkpatrick, Ph.D. and Patricia M. Fazio, Ph.D.

Are wild horses truly "wild," as an indigenous species in North America, or are they "feral" weeds – barnyard escapees, far removed genetically from their prehistoric ancestors? The question at hand is, therefore, whether or not modern horses, *Equus caballus*, should be considered native wildlife.

The genus *Equus*, which includes modern horses, zebras, and asses, is the only surviving genus in a once diverse family of horses that included 27 genera. The precise date of origin for the genus *Equus* is unknown, but evidence documents the dispersal of *Equus* from North America to Eurasia approximately 2-3 million years ago and a possible origin at about 3.4-3.9 million years ago. Following this original emigration, several extinctions occurred in North America, with additional migrations to Asia (presumably across the Bering Land Bridge), and return migrations back to North America, over time. The last North American extinction occurred between 13,000 and 11,000 years ago.<sup>1</sup> Had it not been for previous westward migration, over the land bridge, into northwestern Russia (Siberia) and Asia, the horse would have faced complete extinction. However, *Equus* survived and spread to all continents of the globe, except Australia and Antarctica.

In 1493, on Columbus' second voyage to the Americas, Spanish horses, representing *E. caballus*, were brought back to North America, first in the Virgin Islands, and, in 1519, they were reintroduced on the continent, in modern-day Mexico, from where they radiated throughout the American Great Plains, after escape from their owners.<sup>2</sup>

Critics of the idea that the North American wild horse is a native animal, using only paleontological data, assert that the species, *E. caballus* (or the caballoid horse), which was introduced in 1519, was a different species from that which disappeared 13,000 to 11,000 years before. Herein lies the crux of the debate. However, the relatively new (27-year-old) field of molecular biology, using mitochondrial-DNA analysis, has recently found that the modern or caballine horse, *E. caballus*, is genetically equivalent to *E. lambei*, a horse, according to fossil records, that represented the most recent *Equus* species in North America prior to extinction. Not only is *E. caballus* genetically equivalent to *E. lambei*, but no evidence exists for the origin of *E. caballus* anywhere except North America.<sup>3</sup>

According to the work of Uppsala University researcher Ann Forstén, of the Department of Evolutionary Biology, the date of origin, based on mutation rates for mitochondrial-DNA, for *E. caballus*, is set at approximately 1.7 million years ago in North America. Now the debate becomes one of whether the older paleontological fossil data or the modern molecular biology data more accurately provide a picture of horse evolution. The older taxonomic methodologies looked at physical form for classifying animals and plants, relying on visual observations of physical characteristics. While earlier taxonomists tried to deal with the subjectivity of choosing characters they felt would adequately describe, and thus group, genera and species, these observations were lacking in precision. Reclassifications are now taking place, based on the power and objectivity of molecular biology. If one considers primate evolution, for example, the molecular biologists have provided us with a completely different evolutionary pathway for humans, and they have described entirely different relationships with other primates. None of this would have been possible prior to the methodologies now available through mitochondrial-DNA analysis.

Carles Vilà, also of the Department of Evolutionary Biology at Uppsala University, has corroborated Forstén's work. Vilà et al have shown that the origin of domestic horse lineages was extremely widespread, over time and geography, and supports the existence of the caballoid horse in North America before its disappearance.<sup>4</sup>

Finally, the work of Hofreiter et al,<sup>5</sup> examining the genetics of the so-called *E. lambei* from the permafrost of Alaska, found that the variation was within that of modern horses, which translates into *E. lambei* actually being *E. caballus*, genetically. The molecular biology evidence is incontrovertible and indisputable. The fact that horses were domesticated before they were reintroduced matters little from a biological viewpoint. They are the same species that originated here, and whether or not they were domesticated is quite irrelevant. Domestication altered little biology, and we can see that in the phenomenon called "going wild," where wild horses revert to ancient behavioral patterns. James Dean Feist dubbed this "social conservation" in his paper on behavior patterns and communication in the Pryor Mountain wild horses. The reemergence of primitive behaviors, resembling those of the plains zebra, indicated to him the shallowness of domestication in horses.<sup>6</sup>

The issue of feralization and the use of the word "feral" is a human construct that has little biological meaning except in transitory behavior, usually forced on the animal in some manner. Consider this parallel. *E. przewalski* (Mongolian wild horse) disappeared from Mongolia a hundred years ago. It has survived since then in zoos. That is not domestication in the classic sense, but it is captivity, with keepers providing food and veterinarians providing health care. Then they were released a few years back and now repopulate their native range in Mongolia. Are they a reintroduced native species or not? And what is the difference between them and *E. caballus* in North America, except for the time frame and degree of captivity?

The key element in describing an animal as a native species is (1) where it originated; and (2) whether or not it co-evolved with its habitat. Clearly, *E. caballus* did both, here in North America. There might be arguments about "breeds," but there are no scientific grounds for arguments about "species." The non-native, feral, and exotic designations given by agencies are not merely reflections of their failure to understand modern science, but also a reflection of their desire to preserve old ways of thinking to keep alive the conflict between a species (wild horses) with no economic value anymore (by law) and the economic value of commercial livestock. Native status for wild horses would place these animals, under law, within a new category for management considerations. As a form of wildlife, embedded with wildness, ancient behavioral patterns, and the morphology and biology of a sensitive prey species, they may finally be released from the "livestock-gone-loose" appellation.

Jay F. Kirkpatrick, Director, The Science and Conservation Center, Billings, Montana, holds a Ph.D. in reproductive physiology from the College of Veterinary Medicine at Cornell University. Patricia M. Fazio is currently a freelance environmental writer and editor residing in Cody, Wyoming and holds a B.S. in animal husbandry/biology from Cornell University, and M.S. in environmental history from the University of Wyoming, and a Ph.D. in environmental history from Texas A&M University, College Station.

1 "Horse Evolution" by Kathleen Hunt from [www.onthenet.com/au/~stear/horse\\_evolution.htm](http://www.onthenet.com/au/~stear/horse_evolution.htm); Bruce J. MacFadden, *Fossil Horses: Systematics, Paleobiology, and Evolution of the Family Equidae* (New York: Cambridge University Press, 1992), p. 205.

2 Patricia Mabee Fazio, "The Fight to Save a Memory: Creation of the Pryor Mountain Wild Horse Range (1968) and Evolving Federal Wild Horse Protection through 1971," doctoral dissertation, Texas A&M University, College Station, 1995, p. 21.

3 Ann Forstén, 1992. Mitochondrial-DNA timetable and the evolution of *Equus*: Comparison of molecular and paleontological evidence. *Ann. Zool. Fennici* 28: 301-309.

4 Carles Vilà, Jennifer A. Leonard, Anders Götherström, Stefan Marklund, Kaj Sandberg, Kerstin Lidén, Robert K. Wayne, Hans Ellegren. 2001. Widespread origins of domestic horse lineages. *Science* 291: 474-477.

5 Hofreiter, Michael; Serre, David; Poinar, Hendrik N.; Kuch, Melanie; Pääbo, Svante. 2001. Ancient DNA. *Nature Reviews Genetics*. 2(5), 353-359.

6 James Dean Feist and Dale R. McCullough. 1976. Behavior patterns and communication in feral horses. *Z. Tierpsychol.* 41: 367.





# Preliminary Injunction Hearing



# Preserve Status Quo

- Plaintiffs seek only to preserve the status quo.
- Defendants intend to irreparably violate the status quo by:
  - Removing horses from the A-S Forests prior to this Court's determination regarding their wild and protected status.

# PI Standard

- Two Tests
  - (1) Likely to succeed on the merits and may suffer irreparable injury absent injunctive relief. See Self-Realization Fellowship Church v. Ananda, 59 F.3d 902, 913 (9th Cir. 1995); and
  - (2) Serious questions going to the merits of a claim and the balance of hardships tips in favor of the moving party. Id.

# PI Standard

- Two tests are not separate, but rather represent a sliding scale in which the required probability of success on the merits decreases as the degree of harm increases.
- See Oakland Tribune, Inc. v. Chronicle Publishing Co., 762 F.2d 1374, 1376 (9th Cir. 1985); Mai Systems Corp. v. Peak Computer, Inc., 991 F.2d 511, 516-17 (9th Cir. 1993).

# Irreparable Harm

- Allowing Defendants to proceed with the unlawful removal of nearly 400 potentially wild horses will result in irreparable injury.
- Once these wild horses are captured and removed, they cannot be replaced.

# Irreparable Harm

- As indicted by the wording of the Wild Horse Act, wild horses “enrich the lives of the American people” and “contribute to the diversity of life forms within the Nation.” 16 U.S.C. 1331.
- As Congress declared in 1971, “these horses . . . are fast disappearing from the American scene.”
- Defendants’ actions constitute more than simply thinning the population, but rather a total removal of all horses within the A-S Forests. Id.

# Serious Questions

- Serious questions refer to matters which cannot be resolved one way or the other by the court at the hearing on the injunction; and
- Which present a need to preserve the status quo lest one side prevent resolution of the matter by altering the status quo.
  - Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988 (en banc), cert. denied, 490 U.S. 1035, 109 S. Ct. 1933 (1989).



# Likelihood of Success/Wild Horse Act

- In 1971, Congress recognized that:  
Wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. 16 U.S.C. § 1331.
- “Wild free-roaming horses and burros shall be protected . . . as an integral part of the natural system of the public land.” Id.

# Wild Horse Act

- Under the Wild Horse Act, wild free-roaming horses and burros means “all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forests system on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat.” See 36 C.F.R. § 222.20(13).
- Unbranded claimed horses and burros for which the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. Id.
- The federal regulations also provide that horses not meeting the above definition, but which become intermingled with wild free-roaming horses or burros, are accorded the same protection as “wild” horses. See 36 C.F.R. § 222.23.

1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF NAVAJO )

4 After being first duly sworn, and upon his oath, affiant, Lee Larson deposes and  
5 says:

- 6 1. I am a current resident of Heber/Overgaard, Arizona.
- 7 2. I am over the age of 18 years of age.
- 8 3. I have resided in the Linden area, Navajo County, Arizona, since 2001.
- 9 4. I have been hunting in and visiting the Heber/Overgaard area since the late  
10 1970's and have personally witnessed two separate herds of wild horses in this area.
- 11 5. I am currently employed at Jim Burton Realty, in Overgaard, Arizona.
- 12 6. I have seen herds of wild horses in the following locations between  
13 approximately 1977 and present time:
  - 14 a) along Forest Service Road 86
  - 15 b) between Forest Service Roads 107 and 146
  - 16 c) near Forest Service Road 125
  - 17 d) near Forest Service Road 141
  - 18 e) on Forest Service Road 300
  - 19 f) near the Forest Service Road 163.
- 20 7. I have also seen the herds outside of Bison Ranch in Overgaard, Arizona.
- 21 8. I have not witnessed any markings or brandings on any of the wild horses  
22 that I have encountered.
- 23 9. I have seen between 25 to 30 wild horses at any given time.
- 24 10. I have seen at least five (5) foals since the beginning of 2005 and over the  
25 years I have seen numerous other foals.

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6. I have seen herds of wild horses in the following locations between approximately 1977 and present time:  
a) along Forest Service Road 86  
b) between Forest Service Roads 107 and 146  
c) near Forest Service Road 125  
d) near Forest Service Road 141  
e) on Forest Service Road 300  
f) near the Forest Service Road 163.

7. I have also seen the herds outside of Bison Ranch in Overgaard, Arizona.

8. I have not witnessed any markings or brandings on any of the wild horses that I have encountered.

9. I have seen between 25 to 30 wild horses at any given time.

## **Defendants Offer No Contrary Evidence**

- No certified administrative record.
  - Arbitrary and capricious decision.
- Defendants claim horses arrived after Rodeo-Chediski wildfires in 2002 – no proof
  - Witnesses saw unbranded horses in the Forests prior to the wildfires.

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Two North Central Avenue, Suite 2800  
Phoenix, Arizona 85004-4556  
(602) 384-7000

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STATE OF ARIZONA )

) ss.

COUNTY OF NAVAJO )

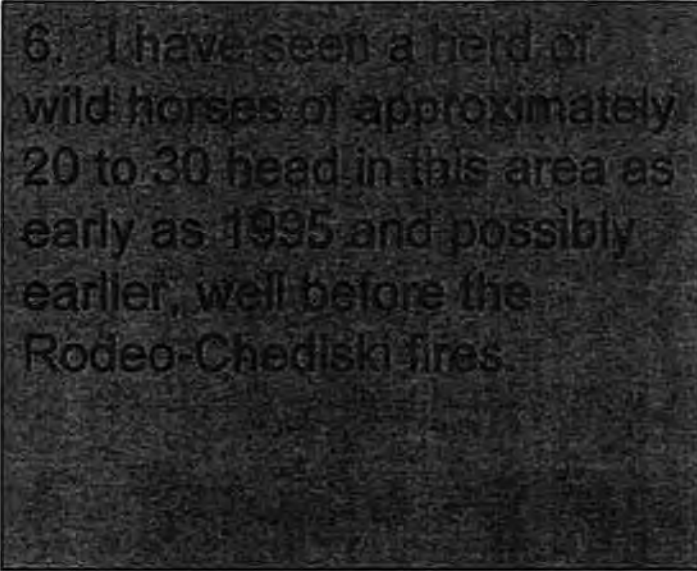
After being first duly sworn, and upon her oath, affiant, Diane Dahlin deposes and says:

1. I am a current resident of Heber/Overgaard, Arizona.
2. I am over the age of 18 years of age.
3. I have resided in the Heber/Overgaard area, Navajo County, Arizona, since 1989.
4. I am currently employed at Jim Burton Realty.
5. I have seen herds of wild horses beginning along the borders of Bison Ranch and continuing east toward Sunrise resort along State Route 260.
6. I have seen a herd of wild horses of approximately 20 to 30 head in this area as early as 1995 and possibly earlier, well before the Rodeo-Chediski fires.

Further affiant sayeth naught.

DATED: September 7, 2005

Diane Dahlin  
Diane Dahlin



STATE OF ARIZONA )

) ss.

County of Navajo )



Subscribed and sworn before me this 7<sup>th</sup> day of September, 2005.

Mary T. Mockelstrom  
Notary Public

Commission Expires: mm 3-13-2008

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STATE OF ARIZONA )

) ss.

COUNTY OF NAVAJO )

After being first duly sworn, and upon his oath, affiant, Richard Potts deposes:

1. I am over the age of 18 years old.
2. I am a current resident of Heber Overgaard, Arizona.
3. I joined the Air Force in 1957, obtained a business degree, and was commissioned as an officer in 1974. I eventually retired as a Captain in the Air Force in 1984. I served as a police officer and detective for the City of Scottsdale, Arizona from 1984 until I retired in 1997.
4. I have resided full-time in the Heber Overgaard area, Navajo County, Arizona, since 1997. Prior to 1997, I visited the area frequently, and I have owned property here since 1970.
5. I am currently serving as a fire lookout for the United States Forest Service and have worked for the Forest Service for the past six (6) summer seasons.
6. As a fire lookout, I am familiar with the Heber Wild Horse Territory. Over the years, I have seen a small band of wild horses in that Territory and, in particular, in the vicinity of Gentry Lookout, Township 11 N, Range 12 E, Section 29. According to the National BLM Wild Horse map, this area is known as the Gentry Lookout. While working around the desert roads in the area, I have become familiar with one particular herd since the summer of 2000. This herd usually consists of seven (7) or eight (8) mares and has produced foals for the last three years of which I am aware.

6. I am familiar with the Heber Wild Horse Territory. Over the years, I have seen a small band of wild horses in that Territory and, in particular, in the vicinity of Gentry Lookout. I have become familiar with one particular herd since the summer of 2000. This was two years prior to the Rodeo-Chediski fires. The leader of this herd is a Buckskin stallion. This stallion usually runs with seven (7) or eight (8) mares and has produced foals for the last three years of which I am aware.

1 In the numerous occasions that I have seen this stallion and his mares, I  
2 have never seen any kind of branding or other domestic markings on any of the horses  
3 in my opinion and based upon my personal knowledge, this small herd of horses is wild  
4 and has been roaming in this area since at least 2000.

5 Further affiant says nothing.

6  
7 DATED 09/07/05

8   
9 Richard Potts

10  
11 STATE OF ARIZONA

12 County of Navajo



13  
14  
15 Subscribed and sworn before me this 7th day of September, 2005.

16   
17 Ronelle Burton  
18 Notary Public

19 Commission Expires November 7, 2005

7. On the numerous occasions that I have seen this stallion and his mares, I have never seen any kind of branding or other domestic markings on any of the horses. In my opinion and based upon my personal knowledge, this small herd of horses is wild and has been roaming in this area since at least 2000.

# No Contrary Evidence

- Defendants claim horses belong to the Apache Indian Tribe – speculation.
  - Witnesses do not report any branding on horses.



1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF NAVAJO )

4 After being first duly sworn, and upon his oath, affiant, Ron Britz deposes and  
5 says:

- 6 1. I am a current resident of Heber/Overgaard, Arizona.
- 7 2. I am over the age of 18 years of age.
- 8 3. I have resided in the Heber/Overgaard area, Navajo County, Arizona, since  
9 1980.

10 4. Prior to the Rodeo-Chediski fires in 2002, I had seen herds of wild horses  
11 throughout the Heber/Overgaard area. The size of the herds have varied but have  
12 included at least a dozen horses at any given time.

13 5. None of the horses that I have viewed over the years were branded or had  
14 any domestic markings, to the best of my knowledge. I believe that on many instances I  
15 was close enough to have viewed or seen brands or markings had there been any on these  
16 horses.

17 6. Throughout the 1980's, I often drove between Heber and Holbrook,  
18 Arizona along State Route 377. During my drives back and forth, I had the opportunity  
19 to view many herds of wild horses along this route. In the 1990's, I frequently saw these  
20 wild horses while I was driving south toward Chevelon, Arizona. However, since the  
21 Rodeo-Chediski fires of 2002, I have noticed an increased number of wild horses near  
22 Bison Ranch in Overgaard, Arizona.

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4. Prior to the Rodeo-Chediski fires in 2002, I had seen herds of wild horses throughout the Heber/Overgaard area. The size of the herds have varied but have included at least a dozen horses at any given time.

5. None of horses that I have viewed over the years were branded or had any domestic markings, to the best of my knowledge. I believe that on many instances I was close enough to have viewed or seen brands or markings had there been any on these horses.

# No Contrary Evidence

- Defendants claim no wild horses in Forests.
  - No proof of “trespass livestock” claims.

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STATE OF ARIZONA )  
 ) ss.  
COUNTY OF NAVAJO )

After being first duly sworn, and upon her oath, affiant, Barbara Van Cleve  
deposes:

1. I am over the age of 18 years old.
2. I am a current resident of Overgaard, Arizona.
3. I have resided in the Overgaard area, Navajo County, Arizona, since 1994.
4. I am currently employed at Jim Burton Realty.
5. I have seen herds of wild horses on the borders of Sunrise Resort and surrounding areas since approximately 2004 .

6. In fact, in 2004, I photographed a large herd of these wild horses along State Route 260 in between Forest Roads 107 and 139. Attached hereto are true and correct copies of photographs I took on May 16, 2004, identified as Exhibit A. Due to the large size of this herd, which I estimate at approximately 30 to 40 head, I had to take two separate photographs to capture the entire herd.

Further affiant sayeth naught.  
DATED: 9-7-05 Barbara Van Cleve

Barbara Van Cleve

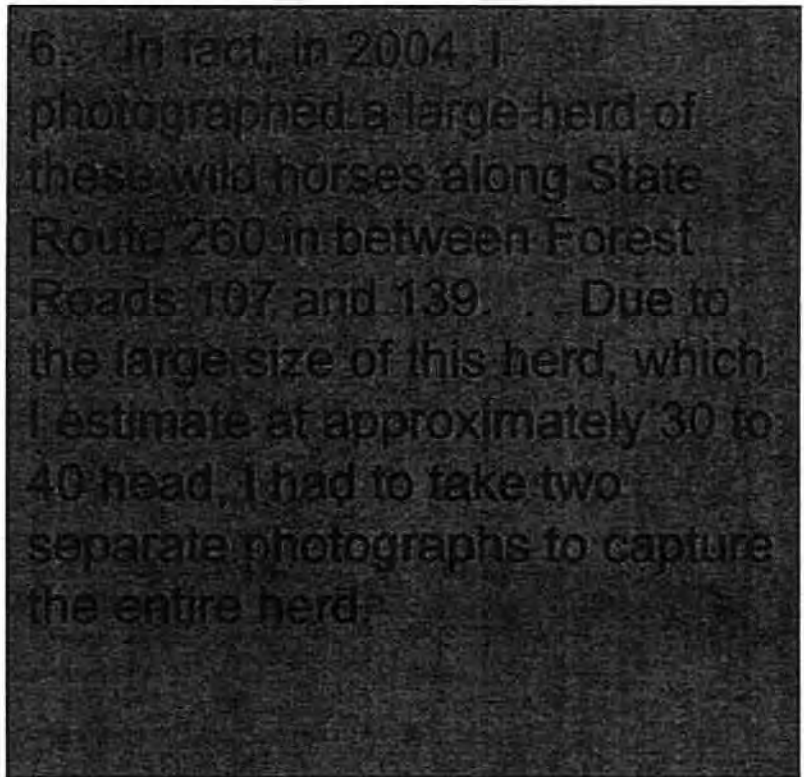
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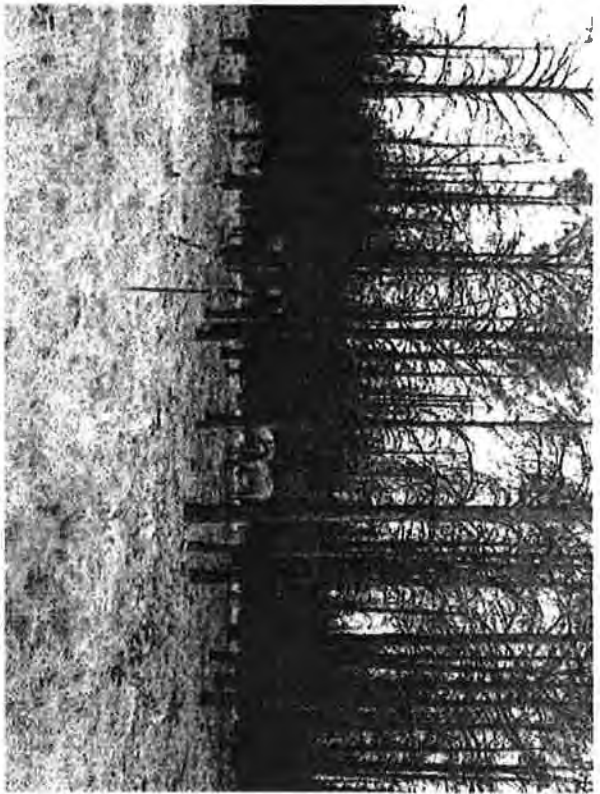
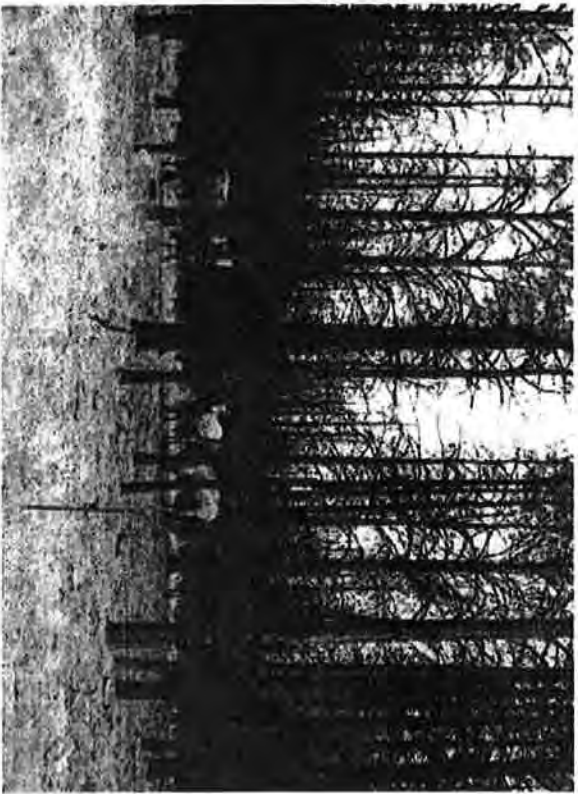
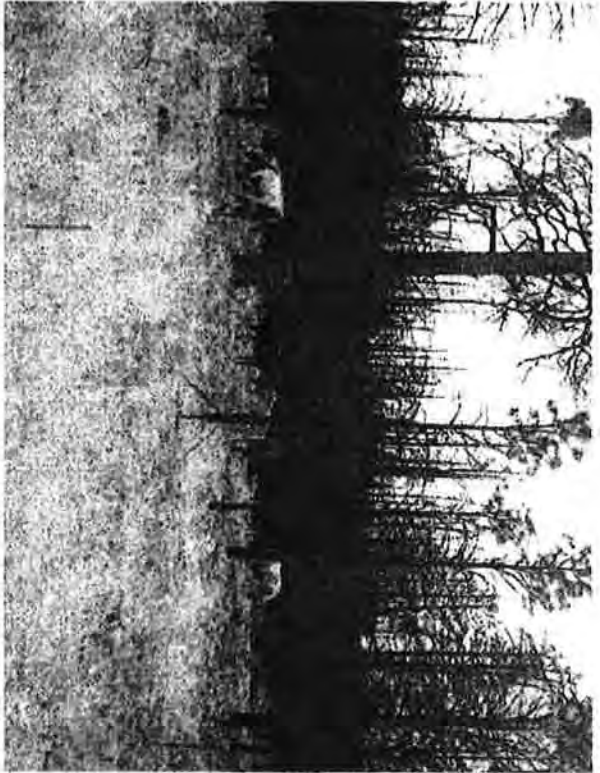
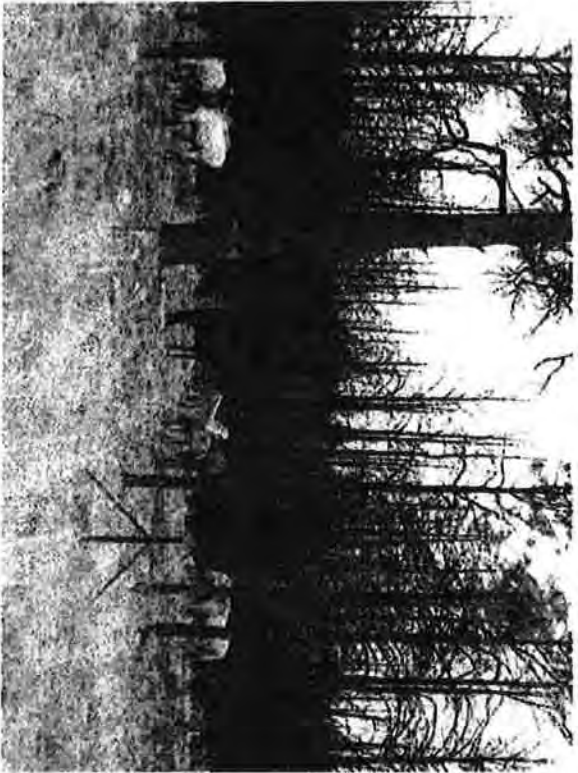


Subscribed and sworn before me this 7<sup>th</sup> day of September, 2005.

Ronelle Burton  
Notary Public

Commission Expires: November 7, 2005





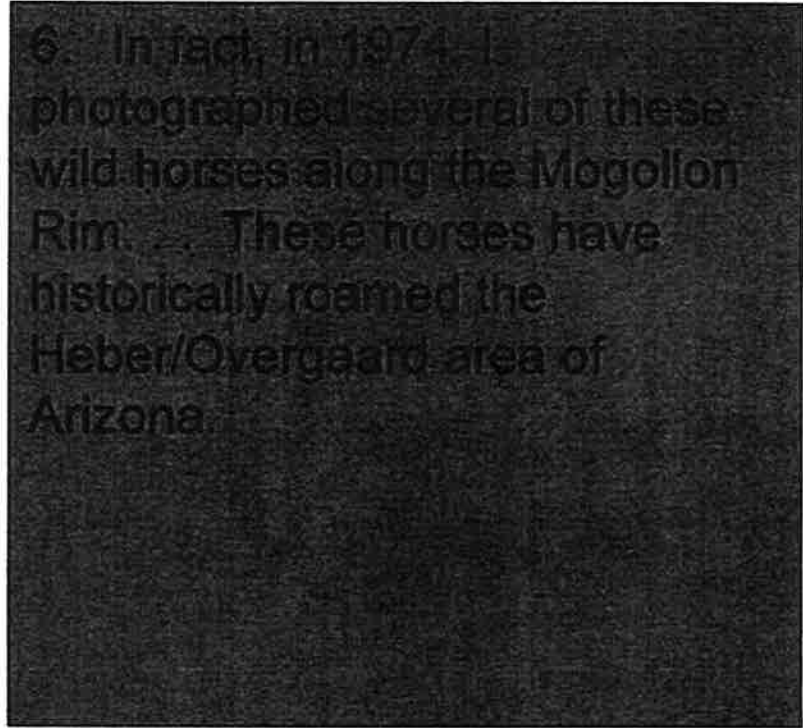
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STATE OF ARIZONA )  
 ) ss.  
 COUNTY OF NAVAJO )

After being first duly sworn, and upon her oath, affiant, Cheryl Cranfill deposes:

- 1. I am over the age of 18 years old.
- 2. I am a current resident of Heber/Overgaard, Arizona.
- 3. I have resided in the Heber/Overgaard area, Navajo County, Arizona, since 1968.
- 4. I am currently employed at Bison Ranch as a Barn Manager.
- 5. I have seen herds of wild horses on the borders of Bison Ranch and surrounding areas since approximately 1974.
- 6. In fact, in 1974, I photographed several of these wild horses along the Mogollon Rim. Attached hereto are true and correct copies of photographs of a herd of wild horses that I personally watched on or around 1974. These horses have historically roamed the Heber/Overgaard area of Arizona.

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# Wild Horse Act

- Plaintiffs have presented evidence that the horses sought to be removed meet the definition of wild, free-roaming horses under the Wild Horse Act.
- Of the various herds of wild horses observed in the Forests since the 1970s.
  - None are branded or claimed.

Part IV. Territory adjustments. Report only those territory changes that have been approved through the NEPA and/or the Forest Land Management Planning Process during FY 90 and FY 91.

1. Name of territories discontinued. None

2. Name of territories where boundaries were adjusted.

Part V. State Wild Horse and Burro Program Overview for Fiscal Years 1990 and 1991 (use additional space as needed): None

STATE: Arizona

PROGRAM HIGHLIGHTS: Report management actions, cooperation with groups, special events, awards, etc. Provide one or two anecdotes about noteworthy accomplishments. Of particular interest would be management actions having to do with or documenting relationships between WH&B management activities and movement towards ecological status and rangeland health objectives and/or coordination of WH&B management and planning for permitted domestic livestock. None

PROGRAM ISSUES: Provide examples of major issues associated with WH&B management i.e. issues associated with drought, accidents, disease outbreaks, harassment/capture/killing of wild horses and burros, interagency disagreements, etc.

Approximately 5 feral horses wander along the Mogollon Rim back and forth from the White River Apache Reservations. The Indians do not manage the horses, neither does the Forest Service. Natural attrition will eliminate the horses eventually.

Approximately 5 feral horses wander along the Mogollon Rim back and forth from the White River Apache Reservations. The Indians do not manage the horses, neither does the Forest Service. Natural attrition will eliminate the horses eventually.

# Likelihood of Success/NEPA

- NEPA requires a federal agency such as USFS to prepare a detailed EIS for all “major federal actions significantly affecting the quality of the human environment.” See Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1211-1212 (9th Cir. 1998) (citing 42 U.S.C. § 4332(2)(C)).
- The decision to permanently remove horses from a protected territory constitutes a “major” action. See American Horse Protection Assoc. v. Andrus, 608 F.2d 811, 814-15 (9th Cir. 1979).

# NEPA

- The plain language of NEPA makes clear that Defendants must comply with the EIS requirement to “the fullest extent possible.” 42 U.S.C. § 4332(c).
- Defendants have no discretion regarding compliance with NEPA;
- The requirement that EIS be prepared for all major federal actions significantly affecting the quality of the human environment is mandatory. See Andrus, 608 F.2d at 815.

# Mootness

- An action for an injunction does not become moot merely because the conduct complained of was terminated, if there remains a possibility of reoccurrence.
  - See FTC v. Affordable Media, LLC, 179 F.3d 1228, 1237 (9th Cir. 1999) (citing Allee v. Medrano, 416 U.S. 802, 801 (1974)).

# Defendants Have Not Shown Mootness

- An action becomes moot only when:
  - (1) There is no reasonable expectation that the wrong will be repeated; **and**
  - (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.”

Norman-Bloodsaw v. Lawrence Berkeley Lab., 135 F.3d 1260, 1274 (9th Cir. 1998).

# Mootness

- To establish that the need for an injunction is moot, Defendants must “show that ‘subsequent events [have] made it **absolutely clear** that the allegedly wrongful behavior cannot reasonably be expected to reoccur.’” Norman-Bloodsaw, 135 F.3d at 1274.
- Here, Defendants have made no such showing

# Preliminary Injunction

- The Court should enter a preliminary injunction prohibiting Defendants from:
  - Awarding a bid for the capture and removal of the horses; and
  - Rounding up and removing any of the horses from the Apache-Sitgreaves National Forests
- Require Defendants to comply with the census requirement of the Wild Horse Act by:
  - Humanely conducting an inventory or accounting of the horses to determine their number and status as wild or domestic trespass, branded versus unbranded; and
  - Presenting reliable data or investigative reports to support their findings.