

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF NAVAJO)

4 After being first duly sworn, and upon her oath, affiant, Diane Dahlin 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 1989.
- 10 4. I am currently employed at Jim Burton Realty.
- 11 5. I have seen herds of wild horses beginning along the borders of Bison
12 Ranch and continuing east toward Sunrise resort along State Route 260.
- 13 6. I have seen a herd of wild horses of approximately 20 to 30 head in this
14 area as early as 1995 and possibly earlier, well before the Rodeo-Chediski fires.

15 Further affiant sayeth naught.

16 DATED: September 7, 2005

17 Diane Dahlin
18 Diane Dahlin

19 STATE OF ARIZONA)
20) ss.
21 County of Navajo)



22 Subscribed and sworn before me this 7th day of September, 2005.

23
24 Mary T. Mockelstrom
25 Notary Public

26 Commission Expires: ^{MM} ~~9-13~~ 3-13-2008

28

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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11. Many of these wild horses have been in the area prior to the Rodeo-Chediski fires of 2002.

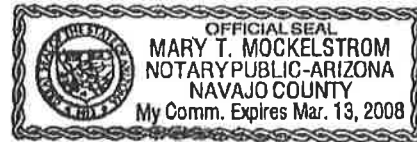
Further affiant sayeth naught.

DATED: 9-7-05

Lee Larson

Lee Larson

STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th day of September, 2005.

Mary T. Mockelstrom
Notary Public

Commission Expires: 3-13-2008

BRYAN CAVE L.L.P.
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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 Rodco-Chediski fires of 2002, I have noticed an increased number of wild horses near
22 Bison Ranch in Overgaard, Arizona.

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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

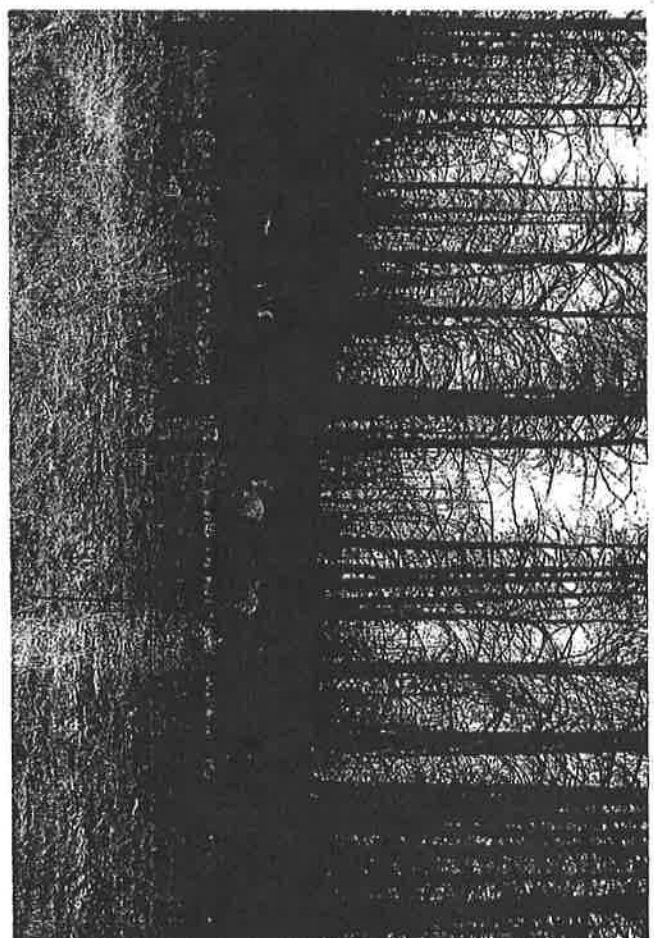
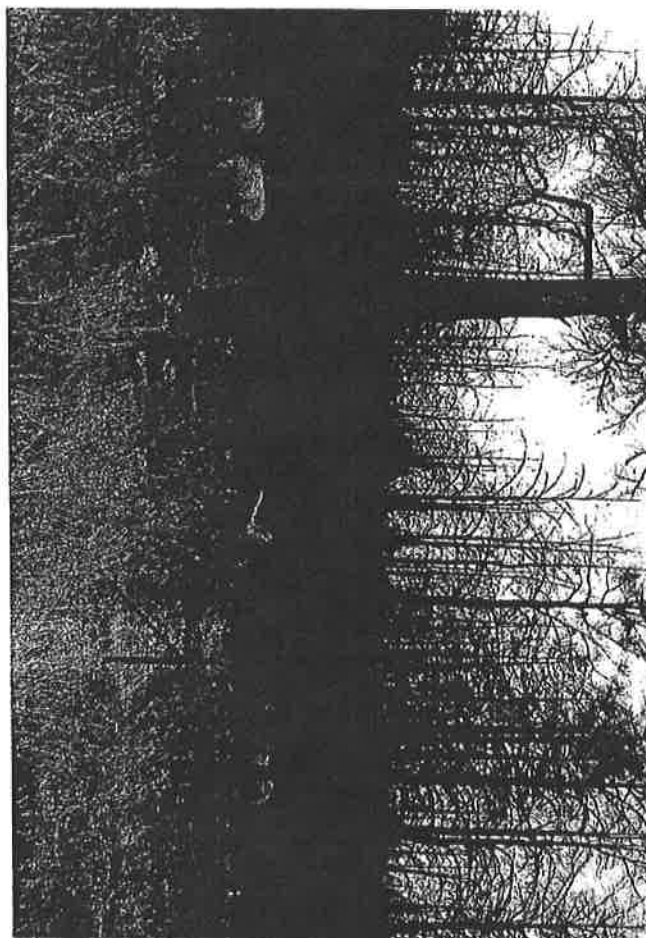
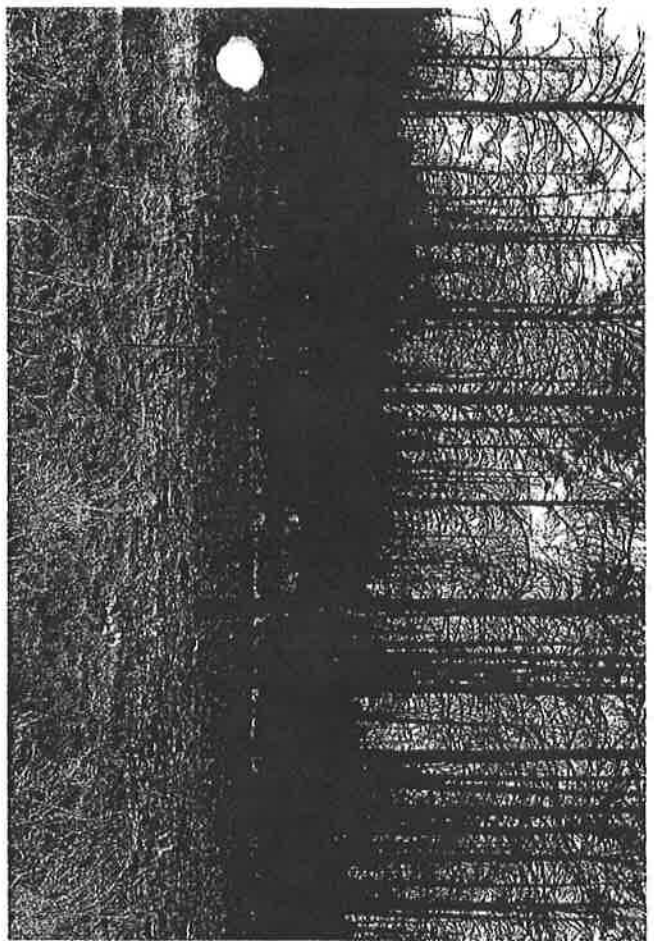
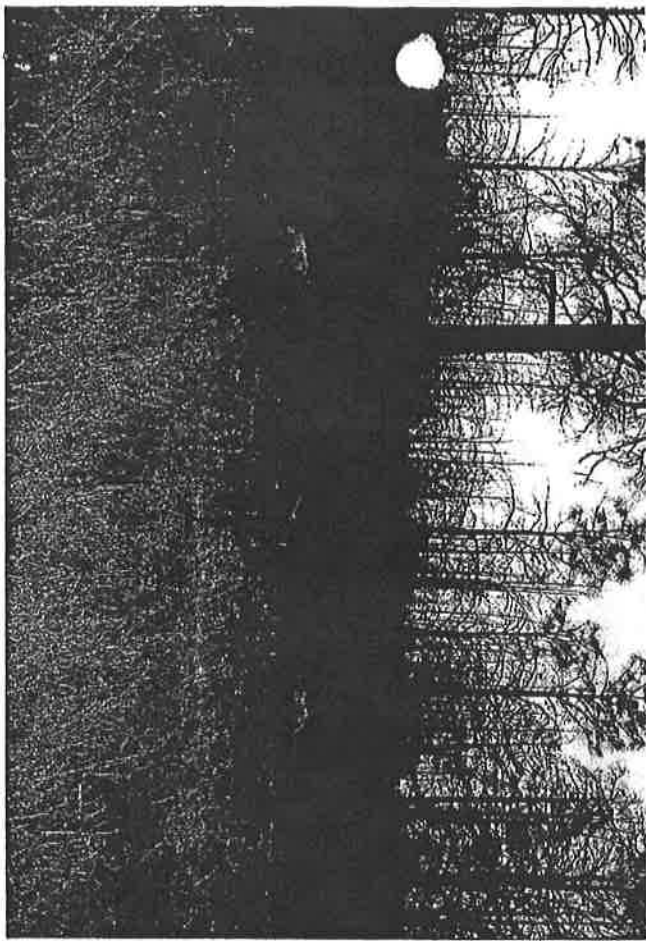
STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th 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 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 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. In this capacity, 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 15.5 E, Section 28. A copy of an Apache-Sitgreaves National Forests map indicating this area (in circle) is attached hereto as Exhibit A. While driving around the forest roads in the area, 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.

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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.

Further affiant sayeth naught.

DATED: 09/07/05


Richard Potts

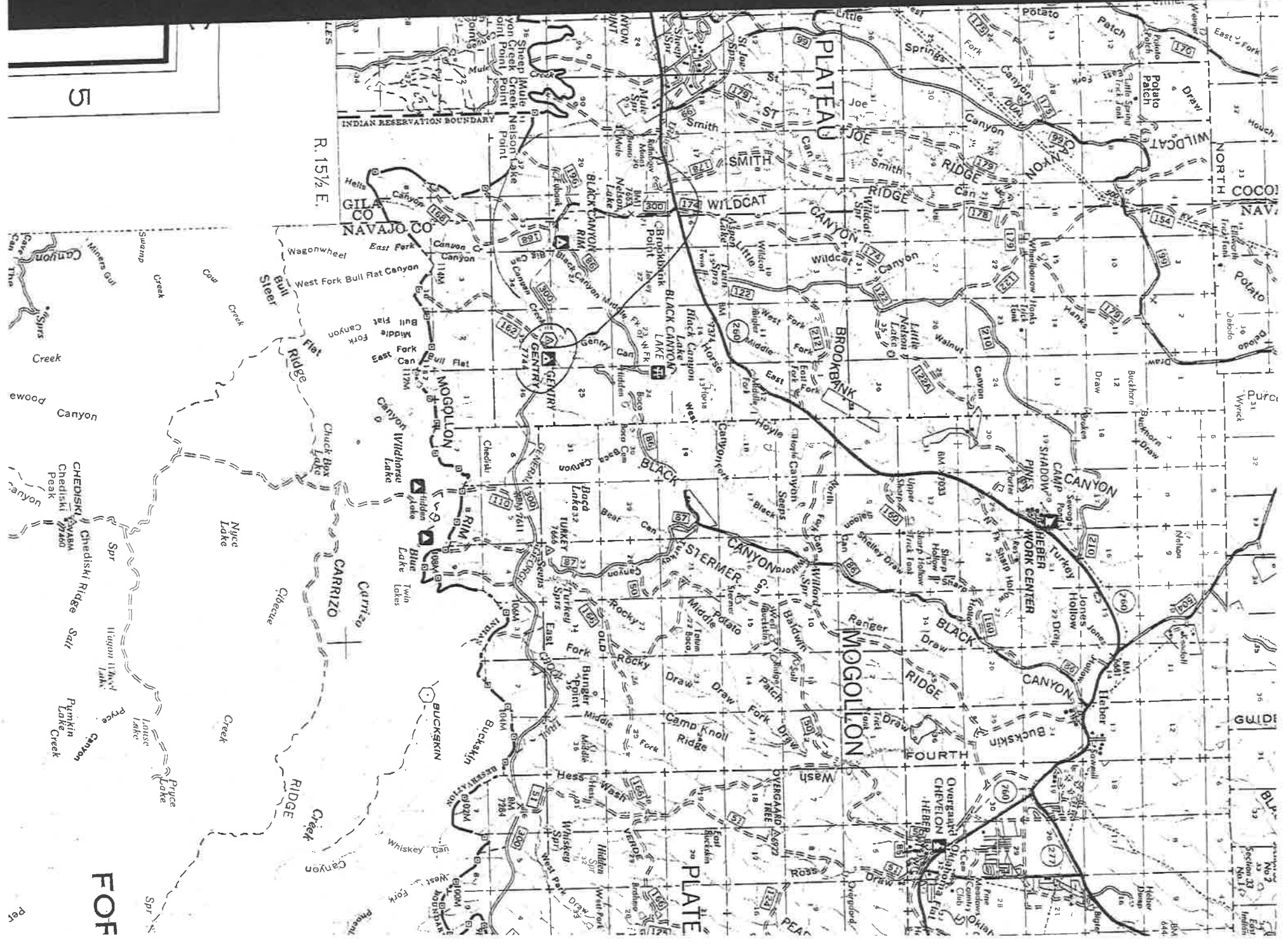
STATE OF ARIZONA)
County of Navajo) ss.



Subscribed and sworn before me this 7th day of September, 2005.


Notary Public

Commission Expires: November 7, 2005



15

FOF

Section 33
No. 1
Hopi

BRYAN CAVE LLP
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STATE OF ARIZONA)
) ss.
COUNTY OF NAVAJO)

After being first duly sworn, and upon her oath, affiant, Cheryl Crandell 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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7. Most recently I have witnessed three separate herds of these wild horses. In particular, I have seen an eighteen-month old colt with a distinctive cream color that has consistently appeared around the Bison Ranch area.

Further affiant sayeth naught.

DATED: Sept. 7, 2005


Cheryl Crandell

STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th day of September, 2005.


Notary Public

Commission Expires: 11/06/2008



AFFIDAVIT OF PATRICIA HAIGHT

1
2 STATE OF ARIZONA)
3) ss.
4 COUNTY OF MARICOPA)
5

6 After being first duly sworn, and upon her oath, affiant, Patricia Haight avows as
7 follows:

8 1. I am over the age of 18 and am competent to testify as to the matters set
9 forth herein and would so testify if called upon to do so.

10 2. I have personal knowledge of all of the matters set forth herein, except
11 those matters theorized upon information and belief, which matters I believe to be true.

12 3. I am currently the Southwest Regional Director for the non-profit
13 organization known as In Defense of Animals. I have served in that position since 2001.
14 My responsibilities include investigating citizen complaints about animal cruelty,
15 addressing legislative issues relating to animal protection on both state and national
16 levels, overseeing Arizona’s largest equine rescue program, and assisting the Maricopa
17 County Sheriff’s Office with their posse program to prevent animal cruelty, among other
18 things.

19 4. I have a degree (Ph.D.) in Experimental Psychology and over twenty years
20 experience in riding, working with, and handling different breeds of horses.

21 5. Sometime in July 2005, I learned that the U.S. Forest Service had plans to
22 round up all of the horses on the public lands of the Apache-Sitgreaves National Forests
23 and send them to an auction house near Holbrook, Arizona. On July 12, 2005, I wrote a
24 letter to Senator John McCain asking for his assistance to confirm whether this
25 information was correct. A copy of my letter is attached at Exhibit A. I continued a
26 dialogue with Senator McCain’s office and the U.S. Forest Service over the next month.
27 In the end, I confirmed the accuracy of my information.
28

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1 6. On or about July 19, 2005, I sent a Freedom of Information Act or FOIA
2 request to Elaine Zieroth with the U.S. Forest Service in Springerville, Arizona. A true
3 and correct copy of that letter is attached at Exhibit 1. The FOIA request sought
4 information relating to a protected wild horse territory similar to a sanctuary dedicated by
5 Congress and known as the Heber Wild Horse Territory.

6 7. I issued a second FOIA request to Ms. Zieroth on or about August 23,
7 2005. This request related to the attempt to award a contract for the removal of all horses
8 from the Apache-Sitgreaves National Forests.

9 8. To date, I have received a few pages of information and reports from the
10 U.S. Forest Service in response to my requests. None of the documents suggest that the
11 Forest Service has conducted any type of investigation or study of the horses in this area
12 before making a decision to remove all of them. In fact, they have failed to provide me
13 with any census or inventory regarding the present number and status of wild horses in
14 the Apache-Sitgreaves National Forest.

15 9. I have also reviewed the Solicitation for Bid entitled "Trespass Horse
16 Capture and Transport, Apache-Sitgreaves National Forest" initially posted on July 19,
17 2005. This Solicitation provides for trapping of the horses, allows motorized equipment,
18 tractor trailers, and stock trailers into the forests for removal of the horses. Most
19 interestingly, the Solicitation also places a "gag order" on it and provides that the
20 "contractor agrees that there shall be no release of information to the news media
21 regarding the removal or remedial activities conducted under this contract." See
22 Solicitation at Section C.1.5(a)(3). The Solicitation provides for conditions for camping
23 for the contractor and its agents when rounding up the horses and staying overnight in the
24 forests at Section H.2.4, a fire plan at Section H.3.0, and other issues such as slash
25 incineration, smoking cigarettes, power chain saws, and the like.

26 10. To my knowledge and investigation to date, neither the United States Forest
27 Service or any other government agency has conducted a public hearing or allowed for
28

1 public comment on their present intent to remove horses from the Apache-Sitgreaves
2 National Forest.

3 11. I have reviewed photographs and videos of the wild horses in the Apache-
4 Sitgreaves National Forests. I have also spoken with residents who have viewed these
5 horses.

6 12. From my review of the photographs and videos of these horses, I believe
7 that the light Buckskin (or crème color) and the jet black horses and foals in the Apache-
8 Sitgreaves National Forests are indicative of offspring of the original Spanish wild
9 mustangs introduced to the Heber area by Father Eusebio Kino some 300 years ago.

10 13. Based upon my discussions and interviews with local residents of
11 Heber/Overgaard, it appears clear that wild horses have existed continuous in the
12 Apache-Sitgreaves National Forest since 1971 and earlier.

13 14. If the Forest Service proceeds with its plan to capture and remove these
14 horses, they will be transported to a livestock auction house in Sun Valley, Arizona (near
15 Holbrook). Upon information and belief, most, if not all the horses at that auction will go
16 for slaughter. This means that there is a good chance that the majority of the horses
17 presently living in the Apache-Sitgreaves National Forest will go to a slaughter house.

18 15. The present bid for removal of these horses constitutes more than a mere
19 relocation or reduction in the horse population, but rather a total eradication and
20 extinction of all wild horses in the area.

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16. Once these wild horses are captured and removed, they can never be replaced.

Further, Affiant sayeth naught.

DATED: 9/09/2005

Patricia Haight, Ph.D.
Patricia Haight, Ph.D.

SWORN AND SUBSCRIBED before me by Patricia Haight, Ph.D. this 9th day of September, 2005.

Lori L. De Los Santos
Notary Public

My Commission expires:

May 6, 2008



BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

The Honorable Senator John McCain
241 Russell Senate Office Building
Washington, D.C. 20510-0303

July 12, 2005

Dear Senator McCain,

Once again I am writing to you regarding an issue related to horses living on Federal land in Arizona. Currently, these horses are living in the Sitgreave National Forest under the jurisdiction of the United States Forest Service. I have been told that the horses may be gathered, sold at auction, and end up at slaughter. I am writing to ask if you might inquire whether the information I have received regarding these horses is correct and whether, if it is correct, there might be an option other than sale of several hundred Arizona horses at auction. This, most likely, will result in most of these horses going to slaughter.

I received the information about this situation through Colonel Newlin Happersett, owner of Blue Grass Arabians in Cave Creek, Arizona. Colonel Happersett is a highly respected horseman in Arizona whose two-year-old Arabian, Point Man, took Championship honors at the last Arabian National Show at WestWorld. He also is a decorated veteran of World War II and Vietnam and was a former POW. Colonel Happersett fosters horses for In Defense of Animals and brought this information to my attention.

Below is the information:

- A committee has been formed by the United States Forest Service to deal with a large number of horses, perhaps several hundred horses, who ran to escape from fires during the Rodeo-Chediski fire. They are horses that were living on the White Mountain Apache Reservation prior to the Rodeo fire and who belonged to the White Mountain Apache Tribe.
- The terrified horses took refuge from the flames by running to the Sitgreave National Forest during the Rodeo fire and have been living there since. They are living on the rim side of the forest going from Showlow toward Lakeside in an area known as Forest Lakes. The public has been blocked access to this area.
- The US Forest Service does not want these horses on that land because they want the vegetation to come back and the horses are grazing on the vegetation. Technically the horses belong to the White Mountain Apache tribe but the White Mountain Apache tribe won't take them back either. Consequently, the Forest Service is working on a plan to gather up all of these hundreds of horses and turn them over to the Arizona Department of Agriculture. If this happens, the horses will go to the Holbrook sale lot. It is a place with a very bad reputation among horse people and animal welfare organizations.
- If the horses are turned over to the Arizona Department of Agriculture by the Forest Service, they will go to the Holbrook facility and, after 14 days, will then be sent to auction. Most of these horses will end up in the hands of killer buyers and be sold to slaughter because there simply are not enough people in the Holbrook area who will buy these horses. I have been told that the Forest Service will not consider taking the responsibility of the horses directly and doing an adoption program because it is too expensive. However, the BLM certainly does adoptions in Arizona and Kelly Grissom, the head of the BLM Horse and Burro Program in Arizona, is experienced at setting

up adoption programs. While I cannot speak for Mr. Grissom on this issue, he has been more than willing to help tribes in Arizona set up adoption programs for horses in other areas.

Would it be possible for you to inquire of the US Forest Service regarding the following concerns that have been expressed to me?

1. Is the Forest Service dealing with several hundred horses in the Sitgreave Forest that they plan to turn over to the Arizona Department of Agriculture as abandoned horses?
2. If the Forest Service is working on this plan, would they reconsider the possibility of an adoption program instead especially given that they have the BLM program in Phoenix to turn to for information on setting up such an adoption?
3. I have contacted Karen Sussman of the International Society for the Protection of Mustangs and Wild Burros to ask her assistance in finding a place for these horses to be relocated. If a place was found for them, would the Forest Service work with animal welfare groups to allow their relocation rather than sale at auction and to killer buyers?

These horses are simply victims of a horrible wildfire in Arizona. They escaped the fire and survived through their own courage and ingenuity. It would be tragic for them to end up at auction and at slaughter. In Defense of Animals delivered hay, feed and medical supplies to people in the White Mountains during that fire. I saw first hand its effect on the people and on the animals including horses. These horses have survived that ordeal. Now, if it is true that the US Forest Service plans to remove them from the land and turn them over to the Arizona Department of Agriculture, they will end up sold at auction and in the hands of killer buyers and slaughter houses. I believe there are other alternatives.

Would it be possible for you to assist me in determining whether this information is correct and, if it is correct, whether the US Forest Service would consider an adoption program or relocation of the horses if land can be found for them? The person I am told who is in charge of the issue of these horses is the following:

Elaine Zorthor
Forest Supervisor, Apache Sitgreave National Forest
PO Box 640
Springerville, AZ 86938

Once again, thank you so very much for your assistance, for your compassion, and for the assistance and kindness of your staff.

With best wishes and deepest respect,

Patricia Haight, Ph.D.
Southwest Regional Director, In Defense of Animals
Director, IDA Conquistador Equine Rescue Program
Cell: 480-232-8088, Email: pat@idausa.org



CityScape, One E. Washington St., Ste. 1200, Phoenix, AZ, 85004 • 602.650.2000

December 23, 2015

Anthony W. Merrill
(602) 650-2310
(602) 264-7033 Fax
amerrill@polsinelli.com

**VIA FEDERAL EXPRESS PRIORITY
OVERNIGHT & EMAIL**

USDA Forest Service
Attn: Appeal Reviewing Officer
210 14th Street, SW
EMC-LEAP, Mailstop 1104
Washington, DC 20250
Email: appeals-chief@fs.fed.us

**Re: *Notice of Appeal: Land Management Plan for the Apache-Sitgreaves
National Forests***

Dear Appeal Reviewing Officer:

Pursuant to 36 CFR 219.17(b)(3) (2012 planning rule) and 36 CFR 219.35, Appendix A (2000 planning rule, as amended July 2010), this notice of appeal regarding the Record of Decision (“ROD”) and Final Environmental Impact Statements (“FEIS”) for the Land Management Plan for the Apache-Sitgreaves National Forests (the “Plan”) is filed on behalf of the International Society for the Protection of Mustangs and Burros and TerraWind Ranch Eco-Action Group (collectively referred to as “appellants”), whom I represent, under the Optional Appeal Procedures Available during the Planning Rule Transition Period (the former 36 CFR 217 appeal procedures in effect prior to November 9, 2000).

Legal notice of the ROD appeared in the *White Mountain Independent* on September 25, 2015, making this appeal timely.

DECISION DOCUMENT: *Record of Decision for the Apache-Sitgreaves National Forests Land Management Plan.*

DATE DECISION SIGNED: July 30, 2015.

RESPONSIBLE OFFICIAL: Calvin N. Joyner, Regional Forester, Southwestern Region, USDA Forest Service

DATE DECISION PUBLISHED: September 25, 2015.

polsinelli.com

Atlanta Chicago Dallas Denver Kansas City Los Angeles Nashville New York Phoenix San Francisco
St. Louis Washington, DC Wilmington
Polsinelli PC, Polsinelli LLP in California

51862093.1



Appeal Reviewing Officer
December 23, 2015
Page 2

PUBLICATION VENUE: *White Mountain Independent*, Show Low, Arizona.

LOCATION: The Apache-Sitgreaves National Forests spans 2.1 million acres. The portion of that forest relevant to this appeal is the Heber Wild Horse Territory, which is approximately 20,000 acres on the Black Mesa Ranger District.

APPELLANTS:

International Society for the Protection of Mustangs and Burros

Karen A. Sussman, President
P.O. Box 55
Lantry, SD 57636-0055
(605) 964-6866
Karensussman@ispmb.org

TerraWind Ranch Eco-Action Group

Jill Irvin, Director
2130 South Holguin Way
Chandler, AZ 85286
(480) 221-2325
Jill@TerraWindRanch.com

APPELLANTS' INTERESTS

The International Society for the Protection of Mustangs and Burros

The International Society for the Protection for Mustangs and Burros ("ISPMB") is a non-profit organization formed for the purpose of promoting animal welfare and protection, including the protection of wild horses. Appellant, ISPMB, is the oldest wild horse and burro organization in the United States. Along with its first president, Wild Horse Annie, ISPMB was instrumental in securing and implementing the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.* (the "Act"). ISPMB was headquartered in Arizona from approximately 1993 until 2000 when it relocated its headquarters to Lantry, South Dakota.

ISPMB served as a party to the lawsuit filed against the United States Forest Service ("USFS"), among others, in the District Court for the District of Arizona in 2005 (the "2005



Appeal Reviewing Officer
December 23, 2015
Page 3

Litigation”).¹ See Complaint (without exhibits) attached hereto as Exhibit 1. In the 2005 Litigation, ISPMB sought a preliminary injunction and alleged that the USFS had not conducted a census, inventory, or any other type of survey to determine how many of these approximate 300 to 400 horses were “wild free-roaming” horses and thus entitled to protection under the Act. ISPMB also alleged that the USFS issued a solicitation entitled “Trespass Horse Capture and Transport, by which the horses were to be captured and transported out of the Apache-Sitgreaves National Forests. The solicitation provided for the round-up and capture of all horses in the Apache-Sitgreaves Forest including those in the Heber Wild Horse Territory and all mares, even those with foals. See Complaint, Exhibit 1.

The District Court substantiated the claims that appellants make in this appeal. In particular, the court provided:

Plaintiffs raise at least serious questions as to the legality of the defendants’ actions. Plaintiffs argue that defendants violated NEPA because the removal of wild horses will significantly affect the human environment, and defendants failed to properly consider the impact, and failed to issue an Environmental Impact Statement (“EIS”) or a statement of reasons as to why an EIS is unnecessary. Plaintiffs argue that defendants violated the Wild Horses Act because they attempted to remove the wild horses, failed to properly investigate the status of horses, failed to keep an inventory of the horses, failed to establish an advisory committee with regard to the horses, and failed to hold a public hearing prior to the attempt to use motorized vehicles to remove the horses. Plaintiffs argue that defendants violated the APA because they acted arbitrarily and capriciously by failing to conduct a full investigation into the effects of the removal of the horses, and failing to comply with NEPA and the Wild Horses Act.

Id. ISPMB successfully obtained the injunction. See Order Granting Injunction, dated December 13, 2005, attached hereto as Exhibit 2. In the Order Granting Injunction, the United States Federal Court for the District of Arizona enjoined the defendants from “rounding up, removing, or awarding a bid for capture and removal of horses from the ASNF.” See Order Granting Injunction, Exhibit 2.

¹ The 2005 Litigation was styled *In Defense of Animals, et al. v. United States Government, Department of Agriculture, et al.*, Civil Action No. 05-2754 PHX-FJM and is referred to throughout this appeal.



Appeal Reviewing Officer
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In March 2007, the parties entered into a stipulated settlement agreement (the "Stipulated Settlement Agreement") and the court issued an order, dated March 21, 2007 (the "Federal Court Order"), which adopted the terms set forth in the Stipulated Settlement Agreement. *See* Stipulated Settlement Agreement, attached hereto as Exhibit 3 and Federal Court Order, attached hereto as Exhibit 4. Pursuant to the Federal Court Order:

- The USFS agreed that the Heber Wild Horse Territory still exists and has not been dissolved.
- The USFS agreed that the wild horses are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Act.
- The USFS will work with the public, including ISPMB, in the development of a written Heber Wild Horse Territory Management Strategy in accordance with the provisions of the Act.
- The USFS will refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts, considered the Sitgreaves National Forest, until the USFS completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy.
- The USFS will involve the public, including ISPMB, in scoping for the analysis.
- The USFS agreed to provide ISPMB with specific notice of the document and consider its comments on the same.
- The USFS agreed to continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.

TerraWind Ranch Eco-Action Group

TerraWind Ranch Eco-Action Group ("TerraWind") is a 501c3 nonprofit whose mission is: "To protect our natural resources from commercial exploitation through education, advocacy and direct action." Proceeds from the nonprofit fund the steps necessary to meet that goal. TerraWind's first mission is to preserve the freedom of Arizona's beautiful wild horses and burros. For that reason, TerraWind has a vested interest in the well-being of the wild horses associated with the Heber Wild Horse Territory within the Apache-Sitgreaves National Forests. TerraWind and its members gain enjoyment from the wild horses in their natural habitat. TerraWind and its members have and shall continue to observe, research, and seek protection for



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the magnificent wild horses and the integral part of the ecosystem that they occupy. Any USFS shortcomings with regard to the Heber Wild Horse Territory and the wild horses will have adverse impacts on the same. The result of those impacts will be to harm the interests of TerraWind and its members.

REASONS FOR THE APPEAL

1. THE LAND MANAGEMENT PLAN FAILS TO RECOGNIZE THE HISTORIC AND CONTEMPORARY PRESENCE OF THE WILD HORSES.

Acknowledged historians for the Heber Wild Horse Territory (the "Territory") trace the history of the wild horses directly back to the journeys of the Jesuit Priest, Father Eusebio Kino, in his explorations of the area for new mission sites during the late 17th and early 18th centuries. See Jinx Pyle, *Narrative of History of Wild Horses on the Mogollon Rim* (Aug. 2005), attached hereto as Exhibit 5. Books on the area, including the famous account of the Hashknife Ranch by Stella Hughes, verify the continued existence of the horses on the Rim and of their great value to the ranchers who often caught a few and made them prized ranch horses. See Stella Hughes, *Hashknife Cowboy: Recollections of Mack Hughes* (1996), attached hereto as Exhibit 6; see also Joan Baeza, *Horses of Arizona*, 2 Arizona Highways 65 (Feb. 1988), attached hereto as Exhibit 7; Bob Thomas, *The Astonishing Double Life of Frontier Rancher Cecil Creswell*, 71 Arizona Highways 10 (Oct. 1995), attached hereto as Exhibit 8; *The Holbrook Argus*, Vol. XII No. 26 (Oct. 1, 1907), attached hereto as Exhibit 9; Will C. Barnes, University of Arizona Bulletin, Vol., VI, No. 1, General Bulletin No. 2 *Arizona Place Names* (Jan. 1, 1935) (excerpt) ("Bronco Mountain"), ("Dry Lake"), ("Wild Horse Lake"), attached hereto as Exhibit 10. Spanish horse experts, who have visited the area, verify the remarkable resemblance of many of the herds to the Andalusian, the Spanish Barb, and the Spanish Colonial horse, ridden by Spanish soldiers who visited the area with Jesuit priests, explorers and settlers. See Jinx Pyle, *Narrative of History of Wild Horses on the Mogollon Rim* (Aug. 2005), Exhibit 5.

The Plan sets out the roles and contributions of the Apache-Sitgreaves National Forests. In that section of the Plan, the USFS provides an overview of distinct characteristics of the National Forests and the diverse ecosystem within it. It pays respect to various wildlife species ranging from the Springerville pocket mouse to the Mexican gray wolf, yet gives no deference to the wild horses as symbols of the West. See Plan at pp. 11-12. This is a foreshadowing of the minimization throughout the Plan of the Territory and of the wild horses.

The USFS has historically concocted reasons to diminish the existence and importance of the wild horses and the Territory. For one, it has made an (erroneous) assumption that the wild horses present in the Territory before the Rodeo-Chediski Fire originated from the Fort Apache Indian Reservation or were abandoned. This assumption is contradicted by local accounts



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regarding the wild horses. Local families remember wild horses in the area from the 1930s to the present. *See* Letter to Zieroth, dated August 25, 2005, attached hereto as Exhibit 11; *see also* Affidavits of various Heber area residents (conclusively demonstrating the historic presence of the unbranded, unclaimed (wild) horses on public lands associated with the Apache-Sitgreaves Forests for well over 30 years prior to the Rodeo-Chediski fire), attached hereto as Exhibit 12; *see also* Photographs of horses in the area taken in the fall of 2006 (conclusively showing the lack of any branding), attached hereto as Exhibit 13.

Additionally, wild horse behavior expert Mary Ann Simonds has opined that the horses have inhabited the Mogollon Rim where the Territory is located since at least the early 1900s and most likely since 1699. *See* Mary Ann Simonds, *Determination of Whether Horses Inhabiting the USFS Heber Wild Horse Territory are "Wild Free-Roaming Horses"*, dated March 5, 2007, at 8, attached hereto as Exhibit 14. Simonds concluded, among other things, that:

- At least two or more distinct bands of wild horses exist in the Territory.
- One group, with a dominant buckskin stallion, numbered from 15-30 horses.
- Another group, with a dominant black/bay stallion, numbered approximately 15-30 horses.
- Field observations from October 2006 support these findings, as fresh manure and hoof prints were observed throughout the area and especially near water sources.

Id. at 2. Simonds recommended that investigations into the behavioral ecology of the wild horses be conducted to develop baseline data and determine the best management practices in order to preserve the wild horses that represent the "living symbols of the historic and pioneer spirit of the West." *Id.* at 3.

Notwithstanding, the USFS continues to rely on unproven claims regarding the alleged diminishing of wild horses in the Territory. Significantly, when put to the test under the fire of litigation, the USFS was utterly unable to support these rumors. *See* Order Granting Injunction, Exhibit 2. The Plan contains only cursory information regarding the population of wild horses in the Territory. Nor is there any indication therein regarding how the USFS determined the population of wild horses at any time since the United States Congress established the Territory. There is no scientific study or facts to indicate that only two mares remained in the 1990s or that the stud for the herd was sterile. The USFS has done absolutely nothing to prove these rumors.



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In 1971, there were *at least* seven horses occupying the Territory, but likely many more. *See* Forest Service Memo to Regional Forester, attached hereto as Exhibit 15. It is not known how the USFS estimated the population of the horses. *See* Deposition of Bumpus, taken Oct. 13, 2006 (“Bumpus Dep.”) at 36:23-37:25, attached hereto as Exhibit 16; Hughes Deposition, taken Oct. 5, 2006 (“Hughes Dep.”) at 66:4-22, attached hereto as Exhibit 17. This appears to be nothing more than a guess based upon a single fly-by. In 1974, the USFS speculated that “the stud [for the herd] may be sterile as no colts have been seen for several years, and there is no indication of unauthorized removal.” *See* Forest Service Memo to Regional Forester, attached hereto as Exhibit 15. The USFS never took any action to test this unverified assumption. Based on incomplete and marginal surveys, from 1974 to 1978, the population of the herd appeared to decrease from seven to three. In 1980, however, the population increased to eight head which suggests, contrary to the USFS’s suspicion in 1974, that the stud was not sterile. *See* Documented Wild Horse Population Numbers, Heber Wild Horse Territory, Apache-Sitgreaves National Forests, attached hereto as Exhibit 18. The wild horse population reportedly dropped to five head in 1982 but increased to seven head in 1984 before holding steady at five head between 1986 and 1991. *Id.* In 1992 the population was listed as zero. *Id.* However, the USFS indicated as late as 1993, that there were two mares left in the herd. *See* Territory Withdrawal Recommendation, attached hereto as Exhibit 23.

The USFS has consistently disregarded the Act’s requirement to maintain a current inventory of wild horses. *See* 16 U.S.C. § 1333(b). Indeed, a census was never conducted to accurately estimate the wild horse population in the Territory – let alone the Apache-Sitgreaves National Forests.² *See* Wild and Free Roaming Horses and Burros on Public Lands Report (estimating the wild horse population in the Territory to be 5 head, but indicating the estimate was not based on a census), attached hereto as Exhibit 19; *see also* Klein Deposition, taken Oct. 13, 2006 (“Klein Dep.”) at 19:14-21:17 (indicating that a census was not conducted to determine whether there were only two horses left), attached hereto as Exhibit 20; Zieroth Deposition, taken Sept. 25, 2006 (“Zieroth Dep.”) at 28:23-30:21 (indicating that she was unaware of any inventories after 1993), attached hereto as Exhibit 21. In addition, it is not clear whether foals or losses from deaths were always included in the estimates of the number of horses. *See* Forest Service letter to Denver Public Library (noting the population estimate as of December 1973 did not include the 1974 foal crop or death losses), attached hereto as Exhibit 22. USFS employees do not know how the population numbers listed in the historical documents were obtained.

² In the 2005 Litigation, the USFS argued that pursuant to the Act, it needed only census horses in the Heber Wild Horse Territory, and not the entire Apache-Sitgreaves National Forests. However, 36 C.F.R. § 222.25 (revised as 36 C.F.R. § 222.65) requires the surveillance and protection of wild horses on national forest lands, other public lands, and lands of other ownership and jurisdiction. *See* Order Granting Injunction at p. 5, Exhibit 2. As such, the USFS’s obligation is not limited to the Territory.



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Hughes Dep. at 65:13-70:22, Exhibit 17; Bumpus Dep. at 37:10-39:11, 65:22-66:20, Exhibit 16. Little is known about the “inventory” in 1993 which indicated that there were two horses remaining in the Territory. Klein Dep. at 19:14-21:17, Exhibit 20. The USFS continued to report the wild horse population as zero in 2004 even though it never conducted a recent census. See Zieroth Dep. at 28:23-30:21, 49:5-50:10, Exhibit 21; Klein Dep. at 35:2-23, Exhibit 20; Hughes Dep. at 26:4-22, Exhibit 17; Bumpus Dep. at 40:2-42:2, 65:22-66:20, Exhibit 16; see also Order Granting Injunction at p.4 (finding the evidentiary value of the of the USFS’s documentation of zero horses to have *de minimus* value, because USFS failed to explain how the figures were derived), Exhibit 2.

Notably, USFS Black Mesa Ranger District Ranger Kathleen Klein testified that she only came to the realization that the Territory had not been disbanded after the 2005 Litigation was filed. She provided that it was at that time that she actually reviewed the provisions of the Act. Klein Dep. at 46:3-23, Exhibit 20. She also testified that the USFS then recognized that Forest Supervisor Bedell either had not withdrawn the territory or he was not able to do so. See Klein Dep. at 51:1-52:24, Exhibit 20. This documentation (along with additional evidence) was provided to the USFS in the 2005 Litigation. Accordingly, the USFS has copies of these documents and knowledge of this information.

Ms. Klein acknowledged that it was USFS practice to discount the existence of the Territory and of the wild horses. Klein Dep. at 52, Exhibit 20. Despite prior court orders and legally binding agreements to the contrary, the Plan continues this alarming practice in violation of the Act. This must be corrected.

Relief Sought

The Plan should remove the following blatantly false statement: “[n]o known records or documentation exists that the Apache NF had any unbranded and unclaimed horses prior to December 15, 1971.” See Plan, Glossary, at p. 170 (“wild horse”); FEIS, Vol. II, Glossary, at p. 546 (“wild horse”). The Plan should also remove all unsubstantiated references to the alleged diminishing of wild horses in the Territory. In particular, the unsubstantiated reference to only two mares remaining on the Territory in 1993, which a federal court specifically determined to have no evidentiary value, should be removed. See Order Granting Injunction, Exhibit 2.

The Territory and the wild horses were considered significant enough to be named and honored in statute, and the USFS should give them the deference deserved by including the historical significance and presence as well as the evidence of the present inhabitation. The Plan should be revised to recognize:

- The wild horses as living symbols of the historic and pioneer spirit of the West;



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- The wild horses contribute to the diversity of life forms within the Nation and, specifically, the Apache-Sitgreaves National Forests;
- The wild horses enrich the lives of the American people; and
- The wild horses are by law an integral component of the natural system of the public lands, as expressed by Congress in the Act.

The USFS is obligated to protect and manage the wild horses in accordance with the Act. These obligations include, but are not limited to the following:

- The USFS has an obligation to manage and protect wild horses residing on any public lands such as the Apache-Sitgreaves National Forests and especially within the Heber Wild Horse Territory.
- The USFS has an obligation to maintain a current inventory of wild horses located in the Apache-Sitgreaves National Forests including means such as observation for branding or domestic markings, use of genetic testing and/or other means or study.

2. THE USFS VIOLATES THE WILD FREE-ROAMING HORSES AND BURROS ACT OF 1971, A FEDERAL COURT ORDER, AND THE NATIONAL ENVIRONMENTAL POLICY ACT BY IGNORING ITS OBLIGATIONS UNDER EACH.

The Plan blatantly disregards the obligations the USFS has under the Act, a Federal Court Order, and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”).

The Wild Free-Roaming Horses and Burros Act of 1971

The Plan plays mere lip service to the Act only to say that the purpose was to provide use by and for the protection of wild horses. It fails to elaborate on and include relevant provisions of the Act including Congress’ recognition of the horses and burros. Pursuant to Congressional designation, the Territory is a “special area”. *See* Plan at p. 7; *see generally* the Act. Indeed, Congress specifically found and declared that:

[W]ild-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



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capture, branding, harassment, or death, and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

16 U.S.C. § 1331.

The USFS must manage the Territory as required by Congress. *See* 1982 Planning Rule § 219.2. Pursuant to the Act, the Territory has specific requirements for its management. For instance, under the Act, the Secretary of Agriculture is “directed to protect and manage wild free-roaming horses as components of the public lands....” 16 U.S.C. § 1333. The term “wild free-roaming horses and burros” is specifically defined under the Act to mean “all unbranded and unclaimed horses and burros on public land of the United States.” 16 U.S.C. § 1332(b). The Act further provides that the Secretary “shall manage wild free-roaming horses and burros in a manner that is designated to achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1333(a). The Secretary “shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in § 1337 of this title.” 16 U.S.C. § 1333(a). To date, the USFS has not complied.

Significantly, Section 1333 of the Act further provides that the Secretary “shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands.” 16 U.S.C. § 1333(b). “All management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a). Moreover, it is illegal to maliciously or negligently injure or harass wild horses or burros protected by the Act, treat them inhumanely or use them for commercial gain. 16 U.S.C. § 1338(a).

Section 1337 of the Act directs the Secretary to “appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection.” The Plan fails to mention any such advice or recommendations from the Wild Horses and Burros Advisory Board.

Furthermore, the Plan repeatedly refers to the “Heber Wild Horse Territory Management Plan” within the Desired Conditions and Guidelines for the Territory. *See* Plan at p. 118. Despite agreeing to complete, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develop a written Wild Horse Territory Management Strategy in accordance with the provisions of the Act, *the USFS has yet to do so. See* Federal Court Order, Exhibit 2. Any attempt to incorporate direction from the nonexistent “Heber Wild Horse Territory Management Plan” is blatantly improper. *See* 1982 Planning Rule § 219.2 (“If, in a particular case, special area authorities require the preparation of a separate special area plan, the direction in any such plan may be incorporated without modification in



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plans prepared under this subpart.”). Where the “special area plan” does not (yet) exist, there is simply no “direction” to incorporate.

Disappointingly, the USFS has – and continues to – flout its obligations under the Act. Indeed, the prior management plan for the Apache-Sitgreaves National Forests failed to provide any direction for the Territory. *See* Plan at p. 4. Despite purporting to do so, this Plan fails to acknowledge the specific requirements for management of the Territory. *See* Plan at pp. 118-19.

Federal Court Order

The actions of the USFS, including the disregard for the Territory and its wild horses in the Plan, indicates that the USFS must have disavowed the Federal Court Order it entered into in the 2005 Litigation.

The Federal Court Order provides the following:

- The Heber Wild Horse Territory still exists and has not been dissolved.
- The wild horses are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Act.
- The USFS will work with the public, including ISPMB, in the development of a written Heber Wild Horse Territory Management Strategy in accordance with the provisions of the Act.
- The USFS will refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts, considered the Sitgreaves National Forest, until the USFS completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy.
- The USFS will involve the public, including the ISPMB, in scoping for the analysis.
- The USFS will provide ISPMB with specific notice of the document and consider its comments on the same.
- The USFS will continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.



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Remarkably, eight years after the Federal Court Order, the USFS has not progressed towards fulfilling its obligations. It is as if the Federal Court Order does not exist. The Federal Court Order addresses the very concerns that appellants have and argue here: the USFS continues to operate without any regard for the Territory or the wild horses associated therewith.

National Environmental Policy Act

The USFS must comply with the NEPA before taking any “major federal action.” Specifically, § 4332 of NEPA provides in pertinent part:

(2) [A]ll agencies of the Federal Government shall...

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, shall accompany the proposal through the existing agency review processes.



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Regrettably, the FEIS is devoid of any analysis of the effects of Plan implementation on wild horses associated with the Heber Wild Horse Territory as required by NEPA. *See generally* FEIS. Indeed, unlike for “Wildlife and Rare Plants”, the FEIS contains no section describing the affected environment for wild horses nor any evaluation or disclosure of the potential environmental consequences on wild horses of implementing four plan alternatives. *Id.* There is, in fact, but scant reference anywhere in the three volume (1374 page) FEIS to the Heber Wild Horse Territory. *See e.g.* FEIS, Vol. I, at pp. 479, 489 (“Livestock Grazing”); *see also* Range Specialist Report. Instead, the FEIS further exposes the Forest Service’s improper characterization of wild horses associated with the Territory as “feral” and “invasive”. *See e.g.* FEIS, Vol. I, at pp. 336 (“Invasive Species”); *see also* Invasive Species Specialist Report.

Significantly, NEPA mandates that the Forest Service take a “hard look” at the direct, indirect, and cumulative impacts on wild horses posed by any proposed project or activity within the Apache-Sitgreaves National Forests. Moreover, the USFS is precluded from gathering or removing any horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until it completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy. *See* Federal Court Order, Exhibit 4.

Relief Sought

The Plan should be revised to recognize USFS’s obligations under the Act, the Federal Court Order and NEPA. Specifically, the Plan should reference the Act and its obligation to protect and manage the wild horses, as well as the requirement to maintain a current inventory of the wild horses. Additionally, the Plan should incorporate the Federal Court Order obligations including, but not limited to, acknowledging the wild horses as an integral component of the Apache-Sitgreaves National Forests, coordinating with the White Mountain Apache Tribe for repair and maintenance of the boundary fence, and refraining from gathering or removing horses associated with the Territory. The Plan should incorporate how the USFS will comply with NEPA and analyze the effects of Plan implementation on wild horses associated with the Territory. Moreover, the Plan should delineate how it will evaluate and disclose potential environmental consequences on the wild horses of implementing four plan alternatives.

Further, the appellants seek specific guidance and information for project and activity decision-making concerning the Territory. This guidance and information has been lacking since the 1987 Plan. Even then, the Plan lacked an incorporation of direction for special areas, including the Territory. *See* ROD at p. 1 (purporting that the Plan provides specific guidance and information for project and activity decision making). *See also* ROD at p. 5 (indicating the need



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for the Plan to incorporate direction for special areas including the Territory). The Plan should provide detailed and specific "Desired Conditions" and "Guidelines" as it does in the lengthy sections devoted to "Wildlife Quiet Area" in stark contrast to the "Wild Horse Territory." *Compare* Plan at pp. 119-20 to Plan at p. 118.

3. THE USFS'S CHARACTERIZATION OF THE WILD HORSES AS "FERAL" AND "INVASIVE" IS UNFOUNDED AND IGNORES EVIDENCE CONTRARY TO THOSE LABELS.

The Act, and subsequent federal regulations, define what a wild horse is – not the USFS's arbitrary determination as reflected in the Plan. Again, all unbranded and unclaimed horses and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use the lands as all or part of their habitat, qualify as "wild horses." *See* 36 C.F.R. § 222.60(b)(13). Unbranded claimed horses for which the claim is found to be erroneous are also wild. *Id.* The 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. § 222.63.

Despite establishment of the Territory in 1973, the USFS has historically ignored its responsibilities with respect to the wild horses within the Apache-Sitgreaves National Forests, including the Territory. Indeed, the USFS stated that "[t]he territory was not an issue raised during development of the [1987] Forest Plan. It was not discussed in the EIS, nor is it discussed anywhere in the Plan itself. A Territory Plan has not been written." *See* Territory Withdrawal Recommendation, Exhibit 23.

Moreover, since 1991, the USFS has alleged that horses associated with the Territory were feral horses and began advocating for their elimination. In a report it compiled, the USFS noted, "[a]pproximately 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." *See* Forest Service Wild Free Roaming Horses and Burros on Public Land Report, Part V (the "Report"), attached hereto as Exhibit 19. In addition, the Report goes on to express how the USFS would like to preclude horses from its management responsibilities. It stated, "[e]limination of incidental feral horses and burros from formal management consideration to reduce impacts on management resources, personnel and time. The A/S 'herd' should not be recognized at all." *See* Forest Service Wild Free Roaming Horses and Burros on Public Land Report, Part V, Exhibit 19.

By 1993, the USFS asserted that the territory was designated in the early 1970s because there were unclaimed animals in the Forest. Some of these were "unclaimed animals from the Fort Apache Indian Reservation and some were animals abandoned in the area when a local family left." *See* Territory Withdrawal Recommendation, Exhibit 23; *see also* USFS letter from



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Hughes to Onken (stating the Territory was only populated with feral horses at the time the Act passed and the Territory should have never been designated as a wild horse territory), attached hereto as Exhibit 24. But, there is no evidence in documents from the 1970s that supports these assertions. *See* Forest Service Memo to Regional Forester, Exhibit 15 and Forest Service letter to Denver Public Library, Exhibit 22.

In a letter dated March 10, 1994 to Steve Bragg from Kate Klein, she provides “[w]e 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.” *See* Letter from Klein to Bragg, dated Mar. 10, 1994, attached hereto as Exhibit 25. The foregoing illustrate the USFS’s sentiment that elimination of the horses associated with the Territory is the USFS’s desired action for advancement of their management responsibilities. *See also* Letter from Zieroth to Sirower, dated September 7, 2005 (stating that “there are hundreds of horses grazing freely on the reservation so they are not really managed. The next step is to gather the horses and contact the State Department of Agriculture...;” and “We do not classify these stray horses as ‘wild free-roaming horses,’ nor do they have connection to the Heber Horse Territory of record.”), attached hereto as Exhibit 26. The conclusion Zieroth provided was not supported by research or investigation. *Id.* Alarming, the USFS admits that “over the years, several attempts have been made to gather feral horses with limited success.” *See* Final Invasive Species Report at p. 7. Such actions would be in direct violation of not only the Act and NEPA, but also (depending on the time frame) Federal court orders, *i.e.* Order Granting Injunction and Federal Court Order. Appellants request any and all information concerning these “gathers.”

Contrary to the USFS’s long-standing and specious position, the horses associated with the Territory are “wild” and entitled to protection under the Act. Indeed, Mary Ann Simonds, a leading authority on wild and domestic horse behavior, opined that there was no data indicating in any way that the horses inhabiting the Territory were feral. She reported that no horses were observed with brands or with horse shoes and that it was unlikely that there was much permanent migration of horses from surrounding areas. *See* Expert Report of Mary Ann Simonds at p. 3, Exhibit 14. Moreover, she reported that the Mogollon Rim is a geographic barrier known to support wild horses through the last century. *Id.* She asserted that all data indicated 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. *Id.* Ms. Simonds found that sufficient social data collected from local residents substantiated her findings that there is a stable population of various bands of black/dark and brown/bay horses and buckskin horses that exist on the Rim and within and near the original Heber Wild Horse Territory. *Id.* at p. 8. *See also* Photos of the Heber wild horses attached as Exhibits 13.



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It is clear that the USFS has not changed its sentiment towards the Territory or the horses in the last four-plus decades. To date, there is still no “Heber Wild Horse Territory Management Strategy.” *See e.g.* Plan at p. 118. Nor does this Plan provide any meaningful guidance or information for project or activity decisions concerning the Territory, let alone the wild horses.

The Plan focuses exclusively on feral and/or stray equine. *See generally* Plan. For instance, within the “Wild Horse Territory” section, the Plan refers only to a current population of “bands of free-ranging stray and/or feral equine...both inside and outside the territory” – implying no current population of wild horses exists. *See* Plan at p. 118. Indeed, the Forest Service goes so far as to suggest that it could unilaterally amend the Plan in the future to remove the Territory. *See* FEIS, Vol. II, App. A, Public Comments and Responses, at p. 693 (“The Heber Wild Horse Territory Management plan (in progress) will identify the appropriate management level (number of wild horses) for this area. If this number is zero, the plan could be amended in the future to remove the territory.”) Further, in the section devoted to “invasive species,” the USFS specifically contends that “feral and/or stray equine have become established on the forests” and that “these unauthorized animals are impacting ecological conditions as well as management opportunities.” The USFS identifies specific locations, namely: Black River drainage, west of Big Lake, and along and north of FR 300. *See* Plan at p. 65. Disturbingly, the USFS recommends that to manage these horses, the forests identify appropriate methods for control and *eradication*. *See* Plan at p. 66.

In neither section, does the USFS acknowledge procedures it must follow in the removal of horses. It fails to recognize that 36 C.F.R. § 222.63 concerning the removal of other horses and burros, provides special protection for horses that do not fall initially within the protection of the Act, if they are subsequently introduced into a protected territory “by accident, negligence or willful disregard of private ownership” and become intermingled with wild free-roaming horses. *See* 36 C.F.R. § 222.63. Further, the USFS fails to acknowledge that it is specifically precluded from gathering or removing *any* horses within the Territory, as well as on the Black Mesa and Lakeside Ranger Districts, until it completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy. *See* Federal Court Order, Exhibit 4.

The USFS’s characterization of wild horses as “feral” or “stray” and, in turn, an “invasive species,” is based on pure speculation. For instance, the Range Specialist Report alleges that “[u]nauthorized horses have been observed on all five ranger districts. Most are *probably* feral or stray equine from adjacent land owners, while others *may have been* abandoned by recreational owners.” *See* Range Specialist Report at p. 9 (emphasis added). Similarly, the Invasive Species Specialist Report further contends that:



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Feral horses have become established in several locations within the forests. Herds (small groups) of these animals can be found along the western forest boundary on the Apache portion (within the Black River drainage on Alpine and Springerville RDs, areas west of Big Lake on the Springerville RD, and upper Eagle Creek on the Clifton RD), and along the southern forest boundary on the Sitgreaves portion (along and north of FR 300 on the Black Mesa and Lakeside RDs).

See Final Invasive Species Report at 7.

In fact, the Plan provides no evidence supporting its (mis)characterization. Indeed, the evidence demonstrates that the USFS has failed to maintain a current inventory of wild horses in the Apache-Sitgreaves from which a determination as to their status could (properly) be made. Moreover, there is no evidence the USFS has sought the input of individuals with scientific expertise or knowledge of wild horses. See Plan at p. 147-48 (List of Preparers); FEIS, Vol. II, at pp. 521-26 (Consultation and Coordination). This failure is in direct contravention of the 1982 Planning Rule. See 1982 Planning Rule § 219.5(b) (“The team shall collectively represent diverse specialized areas of professional and technical knowledge applicable to the planning area, and the team members shall have recognized relevant expertise and experience in professional, investigative, scientific, or other responsible work in specialty areas which they collectively represent. The team may consist of whatever combination of Forest Service staff and other Federal government personnel is necessary to achieve an interdisciplinary approach. The team is encouraged to consult other persons when required specialized knowledge does not exist within the team itself.”)

The USFS must begin the process anew, not simply build on a false and unsupportable premise. See *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211-1212, 1231 (9th Cir. 1998) (“General statements about possible effects and some risk do not constitute a hard look absent justification regarding why more definite information could be provided.”); *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (holding that the purpose of an EIS is to obviate the need for speculation by ensuring that available data are gathered and analyzed prior to the implementation of the proposed action).

Relief Sought

Revise definition of “feral horse” as it is contrary to the Act and regulations. See FEIS, Vol II at p. 531. Revise definition of “wild horse” as it is not in conformance with the Act or regulations. See FEIS, Vol. II, at p. 546. Revise any and all references to feral horses and wild horses in the text of the Plan, FEIS, etc., accordingly.



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The USFS should withdraw the portions of the Plan that makes reference to the wild horses as feral, stray, and/or as an invasive species. *See e.g.* Plan at pp. 118-19. Remove any references to feral, stray, or invasive species of equine unsupported by evidence. Any references to removal of horses must be to pertinent sections of the Code of Federal Regulations as well as with recognition that such removals are precluded by the Federal Court Order. The USFS must undertake the necessary studies and consult with wild horse experts to obtain reliable data from which a determination of wild (or feral) may properly be made to ascertain reliable numbers of wild horses.

4. THE USFS FAILS TO CONSIDER – LET ALONE ANALYZE – HOW THE LAND MANAGEMENT PLAN WILL IMPACT THE WILD HORSES AND THE TERRITORY.

The Plan lacks validity and completeness without a Wild Horse Territory Management Strategy in place.

The Plan is curiously devoid of any true consideration of the wild horses. Despite purporting to incorporate direction for special areas that were not included in the 1987 Plan, including the Heber Wild Horse Territory, the Plan fails (again) to include any information or strategy of value. *See* Plan p. 4.

Furthermore, the Plan includes but four Desired Conditions and only one Guideline for the Territory. In comparison, for the Wildlife Quiet Area, the Plan includes fifteen Desired Conditions and five Guidelines. *See* Plan at p. 119-20. At a minimum, the Plan should include Desired Conditions for the Territory concerning core habitat, preserving natural behaviors, population and genetic exchange, lack of disturbance, and high quality winter range. Guidelines for the Territory should at least ensure fencing to allow movement, connectivity of habitat, and minimization of impacts to the wild horses and their habitat. The USFS does, however, find a position in the Plan for a thorough analysis of other wildlife and rare plants. The USFS here thoughtfully includes a background and description of rare and unique species in the Apache-Sitgreaves Forest. The Plan provides desired conditions and objectives for the named wildlife and rare plants. *See* Plan at pp. 61-62. In contrast, the brief section on the Territory fails to provide the significant history that is part of the background of the Heber wild horses that should be highlighted and cherished.

In the 2005 Litigation, the Federal Court Order included that “[t]he parties hereby agree that wild horses are by law an integral part of the component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 as amended. The Forest Service will work with the public, including Plaintiffs, in the development of a written Heber Wild Horse Territory Management Strategy in accordance with the provisions of the Act.” *See* Stipulated Settlement Agreement, Exhibit 3. While that Stipulated Settlement



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Agreement provided promise that the Forest Service would at last place overdue attention onto the Heber Wild Horse Territory and the valuable horses associated with that territory, now eight years later the Forest Service has yet to advance any closer to the development of a written management strategy. Notwithstanding, the Plan improperly attempts to incorporate direction from this nonexistent Heber Wild Horse Territory Management Plan.

While the Plan alludes to a management strategy, it focuses almost exclusively on removal of wild horse populations when they exceed the appropriate management levels (“AML”). *See e.g.* Plan at p. 118 (Guideline) (“When wild horse populations exceed the appropriate management levels, horses should be removed in accordance with the ‘Heber Wild Horse Territory Management Plan’ (when completed)”); *id.* (Desired Conditions) (“Horse numbers within the Territory are aligned with the appropriate management level as described in the ‘Heber Wild Horse Territory Management Plan.’”). With more of a focus on the removal strategy, the USFS gives no consideration to Desired Conditions or Guidelines focused on keeping the horses thriving and healthy.

Significantly, failure to prioritize wild horse management plagues the USFS at the national level as well. As recently as August 25, 2014, at a meeting of the Wild Horse and Burro Advisory Board, the USFS discussed the *continued* need to: (1) describe and define thriving natural ecological balance; (2) develop a basic framework for territory management plan components; and (3) develop a framework for NEPA components specific to wild horse and burro decisions. *See* USFS Inter-Regional Action Plan PowerPoint, attached hereto as Exhibit 27. These concepts all pertain to the wild horses and the requirements the USFS must follow in the Territory. This advisory board meeting information demonstrates the *lack of development* in these areas remaining as of 2014. There is no wonder that the lack of development continues to be the norm and is further exemplified by the utterly deficient guidance for the Territory in the Plan.

The Plan ignorantly refers to the Wild Horse Territory as suitable for all uses – other than the protection of wild horses.

Pursuant to the Act, the Heber Wild Horse Territory was designated as a “sanctuary” for the protection and preservation of wild horses. 16 U.S.C. § 1333(a). Moreover, even designated ranges managed under a multiple use concept are to be “devoted principally” to wild horses. 16 U.S.C. § 1332(c). Notwithstanding, the Plan fails to provide a framework that ensures the welfare of wild horses associated with the Territory. *See* discussion *supra* at pp. 17-18. Indeed, the Plan identifies the Territory as “suitable” for every possible use imaginable, including: livestock grazing; energy corridor and other energy development; communications sites; timber



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production and tree cutting; motorized travel, including new designated motorized areas; and mechanized recreation. *See* Plan at pp. 133-40.

Pursuant to the 1982 Planning Rule, the appropriateness of applying certain resource management practices to a particular area of land is to be determined by an analysis of the economic and environmental consequences and the alternative uses foregone. *See* 1982 Planning Rule § 219.3 (“Suitability”). Despite this mandate, in no way does the Plan consider the impact that any of these uses may have on the designated Territory or the protected wild horses associated with that Territory. *See also* discussion *supra* at pp. 11-13 (NEPA).

The USFS’s failure to analyze the consequences of livestock grazing on the wild horses is particularly glaring. In forest planning, “the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined.” *See* 1982 Planning Rule § 219.20. Specifically,

Lands suitable for grazing and browsing shall be identified and their condition and trend shall be determined. The present and potential supply of forage for livestock, *wild and free-roaming horses* and burros, and the capability of these lands to produce suitable food and cover for selected wildlife species shall be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration.

Id. at § 219.20(a) (emphasis added). The Forest Service must consider, among other things, “possible conflict or beneficial interactions among livestock, *wild free-roaming horses* and burros and wild animal populations, and [...] direction for rehabilitation of ranges in unsatisfactory condition...” *Id.* at § 219.20(b) (emphasis added).

Authorized livestock grazing (particularly within the Territory) may adversely affect the wild horse herds’ genetic, behavior, nutritional, and/or reproductive health. For instance:

- Hundreds of livestock occupying the same lands as the wild horses – including the Territory, which was designated pursuant to the Act, may disrupt and displace wild horses.
- Livestock grazing necessarily results in competition between livestock, wild horses, and wildlife for limited forage to maintain a healthy population with the allotments.



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- Livestock grazing may result in insufficient forage to maintain a healthy population of wild horses.
- Overuse, especially during dry conditions near water sources, may lead to insufficient available forage, accelerated soil erosion, and stress that could jeopardize wild horses.
- Damage from livestock grazing on the Territory degrades range conditions for wild horses.
- Maintaining and installing structural improvements, including fencing and cattle guards, restricts wild horse movement contrary to the “free-roaming” lifestyle mandated by the Act.
- Maintenance and installation of new structural improvements may negatively impact wild horse free-roaming behavior, including natural rest and rotation of vegetation.
- Maintaining and installing structural improvements may impact wild horse social units, resulting in fragmentation and small sub-divided populations with low genetic variability.
- Vegetative treatments may further disrupt and displace wild horses associated with the Territory.

Moreover, given that the entirety of the Territory is situated within grazing allotments, namely the Heber and Black Canyon Allotments, the cumulative impacts of the livestock grazing on the Territory may be so significant as to render the Territory not “suitable” for wild horses – the very purpose for which it was established. The Territory most certainly cannot be designated as suitable for all uses without an investigation and analysis of the effects of such uses on the wild horses and the Territory.

As put forth in the section immediately above, the Territory is one which requires the USFS to develop and articulate a written Heber Wild Horse Territory Management Strategy. The USFS, however, has delayed for decades now, the development of that strategy. Until the USFS has developed a Wild Horse Territory Management Plan, it is impossible for it to determine for what other uses the Territory may be suitable. Any decision as to the suitability of the Territory for multiple uses would be arbitrary and capricious or otherwise not in accordance with applicable law.



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Relief Sought

The USFS must develop a written Heber Wild Horse Territory Management Strategy, in accordance with the Act. Until it does so, it should be precluded from making any decisions potentially impacting the Territory or the welfare of the horses associated with it. To do so would be to allow the USFS to completely disregard the applicable law, in particular the Act, and the protected horses associated with it.

The USFS should revise the Plan to remove the identification of the Territory as suitable for all of the various uses described, until proper investigation and analysis is conducted.

Importantly, the appellants seek the Plan's differentiated management and guidance according to the unique needs of the Territory. While the ROD purports that the "Plan provides direction for management areas that have specific management direction that differs from the general forest[,]" including the Heber Wild Horse Territory, the Plan – in fact – fails (again) to include any information or strategy of value. *See* ROD at p. 19. The very real danger is that without such unique guidance, resource management activities within the Territory would be no different than those within the Apache-Sitgreaves National Forests in general. The Territory's needs, however, are unmistakably distinct from those of the general forest.

CONCLUSION

The Plan, as approved, categorically fails to recognize the role and significance that Congress, among others, has placed upon the wild horses associated the Heber Wild Horse Territory. The Plan fails to meet obligations it has under federal acts such as the Wild Free-Roaming Horses and Burros Act and NEPA, including protecting and managing the wild horses and keeping current inventories of the same. The Plan makes references to unsubstantiated claims of the number of horses remaining on the Territory although a federal court has held these claims to be of no evidentiary value. Additionally, the Plan ignores a Federal Court Order providing that the USFS not gather or remove horses within the Territory without first conducting an analysis to develop a written Territory management strategy. Evidencing a failure to meet these obligations, the Plan is void of any guidance or direction as to the Territory.

The Plan should be required to contain specific direction and objectives for the Territory. The brief section devoted to the Territory pales in comparison to other sections with significantly more developed guidance, such as that provided in the "Desired Conditions" and "Guidelines" sections of the Plan. The indifference to the wild horses and the Territory is further illustrated in the Plan by its ignorant characterization of the Territory as suitable for all uses – without analysis of the Territory itself. The Plan failed to carefully analyze the needs of the wild horses associated with the Territory and the impact that other uses would have on them both. The lack of attention



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to the Territory and the horses is dumbfounding in light of the fact that the Plan purports to include particular direction for special areas, naming the Heber Wild Horse Territory as one of those areas.

The Plan must be revised to develop the areas highlighted here. To allow the Plan to be implemented as approved would cause irreversible and irretrievable damage to the Territory and the wild horses. Without focused guidance and a management strategy concentrated on the Territory and the horses, the USFS will have broad discretion to implement general activities provided under the Plan. The needs of the National Forests as a whole vary greatly from the needs of the Territory and therefore, should not be applied. The Plan requires revision to include distinctive and specialized objectives and safeguards for the Heber Wild Horse Territory.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony W. Merrill".

Anthony W. Merrill

Enclosures



File Code: 1570
Date: JAN 08 2016

Anthony Merrill, Attorney
Polsinelli
CityScape, One E. Washington St., Ste. 1200
Phoenix, AZ, 85004

Dear Mr. Merrill:

We have received the timely appeal of Regional Forester Calvin Joyner's Record of Decision approving the Final Environmental Impact Statement for the Apache-Sitgreaves National Forests Land Management Plan Revision, which you filed on behalf of the International Society for the Protection of Mustangs and Burros and TerraWind Ranch Eco-Action Group. This appeal has been assigned number 16-13-00-0007. Please refer to that number for any correspondence related to this appeal.

Your appeal will be processed in accordance with provisions of Optional Appeal Procedures, <http://www.fs.fed.us/emc/applit/includes/201307PlanAppealProceduresDuringTransition.pdf> (36 CFR 219.17(b)(3), published April 9, 2012; also 36 CFR 219.35 and Appendix A to section 219.35, published December 18, 2009).

The appellants may request a meeting with the Regional Forester at (505) 842-3178 to discuss the appeal, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on your appeal.

Sincerely,

BRIAN FEREBEE
Reviewing Officer for the Chief

cc: Region 3 Planning

International Society for the Protection of Mustangs and Burros
Karen A. Sussman, President
P.O. Box 55
Lantry, SD 57636-005

TerraWind Ranch Eco-Action Group
Jill Irvin, Director
2130 South Holguin Way
Chandler, AZ 85286



File Code: 1920; 1570
Date: FEB 25 2016


Anthony W. Merrill
Attorney
Polsinelli
City Scape, One E. Washington St., Ste. 1200
Phoenix, Arizona 85004

Dear Mr. Merrill:

This letter is a follow-up reminder of the decision for the Apache-Sitgreaves Revised Land Management Plan. Your appeal, No. 16-13-00-0007, is being reviewed by the Appeal Reviewing Officer in the Chief's Office and is being processed in accordance with the provisions of the Optional Appeal Procedures (36 CFR 217[b][3], published April 9, 2012; also 36 CFR 219.35 and Appendix A to section 219.35, published December 18, 2009). The appeal resolution decision is expected by early June 2016.

Prior to that decision, if you would like a meeting with me and the Planning Staff here in the Regional Office to discuss resolution to any of your appeal points, please contact Roxanne Turley, Acting Regional Administrative Review Coordinator, at (505) 842-3178, to set up an appeal resolution meeting.

Sincerely,


CALVIN N. JOYNER
Regional Forester

cc: Stephen Best, Wendy Haskins, Nancy Walls, Thomas Greene, Bob Davis, Jennifer Ruyle, Matt Turner, Roxanne Turley, Margaret Van Gilder, Deborah McGlothlin, Nancy Rusho, Jody Sutton



File Code: 1900

Date: JUL 01 2016

Anthony W. Merrill, Polsinelli Law Firm
Attorney
CityScape
One E. Washington St.
Ste. 1200
Phoenix, Az 85004

Dear Mr. Merrill:

Thank you for meeting with me and others from the Southwestern Regional Office and the Apache-Sitgreaves National Forests on May 6, 2016, to discuss your appeal of my decision approving the Apache-Sitgreaves National Forests Land and Resource Management Plan. I am encouraged that in that discussion and in subsequent exchanges we were able to address your concerns regarding your appeal issues 1-4 in the Apache-Sitgreaves National Forests Plan and associated Final EIS. I believe the changes we have mutually agreed to, will help better address direction in the Forest Plan toward managing wild horses on the Apache-Sitgreaves National Forests. You indicated the proposed changes would alleviate your concerns and that you are willing to withdraw your appeal based on our commitment to make those changes to the Final EIS and/or Forest Plan, as outlined in the enclosed document. In addition to these document changes, we agreed to continue these discussions, as appropriate, in the collaborative development of the Heber Wild Horse Territory Management Plan. This process is to begin on the Forest, with stakeholder groups that include the International Society for the Protection of Mustangs and Burros and TerraWind Ranch Eco-Action Group, soon after the Plan appeal review period is complete.

Please find enclosed, a document showing the specific changes we have agreed to. The resolution summary for each issue is marked "Resolution" and the language changes are marked "Document Changes", which includes references to the Final EIS and/or Forest Plan, where the changes will be made with the specific changes listed in italics. All proposed changes to the Final EIS are done through errata as clarifications or corrections that do not require additional NEPA analyses. All proposed changes to the Plan are administrative changes that do not require a plan amendment or a plan revision.

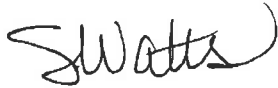
In order to withdraw your appeal, please send a letter (email) to the Reviewing Officer, appeals-chief@fs.fed.us, stating your name, organization, and a statement that you are withdrawing your appeal (appeal No.16-13-00-007) of the Apache-Sitgreaves Forests Plan (issues 1-4, listed on pages 5-22 of your appeal). The Appeal review period is quickly coming to a close (a decision is due the second week of July), so it would be beneficial to submit your letter of appeal withdrawal with all possible speed, otherwise the Appeal Reviewing Officer will need to decide on the merits of your appeal rather than on the mutually agreed to resolution that we have reached.



After you send this letter you will get a response acknowledging the withdrawal of your appeal. The Forest will then make the agreed upon changes to the Final EIS and Forest Plan as well as any other changes determined by the Reviewing Officer resulting from the review of all appeals on this Plan. This will likely not occur until after the appeal review period concludes in mid-July so that the Forest can address these and any other changes simultaneously. Please contact Roxanne Turley, Acting Regional Administrative Review Coordinator, at (505) 842-3178 or Matt Turner, Regional Planner, at (505) 842-3214 if you would like additional information.

As mentioned above, we have mutually agreed to continue discussions regarding the Heber Wild Horse Territory Management Plan on the Apache-Sitgreaves National Forests. We look forward to continuing those discussions with you and will be back in touch as that process begins.

Sincerely,



AR CALVIN N. JOYNER
Regional Forester

Enclosures (2)

cc: Tiffany Anderson (TAnderson@Polsinelli.com), Stephen Best, Wendy Jo Haskins, Nancy Walls, Thomas Greene, Bob Davis, Jennifer Ruyle, Steve Hattenbach, Dawn Dickman (DAWN.DICKMAN@OGC.USDA.GOV), Nancy Rusho, Deborah McGlothlin

**Apache-Sitgreaves National Forests Plan
ISPMBfTerraWind Appeal Resolution
Appeal #16-13-00-0007
June 30, 2016**

ISSUE 1: THE LAND MANAGEMENT PLAN FAILS TO RECOGNIZE THE HISTORIC AND CONTEMPORARY PRESENCE OF THE WILD HORSES.

Resolution

- Glossary definitions for "Wild free-roaming horses and burros," "Wild horse and burro territory," and "Stray animal" will be replaced by definitions taken directly from federal statute, federal regulations, and/or Arizona state statute.
- Plan language in Wild Horse Territory section of the Land Management Plan will be replaced as described below.

Document Changes

1.1 a. Replace glossary definition for "Wild horse (wild free-roaming horse)," FLMP, p. 170 and FEIS, v. 2, p. 546, with:

"Wild free-roaming horses and burros-

- *" ... all unbranded and unclaimed horses and burros on public lands of the United States." (16 USC 1332(b)).*
- *"Wild free-roaming horses and burros mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto the National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. 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." (36 CFR 222.60(b)(13))*
- *"Horses and burros not within the definition in § 222.20(b)(13) [recodified as 36 CFR § 222.60(b)(13)] which are introduced onto Wild Horse and Burro Territories or ranges after December 15, 1971, by accident, negligence, or willful disregard of private ownership, and which do not become intermingled with wild free-roaming horses or burros shall be considered as unauthorized livestock and treated in accordance with provisions in 36 CFR 261.7 and 262.10." (36 CFR 222.63) [administrative change to the plan; erratum to the FEIS]*

1.1 b. Add a glossary definition for "Wild horse and burro territory", FLMP p. 170, and FEIS, v. 2 p. 546, after the definition of "Wild free-roaming horses and burros":

Wild Horse and Burro Territory -- Lands of the National Forest System which are identified by the Chief, Forest Service, as lands which were territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act." (36 CFR 222.60(b)(15)) [administrative change to the plan; erratum to the FEIS]

1.1c. Replace glossary definition for "stray equine" with definition for "Stray animal", FLMP p. 167 and add to FEIS, v.2 p. 544, before the definition of "Structure":

Stray anima/-

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- *Livestock, bison or ratites whose owner is unknown or cannot be located, or any such animal whose owner is known but permits the animal to roam at large on the streets, alleys, roads, range or premises of another without permission". (Arizona Revised Statute: Title 3, Chapter 11, Article 7,3-1401)*
- *Stray horses and burros are animals that do not meet the definition of a wild free-roaming horse in accordance with 36 CFR 222.60(b)(13). [administrative change to the plan; erratum to the FEIS]*

1.2. Replace the entire section Background for Wild Horse Territory, (FLMP, p. 118) with:

"This management area contains most of the Heber Wild Horse Territory, approximately 19,700 acres on the Black Mesa Ranger District. The territory was established in 1973 pursuant to the Wild Free-Roaming Horse and Burro Act of 1971 as amended with the purpose of providing use by and for the protection of wild horses. The Heber Wild Horse Territory is considered a special area by the Forest Service. The Forest Service entered into a Stipulation Agreement filed on March 2, 2007, agreeing that wild horses are by law an integral part and component of the natural system of the public lands, as expressed by Congress. Under the Stipulation Agreement, the Forest Service agreed to "refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until the Forest Service completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy." [administrative change]

1.3. Replace the "Management Approaches for Wild Horse Territory" section (FLMP, pp. 118-119) with the following:

"The Forest Service will administer wild horses in the Heber Wild Horse Territory in accordance with applicable laws and regulations, including but not limited to 36 CFR Part 222, Subpart D. The Forest Service will work with the public to develop a Heber Wild Horse Territory Management Plan to direct specific management actions for the Heber Wild Horse Territory. Based on site-specific analysis, the management plan will determine an appropriate management level. As directed in the regulations at 36 CFR 222. 61 (a)(1), the goal is to maintain a thriving ecological balance within the territory. Management actions may be needed both inside and outside of the territory to meet desired conditions." [administrative change].

ISSUE 2: THE USFS VIOLATES THE WILD FREE-ROAMING HORSES AND BURROS ACT OF 1971, A FEDERAL COURT ORDER, AND THE NATIONAL ENVIRONMENTAL POLICY ACT BY IGNORING ITS OBLIGATIONS UNDER EACH.

Resolution

This issue is resolved by the same changes as Issue 1.

Document Changes

See document changes for Issue 1, above.

Apache-Sitgreaves National Forests Plan
ISPMBITerraWind Appeal Resolution
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ISSUE 3: THE USFS'S CHARACTERIZATION OF THE WILD HORSES AS "FERAL" AND "INVASIVE" IS UNFOUNDED AND IGNORES EVIDENCE CONTRARY TO THOSE LABELS.

Resolution

- Glossary definitions of "Feral equine" (Plan) and "Feral horse" (Final EIS) will be replaced by definitions taken from federal regulations, as described below.
- Language characterizing the horses as feral and/or invasive will be removed from the Plan and Final EIS, as described below.

Document Changes

3.1 Change definition of "Feral equine" in FLMP glossary, p. 155, to the following:

"Feral animal/-" ... animal/s, including horses, burros, cattle, swine, sheep, goats, reindeer, dogs, and cats, without ownership that have reverted to the wild from a domestic state ..." (50 CFR 30. 11). *Feral horses and burros are animals that do not meet the definition of a wild free-roaming horse in accordance with 36 CFR 222.60(b)(13).*" [administrative change]

3.2 Replace definition for "Feral horse" in FEIS (p. 531) with the above definition for "Feral animal." [erratum]

3.3 Delete paragraph 2, page 65, under Invasive Species, FLMP as follows: "In addition, feral and/or stray equine (e.g., horses) have become established on the forests. These unauthorized animals are impacting ecological conditions as well as management opportunities. Locations include areas within the Black River drainage, west of Big Lake, and along and north of FR300." [administrative change]

3.4 Delete paragraph 3, v. 1, page 336, of the FEIS as follows: "Feral horses have become established in several locations within the forests. Herds (small groups) of these animals can be found along the western forest boundary on the Apache portion (within the Black River drainage on Alpine and Springerville Ranger Districts, areas west of Big Lake on the Springerville Ranger District, and upper Eagle Creek on the Clifton Ranger District) and along the southern forest boundary on the Sitgreaves portion (along and north of Forest Road 300 on the Black Mesa and Lakeside Ranger Districts). A feral horse is defined as a free roaming horse having escaped from domestication. Feral horses are escaped domestic horses, or their descendants (branded or unbranded), that strayed, escaped, or were deliberately released onto National Forest System lands and continue to survive and reproduce on the forests in the wild. Feral horses are animals that do not meet the definition of a wild free roaming horse and are considered unauthorized livestock. These unauthorized animals are negatively impacting ecological conditions as well as management opportunities were they occur. Feral horses have few natural predators." [erratum]

3.5a. Revise FEIS "Response" at v. 2, p. 692: "The definition for feral *animal* was added to the plan. See definitions for feral *animal*, unauthorized livestock, and wild *free-roaming* horses and *burros* in the plan's glossary." [erratum]

3.5b. Revise FEIS "Response" at p. 693 (delete final sentence): "The wild horse territory remains as one of the 12 management areas identified in chapter 3 of the plan. The Heber Wild

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Appeal #16-13-00-0007

June 30, 2016

Horse Territory management plan (in progress) will identify the appropriate management level (number of wild horses) for this area. If this number is zero, the plan Could be amended in the future to remove the territory. [erratum]

3.6. Add to the FEIS Chapter 3 Introduction (add below two sentences to the end of the first paragraph on page 49): "Specialist reports are one of a host of factors considered in the decision-making process. The final decision is based on information derived from a number of sources and may not fully reflect statements made in the specialist reports." [erratum]

ISSUE 4 THE USFS FAILS TO CONSIDER - LET ALONE ANALYZE - HOW THE LAND MANAGEMENT PLAN WILL IMPACT THE WILD HORSES AND THE TERRITORY.

Resolution

4.1 The Forests will defer any site-specific plan amendments to change the suitability of the HWHT for one or more uses until site-specific NEPA analysis for the Heber Wild Horse Territory Management Strategy.

Document Changes

4.2 Add a footnote at the end of paragraph 3, p. 133, in LMP, after " ... support that use.":

"As a result of site-specific analysis if plan suitability needs adjustment, it can be accomplished through a plan amendment." [administrative change]



CityScape, One E. Washington St., Ste. 1200, Phoenix, AZ, 85004• 602.650.2000

December 13, 2017

Anthony W. Merrill
(602) 650-2310
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amerrill@polsinelli.com

Via Email & U.S. Mail

Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
P.O. Box 586
Albuquerque, NM 87103-0586
Email: dawn.dickman@ogc.usda.gov

Re: *Heber Horse Collaborative*

Dear Ms. Dickman:

I am writing to express concerns regarding the Heber Horse Collaborative (the “Collaborative”) and its current trajectory. I have served as counsel for the International Society for the Protection of Mustangs and Burros and In Defense of Animals, among others, in an action against the United States Forest Service and other governmental entities in 2007, in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. As a result of that action, the United States District Court for the District of Arizona ordered the Forest Service to comply with various conditions, including that the wild horses within the Heber Wild Horse Territory (“HWHT”) are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the “Act”) as amended and that the Forest Service would work with the public, including Plaintiffs, in the development of a written HWHT Management Strategy in accordance with the provisions of the Act. Because of the concerns we have regarding the Collaborative, as more fully discussed below, we believe that the Forest Service has not met its obligations.

The order provides, among other terms, the following:

- That the Forest Service work with the public, including the Plaintiffs in that matter, in the development of a written HWHT Management Strategy in accordance with the provisions of the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.*
- That the Forest Service refrain from any gathering or removing of horses within the Heber Wild Horse Territory and the Black Mesa and Lakeside Ranger districts (which are

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USDA OFFICE OF GENERAL COUNSEL
December 13, 2017
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considered the Sitgreaves National Forests), until the Forest Service completes two actions.

- The first is the completion of an analysis and appropriate environmental document pursuant to NEPA, with public involvement.
- The second action is the development of a written HWHT Management Strategy, in which the Plaintiffs shall be included. The Forest Service is required to provide Plaintiffs with specific notice of the document and consider Plaintiffs' comments on the same.
- That the Forest Service continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.

While we have not been informed of any repairs to or maintenance efforts on the boundary fence, when we learned that a collaborative working group would be formed to provide input and recommendations for the development of a HWHT Management Strategy, we were very pleased. We expected that the participants in the group would have a broad range of education and experience in areas that directly related to the HWHT and that at least one of the Plaintiffs would be included, as ordered by the Court. The expectation was that input from the Collaborative members would be objective and informed in order to propose actions that would positively impact the HWHT and the horses themselves. The Collaborative has met only four times thus far and already there are concerns that the course the Collaborative is taking does not conform with the purpose of the group or the terms of the order. If the group continues to follow this direction, the results will not properly inform the development of a written HWHT Management Strategy.

According to reports we have received about the Collaborative's composition, it does not appear as though the members include a representative group of horse advocates or experts. Namely, in violation of the Court order, the Collaborative does not include any of the Plaintiffs. The majority of members, based on their education and experience, appear to be uninformed about what the HWHT has to offer and how the horses interact in the HWHT. This is further supported by reports that the Collaborative meetings are void of meaningful discussion about the wild horses themselves, their needs, the protected status, etc. It seems counterintuitive to establish a working group for the benefit of the HWHT and its wild horses, with the ultimate goal of contributing to a written plan directly affecting the same, that does not include sufficient horse experts and advocates.

Moreover, we have been informed that a Proposed Appropriate Management Level Determination (the "Proposal") was disseminated to the Collaborative. It was reportedly drafted in February 2017 by members of the TEAMS Enterprise Unit and purports to give a pre-



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The Collaborative was promoted as a group that would assist in the development of a written plan, much like the one produced by the TEAMS Enterprise Unit. Further, the Collaborative promoted itself as one which would provide input into the development of proposed actions regarding the HWHT and that the Collaborative would be a platform for learning, analysis and solution-oriented discussions. Accordingly, it is nonsensical for the Collaborative to begin its work with data and results which are erroneously skewed against the horses and the HWHT. The results contained in the Proposal are of the type that the Collaborative should conclude with, not begin. To date, and according to meeting minutes, the Collaborative has not provided a platform for learning about the HWHT and its horses. Nor has it encouraged a solution-oriented discussion thus far.

We demand that the Forest Service review its obligations under the order and once and for all comply with it. Specifically, the Forest Service must assess its progress on repair of the boundary fence. It must be completed, if it has not yet been repaired. Next, the Forest Service must take action upon the Collaborative while it is in its infancy. The Forest Service has a court-ordered obligation to include Plaintiffs in the development of a written HWHT Management Strategy. Accordingly, your direct involvement in ensuring that the Collaborative include a Plaintiff in the group, as required by the order, is imperative. We recommend that our client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. We are confident she can contribute a wealth of experience and education on the topic of the wild horses and the HWHT.

The horses have a federally-protected right to live within the Heber Wild Horse Territory and the surrounding districts. As such, it behooves the Collaborative to change its trajectory from an outcome driven group (based on unfounded data) to one that is objectively well-informed, investigative, and analytical in order to develop a HWHT Management Strategy, as directed by the Court's order. If the Collaborative continues on the route it has taken over the past four



Dawn M. Dickman
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December 13, 2017
Page 4

meetings, the outcome will surely be to end up right where the Collaborative started. We believe we share a mutual goal of promoting the successful management of a sustainable herd in the Heber Wild Horse Territory in accordance with the Wild Free-Roaming Horses and Burros Act. Please assist us in continuing towards that end.

Thank you for your attention to this matter. I look forward to your follow through.

Very truly yours,

A handwritten signature in black ink that reads "Anthony W. Merrill". The signature is fluid and cursive.

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu), Larry Fisher (lfisher@email.arizona.edu)



One East Washington Street, Suite 1200, Phoenix, AZ 85004-2568 • 602.650.2000

June 19, 2018

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Via Email & U.S. Mail

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Albuquerque, NM 87103-0586
Email: dawn.dickman@ogc.usda.gov

Re: *Follow up to Heber Wild Horse Territory Emergency*

Dear Ms. Dickman:

I am writing as a follow up to our May 23, 2018 letter regarding our concerns on the Heber Wild Horse Territory ("HWHT"). In the letter, we expressed that the concerns were two-fold: the drought facing the HWHT and the status of the Heber Horse Collaborative (the "Collaborative"). Critical time is passing and the HWHT and its wild horses cannot continue to wait for intervention.

In our May 23, 2018 letter, we expressed concern over the imminent danger the wild horses face in the HWHT as a result of the severe drought. Upon information, the Forest Service has yet to initiate an action plan to ameliorate this situation. We again request that the Forest Service provide us with information on the number of cattle that have been brought onto the HWHT. As you know, cattle do not have a federal right to be on the HWHT and therefore must be removed in order to leave territory resources to the wild horses. The Forest Service has the authority to remove cattle currently on the territory and officially close the HWHT to all cattle.

Pursuant to 43 C.F.R. § 4710.5, the Forest Service may close public lands to grazing by livestock. Specifically, the regulation provides, in pertinent part:

If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions...the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

43 C.F.R. 4710.5(a). At a critical time like the present, the wild horses must be priority. Closure of the HWHT to grazing by livestock through the implementation of this regulation is indeed necessary for the protection and management of the wild horses.

June 19, 2018

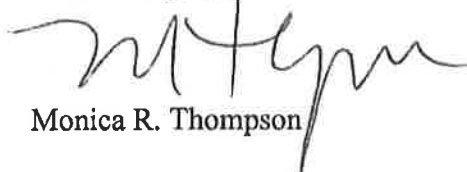
Page 2

You will recall that the May 23, 2018 letter also addressed our concern over the HWHT Management Strategy (the "Plan") and the Heber Horse Collaborative (the "Collaborative"). This drought is but one illustration of the reasons the Plan is vital. We again strongly recommend that our client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. Ms. Sussman was actually the impetus for the Collaborative. Her long time commitment, persistence and advocacy for the wild horses played a significant role in the initiation of a group such as the Collaborative. Ms. Sussman is the right person to replace a former Collaborative member and wild horse advocate, Jill Irvin.

As advocates for the HWHT and the wild horses, we continue to rely heavily on the court order issued in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. The order requires the Forest Service to comply with various conditions, including that the wild horses within the HWHT are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the "Act") as amended. The Forest Service must fulfill its duty to protect and manage the federally-protected Heber wild horses. Specifically, the Forest Service should remove the cattle currently grazing upon the HWHT, pursuant to 47 C.F.R. § 4710.5. Secondly, we request that the Forest Service recommend to Arizona State University and Southwest Decision Resources that Karen Sussman be appointed to the Collaborative. Her appointment would ensure that the Collaborative has a more balanced representation in support of the wild horses.

This is a critical juncture for the wild horses on the HWHT. The Forest Services has the authority and capacity to make its most important, positive impact on the wild horses yet. Thank you for your attention to this matter. I look forward to your response and follow through.

Very truly yours,



Monica R. Thompson

MRT/dmc

cc: Michael Schoon (Michael.schoon@asu.edu), Larry Fisher (lafisher@email.arizona.edu)



U.S. Department of Agriculture
Office of the General Counsel
Mountain Region, Albuquerque Field Office
P.O. Box 586, Albuquerque, NM 87103
Main Line: (505) 248-6010

June 29, 2018

VIA EMAIL

Monica R. Thompson
Polsinelli PC
One East Washington Street, Ste 1200
Phoenix, AZ 85004-2568

RE: Response to letters regarding Heber Wild Horse Territory

Dear Ms. Thompson,

This is in response to your letter dated June 19, 2018, as well as a previous letter from Mr. Merrill dated May 23, 2018. First, let me assure you, the Apache-Sitgreaves National Forests has been aware of the drought situation and its potential impacts on the horses and wildlife for some time, and has been actively responding to water issues. The Forest has been coordinating with groups and private individuals who have been providing water since early May.

The Gila Herd Foundation, the Heber Wild Horse Freedom Preservation Alliance, Equine WellBeing Rescue Inc., along with other private and public partners, have been and continue to haul water for wildlife, livestock, and horses on lands within the Sitgreaves National Forest. Gates are confirmed open where there are no permitted livestock. Where livestock are turned out, gates are closed around pastures to maintain livestock control. Water within those pastures is available to permitted livestock, wildlife, and the horses. A few gates around dangerous stock tanks are closed to keep horses from getting mired in the deepening mud. Eighty head of livestock were turned out on the Black Canyon Allotment as of June 1, and are scheduled to graze areas within and outside the territory until mid-September. Despite the current drought conditions, there is sufficient residual forage remaining from last year's growing season to provide feed for horses, wildlife and permitted livestock until summer rains set in.

The entire Apache-Sitgreaves National Forests is in Stage 2 Fire Restrictions. In addition, on May 23, the Forests implemented four area closures, including the area around the Heber Wild Horse Territory, south of state highway 260 at the Mogollon Rim Visitors

Center, east to US Highway 60 near Show Low, Arizona. Forest-level closure information is posted on the Forests' website. Despite these closures to the public, private and public partners have been given exemptions on the Black Mesa and Lakeside Ranger Districts to enter closed areas for the purpose of hauling water.

As previously discussed with Mr. Merrill, Arizona State University's School of Sustainability (ASU) is a neutral and independent entity that has convened the collaborative group to help provide input and recommendations to the Forest Service for development of the proposed action for the Heber Wild Horse Territory management plan. ASU, with facilitation assistance from Southwest Decision Resources (SDR) (retained under a Forest Service contractual agreement), assembled the collaborative group from a broad range of participants and perspectives. The collaborative working group has made great progress over the last several months and is still on their original timeline to have recommendations to the Forest Service by early this fall.

The Forest Service is participating, along with other cooperating agencies, with the collaborative process. The Forest Service has the decision-making authority on the final content of the territory management plan, but is not the convener of the collaborative process and does not invite participants to join the working group. ASU and SDR conducted interviews of potential participants for the working group in order to gauge interest and commitment to be part of the collaborative. I understand Karen Sussman and Jill Irvin were both contacted as part of that process. Further inquiries related to the collaborative participants should be directed to Michael Schoon, Assistant Professor, ASU School of Sustainability.

The Forest Service continues to work pursuant to the Wild Free-Roaming Horses and Burros Act of 1971, as amended, as well as other applicable laws, policies, and regulations—including the Multiple Use Sustained Yield Act of 1960, the National Forest Management Act, Forest Service regulations at 36 C.F.R. Part 222, and the Land and Resource Management Plan for the Apache-Sitgreaves National Forests—to develop the territory management plan for the Heber Wild Horse Territory. The Forest Service also continues to comply with its obligations per the Stipulation Agreement signed in *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM.

Thank you for your interest in management of the Heber Wild Horse Territory. If you have any questions or concerns, please feel free to email or call me at (505) 248-6006.

Sincerely,



Dawn M. Dickman
USDA Office of the General Counsel



CityScape, One E. Washington St., Ste. 1200, Phoenix, AZ, 85004• 602.650.2000

December 13, 2017

Anthony W. Merrill
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amerrill@polsinelli.com

Via Email & U.S. Mail

Dawn M. Dickman
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The order provides, among other terms, the following:

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Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
December 13, 2017
Page 2

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- The first is the completion of an analysis and appropriate environmental document pursuant to NEPA, with public involvement.
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Dawn M. Dickman
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Thank you for your attention to this matter. I look forward to your follow through.

Very truly yours,

A handwritten signature in black ink that reads "Anthony W. Merrill".

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu), Larry Fisher (lfisher@email.arizona.edu)

D



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February 9, 2018

Anthony W. Merrill
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Via Email & U.S. Mail

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Re: *Heber Horse Collaborative*

Dear Ms. Dickman:

In my correspondence of December 13, 2017, I wrote to communicate concerns regarding the Heber Horse Collaborative (the "Collaborative") and its trajectory. I also wrote to remind the United States Forest Service ("Forest Service") of the Court order issued in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. The order requires the Forest Service to comply with various conditions, including that the wild horses within the Heber Wild Horse Territory ("HWHT") are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the "Act") as amended and that the Forest Service would work with the public, including Plaintiffs, in the development of a written HWHT Management Strategy in accordance with the provisions of the Act. We have concerns that the Forest Service is not meeting its obligations through the Collaborative, as more fully discussed below.

The order requires, among other terms, the following:

- That the Forest Service work with the public, including the Plaintiffs in that matter, in the development of a written HWHT Management Strategy in accordance with the provisions of the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.*
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USDA OFFICE OF GENERAL COUNSEL
February 9, 2018
Page 2

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Accordingly, the Forest Service must assess its progress on repair of the boundary fence. It must be completed, if it has not yet been repaired. Next, the Forest Service must take action upon the Collaborative while it is in its infancy. The Forest Service has a court-ordered obligation to include Plaintiffs in the development of a written HWHT Management Strategy. The Forest Service's direct involvement in ensuring that the Collaborative include a Plaintiff in the group, as required by the order, is imperative. We proposed our client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. We are confident she can contribute a wealth of experience and education on the topic of the wild horses and the HWHT. We have not received a response from you regarding this proposal. Due to the time-limited nature of the Collaborative, the situation is urgent and Ms. Sussman should be appointed immediately.

Given the horses' federally-protected right to live within the Heber Wild Horse Territory and the surrounding districts, the Forest Service must take action promptly. The Collaborative should be required to change its trajectory to ensure the development of a HWHT Management Strategy that meets the requirements of the Court's order. We would appreciate a response indicating the actions that were taken with regard to the Collaborative.



Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
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Page 4

Very truly yours,

A handwritten signature in black ink that reads "Anthony W. Merrill". The signature is fluid and cursive.

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu)
Larry Fisher (lafisher@email.arizona.edu)



CityScape, One E. Washington St., Ste. 1200, Phoenix, AZ, 85004• 602.650.2000

May 23, 2018

Anthony W. Merrill
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Via Email & U.S. Mail

Dawn M. Dickman
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Re: *Heber Wild Horse Territory Emergency*

Dear Ms. Dickman:

I write again to express recent concerns regarding the Heber Wild Horse Territory (“HWHT”). My concerns are two-fold: the drought facing the HWHT and the status of the Heber Horse Collaborative (the “Collaborative”). The HWHT and its wild horses desperately need the Forest Service’s intervention at this critical juncture.

First, as you are likely aware, the wild horses are facing imminent danger in the HWHT as a result of the severe drought. According to reports, waterholes are dry which could compromise the area’s vegetation. The drought has already had a drastic, negative impact on the diminishing water which we can expect will only worsen as temperatures rise. We understand that cattle have been brought out onto the HWHT making resources scarcer for the wild horses, which are by federal right, on the territory. The dry, sparse forage and lack of water will most certainly lead to the death of the already dwindling wild horse population.

By all accounts, the Forest Service is not currently leading or even entertaining an action plan to ameliorate this situation. Pursuant to 43 C.F.R. § 4710.5, the Forest Service may close public lands to grazing by livestock. Specifically, the regulation provides, in pertinent part:

If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions...the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

43 C.F.R. 4710.5(a). The Forest Service, with its authority and ample resources, should not sit idly by and watch the wild horses suffer. Closure of the HWHT to grazing by livestock could provide immediate relief and eliminate unnecessary competition for resources. In fact,

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implementation of this regulation at this time is indeed necessary for the protection and management of the wild horses. As you will recall, on December 13, 2017, I wrote to you about the urgency for the HWHT Management Strategy (the "Plan") to be prudently and thoughtfully drafted to ensure the best interests of the wild horses are met. This drought is but one illustration of the reasons the Plan is vital. This leads to my second concern.

I received information that the Heber Horse Collaborative (the "Collaborative"), which was originally tasked with developing a written Plan within one year, has been granted a one-year extension to complete the Plan. We are unaware of the reason for extending the deadline, but we cannot help but consider the continuing effects a lack of plan will have on the HWHT and the wild horses. Notwithstanding that, we believe this is an ideal opportunity to revisit the Collaborative's representatives and trajectory. In my February 9, 2018 letter to you, I proposed that my client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. While I understand that Arizona State University ("ASU") and Southwest Decision Resources ("SDR") members are responsible for organizing the group, we would be most appreciative if the Forest Service would provide them with Ms. Sussman's name as a potential candidate for the Collaborative. Ms. Sussman brings years of experience and education on the topic of the HWHT wild horses and the challenges they face. While the year extension prolongs the final written Plan, it also provides a renewed opportunity to ensure that the Collaborative has the right balance of representatives and that the most pressing issues facing the HWHT and its wild horses are being considered. Ms. Sussman is eager and well-equipped to assist in the development of the Plan, including strategies for addressing a drought.

As advocates for the HWHT and the wild horses, we rely heavily on the court order issued in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. The order requires the Forest Service to comply with various conditions, including that the wild horses within the HWHT are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the "Act") as amended. The Forest Service cannot allow such an integral part of the natural system to perish on the public lands it manages. The wild horses cannot be allowed to die from thirst exacerbated by competing for scarce resources with cattle that do not have the same right to graze as the wild horses and contending with unrepaired boundary fences.

We are calling on the Forest Service to fulfill its duty to protect and manage the federally-protected Heber wild horses. Specifically, the Forest Service should assess the drought situation as it is affecting the wild horses and collaborate with interested community supporters to provide aid and relief to the wild horses immediately. Its first action should be to remove the cattle



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currently grazing upon the HWHT, pursuant to 47 C.F.R. § 4710.5. We would like to request that the Forest Service provide us with the current number of cattle that are grazing on the HWHT and the number the Forest Service is anticipating for the remainder of 2018. Secondly, we request that the Forest Service recommend to ASU and SDR that Karen Sussman be appointed to the Collaborative. We strongly believe the impact of her appointment would be significant.

The lives of these majestic horses are in jeopardy now more than ever before. It behooves the Forest Service to fully perform its duties and step into action to save the lives of the wild horses in the HWHT. There is no time to waste.

Thank you for your attention to this matter. I look forward to your response and follow through.

Very truly yours,

A handwritten signature in black ink that reads "Anthony W. Merrill".

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu), Larry Fisher (lfisher@email.arizona.edu)



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February 9, 2018

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Via Email & U.S. Mail

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Albuquerque, NM 87103-0586
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Re: *Heber Horse Collaborative*

Dear Ms. Dickman:

In my correspondence of December 13, 2017, I wrote to communicate concerns regarding the Heber Horse Collaborative (the “Collaborative”) and its trajectory. I also wrote to remind the United States Forest Service (“Forest Service”) of the Court order issued in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. The order requires the Forest Service to comply with various conditions, including that the wild horses within the Heber Wild Horse Territory (“HWHT”) are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the “Act”) as amended and that the Forest Service would work with the public, including Plaintiffs, in the development of a written HWHT Management Strategy in accordance with the provisions of the Act. We have concerns that the Forest Service is not meeting its obligations through the Collaborative, as more fully discussed below.

The order requires, among other terms, the following:

- That the Forest Service work with the public, including the Plaintiffs in that matter, in the development of a written HWHT Management Strategy in accordance with the provisions of the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.*
- That the Forest Service refrain from any gathering or removing of horses within the Heber Wild Horse Territory and the Black Mesa and Lakeside Ranger districts (which are considered the Sitgreaves National Forests), until the Forest Service completes two actions.

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- The first is the completion of an analysis and appropriate environmental document pursuant to NEPA, with public involvement.
- The second action is the development of a written HWHT Management Strategy, in which the Plaintiffs shall be included. The Forest Service is required to provide Plaintiffs with specific notice of the document and consider Plaintiffs' comments on the same.
- That the Forest Service continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.

While we have not been informed of any repairs to, or maintenance efforts on, the boundary fence, when we learned that a collaborative working group would be formed to provide input and recommendations for the development of a HWHT Management Strategy, we were very pleased. We expected that the participants in the group would have a broad range of education and experience in areas that directly related to the HWHT and that at least one of the Plaintiffs would be included, as ordered by the Court. The expectation was that input from the Collaborative members would be objective and informed in order to propose actions that would positively impact the HWHT and the horses themselves. The Collaborative has met only four times thus far and already there are concerns that the course the Collaborative is taking does not conform with the purpose of the group or the terms of the order. If the group continues to follow this direction, the results will not properly inform the development of a written HWHT Management Strategy.

According to reports we have received about the Collaborative's composition, it does not appear as though the members include a representative group of horse advocates or experts. Namely, in violation of the Court order, the Collaborative does not include any of the Plaintiffs. The majority of members, based on their education and experience, appear to be uninformed about what the HWHT has to offer and how the horses interact in the HWHT. This is further supported by reports that the Collaborative meetings are void of meaningful discussion about the wild horses themselves, their needs, the protected status, etc. It seems counterintuitive to establish a working group for the benefit of the HWHT and its wild horses, with the ultimate goal of contributing to a written plan directly affecting the same, that does not include sufficient horse experts and advocates.

Moreover, we have been informed that a Proposed Appropriate Management Level Determination (the "Proposal") was disseminated to the Collaborative. It was reportedly drafted in February 2017 by members of the TEAMS Enterprise Unit and purports to give a pre-determined management determination for the HWHT. Not coincidentally, the Proposal uses historical Forest Service data that the Court in 2007 determined to be unfounded. Much of the



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data contained in the Proposal was at the center of the issues in the 2007 matter referenced above. Yet, shockingly, the Proposal ignored all the findings from that proceeding, which were submitted as part of the public record and proceeded from a false narrative. Our understanding is that the Proposal reaches the unfounded conclusion that the HWHT can sustain only 31 horses, but that to avoid inbreeding depression in horse populations, a minimum herd size of 50 effective breeding animals (a total population size of about 150 to 200 animals) is recommended. This places the horses in a no-win quandary. Together, the composition of the group and the report the Collaborative chose to lead with indicates a clear, unfair bias against the horses. As ordered by the Court, new data should be gathered and analyzed for application going forward.

The Collaborative was promoted as a group that would assist in the development of a written plan, much like the one produced by the TEAMS Enterprise Unit. Further, the Collaborative promoted itself as one which would provide input into the development of proposed actions regarding the HWHT and that the Collaborative would be a platform for learning, analysis and solution-oriented discussions. Accordingly, it is nonsensical for the Collaborative to begin its work with data and results which are erroneously skewed against the horses and the HWHT. The results contained in the Proposal are of the type that the Collaborative should conclude with, not begin. To date, and according to meeting minutes, the Collaborative has not provided a platform for learning about the HWHT and its horses. Nor has it encouraged a solution-oriented discussion thus far.

Accordingly, the Forest Service must assess its progress on repair of the boundary fence. It must be completed, if it has not yet been repaired. Next, the Forest Service must take action upon the Collaborative while it is in its infancy. The Forest Service has a court-ordered obligation to include Plaintiffs in the development of a written HWHT Management Strategy. The Forest Service's direct involvement in ensuring that the Collaborative include a Plaintiff in the group, as required by the order, is imperative. We proposed our client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. We are confident she can contribute a wealth of experience and education on the topic of the wild horses and the HWHT. We have not received a response from you regarding this proposal. Due to the time-limited nature of the Collaborative, the situation is urgent and Ms. Sussman should be appointed immediately.

Given the horses' federally-protected right to live within the Heber Wild Horse Territory and the surrounding districts, the Forest Service must take action promptly. The Collaborative should be required to change its trajectory to ensure the development of a HWHT Management Strategy that meets the requirements of the Court's order. We would appreciate a response indicating the actions that were taken with regard to the Collaborative.



Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
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Page 4

Very truly yours,

A handwritten signature in black ink that reads "Anthony W. Merrill".

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu)
Larry Fisher (lfisher@email.arizona.edu)

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July 1, 2019

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Dear Ms. Sellari and Ms. Dickman:

I am writing to you on behalf of my client, the International Society for the Protection of Mustangs and Burros ("ISPMB"), for two reasons. First, I wanted to reiterate the legally binding obligations that the Forest Service agreed to when it signed the March 13, 2007 settlement agreement in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM, filed in the United States District Court for the District of Arizona (the "Stipulated Settlement Agreement").

Second, I have reviewed the Heber Collaborative Working Group ("working group") report ("final report" or "working group report"), and I am contacting you to raise some serious issues concerning the working group's composition, the adequacy and content of the materials presented to the working group, and the legality and appropriateness of the working group's findings and recommendations.

I. Forest Service Obligations, Pursuant to the Stipulated Settlement Agreement.

In 2005, the ISPBM initiated a civil action against the Forest Service alleging violations of the Wild Free Roaming Horses and Burros Act of 1971 ("Wild Horse Act"), 16 U.S.C. §1331 *et. seq.*; the National Environmental Protection Act ("NEPA"), 42 U.S.C. §4321 *et. seq.*; and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 *et. seq.*, in response to the Forest Service's solicitation for the capture, relocation, and eventual sale of 120 horses on public lands in the Heber area. On September 9, 2005, my clients obtained a Temporary Restraining Order, enjoining the Forest Service from awarding a bid for capture and removal of the horses and for rounding up the

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horses within the Apache-Sitgreaves National Forest. *See* Attachment 1. After an extension of the temporary restraining order, the court also granted a preliminary injunction against the Forest Service stating, that our clients:

[R]aise at least serious questions as to the legality of the defendants' actions. Plaintiffs argue that defendants violated NEPA because the removal of wild horses will significantly affect the human environment, and defendants failed to properly consider the impact, and failed to issue an Environmental Impact Statement ("EIS") or a statement of reasons as to why an EIS is unnecessary. Plaintiffs argue that defendants violated the Wild Horses Act because they attempted to remove the wild horses, failed to properly investigate the status of horses, failed to keep an inventory of the horses, failed to establish an advisory committee with regard to the horses, and failed to hold a public hearing prior to the attempt to use motorized vehicles to remove the horses. Plaintiffs argue that defendants violated the APA because they acted arbitrarily and capriciously by failing to conduct a full investigation into the effects of the removal of the horses, and failing to comply with NEPA and the Wild Horses Act.
December 13, 2005 Order, Attachment 2.

Finally, in March 2007, ISPMB and the Forest Service entered into a Stipulated Settlement Agreement. Attachment 3.

Pursuant to the Stipulated Settlement Agreement, there are several obligations and stipulations that the Forest Service agreed to, including

- that the Heber Wild Horse Territory still exists;
- that the wild horses are by law an integral part of the natural system of public lands;
- that the Forest Service would work with the public, including our client, to develop a written horse management strategy;
- that the Forest Service will refrain from gathering or removing horses until a NEPA study has been completed;
- that the Forest Service will involve the public, including our client, in scoping and analysis;
- that the Forest Service will provide ISPMB with specific notice of the document and consider my client's comments; and
- that the Forest Service will work with the White Mountain Apache Tribe to repair and maintain the boundary fence between the Forest Service lands and the Fort Apache Indian Reservation.

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As explained below, at least two of these obligations have not been met.

A. The Forest Service is obligated to provide ISPMB with specific notice.

Among the stipulations, the Forest Service is to develop a written Heber Wild Horse Territory Management Strategy. “The Forest Service will involve the public, including the Plaintiffs, in scoping for this analysis. The Forest Service will provide Plaintiffs with **specific** notice of the document and consider Plaintiffs’ comments on the same. . .” *See* Stipulated Settlement Agreement, Stipulation 5 (emphasis added). The Agency failed to provide my client with any form of notice with respect to the working group report, which was apparently completed in December of 2018.

It is not sufficient to merely make these materials publicly available online, or to provide an email subscription option for updates through the Forest Service website. The Forest Service agreed to provide my client with “specific notice” and has yet to do so. Accordingly, I demand that the Forest Service keep my client apprised through direct communication with myself or my colleagues who represent ISPMB, as the NEPA process continues. Please reaffirm this commitment.

B. The Forest Service Agreed to Construct and Maintain a Boundary Fence Between the National Forest and the Fort Apache Indian Reservation.

In the Stipulated Settlement Agreement, the Forest Service agreed to “continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.” In the 12 years since the Stipulated Settlement Agreement was signed, little has been done about the boundary fence.

At various opportunities, my client has reminded the Forest Service of its obligations concerning the boundary fence, and those reminders have apparently been ignored. Yet again my client demands that the agency comply with its court-ordered obligation and notify my client of the time frame within which it intends to complete the fence, and then make efforts to actually complete it within that time frame.

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II. Response to the Heber Wild Horse Territory Collaborative Working Group Final Report.

A. Legal Standards and Requirements Concerning Qualifications of Scientists and Advisory Board Members.

By statute, in protecting and managing the wild horses, the Forest Service “shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 1337 of this title.” 16 U.S.C. § 1333(a).

In the Stipulated Settlement Agreement, the Forest Service agreed to complete an analysis and documentation pursuant to NEPA to develop a written Heber Wild Horse Territory Management Strategy. The Forest Service also specifically agreed to include my client in the public scoping for that analysis. *See* Stipulation 5, Attachment 3. By excluding my client from the working group, the Forest Service has failed to satisfy its statutory duty.

B. Concerns with selection of members and “Collaborative” Nature of the working group.

By virtue of the Stipulated Settlement Agreement, my client should have been included in the scoping for the analysis, but none of my client’s representatives were selected for the working group. One woman who was affiliated with my client’s organization dropped out of the working group because the other members were so hostile to her. Another woman who is unaffiliated with my client but was also advocating for the horses apparently could not offer input without being met with hostile responses that were so severe that she stopped contributing, even though she continued to attend the meetings.

In December of 2017, our client raised its concerns with the Collaborative Group in a letter. Attachment 4. Which expressed our disappointment that the working group was devoid of any wild horse experts. The group was relying on a paper prepared by the TEAMS Enterprise Unit, which in turn relied on unreliable data provided by the Forest Service in the civil matter that the court found to be unfounded. It is futile to review reports and studies that are founded on bad studies and data in an effort to reach valid and worthwhile conclusions, but apparently that is what the Working Group has attempted to do.

This raises serious concerns regarding the legitimacy of the working group’s recommendations. If some members were silenced or forced out, their opinions are unlikely to have been reflected in the final report. As those members were both wild horse advocates, it is also likely that the opinions and concerns of my client were not properly voiced within the working group or reflected in the final report.

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C. Issues with the Selection of materials and information presented to the Working Group.

As stated above, the Forest Service shall consider the recommendations of *qualified* scientists, at least some of whom cannot be affiliated with the federal or state governments. If the Forest Service is going to consider the recommendations of the working group, particularly on issues related to biology and ecology, then the materials presented to and relied upon by the Working Group should be from reputable sources, including some sources unaffiliated with the state and federal government.

In the final report, there is no bibliography or a list of presenters, their presentation topics, and their credentials. The final report is peppered with references to various reports, federal manuals, and a few presenters; however, there is no way to determine if the information presented to the participants was balanced or reputable. The qualifications and affiliations of the speakers are undocumented. The scope and sources of the studies is barely mentioned.

Additionally, our client retained an expert, Mary Ann Simonds, during the course of the civil litigation in the 2000s. Ms. Simonds' report is a part of the record of that case, and should be a part of the administrative record, yet it does not appear that the working group had access to her materials. Attachment 5. As a part of her investigation, Ms. Simonds combined a review of historical records, field observation of the horses and habitat, and social research through conducting interviews to conclude that there was sufficient evidence to conclude that there were at least two or more stable groups of 15-30 wild horses in or near the Heber Wild Horse Territory. *See* Attachment 2. The record from the civil matter is a baseline concerning the records and the reliability of the records concerning the wild horses at the time the litigation was brought. Moreover, the litigation is origin of the scoping analysis, therefore, it is only proper that the case record be a part of the analysis.

D. The Working Group Does Not Appear to Have Had Access to the Record from the Litigation.

The Stipulated Settlement Agreement specifically obligates the Forest Service to consider the comments and recommendations of my client. As part of this consideration includes considering the materials from the litigation as a part of the administrative record. It does not appear that the working group was provided with any portion of the record from the litigation that gave rise to the Stipulated Settlement Agreement.

It is imperative for the sake of a full and complete administrative record that those materials are considered in creating the Wild Horse Management Plan. Importantly, those materials

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underscore the unreliability and fundamental deficiency of documentation concerning the wild horses up through the execution of the Stipulated Settlement Agreement. This would be significant information to present to the Working Group. The working group was presented with the Forest Service's records, so the Working Group also should have been appraised of the questionable credibility of that record.

E. The Working Group's recommendation concerning the Wild Horse Population Generally.

The working group in its report appears to blindly accept the census collected by the Forest Service in the 1990's. *See e.g.* Final report, at 18. These counts are unreliable for several reasons, all of which are shown in the record from the litigation. First, the methodology for the surveys is undocumented. In the civil case, the court stated that our client's motion to strike the Forest Service's table showing the horse population "denied as moot because the evidentiary value of the table is de minimis-defendants fail to explain how these figures were derived." Attachment 2, at 4. As an aside, this is roughly the same chart that is displayed on the Apache-Sitgreaves National Forest website.

The Forest Service's Data is unreliable.

The USFS has consistently disregarded the Act's requirement to maintain a current inventory of wild horses. *See* 16 U.S.C. § 1333(b). Indeed, a census was never conducted to accurately estimate the wild horse population in the Territory – let alone the Apache-Sitgreaves National Forests.

Agency employees who worked for the agency at the time had no idea that the census was being taken, or what they were counting. In a deposition, a Forest Service district ranger, for the Heber Ranger District (which was consolidated with the Black Mesa Ranger District) stated that the agency inventories frogs and birds, but not larger animals in that area. Moreover, she believed that the two wild horse bands that she had witnessed during the course of her post were not federally protected wild horses because they were not on the Wild Horse Territory. In another deposition, Kendell Hughes, a GS11 range management specialist who had worked at the Black Mesa Ranger District since the early 1990's, stated that he believed the Wild Horse Territory had been dissolved in the early 1990's. (*See* Attachment 6).

As acknowledged by the court, "Defendants argue that pursuant to the Wild Horses Act, they need only census horses in the Heber Wild Horse Territory, and not the entire ASNF. However, 36 C.F.R. §222.25 requires the surveillance and protection of wild horses on national forest lands, other public lands, and lands of other ownership or jurisdiction." Attachment 2, at 5. By statute, wild horses are "all unbranded and unclaimed horses and burros on public lands of the United States." 16 U.S.C. 1333(a)(emphasis added). The horses can only lose their designation as wild if they are sold pursuant to statute, and their remains lose the designation upon the horse's

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death. However, wild horses do not lose their legal protections based on where they roam.

The lack of awareness among the forest rangers about what constitutes a wild horse, and even the existence of a wild horse territory in their district undermines the reliability of the census that the working group so readily accepts.

The Forest Service's reports were refuted in the civil case record through affidavits.

Moreover, there are numerous affidavits that were presented as evidence in the civil case, which come from people who have lived in the Heber area for many years, and have witnessed the wild horses in greater numbers than those reported by the Forest Service during the same timeframe. (See Attachment 7). The collaborative group did conduct its own interviews but does not appear to have had access to the affidavits, even though the affidavits are certainly available to the Forest Service. Final report at 2. Enclosed you will additionally find a compact disk with materials previously provided to the Forest Service for inclusion in the administrative record. Attachment 8.

Other factors should also be considered.

Finally, the while Rodeo-Chediski fire did burn several fences, but it also burned the majority of the Heber Wild Horse Territory, clearing foliage and tree cover in an area that was severely overgrown (a fact that was said to contribute to the severity of the fire). Frankly, it follows that the horses were more visible in the area than they were before the fire – a factor which the working group does not appear to consider.

F. The Horses at issue in This Matter are Wild Horses.

While our client does not disagree that horses with a “use affinity” to the Wild Horse Territory should be considered wild horses, it is important that the horses are acknowledged as wild under the statutory definition – “all unbranded and unclaimed horses and burros on public lands of the United States.” 16 U.S.C. §1332(b). Final report, at 7. Horses that fell under this definition in 1971 and their progeny have statutory protection under the Wild Horses and Burros Act. Horses that are wild by virtue of the “use affinity” definition might not be guaranteed the same protections. Rather, horses that are unbranded, unmarked, and unclaimed on any federal public lands, whether deemed “Wild Horse Territory” or not, should presumptively have legal wild horse status. C.F.R. § 222.23 provides the conditions for treating certain horses as “unauthorized livestock,” for removal. However, these horses can only be designated a “unauthorized livestock” until they intermingle with the wild horses.

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Assertions that the wild horses died off have no evidentiary value.

During litigation, the Forest Service claimed that the horses were not wild, and presented a summary table, which showed that between 1992 and 2004, there were no documented wild horses in the Heber Wild Horse Territory. *See* Attachment 2. This is the same information that the judge in the civil case said had de minimis value, and it seems to be the information that the working group has relied upon. The working group has no discussion concerning the reliability of the Forest Service's assertions. Final report at 18-19.

Additionally, the working group does not establish a basis for why the horses should be protected solely based on an affinity with the Wild Horse Territory. The Territory was established to be a range for the horses. The horses did not become wild because of their associating with the territory. The Working Group's logic here suggests that there potentially is a fundamental misunderstanding within the Working Group as to what makes a horse "wild and free roaming" under the statute. 16 U.S.C. 1331.

For these reasons, my client questions whether the information presented to the Working Group was a full documentation of the record to date, whether the studies were credible and balanced, and whether there were speakers that were not affiliated with the government as well as speakers who were.

G. Appropriate Management Level

Case law dictates that the Forest Service cannot manage to a number.

In *Dahl v. Clark*, the court held that the BLM should manage the horse population to support ecological balance, not to maintain a specific number. *Dahl v. Clark*, 600 F. Supp. 585, 595 (D. Nev. 1984)(stating "Nowhere in the law or regulations is the BLM required to maintain any specific numbers of animals or to maintain populations in the numbers of animals existing at any particular time.")

Under the Wild Horse and Burros Act, as amended by the Public Rangelands Improvement Act ("PRIA"), the Forest Service, case remove "excess animals" if they "must be removed from an area in order to preserve and maintain a thriving and natural ecological balance and multiple-use relationship in that area." 16 U.S.C. §1332(f). To establish that certain horses are excess animals, the Forest Service must (1) create and consider a current inventory of the wild and free roaming horses and burros on the lands within its jurisdiction, consult with state and federal wildlife agencies, consider the advice of qualified scientists or other individuals with scientific expertise or special knowledge of the wild horses and burros; and (2) make a determination that

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there is an excess based on a special study, or the consideration of the inventory, information in any applicable land use planning, information from a court ordered Environmental Impact Statement, and any additional information presented to the Forest Service. 16 U.S.C. 1333.

The working group report recommends management to a range of 40-60 adult horses, but then later acknowledges that 150 horses are necessary for proper biological diversity. Final report at 19. Apparently to side step this inconsistency, the working group suggests that the horses will interbreed with horses from the Fort Apache reservation, and this will maintain their diversity. *Id.* at 19-20. This shows that the working group is either ignorant of or ignoring the fact that the Forest Service has agreed to repair and maintain the fence separating the White Mountain Apache lands and the wild horse territory in the Stipulated Settlement Agreement. Attachment 3. The working group report does acknowledge that the courts in both *Dahl v. Clark*, and *Animal Protection Institute of America v. Nevada BLM*, reject triggering population adjustment based on the population exceeding a threshold number. Even then, the Forest Service must identify and act concerning the animals that are actually causing the harm, whether they are horses, other wildlife, or livestock. Moreover, the Forest Service cannot do so without Without any citation to a study, without any NEPA analysis, as required by the Stipulated Settlement

The Wild Horse Territory is principally devoted to the wild horses.

By statute, the “range” for a wild horse herd is “devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for public lands of the United States.” 16 U.S.C. 1332(c). Under the Taylor Grazing Act, Federal Land Policy and Management Act of 1976 (“FLPMA”), and PRIA, grazing preferences “shall not create any right, title, interest, or estate in or to the [federal] lands.” Moreover, even though grazing rights are generally highly stable in the wake of the Taylor Grazing Act, they are not the same as property rights. *See United States v. Fuller*, 409 U.S. 488 (1973). (United States Supreme Court holding that the takings clause does not require the federal government to compensate landowner for value added to property by virtue of a land permit). Accordingly, while the Heber Wild Horse Territory is specifically reserved for the wild horses, the use of that same land for cattle grazing permits is only permissible. Not mandatory.

In the final report, the working group proposes, without reference to any study, let alone governing law, an “equitable allocation” of an equal amount of Animal Unit Months (“AUM”) to the wild horses, the cattle, and the elk. Final report at 9. The final report provides no support for this allocation, and the allocation presumes that the horses, livestock, and other wildlife each have equal claim to the territory, when by law the territory is to be principally devoted to the wild horses. Additionally, the final report suggests an allocation of 495 AUM to the horses, livestock, and elk. Final report at 10-11. This number and proposed allocation are completely unsupported in the final

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paper, and appear to be selected and structured solely for the sake of maintaining the cattle allotment at its current level. There is little to no support in the resources that the Working Group cites to in the final report for setting a particular AUM capacity in the Heber Wild Horse Territory.

As stated by the working paper, the AUM determinations it uses are conservative; however, the paper does not explain in what way. *Id.* at 9-10. Additionally, the wild horses have been effectively barred from the wild horse territory by fencing around the cattle allotments that overlay the wild horse territory. The cattle allotments have been established and likely adjusted in the near total absence of the horses, whom that land was principally reserved for by Congress. Accordingly, if an adjustment to grazing populations is necessary once the horses regain access to the territory, the agency should first reassess and adjust allocations to the cattle and elk in the territory rather than attributing the need for adjustment to the horses because they were reintroduced last to their territory.

The Final Report supports the use of birth control drugs, such as PZP, without establishing the need for population control.

Congress has “authorized and directed” the Forest Service to “protect and manage the wild and free roaming horses.” 16 U.S.C. 1333(a). Indeed, Congress has specifically found and declared that:

[W]ild-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 area where presently found, as an integral part of the natural system of the public lands.

16 U.S.C. §1331

In keeping with this directive, Congress has precisely established the type and source of information the Forest Service must consider, and the type of records the Forest Service must keep in discharging its management and protection duties. These include considering advice from scientists both within and outside of the federal and state governments and maintaining a current herd book. 16 U.S.C. § 1333(b). “All management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a). Moreover, it is illegal to maliciously or negligently injure or harass wild

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horses or burros protected by the Act, treat them inhumanely or use them for commercial gain.¹⁶ U.S.C. § 1338(a). Until the Forest Service has complied with the recordkeeping and fact gathering requirements in the statute, particularly in light of the directives to protect and minimally manage the horses, the Forest Service should not undertake a population control program.

The working group asserts population thresholds without sufficient knowledge of whether population control or reduction is currently needed.

The working group has asserted in the final report that it assumes 200-300 horses are on the Forest Service lands currently. There is some disagreement among its members, but the group assumes that there are 200-300 horses at issue, (final report at 18) and the target herd size is between 40-60 or up to 150, depending on the member. *Id.* at 12, 19. The group then asserts that while 150 is likely the minimum size to maintain a healthy, genetically diverse population there appears to be absolutely no support for how a healthy population can be maintained with a smaller population. *Id.* at 19.

At this time there is little to no actual data concerning the herd size, health of the forest, or health of the horses. Without sufficient information it is entirely premature to recommend herd reduction or population control. The horses have been living in an effectively unmanaged state for decades. Unless there is a showing of excess, population management is inappropriate.

The final report supports PZP as a least invasive measure for population control.

The working group report embraces the use of PZP to control the wild horse populations. My client categorically opposes this position. PZP acts as an endocrine disruptor that can permanently sterilize horses if it is repeatedly administered. Additionally, the use of PZP contributes to large differences in behavior and physiology. Studies have documented decreases in group fidelity. *See* Madosky, et. al., The effects of immunocontraception on harem fidelity in feral horse (*Equus caballus*) population, 128 *Applied Animal Behavior Science* 50 (2010).

There are also marked differences in the treated horses' physiology, including extended reproductive cycling beyond the normal breeding season, and breeding cycles becoming desynchronized from environmental factors such as the availability of food and the severity of weather, which the breeding cycles are normally tied to. *See* (Nuñez, C. M. V., J. S. Adelman, and D. I. Rubenstein, Immunocontraception in wild horses (*Equus caballus*) extends reproductive cycling beyond the normal breeding season, 5(10) *PLoS ONE*, e13635 (2010); J.I. Ransom et. al. Contraception can lead to trophic asynchrony between birth pulse and resources, 8(1) *PLOS ONE* e54972 (2013). Because horses are extremely social by nature, behavioral changes can have

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profound impacts on the herd. *See* Nuñez, Consequences of porcine zona pellucida immunocontraception to feral horses, 12(1) Human-Wildlife Interactions, 131 (Spring 2018). From the working group report, it seems that the benefits of PZP were presented to the working group, but none of the numerous risks. Management should not include selecting what horse can breed through the administration of PZP. When the horses do reach carrying capacity for their environment, their reproductive rates naturally decline substantially. This is stated in the National Academy of Sciences report on the working group's site.

As an additional consideration, the use of PZP or any other birth control drugs decreases the number of breeding animals, and thereby reduces the genetic diversity of the herd over successive generations. This is a serious concern, particularly when paired with the herd sizes that the Working Group has proposed. This is an externality that the final report does not mention.

There is no data, let alone sufficient data, to warrant these population control tactics. Even if there was sufficient data, there are significant impacts that the use of these drugs would have on the horse herds that the working group has failed to consider.

In Closing

On behalf of my client I request that the Forest Service comply with the Stipulated Settlement Agreement by notifying my client directly or through counsel of developments as the NEPA process proceeds, and by notifying my client as to when the boundary fence will be completed.

Second, I request that the agency include the attached and referenced documents and studies as a part of the administrative record as it proceeds through the NEPA process to develop the Heber Wild Horse Territory Management Strategy.

Finally, the recommendations of the working group are just that, recommendations. The Forest Services may be obligated to consider the working group's findings, but cannot disregard the record from the civil litigation. Given the significant issues with the working group's composition, resources, and conclusions, the Forest Service has ample authority to weigh the usefulness of the working groups final report accordingly.

My client reserves its rights to object to the remainder of the report. If you have any questions or updates, please contact me. Thank you.

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July 1, 2019
Page 13

Very truly yours,

Snell & Wilmer



Farris Jean Gillman

FJG/js

Enclosed:

- Attachment 1: Order from the District Court Judge granting the Temporary Restraining Order.
- Attachment 2: Order from the District Court Judge granting the Preliminary Injunction.
- Attachment 3: Stipulated Settlement Agreement.
- Attachment 4: Letter from A. Merrill with Concerns re the Working Group.
- Attachment 5: Report of Mary Ann Simonds.
- Attachment 6: Depositions of two Forest Service Employees.
- Attachment 7: Affidavits of Individuals concerning the Heber Wild Horse Herd.
- Attachment 8: [Compact Disk] Materials previously provided to the USFS for inclusion in the administrative record.

cc: Anthony W. Merrill (via email only).

4816-1981-2761.1

ATTACHMENT 1

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CV-05-2754

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,

~~PROPOSED~~ TEMPORARY RESTRAINING ORDER

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.

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

Based on the Verified Complaint of Plaintiffs In Defense of Animals, the Animal Welfare Institute, and the International Society for the Protection of Mustangs and Burros, its application for temporary restraining order, the accompanying affidavits, and an ^{ex parte} hearing having been held with respect thereto, ~~unless a temporary restraining order issues, the status quo will not be preserved and immediate injury will result to Plaintiffs before a hearing~~ ^{with notice to the Defendants, and for the reasons stated on the record, along with the court's findings}

BRYAN CAVE LLP
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(602) 364-7000

1 *and conclusions under Rule 52(a), Fed.R.Civ.P., as dictated on the record,*
2 ~~on a preliminary injunction can be held. The Court specifically finds that ex parte relief is~~
3 ~~both appropriate and necessary to prevent irreparable harm to Plaintiffs. Accordingly,~~

4 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that:

5 1. Defendants, and their agents, employees, attorneys, and all persons acting in aid
6 or concert with them, and all persons to whom knowledge of the same may come, are hereby
7 restrained and enjoined from the following:

8 (A) Awarding a bid for the capture and removal of horses within the Apache-
9 Sitgreaves National Forest;

10 (B) Rounding up and removing approximately 400 wild horses from the Apache-
11 Sitgreaves National Forest, ~~until Defendants have complied with the~~
12 ~~requirements of the APA and NEPA, including:~~

13 (1) ~~Preparing an Environmental Impact Statement to determine the impact~~
14 ~~of the proposed removal on the human and natural environment;~~

15 (2) ~~Determining the number of wild, unbranded horses located in the~~
16 ~~Apache-Sitgreaves National Forest by use of genetic testing, first-hand~~
17 ~~observation, and scientific study;~~

18 (3) ~~Determining the amount of branded horses in the Apache-Sitgreaves~~
19 ~~National Forest that now qualify for protection under the Wild Horse Act~~
20 ~~through intermingling by means of first-hand observation and scientific~~
21 ~~study; and~~

22 (4) ~~Providing the public with notice of any proposed action with regard to~~
23 ~~horses within the Apache-Sitgreaves National Forest and allowing for~~
24 ~~public comment on that proposed action.~~

25 2. This Order will expire on ~~2002, unless prior thereto the~~
26 ~~Order is extended by the Court or Defendants consent that it may be extended for a longer~~
27 ~~period.~~
28 *is in effect until the court rules on plaintiff's application for preliminary injunctive relief.*

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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3. A hearing on Plaintiffs' application for preliminary injunction shall be set for the 23 day of September, 2005 at 10:00 AM/PM

4. Plaintiffs shall serve this restraining order and all supporting papers on Defendants by no later than Sept 12, 2005, *unless it has already been done.*

5. Defendants shall serve and file any responsive papers relating to Plaintiffs' application for preliminary injunction by Sept. 19, 2005.

6. Plaintiffs shall serve and file any reply papers relating to Plaintiffs request for preliminary injunction by Sept. 21, 2005.

7. Because this Order preserves the status quo only until a preliminary injunction hearing can be held and there does not appear at this point to be any legitimate financial harm to Defendants, no security will be required pursuant to Fed. R. Civ. P. 65(c).

Issued at 4:45 ~~AM~~PM on Sept. 9, 2005.


Judge of the U.S. District Court

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ATTACHMENT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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In Defense of Animals, a non-profit
organization, et al.,

No. 05-CV-2754-PHX-FJM

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Plaintiffs,

ORDER

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vs.

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United States Government, Department of
Agriculture, et al.,

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Defendants.

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I.

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On July 19, 2005, defendant United States Forest Service issued a bid solicitation for the removal of horses from the Apache-Sitgreaves National Forest ("ASNF"). Complaint, Exhibit D. On September 9, 2005, plaintiffs filed this action seeking a Temporary Restraining Order ("TRO") and Preliminary Injunction to prevent defendants from removing any horses from the ASNF, or awarding a bid for the capture and removal of any horses from the ASNF, unless defendants have complied with the National Environmental Policy Act ("NEPA"), the Wild Free-Roaming Horses and Burros Act ("Wild Horses Act") and the Administrative Procedures Act ("APA"). We issued a TRO enjoining defendants from rounding up, removing, or awarding a bid for the capture and removal of horses from the ASNF (doc. 5). Subsequently, defendants lost their funding for the bid solicitation, and accordingly, it is no longer viable. Response at 2.

1 We now have before us plaintiffs' application for a preliminary injunction (doc. 1),
2 defendants' Response (doc. 13), and plaintiffs' Reply (doc. 16). We also have before us
3 defendants' supplemental filing (doc. 17), plaintiff's supplemental filing (doc. 18), and
4 plaintiff's motion to strike defendants' supplemental filing (doc. 20), all of which were filed
5 the day of the preliminary injunction hearing.

6 **II.**

7 Defendants argue that the application for a preliminary injunction is moot because
8 the July 19, 2005 bid solicitation is no longer viable. Response at 2-4. However, an
9 action for a preliminary injunction will not become moot "merely because the conduct
10 complained of was terminated, *if there is a possibility of recurrence*, since otherwise the
11 defendant's [sic] would be free to return to [their] old ways," Fed. Trade Comm'n v.
12 Affordable Media, LLC, 179 F.3d 1228, 1237 (9th Cir. 1999) (alteration in original)
13 (citation omitted). To establish mootness, defendants would need to show that
14 "subsequent events made it absolutely clear that the allegedly wrongful behavior could
15 not reasonably be expected to recur." United States v. Concentrated Phosphate Export
16 Ass'n, 393 U.S. 199, 203, 89 S. Ct. 361, 364 (1968). This action for a preliminary
17 injunction is not moot because there is a possibility of recurrence; defendants are
18 contemplating another bid solicitation under the 2006 budget. Response at 2.

19 Defendants also argue that the application for a preliminary injunction is not ripe
20 because defendants have not issued another bid solicitation. Response at 3. The rationale
21 of the ripeness doctrine is to "prevent the courts, through avoidance of premature
22 adjudication, from entangling themselves in abstract disagreements over administrative
23 policies, and also to protect the agencies from judicial interference until an administrative
24 decision has been formalized and its effects felt in a concrete way by the challenging
25 parties." Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 1515
26 (1967). Defendants' argument fails because plaintiffs' claims are not based upon an
27 abstract disagreement over policy but the very real concrete dispute over the identity of
28 the horses, the applicability of multiple statutes and the defendants' conceded intent in

1 soliciting bids. This action is thus ripe for adjudication. See Porter v. Jones, 319 F.3d
2 483, 490-91 (9th Cir. 2003).

3 **III.**

4 A preliminary injunction should only be granted if the moving party "demonstrates
5 that it is likely to succeed on the merits and may suffer irreparable injury, or that serious
6 questions exist on the merits and the balance of hardships tips in its favor." Self-
7 Realization Fellowship Church v. Ananda Church of Self-Realization, 59 F.3d 902, 913
8 (9th Cir. 1995). "These two formulations represent two points on a sliding scale in which
9 the required degree of irreparable harm increases as the probability of success decreases."
10 Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1376 (9th Cir. 1985).
11 Therefore, "[w]here a party can show a strong chance of success on the merits, he need
12 show only a possibility of irreparable harm. Where, on the other hand, a party can show
13 only that serious questions are raised, he must show that the balance of hardships tips
14 sharply in his favor." Bernard v. Air Line Pilots Ass'n, Int'l, AFL-CIO, 873 F.2d 213, 217
15 (9th Cir. 1989).

16 **A.**

17 Plaintiffs raise at least serious questions as to the legality of defendants' actions.
18 Plaintiffs argue that defendants violated NEPA because the removal of wild horses will
19 significantly affect the human environment, and defendants failed to properly consider the
20 impact, and failed to issue an Environmental Impact Statement ("EIS") or a statement of
21 reasons as to why an EIS is unnecessary. Complaint at 9-11. Plaintiffs argue that
22 defendants violated the Wild Horses Act because they attempted to remove the wild
23 horses, failed to properly investigate the status of the horses, failed to keep an inventory
24 of the horses, failed to establish an advisory committee with regard to the horses, and
25 failed to hold a public hearing prior to the attempt to use motorized vehicles to remove
26 the horses. Complaint at 6-9. Plaintiffs argue that defendants violated the APA because
27 they acted arbitrarily and capriciously by failing to conduct a full investigation into the
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1 effects of the removal of the horses, and failing to comply with NEPA and the Wild
2 Horses Act. Complaint at 11.

3 In response to all of these allegations, defendants merely argue that the horses at
4 issues are not "wild horses." The Wild Horses Act defines "wild free-roaming horses and
5 burros" as "all unbranded and unclaimed horses and burros on public lands of the United
6 States." 16 U.S.C. § 1332(b). Defendants set forth a summary table showing that
7 between 1992 and 2004, there were no documented wild horses in the Heber Wild Horse
8 Territory. Declaration of Debra Bumpus, Exhibit 1. Plaintiffs' motion to strike this
9 document is denied as moot because the evidentiary value of the table is de
10 minimis—defendants fail to explain how these figures were derived (doc. 20). Defendants
11 also argue that the horses at issue are domesticated and "strayed onto the forest after the
12 Rodeo-Chediski Fire in 2002." Complaint, Exhibit C at 1. However, plaintiffs set forth
13 six affidavits by residents of the ASNF area, who have seen unbranded "wild horses" in
14 the ASNF area before and after the Rodeo-Chediski fire. Application for TRO, Exhibits
15 B-G.

16 Defendants further argue that this evidence is insufficient, because plaintiffs must
17 also show that the horses are unclaimed. Response at 3. However, defendants fail to
18 argue that the horses have been claimed, and to the contrary, they state that they "notified
19 the White Mountain Apache Tribal Chairman and Tribal Attorneys of a Notice of
20 Impoundment Action and g[ave] tribal members more than 30 days to come gather their
21 horses [and] [n]o horse owners [came] forward." Complaint, Exhibit C at 1. Moreover,
22 plaintiffs argue that they are prevented from setting forth more detailed evidence as to
23 claims because defendants failed to properly inventory the horses pursuant to the
24 requirements of the Wild Horses Act. Application for TRO at 15; Reply at 7.

25 Defendants' arguments, and defendants' counsel's statements during the
26 preliminary injunction hearing, evidence defendants' failure to have thoroughly
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1 considered the status of the horses in the ASNF before soliciting a bid for their removal.¹
2 Accordingly, we conclude that plaintiffs have raised serious questions as to the legality of
3 defendants' actions.

4 **B.**

5 The removal of horses prior to final adjudication would cause plaintiffs
6 irreparable harm. Defendants state that they are contemplating removing the horses if a
7 preliminary injunction is not granted, and plaintiffs' argue that once removed, the horses
8 will become extinct in the ASNF.² Application for Temporary Restraining Order at 17.
9 In contrast, defendants conceded at the preliminary injunction hearing that a preliminary
10 injunction prohibiting horse removal would not cause the defendants any hardship.
11 Accordingly, the balance of hardships tips sharply in plaintiffs' favor.

12 **IV.**

13 **IT IS ORDERED GRANTING** plaintiffs' application for a preliminary injunction
14 and enjoining defendants from awarding a bid for the capture and removal of the
15 allegedly wild horses from within the Apache-Sitgreaves National Forest, and from
16 rounding up and removing the allegedly wild horses from within the Apache-Sitgreaves
17 National Forest. This order is in effect until final judgment is entered by way of motion
18 for summary judgment or trial (doc. 1).

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22 ¹ Defendants argue that pursuant to the Wild Horses Act, they need only census horses
23 in the Heber Wild Horse Territory, and not the entire ASNF. However, 36 C.F.R. § 222.25
24 requires the surveillance and protection of wild horses on national forest lands, other public
lands, and lands of other ownership or jurisdiction.

25 ² Defendants argue that plaintiffs will not suffer irreparable harm if the preliminary
26 injunction is denied because defendants have not issued a new bid solicitation, and they will
27 warn the court and the plaintiffs before issuing a new bid solicitation. We resolved this
28 matter with regard to the mootness analysis above. Moreover, plaintiffs should not be forced
to monitor defendants' activity to ensure that they have complied with their promise of pre-
removal notification.

ATTACHMENT 3

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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.

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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")¹ 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.

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28 ¹ 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.

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9. Upon dismissal of this civil action, the Forest Service will pay the Plaintiffs a total of \$3,000.00 in full and complete satisfaction of any and all claims for attorneys' fees and costs of litigation by Plaintiffs for pursuing Civil Action 05-2754 PHX-FJM.

10. Plaintiffs agree that receipt of this payment from the Forest Service shall operate as a release of any and all claims for attorneys' fees and costs that Plaintiffs may seek to pursue in Civil Action 05-2754-PHX-FJM.

11. The Parties agree and understand that the Forest Service's obligations under this Stipulated Settlement Agreement, with exception of those listed in Paragraph 10, are contingent upon the availability of appropriate funds, and that nothing in this Agreement shall be construed as a commitment or requirement that the Forest Service obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

12. Nothing in this Stipulation and Joint Motion constitutes an admission by any Party to any fact, claim, or defense at issue in this lawsuit.

DATED: this 13th day of March, 2007.

s/ Paul K. Charlton
PAUL K. CHARLTON
United States Attorney

s/ Richard Patrick
RICHARD PATRICK
Assistant U.S. Attorney
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4406
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s/ Anthony W. Merrill
ANTHONY W. MERRILL, ESQ.
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Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406
(602) 364-7000

Attorney for Plaintiffs

ATTACHMENT 4



CityScape, One E. Washington St., Ste. 1200, Phoenix, AZ, 85004 • 602.650.2000

December 13, 2017

Anthony W. Merrill
(602) 650-2310
(602) 264-7033 Fax
amerrill@polsinelli.com

Via Email & U.S. Mail

Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
P.O. Box 586
Albuquerque, NM 87103-0586
Email: dawn.dickman@ogc.usda.gov

Re: *Heber Horse Collaborative*

Dear Ms. Dickman:

I am writing to express concerns regarding the Heber Horse Collaborative (the "Collaborative") and its current trajectory. I have served as counsel for the International Society for the Protection of Mustangs and Burros and In Defense of Animals, among others, in an action against the United States Forest Service and other governmental entities in 2007, in the matter styled *In Defense of Animals, et al. v. United States Department of Agriculture, et al.*, Case No. CV-05-2754-PHX-FJM. As a result of that action, the United States District Court for the District of Arizona ordered the Forest Service to comply with various conditions, including that the wild horses within the Heber Wild Horse Territory ("HWHT") are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 (the "Act") as amended and that the Forest Service would work with the public, including Plaintiffs, in the development of a written HWHT Management Strategy in accordance with the provisions of the Act. Because of the concerns we have regarding the Collaborative, as more fully discussed below, we believe that the Forest Service has not met its obligations.

The order provides, among other terms, the following:

- That the Forest Service work with the public, including the Plaintiffs in that matter, in the development of a written HWHT Management Strategy in accordance with the provisions of the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.*
- That the Forest Service refrain from any gathering or removing of horses within the Heber Wild Horse Territory and the Black Mesa and Lakeside Ranger districts (which are

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Allanta Chicago Dallas Denver Kansas City Los Angeles Nashville New York Phoenix San Francisco
St. Louis Washington, DC Wilmington
Polsinelli PC, Polsinelli LLP in California

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considered the Sitgreaves National Forests), until the Forest Service completes two actions.

- The first is the completion of an analysis and appropriate environmental document pursuant to NEPA, with public involvement.
- The second action is the development of a written HWHT Management Strategy, in which the Plaintiffs shall be included. The Forest Service is required to provide Plaintiffs with specific notice of the document and consider Plaintiffs' comments on the same.
- That the Forest Service continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.

While we have not been informed of any repairs to or maintenance efforts on the boundary fence, when we learned that a collaborative working group would be formed to provide input and recommendations for the development of a HWHT Management Strategy, we were very pleased. We expected that the participants in the group would have a broad range of education and experience in areas that directly related to the HWHT and that at least one of the Plaintiffs would be included, as ordered by the Court. The expectation was that input from the Collaborative members would be objective and informed in order to propose actions that would positively impact the HWHT and the horses themselves. The Collaborative has met only four times thus far and already there are concerns that the course the Collaborative is taking does not conform with the purpose of the group or the terms of the order. If the group continues to follow this direction, the results will not properly inform the development of a written HWHT Management Strategy.

According to reports we have received about the Collaborative's composition, it does not appear as though the members include a representative group of horse advocates or experts. Namely, in violation of the Court order, the Collaborative does not include any of the Plaintiffs. The majority of members, based on their education and experience, appear to be uninformed about what the HWHT has to offer and how the horses interact in the HWHT. This is further supported by reports that the Collaborative meetings are void of meaningful discussion about the wild horses themselves, their needs, the protected status, etc. It seems counterintuitive to establish a working group for the benefit of the HWHT and its wild horses, with the ultimate goal of contributing to a written plan directly affecting the same, that does not include sufficient horse experts and advocates.

Moreover, we have been informed that a Proposed Appropriate Management Level Determination (the "Proposal") was disseminated to the Collaborative. It was reportedly drafted in February 2017 by members of the TEAMS Enterprise Unit and purports to give a pre-



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determined management determination for the HWHT. Not coincidentally, the Proposal uses historical Forest Service data that the Court in 2007 determined to be unfounded. Much of the data contained in the Proposal was at the center of the issues in the 2007 matter referenced above. Yet, shockingly, the Proposal ignored all the findings from that proceeding, which were submitted as part of the public record and proceeded from a false narrative. Our understanding is that the Proposal reaches the unfounded conclusion that the HWHT can sustain only 31 horses, but that to avoid inbreeding depression in horse populations, a minimum herd size of 50 effective breeding animals (a total population size of about 150 to 200 animals) is recommended. This places the horses in a no-win quandary. Together, the composition of the group and the report the Collaborative chose to lead with indicates a clear, unfair bias against the horses. As ordered by the court, new data should be gathered and analyzed for application going forward.

The Collaborative was promoted as a group that would assist in the development of a written plan, much like the one produced by the TEAMS Enterprise Unit. Further, the Collaborative promoted itself as one which would provide input into the development of proposed actions regarding the HWHT and that the Collaborative would be a platform for learning, analysis and solution-oriented discussions. Accordingly, it is nonsensical for the Collaborative to begin its work with data and results which are erroneously skewed against the horses and the HWHT. The results contained in the Proposal are of the type that the Collaborative should conclude with, not begin. To date, and according to meeting minutes, the Collaborative has not provided a platform for learning about the HWHT and its horses. Nor has it encouraged a solution-oriented discussion thus far.

We demand that the Forest Service review its obligations under the order and once and for all comply with it. Specifically, the Forest Service must assess its progress on repair of the boundary fence. It must be completed, if it has not yet been repaired. Next, the Forest Service must take action upon the Collaborative while it is in its infancy. The Forest Service has a court-ordered obligation to include Plaintiffs in the development of a written HWHT Management Strategy. Accordingly, your direct involvement in ensuring that the Collaborative include a Plaintiff in the group, as required by the order, is imperative. We recommend that our client, Karen Sussman, of the International Society for the Protection of Mustangs and Burros, be appointed to the Collaborative. We are confident she can contribute a wealth of experience and education on the topic of the wild horses and the HWHT.

The horses have a federally-protected right to live within the Heber Wild Horse Territory and the surrounding districts. As such, it behooves the Collaborative to change its trajectory from an outcome driven group (based on unfounded data) to one that is objectively well-informed, investigative, and analytical in order to develop a HWHT Management Strategy, as directed by the Court's order. If the Collaborative continues on the route it has taken over the past four



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meetings, the outcome will surely be to end up right where the Collaborative started. We believe we share a mutual goal of promoting the successful management of a sustainable herd in the Heber Wild Horse Territory in accordance with the Wild Free-Roaming Horses and Burros Act. Please assist us in continuing towards that end.

Thank you for your attention to this matter. I look forward to your follow through.

Very truly yours,

A handwritten signature in cursive script that reads "Anthony W. Merrill".

Anthony W. Merrill

cc: Michael Schoon (Michael.schoon@asu.edu), Larry Fisher (lfisher@email.arizona.edu)

ATTACHMENT 5

**Determination of Whether Horses Inhabiting the
USFS Heber Wild Horse Territory are
“Wild Free-Roaming Horses”**

Prepared

by

Mary Ann Simonds

March 5, 2007

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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

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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.

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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

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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*

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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.

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 Behandeln, 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

Field Investigation	\$ 2500	paid
Data Review and Report Preparation	\$ 2500	to be paid

Total Compensation \$ 5000

ATTACHMENT 6

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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

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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:

9 BRYAN CAVE, LLP

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

16 UNITED STATES ATTORNEY'S OFFICE

17 By Mr. Richard G. Patrick

18 40 North Central Avenue, Suite 1200

19 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.

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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 Heber?
 22 A. Heber.
 23 Q. Heber?
 24 A. Yes. Yes.
 25 Q. And can you describe what the Heber Wild Horse

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 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 hoises 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 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-Chedlski 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

<p style="text-align: right;">Page 22</p> <p>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.</p>	<p style="text-align: right;">Page 24</p> <p>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?</p>
<p style="text-align: right;">Page 23</p> <p>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</p>	<p style="text-align: right;">Page 25</p> <p>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.</p>

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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?

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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

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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?

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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 --

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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?

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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.)

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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?

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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 Zicroth'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 --

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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.

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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.

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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

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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.

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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?

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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.

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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.

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

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.

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,

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.

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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

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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

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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.

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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 Kendell 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.

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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.

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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.

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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.

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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 --

14 (Pages 50 to 53)

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1 Q. And --
 2 A. -- down to the root.
 3 Q. And by "they", do you mean the horses or do you mean
 4 other wild -- what do you mean by "they"?
 5 A. Animals, I guess, horses, which are animals, I guess.
 6 Q. I would agree with that.
 7 So your rehabilitation efforts, in some areas,
 8 weren't growing back, and you attributed it to some sort of
 9 wildlife issue; is that fair?
 10 A. Are you lumping wildlife and -- how are you
 11 specifying wildlife, I guess?
 12 Q. Oh. I'm just lumping all creatures that might munch
 13 on grass together.
 14 A. In some areas.
 15 Q. Were you able to identify any areas that horses were
 16 specifically preventing the rehabilitation?
 17 A. No. I didn't identify any areas.
 18 Q. Did you have any cattle permittees complaining about
 19 the horses?
 20 A. Yeah.
 21 Q. And what --
 22 A. Yes.
 23 Q. And what were the complaints?
 24 A. One was that thing -- we rested the area from -- from
 25 livestock, to allow recovery, but, yeah, we allowed the -- the

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1 horses were -- were coming on, and they'd multiply,
 2 eventually, and what were we going to do about them. So --
 3 Q. And as a result of the cattle permittees complaints,
 4 did you take any action to address their concerns?
 5 A. Could you rephrase that question, I guess?
 6 Q. Sure. When the cattle permittees complained, what
 7 did you do?
 8 A. Well, I -- we informed them that we had this contract
 9 out. We informed them -- let them know what we were trying to
 10 do.
 11 Q. Did you have the contract out before the cattle
 12 permittees complained?
 13 A. No, not always -- or, no.
 14 Q. Okay. And -- and where do you think these horses
 15 came from?
 16 You mentioned, before the fire, that there were
 17 roughly 10 to 20, or something like that, in the Black Mesa
 18 District, and at some point after the fire, you know, roughly,
 19 I think you testified there were two to 300, or something in
 20 that nature.
 21 Where do you think the horses came from?
 22 A. I think they come from the south, off the Fort Apache
 23 Indian Reservation.
 24 Q. Okay. Did you do anything to determine if that was
 25 the case?

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1 A. (Indicating.)
 2 Q. How did you -- how did you decide -- how do you know
 3 that they came off of the Indian reservation?
 4 A. Well, they came from somewhere, and knowing that they
 5 have a lot of horses down there, that's where I figured they
 6 came.
 7 Q. Okay. We are going to go back to the administrative
 8 record and just look at a couple more documents. I'm going to
 9 have you turn to tab 22. Actually, you are on tab 22, aren't
 10 you?
 11 I'm going to have you take a look at tab 24, which is
 12 just a couple tabs down from where you are.
 13 A. So, not 22?
 14 Q. Nope, not 22. Sorry. We've already talked about 22.
 15 A. Okay.
 16 Q. We're going to go to 24. This is a very similar
 17 letter --
 18 MR. PATRICK: Okay.
 19 Q. (BY MS. KLEIN) -- to the previous letter that we
 20 just looked at, except this one is a direct to Mr. Dallas
 21 Massey --
 22 A. Massey.
 23 Q. Massey? -- of the -- thank you -- of the tribal --
 24 he's the tribal chairman of the White Mountain Apache Tribe.
 25 What kind of contact did you have with the tribe

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1 regarding the removal of the horses?
 2 A. Dallas Massey? I had none.
 3 Q. Did you have contacts with anyone else from the
 4 tribe?
 5 A. Seems like a couple people come up and -- from the
 6 tribe -- and we talked about them.
 7 Q. What did you talk about?
 8 A. They wanted to go look at them, I believe, look at
 9 some of them, so I kind of pinpointed them, showed them a map
 10 of the forest and --
 11 Q. And do you know what their purpose was or why they
 12 wanted to look at them?
 13 A. I would assume, to see if they were -- to come get
 14 them or something, if they wanted to come get them or -- or
 15 were going to come get them or something. I don't know.
 16 Q. Did you ever go out with any members of the tribe
 17 when they went to look at the horses?
 18 A. No.
 19 Q. Do you know if the Indian tribe claimed or went and
 20 got any of the horses that were --
 21 A. No, I don't know.
 22 Q. -- in your district?
 23 A. I don't know.
 24 Q. You just know that they looked at them?
 25 A. Yeah.

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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.

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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

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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

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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

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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

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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

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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.

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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 --

<p style="text-align: right;">Page 66</p> <p>1 Q. So you looked at other documents, and then this is --</p> <p>2 A. Correct.</p> <p>3 Q. Okay. The first one referred to is a 1974 letter.</p> <p>4 And just for the purposes of us understanding what</p> <p>5 documents you're talking about, I'm going to have you flip to</p> <p>6 either tab two or tab three.</p> <p>7 And, just take a minute to look at tab two and tab</p> <p>8 three. I just want to know if you're referring to one of</p> <p>9 these letters in your e-mail that's under, I believe it's, tab</p> <p>10 13.</p> <p>11 A. All right. Yes.</p> <p>12 Q. Okay. Do you know which one it is or is it both?</p> <p>13 A. Tab two. Let me see. Tab three. Just tab two.</p> <p>14 Q. Okay. And did you do anything to verify the</p> <p>15 information from the 1974 letter which we think is tab two?</p> <p>16 Did you do anything to verify whether or not -- what that</p> <p>17 information was based on?</p> <p>18 A. (Indicating.)</p> <p>19 Q. Let me try that again.</p> <p>20 Did you do anything to check the information that was</p> <p>21 in the 1974 letter?</p> <p>22 A. No.</p> <p>23 Q. Okay. Your e-mail which is under tab 13 -- again,</p> <p>24 we're just going to keep flipping back between different</p> <p>25 documents. So, you're --</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay.</p> <p>2 A. -- at them, you know.</p> <p>3 Q. I'm just trying to understand, if we're trying your</p> <p>4 memory.</p> <p>5 So, as you're flipping back to these documents, do</p> <p>6 you -- do you remember, oh, yes, I looked at this or is it,</p> <p>7 you know --</p> <p>8 A. Yes, I -- yes, I did look at this.</p> <p>9 Q. That's what I'm trying to say.</p> <p>10 A. Okay.</p> <p>11 Q. It's not --</p> <p>12 A. Okay.</p> <p>13 Q. And then the last, just -- finally, the last document</p> <p>14 that you mention is a 1993 letter by the district ranger, and</p> <p>15 if you flip to tab nine --</p> <p>16 A. Okay.</p> <p>17 Q. -- is that -- do you remember reviewing this document</p> <p>18 in tab nine?</p> <p>19 A. Yes. Wait a minute. Yes. Tab nine.</p> <p>20 Q. Okay. And is that -- is the information in your</p> <p>21 e-mail under tab 13 based, in part, on tab nine, when you're</p> <p>22 talking about the 1993 letter?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And for the information that's contained in</p> <p>25 tab six, which is the 1991 report, and tab nine, which is the</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Okay.</p> <p>2 Q. -- you're right --</p> <p>3 A. Okay.</p> <p>4 Q. -- there on tab 13.</p> <p>5 A. 13.</p> <p>6 Q. Third line down, it says: A 1991 report indicates</p> <p>7 that approximately 5 feral horses -- and then the sentence</p> <p>8 continues on.</p> <p>9 I'll give you a couple minutes to read that portion.</p> <p>10 You ready?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And my question for you is, is that information based</p> <p>13 on the document underneath tab six in the administrative</p> <p>14 record?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Do you remember reviewing that document, the</p> <p>17 one underneath tab six?</p> <p>18 A. Do I remember --</p> <p>19 Q. Yeah.</p> <p>20 A. -- reviewing it?</p> <p>21 Q. Do you remember looking at that document?</p> <p>22 A. I'm sure I did. I don't remember it at this time,</p> <p>23 but --</p> <p>24 Q. Okay.</p> <p>25 A. -- I'm sure I did, because I look --</p>	<p style="text-align: right;">Page 69</p> <p>1 1993 letter, did you do anything to check the accuracy of the</p> <p>2 information or did you just rely on the face of the documents</p> <p>3 as they were written?</p> <p>4 A. Yes, I -- I had to rely on -- I had to rely on them.</p> <p>5 Q. Okay. So you didn't dig into any other records?</p> <p>6 This is where your -- this is the source of your</p> <p>7 information --</p> <p>8 A. This is, yeah, the --</p> <p>9 Q. -- are the three documents?</p> <p>10 And this e-mail and the three documents that, I</p> <p>11 guess, are tab two, tab six and tab nine, did you rely on</p> <p>12 those documents in making the decision of whether or not to</p> <p>13 remove the horses from the Black Mesa District and Lakeside</p> <p>14 District Territory?</p> <p>15 A. In when?</p> <p>16 Q. When you decided to remove the horses, when the</p> <p>17 Forest Service decided to remove the horses, did the documents</p> <p>18 in tab two and tab six and tab nine, were they part of your</p> <p>19 decision-making process in determining whether the horses</p> <p>20 could be removed?</p> <p>21 MR. PATRICK: Object to form and foundation.</p> <p>22 THE WITNESS: Can I ask Rich a question?</p> <p>23 MS. KLEIN: Sure.</p> <p>24 (Brief off-the-record discussion, 12:45 p.m. until</p> <p>25 12:46 p.m.)</p>

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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?

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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 Kendell may be confusing
 25 the situation of the horses from the Reservation unauthorized

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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.

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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

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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

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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,

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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,

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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>

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?

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?

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

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.

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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

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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

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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
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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
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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 reporter
CCR No. 50754

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I N D E X

Examination By:
Ms. Broucek

Page
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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

By: Christine E. Broucek, Esq.
11 Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406

12

13 For the Defendants:

14 UNITED STATES ATTORNEY'S OFFICE

By: Richard G. Patrick, Esq.
15 Assistant United States Attorney
Two Renaissance Square

16 40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

17

Also present:

18

Tiffany Andersen

19

20

21

22

23

24

25

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

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2
3
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 E X A M I N A T I O N

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 stray
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)
) ss.
 2 COUNTY OF MARICOPA)

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 Kerry Fremerman, RPR
 Certified Court Reporter
 Certificate No. 50754
 24
 25

ATTACHMENT 7

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PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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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:

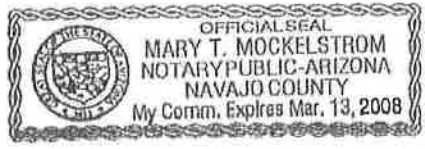
1. I am a current resident of Heber/Overgaard, Arizona.
2. I am over the age of 18 years of age.
3. I have resided in the Heber/Overgaard area, Navajo County, Arizona, since 1989.
4. I am currently employed at Jim Burton Realty.
5. I have seen herds of wild horses beginning along the borders of Bison 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 7th day of September, 2005.

Mary T. Mockelstrom
Notary Public

Commission Expires: mm ~~9-13~~ 3-13-2008

Exhibit C

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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STATE OF ARIZONA)
) ss.
COUNTY OF NAVAJO)

After being first duly sworn, and upon his oath, affiant, Lee Larson 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 Linden area, Navajo County, Arizona, since 2001.
4. I have been hunting in and visiting the Heber/Overgaard area since the late 1970's and have personally witnessed two separate herds of wild horses in this area.
5. I am currently employed at Jim Burton Realty, in Overgaard, Arizona.
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.
10. I have seen at least five (5) foals since the beginning of 2005 and over the years I have seen numerous other foals.

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11. Many of these wild horses have been in the area prior to the Rodeo-Chediski fires of 2002.

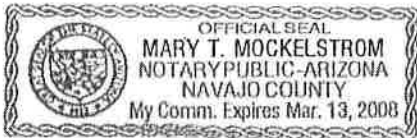
Further affiant sayeth naught.

DATED: 9-7-05

Lee Larson

Lee Larson

STATE OF ARIZONA)
County of Navajo) ss.



Subscribed and sworn before me this 7th day of September, 2005.

Mary T. Mockelstrom
Notary Public

Commission Expires: 3-13-2008

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

Exhibit D

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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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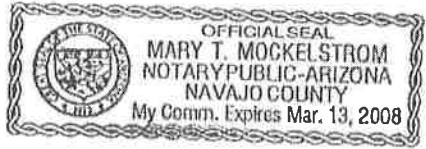
7. Most recently, in April 2005, while driving from Holbrook to Heber, Arizona, I saw a herd of approximately 12 to 15 horses. Again, I did not see any brandings or evidence of domestic marking of any kind on the horses.

Further affiant sayeth naught.

DATED: 9-7-05


Ron Britz

STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th day of September, 2005.

Mary T. Mockelstrom
Notary Public

Commission Expires: 3-13-2008

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PHOENIX, ARIZONA 85004-4406
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Exhibit E

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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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 .

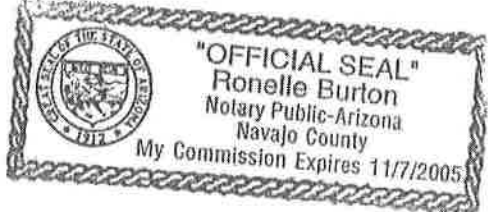
6. In fact, in 2004, I photographed a large herd of these wild horses along State Route 260 in between Forest Roads 107 and 139. Attached hereto are true and correct copies of photographs I took on May 16, 2004, identified as Exhibit A. Due to the large size of this herd, which I estimate at approximately 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

STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th day of September, 2005.

Ronelle Burton
Notary Public

Commission Expires: November 7, 2005

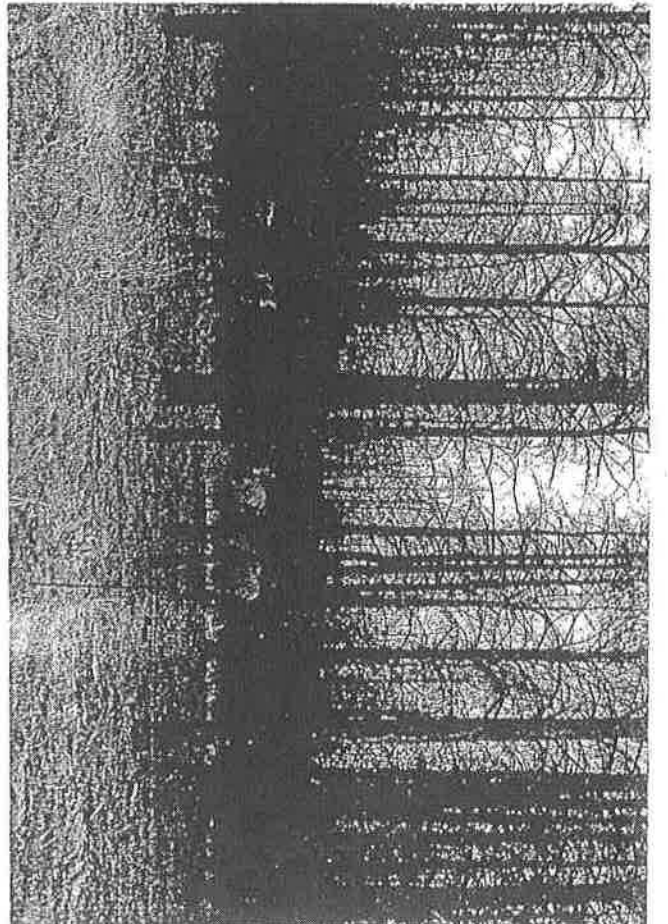
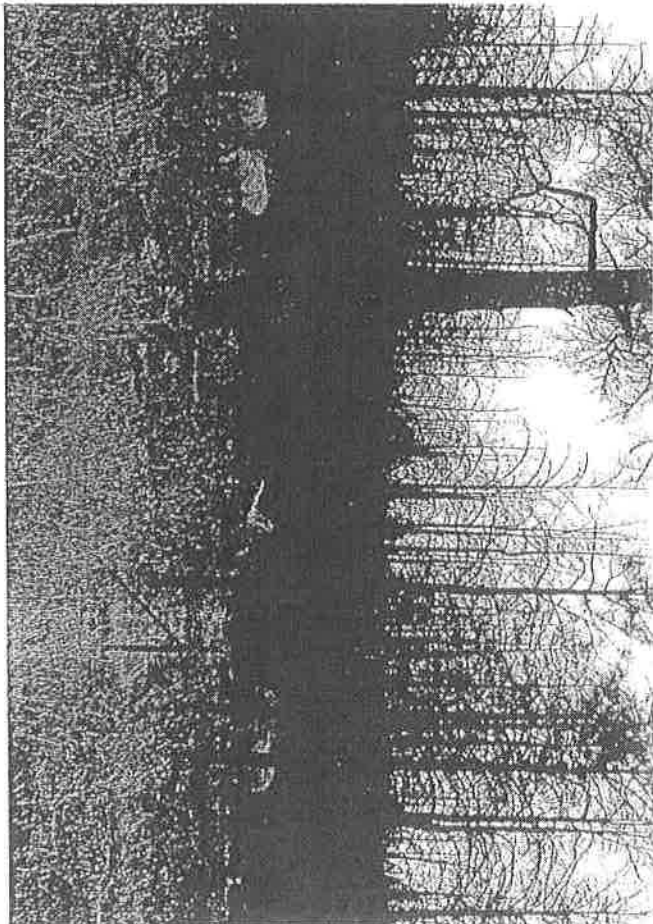
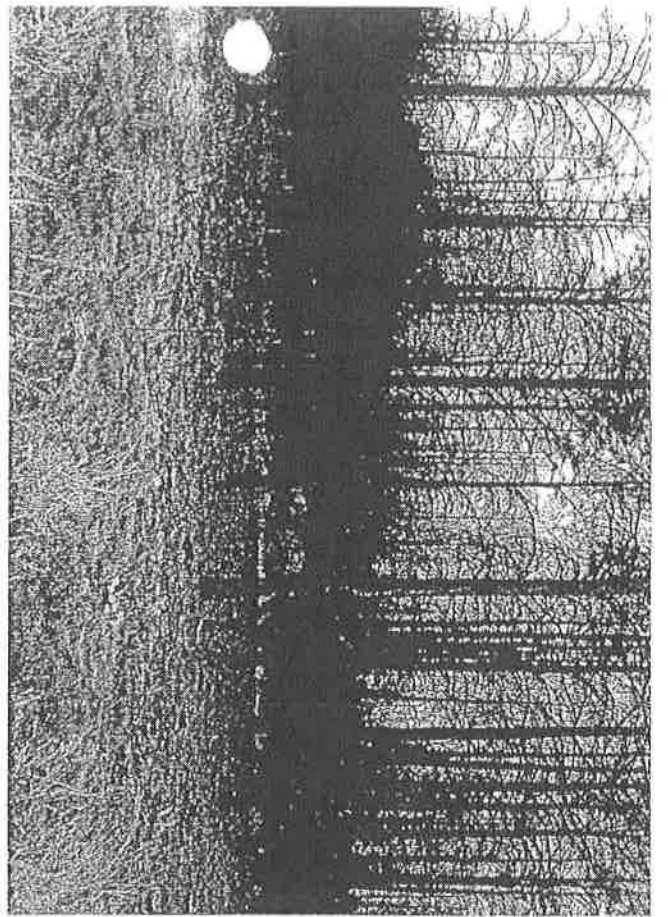
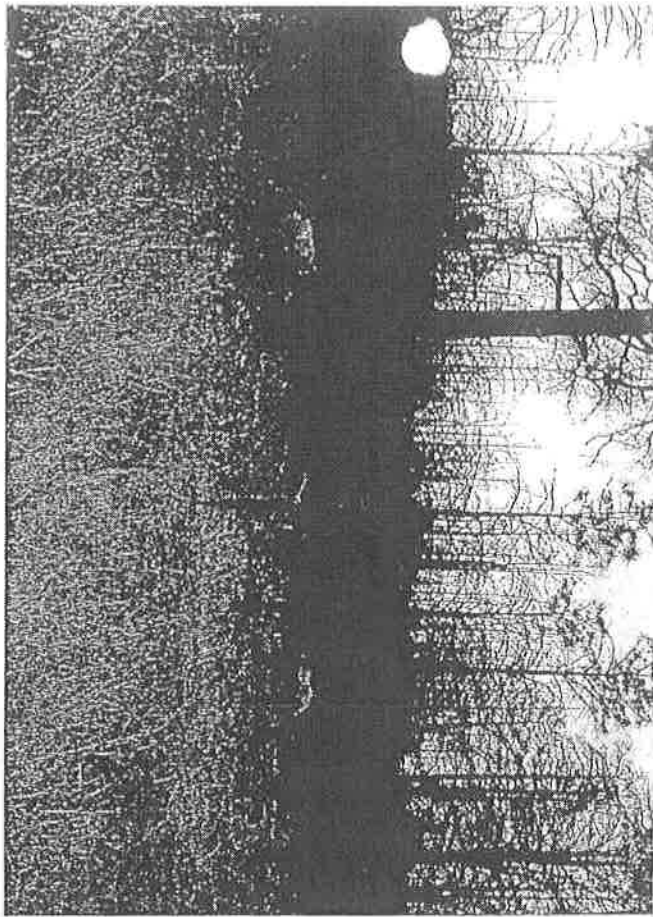


Exhibit F

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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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 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. In this capacity, 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 15.5 E, Section 28. A copy of an Apache-Sitgreaves National Forests map indicating this area (in circle) is attached hereto as Exhibit A. While driving around the forest roads in the area, 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.

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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.

Further affiant sayeth naught.

DATED: 09/07/05


Richard Potts

STATE OF ARIZONA)
County of Navajo) ss.
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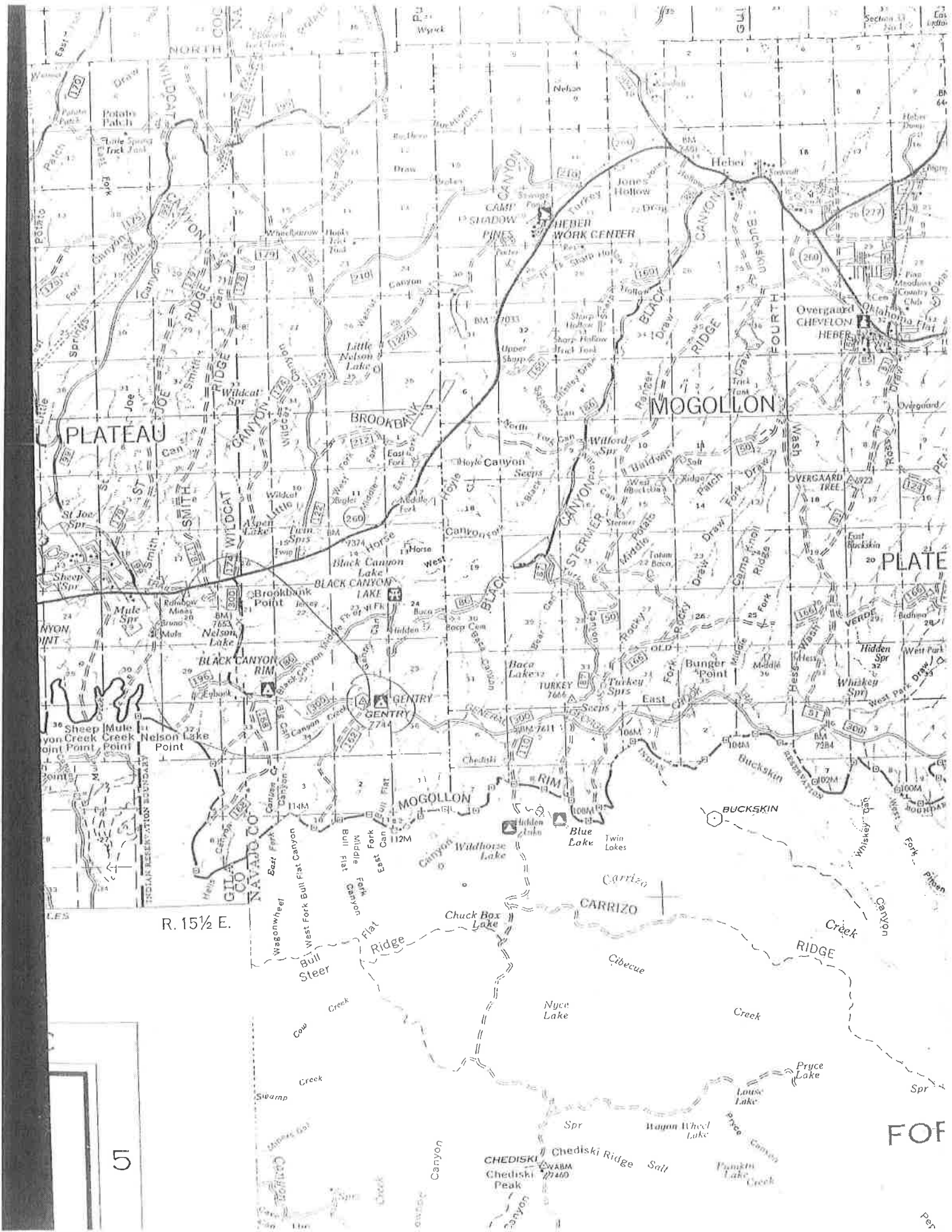


Subscribed and sworn before me this 7th day of September, 2005.


Notary Public

Commission Expires: November 7, 2005

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PHOENIX, ARIZONA 85004-4406
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PLATEAU

MOGOLLON

PLATE

R. 15 1/2 E.

FOF

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Per

Exhibit G

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PHOENIX, ARIZONA 85004-4406
(602) 364-7000

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STATE OF ARIZONA)
) ss.
COUNTY OF NAVAJO)

After being first duly sworn, and upon her oath, affiant, Cheryl Crandell 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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(602) 364-7000

7. Most recently I have witnessed three separate herds of these wild horses. In particular, I have seen an eighteen-month old colt with a distinctive cream color that has consistently appeared around the Bison Ranch area.

Further affiant sayeth naught.

DATED: Sept. 7, 2005


Cheryl Crandell

STATE OF ARIZONA)
) ss.
County of Navajo)



Subscribed and sworn before me this 7th day of September, 2005.


Notary Public

Commission Expires: 11/06/2008

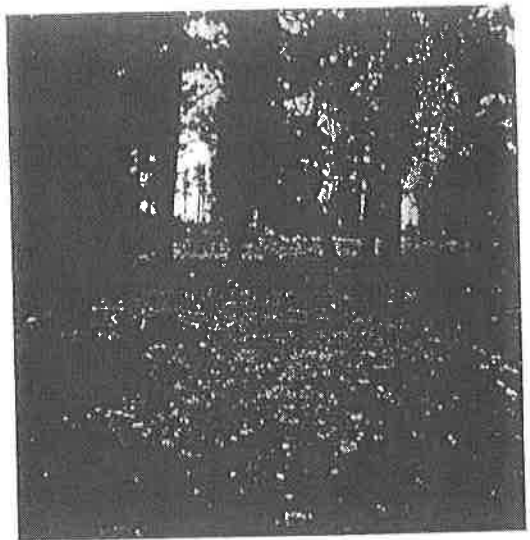


Exhibit H

AFFIDAVIT OF PATRICIA HAIGHT

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

After being first duly sworn, and upon her oath, affiant, Patricia Haight avows as follows:

1. I am over the age of 18 and am competent to testify as to the matters set forth herein and would so testify if called upon to do so.

2. I have personal knowledge of all of the matters set forth herein, except those matters theorized upon information and belief, which matters I believe to be true.

3. I am currently the Southwest Regional Director for the non-profit organization known as In Defense of Animals. I have served in that position since 2001. My responsibilities include investigating citizen complaints about animal cruelty, addressing legislative issues relating to animal protection on both state and national levels, overseeing Arizona’s largest equine rescue program, and assisting the Maricopa County Sheriff’s Office with their posse program to prevent animal cruelty, among other things.

4. I have a degree (Ph.D.) in Experimental Psychology and over twenty years experience in riding, working with, and handling different breeds of horses.

5. Sometime in July 2005, I learned that the U.S. Forest Service had plans to round up all of the horses on the public lands of the Apache-Sitgreaves National Forests and send them to an auction house near Holbrook, Arizona. On July 12, 2005, I wrote a letter to Senator John McCain asking for his assistance to confirm whether this information was correct. A copy of my letter is attached at Exhibit A. I continued a dialogue with Senator McCain’s office and the U.S. Forest Service over the next month. In the end, I confirmed the accuracy of my information.

1 6. On or about July 19, 2005, I sent a Freedom of Information Act or FOIA
2 request to Elaine Zieroth with the U.S. Forest Service in Springerville, Arizona. A true
3 and correct copy of that letter is attached at Exhibit 1. The FOIA request sought
4 information relating to a protected wild horse territory similar to a sanctuary dedicated by
5 Congress and known as the Heber Wild Horse Territory.

6 7. I issued a second FOIA request to Ms. Zieroth on or about August 23,
7 2005. This request related to the attempt to award a contract for the removal of all horses
8 from the Apache-Sitgreaves National Forests.

9 8. To date, I have received a few pages of information and reports from the
10 U.S. Forest Service in response to my requests. None of the documents suggest that the
11 Forest Service has conducted any type of investigation or study of the horses in this area
12 before making a decision to remove all of them. In fact, they have failed to provide me
13 with any census or inventory regarding the present number and status of wild horses in
14 the Apache-Sitgreaves National Forest.

15 9. I have also reviewed the Solicitation for Bid entitled "Trespass Horse
16 Capture and Transport, Apache-Sitgreaves National Forest" initially posted on July 19,
17 2005. This Solicitation provides for trapping of the horses, allows motorized equipment,
18 tractor trailers, and stock trailers into the forests for removal of the horses. Most
19 interestingly, the Solicitation also places a "gag order" on it and provides that the
20 "contractor agrees that there shall be no release of information to the news media
21 regarding the removal or remedial activities conducted under this contract." See
22 Solicitation at Section C.1.5(a)(3). The Solicitation provides for conditions for camping
23 for the contractor and its agents when rounding up the horses and staying overnight in the
24 forests at Section H.2.4, a fire plan at Section H.3.0, and other issues such as slash
25 incineration, smoking cigarettes, power chain saws, and the like.

26 10. To my knowledge and investigation to date, neither the United States Forest
27 Service or any other government agency has conducted a public hearing or allowed for
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public comment on their present intent to remove horses from the Apache-Sitgreaves National Forest.

11. I have reviewed photographs and videos of the wild horses in the Apache-Sitgreaves National Forests. I have also spoken with residents who have viewed these horses.

12. From my review of the photographs and videos of these horses, I believe that the light Buckskin (or crème color) and the jet black horses and foals in the Apache-Sitgreaves National Forests are indicative of offspring of the original Spanish wild mustangs introduced to the Heber area by Father Eusebio Kino some 300 years ago.

13. Based upon my discussions and interviews with local residents of Heber/Overgaard, it appears clear that wild horses have existed continuous in the Apache-Sitgreaves National Forest since 1971 and earlier.

14. If the Forest Service proceeds with its plan to capture and remove these horses, they will be transported to a livestock auction house in Sun Valley, Arizona (near Holbrook). Upon information and belief, most, if not all the horses at that auction will go for slaughter. This means that there is a good chance that the majority of the horses presently living in the Apache-Sitgreaves National Forest will go to a slaughter house.

15. The present bid for removal of these horses constitutes more than a mere relocation or reduction in the horse population, but rather a total eradication and extinction of all wild horses in the area.

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16. Once these wild horses are captured and removed, they can never be replaced.

Further, Affiant sayeth naught.

DATED: 9/09/2005

Patricia Haight, Ph.D.
Patricia Haight, Ph.D.

SWORN AND SUBSCRIBED before me by Patricia Haight, Ph.D. this 9th day of September, 2005.

Lori L. De Los Santos
Notary Public

My Commission expires:

May 6, 2008



BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

The Honorable Senator John McCain
241 Russell Senate Office Building
Washington, D.C. 20510-0303

July 12, 2005

Dear Senator McCain,

Once again I am writing to you regarding an issue related to horses living on Federal land in Arizona. Currently, these horses are living in the Sitgreave National Forest under the jurisdiction of the United States Forest Service. I have been told that the horses may be gathered, sold at auction, and end up at slaughter. I am writing to ask if you might inquire whether the information I have received regarding these horses is correct and whether, if it is correct, there might be an option other than sale of several hundred Arizona horses at auction. This, most likely, will result in most of these horses going to slaughter.

I received the information about this situation through Colonel Newlin Happersett, owner of Blue Grass Arabians in Cave Creek, Arizona. Colonel Happersett is a highly respected horseman in Arizona whose two-year-old Arabian, Point Man, took Championship honors at the last Arabian National Show at WestWorld. He also is a decorated veteran of World War II and Vietnam and was a former POW. Colonel Happersett fosters horses for In Defense of Animals and brought this information to my attention.

Below is the information:

- A committee has been formed by the United States Forest Service to deal with a large number of horses, perhaps several hundred horses, who ran to escape from fires during the Rodeo-Chediski fire. They are horses that were living on the White Mountain Apache Reservation prior to the Rodeo fire and who belonged to the White Mountain Apache Tribe.
- The terrified horses took refuge from the flames by running to the Sitgreave National Forest during the Rodeo fire and have been living there since. They are living on the rim side of the forest going from Showlow toward Lakeside in an area known as Forest Lakes. The public has been blocked access to this area.
- The US Forest Service does not want these horses on that land because they want the vegetation to come back and the horses are grazing on the vegetation. Technically the horses belong to the White Mountain Apache tribe but the White Mountain Apache tribe won't take them back either. Consequently, the Forest Service is working on a plan to gather up all of these hundreds of horses and turn them over to the Arizona Department of Agriculture. If this happens, the horses will go to the Holbrook sale lot. It is a place with a very bad reputation among horse people and animal welfare organizations.
- If the horses are turned over to the Arizona Department of Agriculture by the Forest Service, they will go to the Holbrook facility and, after 14 days, will then be sent to auction. Most of these horses will end up in the hands of killer buyers and be sold to slaughter because there simply are not enough people in the Holbrook area who will buy these horses. I have been told that the Forest Service will not consider taking the responsibility of the horses directly and doing an adoption program because it is too expensive. However, the BLM certainly does adoptions in Arizona and Kelly Grissom, the head of the BLM Horse and Burro Program in Arizona, is experienced at setting

up adoption programs. While I cannot speak for Mr. Grissom on this issue, he has been more than willing to help tribes in Arizona set up adoption programs for horses in other areas.

Would it be possible for you to inquire of the US Forest Service regarding the following concerns that have been expressed to me?

1. Is the Forest Service dealing with several hundred horses in the Sitgreave Forest that they plan to turn over to the Arizona Department of Agriculture as abandoned horses?
2. If the Forest Service is working on this plan, would they reconsider the possibility of an adoption program instead especially given that they have the BLM program in Phoenix to turn to for information on setting up such an adoption?
3. I have contacted Karen Sussman of the International Society for the Protection of Mustangs and Wild Burros to ask her assistance in finding a place for these horses to be relocated. If a place was found for them, would the Forest Service work with animal welfare groups to allow their relocation rather than sale at auction and to killer buyers?

These horses are simply victims of a horrible wildfire in Arizona. They escaped the fire and survived through their own courage and ingenuity. It would be tragic for them to end up at auction and at slaughter. In Defense of Animals delivered hay, feed and medical supplies to people in the White Mountains during that fire. I saw first hand its effect on the people and on the animals including horses. These horses have survived that ordeal. Now, if it is true that the US Forest Service plans to remove them from the land and turn them over to the Arizona Department of Agriculture, they will end up sold at auction and in the hands of killer buyers and slaughter houses. I believe there are other alternatives.

Would it be possible for you to assist me in determining whether this information is correct and, if it is correct, whether the US Forest Service would consider an adoption program or relocation of the horses if land can be found for them? The person I am told who is in charge of the issue of these horses is the following:

Elaine Zorthor
Forest Supervisor, Apache Sitgreave National Forest
PO Box 640
Springerville, AZ 86938

Once again, thank you so very much for your assistance, for your compassion, and for the assistance and kindness of your staff.

With best wishes and deepest respect,

Patricia Haight, Ph.D.
Southwest Regional Director, In Defense of Animals
Director, IDA Conquistador Equine Rescue Program
Cell: 480-232-8068, Email: pat@idausa.org

Exhibit I

AFFIDAVIT OF DEBRA SIROWER

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

5
6 After being first duly sworn, and upon her oath, affiant, Debra Sirower, avows as
7 follows:

8 1. I am over the age of 18 and am competent to testify as to the matters set
9 forth herein and would so testify if called upon to do so.

10 2. I have personal knowledge of all of the matters set forth herein, except
11 those matters theorized upon information and belief, which matters I believe to be true.

12 3. My law firm currently represents three animal welfare groups: In Defense
13 of Animals, the Animal Welfare Institute, and the International Society for the Protection
14 of Mustangs and Burros. In this capacity, I have had discussions with the U.S. Forest
15 Service located in Springerville, Arizona regarding its attempt to remove all horses from
16 the Apache-Sitgreaves National Forests. In particular, my contacts have been with Elaine
17 Zieroth, a U.S. Forest Supervisor.

18 4. On August 26, 2005, I sent a letter by fax to Ms. Zieroth pointing out the
19 various federal statutes that are applicable to the Forest Service's attempt to remove the
20 horses, wild or otherwise, from the Apache-Sitgreaves National Forests. On behalf of my
21 clients, I asked that the Forest Service delay or refrain from awarding any bid on its
22 Solicitation for the capture and removal of the horses. A copy of this letter is attached at
23 Exhibit A.

24 5. After a number of telephone discussions with Ms. Zieroth, it became clear
25 to me that the U.S. Forest Service intended to move forward with its plans to remove all
26 of the horses from this forest area, despite my clients protestations and request to comply
27 with federal laws. As a result, on September 2, 2005, I sent another letter by fax to Ms.
28 Zieroth asking as a compromise position that, the Forest Service agree to remove only

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(602) 364-7000

1 “branded” horses (those with some type of domestic marking or sign ownership) so we
2 could have time to discuss the remaining issues further.

3 6. The U.S. Forest Service was scheduled to award the bid on its solicitation
4 for the capture and removal of the horses by August 31, 2005. However, due to
5 Hurricane Katrina, and the fact that its contracting office was located in New Orleans,
6 Louisiana, the time to award the bid was extended until September 10, 2005.

7 7. On Wednesday, September 7, 2005, I received a response letter from Ms.
8 Zieroth to my initial letter. A true and correct copy of this letter is attached at Exhibit B.
9 In sum, Ms. Zieroth stated that the Forest Service considered all of the 300 to 400 horses
10 in the Apache-Sitgreaves National Forests as “strays” or trespass livestock which
11 authorizes them to impound and dispose of them as needed. The Forest Service believes
12 that all of horses in the forests were chased by the Rodeo-Chediski fires off of the Apache
13 Indian reservation. The Forest Service’s position is that because the animals are
14 “claimed” or owned by the Apaches, they could be removed from the forest as
15 “unauthorized livestock.”

16 8. On Thursday, September 8, 2005, I spoke with Ms. Zieroth in a final
17 attempt to persuade the U.S. Forest Service to delay the bid award and consider whether
18 there were indeed wild horses in the forests in question that were deserving of protection
19 under the 1971 Wild Horses and Burros Act. I advised Ms. Zieroth that I have visited
20 Heber/Overgaard this week and interviewed local residents who confirmed seeing these
21 wild horses in the forests and surrounding areas since the 1970s. I also advised her that
22 they residents had provided me with sworn statements. Despite this information, the
23 Forest Service held to its position and advised me that it was trying to award the bid by
24 Saturday, September 10, 2005.

25 9. After my phone conversation with Ms. Zieroth yesterday afternoon, I
26 prepared another letter to her advising of my clients intent to move forward and seek a
27 restraining order to prevent the bid award. A copy of this letter is attached as Exhibit C.
28 If the bid is awarded, the contractor will begin operations which include the round up and

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trapping of the horses in the Apache-Sitgreaves National Forests and then transporting them to the auction house near Holbrook, Arizona.

Further, Affiant sayeth naught.

DATED: 9/9/05

Debra Sirower
Debra A. Sirower

SWORN AND SUBSCRIBED before me by Debra Sirower this 9th day of September, 2005.

Lori L. De Los Santos
Notary Public

My Commission expires:

May 6, 2008



BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

EXHIBIT A
TO DEBRA SIROWER'S AFFIDAVIT

BRYAN CAVE

Debra A. Sirower
Direct: 602-364-7153
Fax: 602-716-8452

August 26, 2005

By Fax (928) 333-5966 & U.S. Mail
Elaine J. Zieroth, Forest Supervisor
Apache-Sitgreaves National Forests
U.S. Dept. of Agriculture
P.O. Box 640
Springerville, AZ 85938-0640

**Re: Removal of 400 Wild Horses from Heber Wild Horse Territory
Apache-Sitgreaves Forest**

Dear Ms. Zieroth:

This firm has been retained to represent the interests of certain animal protection groups including In Defense of Animals, the Animal Welfare Institute, the International Society for the Protection of Mustangs and Burros, as well as other concerned citizens residing within of the State of Arizona. It has come to our attention that the U.S. Forest Service has issued requests for bids on the removal of approximately 400 wild horses from the Heber Wild Horse Territory, Apache-Sitgreaves Forest. In response to a FOIA request by Dr. Pat Haight, our clients received little to no documentation for this decision. However, we have learned that the bid award for this removal will be made no later than August 31, 2005, and the scheduled removal is to begin the second week of September 2005. We have also received and reviewed your letter to Dr. Haight dated July 26, 2005. Based upon the information received to date, our clients have serious concerns about this attempted removal of protected animals.

First, we question whether adequate investigation and research has been conducted to support your conclusion that these animals are "trespass horses" and "are not considered wild horses." While your policy manual may provide for a certain manner of disposing of abandoned trespass property; we question the basis of your initial conclusion that the animals fall into this category.

Second, and possibly most telling, is the fact that the response to Dr. Haight's FOIA request provided little to no information demonstrating that any type of inventory, study or census has been conducted in this area for decades. Additionally, we found that no investigation has been conducted to determine how many of these horses are unbranded. We know from your efforts so far that the horses are unclaimed. Again, we question the basis of your decision that the horses are indeed trespass horses and not wild horses.

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United Arab Emirates (Dubai)
Washington, DC

And Bryan Cave,
A Multinational Partnership,
London

Third, our concerns were further heightened after interviews were conducted of local residents. Based upon first-hand eye witnesses' accounts, the majority of these horses are indeed unbranded and unclaimed. Presently, our clients are in the process of interviewing local residents who will confirm by written affidavit, video, and perhaps live testimony that these horses have lived in that area for years. We believe that many of these local citizens will also confirm that the horses were living in the area decades prior to the Rodeo-Chediski fires. As such, these horses would be federally protected as discussed below.

With this said, we need to bring to your attention that any attempt to remove 400 horses from this rugged area would likely be considered a "major Federal action significantly affecting the quality of the human environment." Such a massive operation of removal, assuming you intend to remove live horses, would require numerous personnel who would be camping out in this territory, installing traps, providing access points for horse trailers and other transportation, off-road vehicles, and the like. The bidding information suggests that the cost for such a removal may range between \$200,000 and \$320,000. In this rugged mountainous area, there should be no disagreement that this operation with all of its vehicles, traps, and manpower will cause considerable disturbance to the surrounding environment and other wildlife. It is apparent that compliance with the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321, *et. seq.* ("NEPA") is required before taking this type of major federal action. Specifically, Section 4332 provides in pertinent part:

- (2) [A]ll agencies of the Federal Government shall ***
- (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --
- (i) the environmental impact of the proposed action,
 - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
 - (iii) alternatives to the proposed action,
 - (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
 - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local

agencies; which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes.

42 U.S.C. Section 4332. In short, your actions in attempting to remove the horses appear predecisional in terms of NEPA. An environmental assessment or impact study should be conducted as well as a census to determine the precise nature and number of wild horses and how many are unbranded in this territory. Only then, after proper investigation and study, should a decision be made as to how the area should be managed.

We also point out that under the Wild Horses and Burros Act of 1971, 16 U.S.C. Section 1331, *et seq.*, the trespass status of these animals is arguable, and many may well be federally protected as provided for under the Act. As you are probably familiar, the Act's preamble and declaration of the policy provides:

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 area where presently found, as an integral part of the natural system of the public lands.

Under this Act, the Secretary of Agriculture is charged with the responsibility of "managing and protecting" all wild free-roaming horses. The Act also provides that the Secretary "shall manage wild free-roaming horses and burros in a manner that is designated to achieve and maintain a thriving natural ecological balance on the public lands." Section 1333(a). This Act further provides that the Secretary "shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands." Section 1333(b).

As you are aware, there are also regulations under the 1971 Act of significance here. In particular, CFR Section 222.23 entitled "Removal of Other Horses and Burros," defines the conditions for treating certain horses as "unauthorized livestock" which could then be impounded and properly disposed. Notably, Section 222.23 provides special protection for horses that do not fall initially within the protection of the 1971 Act, if they are subsequently introduced into a protected territory "by accident, negligence or willful disregard of private ownership" and which become intermingled with wild free-roaming horses. Accordingly, only if these newly introduced horses do not intermingle may they be considered "unauthorized livestock." Based upon the information available to us to date, it appears that the horses in question have intermingled. Additionally, Section 222.25 of the regulations provides protection for the wild free-roaming horses even if they were to move or migrate off of protected territories onto lands of other ownership or jurisdiction.

Elaine J. Zieroth, U.S. Forest Supervisor
August 26, 2005
Page 4

Bryan Cave LLP

While we acknowledge the Forest Service's position that these animals are trespassing and therefore not protected, we question that position since the Forest Service readily admits it has not conducted a census in this area for decades. In fact, the response to the FOIA request revealed that no efforts to inventory or count the horses in this area has been conducted. Failure to conduct a census and jumping to the conclusion that these animals are trespass without good cause violates the Wild Horses and Burros Act of 1971. Furthermore, the Act defines "wild horses and burros" as "all unbranded and unclaimed horses and burros on public lands of the United States."

The Administrative Procedure Act, 5 U.S.C. Sections 551, *et seq.* ("APA") may be relevant to your agency's actions as well. Taking these steps without first conducting a full and proper investigation could be viewed as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and thus in violation of the APA. 5 U.S.C. Section 706(2)(a).

Since the Forest Service intends to revise its land use plans in 2006, this is a prime opportunity to allow public comment as to whether to maintain horses in this area or not. We are not aware of any official decision to remove all horses from the Heber Wild Horse Territory. If such a decision has been made, please advise when it was made, by whom, and if there was any public comment or research on the issue. We also note that it is obviously, much easier to complete a Forest Plan Revision in 2006 if wild horses do not need to be taken into consideration.

In sum, we ask that you reconsider your actions, meet the requirements of a NEPA review, and provide documentation including monitoring data supporting your claim that these horses are "trespassers" and do not fall within the protections of the 1971 Act. We contend that before any major federal action such as this one can be undertaken, Section 4332 of NEPA must be followed. If you require another FOIA request, we can issue one, but, this letter should suffice. We, however, seriously question that all 400 horses are trespassers and ask for further investigation on your part as well as compliance with all applicable federal statutes.

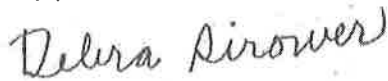
We are open to the possibility of a face-to-face meeting among all interested parties to facilitate discussions and an exchange of information. While we are hopeful that we can resolve this dispute, we need a prompt response by the close of business Monday, August 29, 2005. We also ask that you consider delaying the bid award next week and take time to review the historic information that our clients have gathered (which will establish that many of these horses are not trespass horses). If you choose to move forward next week with the bid award, we will be forced to seek relief through other means including court-intervention.

Elaine J. Zieroth, U.S. Forest Supervisor
August 26, 2005
Page 5

Bryan Cave LLP

Thank you for your time.

Very truly yours,



Debra A. Sirower

DAS:ck

cc: Lucia Turner, Acting Regional Forester (by mail and fax 505-842-3110)
United States Forest Service
333 Broadway SE
Albuquerque, New Mexico 87102

Senator John McCain (by mail and fax 602-952-8702)
5353 North 16th Street, Suite 105
Phoenix, Arizona 85016

Senator John McCain (by mail and fax 202-228-2862)
241 Russell Senate Office Building
United States Senate
Washington, D.C. 20510
Attention: Nick Matiella

EXHIBIT B
TO DEBRA SIROWER'S AFFIDAVIT



APACHE-SITGREAVES NATIONAL FORESTS

P.O. BOX 640
SPRINGVILLE, AZ 85938
(928) 333-4301
FAX (928) 333-5966

DATE: September 7, 2005

TO: Debra Sinsler

FROM: Ernie Zieroth

SUBJECT: Response to correspondence

Number of Pages (including cover sheet): 3

Comments: _____

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United States
Department of
Agriculture

Apache-Sitgreaves
National Forests

P.O. Box 640
Springerville, AZ 85938-0640
(928) 333-4301 FAX: 333-5966
TTY: (928) 333-6292

File Code: 5330-4

Date: September 7, 2005

Ms. Debra Sirower
Bryan Cave LLP
One Renaissance Square
Two North Central Ave., Suite 2200
Phoenix, AZ 85004-4406

Dear Ms. Sirower:

This letter is in response to your letters of August 26 and 31, and September 2, 2005, concerning the proposed gathering of stray livestock on the Apache-Sitgreaves National Forest. Specifically you were inquiring about the approximately 300 horses that have strayed from the Fort Apache Reservation onto National Forest System lands in the area from Pinetop to Heber, Arizona. You also cited two Freedom of Information requests in your letters and those will be formally processed through our FOIA Officer.

We are confident that the horses involved in this action strayed onto the forest after the Rodeo-Chediski Fire in 2002. The fences between the reservation and the national forest were burned by the fire and were ineffective in stopping the movement of livestock. According to our Bureau of Indian Affairs and Tribal contacts, the BIA rounded up several hundred of the horses that graze freely on reservation land, to prevent damage to the areas being reclaimed following the fire. During their round-up, they indicated that hundreds of horses likely were pushed onto the national forest. The BIA then rebuilt the fences, trapping the horses on the forest.

We have very clear direction under 36 CFR 262.10 and our policy Handbook for Law Enforcement, FSH 5309.11 on impoundment procedures for stray livestock. Impoundment of stray livestock is a law enforcement activity and under 7 CFR 1b.3, the Secretary has excluded from documentation (EA or EIS) certain categories of actions, including law enforcement activities. Therefore, we are not required to complete an environmental document for this action.

I have provided Dr. Haight with a copy of our impoundment policies. We have notified the White Mountain Apache Tribal Chairman and Tribal Attorney of a Notice of Impoundment Action and given tribal members more than 30 days to come gather their horses. No horse owners have come forward. As I stated, there are hundreds of horses grazing freely on the reservation so they are not really managed there. The next step is to gather the horses and contact the State Department of Agriculture, under our Cooperative Agreement (C.A.) with the State of Arizona Livestock Sanitary Board. We have received a letter from the State concerning the procedures. The State Brand Inspector inspects the horses for brands and the owners of the brands are contacted and given five days to redeem their animals. The C.A. states: "That unbranded, unmarked or branded unknown ownership horses, mules, asses, cattle, sheep or goats impounded by the agencies on Public Lands will be turned over to the Board for disposal...".

As you are aware, we have advertised for a contractor to gather the horses. We have a FOIA request from Dr. Haight, asking for the contractor's name once the contract is awarded. You



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have also asked under FOIA how the award of the bid was extended. We will formally respond to the FOIA, but let me explain that the contract itself was not extended, but our time limit for obligating Fiscal Year 2005 funds under contracts was verbally extended to September 10, 2005. With the impacts from Hurricane Katrina in New Orleans, we are not certain whether our National Finance Center there will be able to find alternative locations for processing our financial instruments. We are trying to award the bid this week, but do not know if we will be successful. I will inform you if we do award the bid.

We do not classify these stray horses as "wild and free-roaming horses", nor do they have any connection to the Heber Horse Territory of record. The 1974 report on the Heber Territory lists 7 horses within the territory. The "Ninth Report to Congress on the Administration of the Wild Free-Roaming Horse and Burro Act" (following the 1990-91 censuses) lists 5 horses. The 1991 report FS-2200-E also notes: "Approximately 5 feral horses wander along the Mogollon Rim back and forth from the White River Apache Reservation. The Indians do not manage the horses, neither does the Forest Service. Natural Attrition will eliminate the horses eventually". The 2200-E report goes on to state, under program needs: "Elimination of incidental feral horses and burros from formal management consideration to reduce impacts on management resources, personnel and time. The A/S "herd" should not be recognized at all." The 1993 letter from the Heber District Ranger lists 2 mares in the territory. We always have a certain number of stray horses from the reservation, and these are no doubt the horses that some of your contacts see in the area.

If you would like to send me any of the materials you mentioned, I would welcome seeing them. I would also be available for a meeting in my office if you wish. I do not have any plans to be in Phoenix, however, this month. Please contact me if you would be available to meet.

Sincerely,



ELAINE J. ZIEROTH
Forest Supervisor

cc:
Ralph Giffen, WO Range
Gene Onken, RO
Deb Bumpus, A-S Range Staff
Ed Collins, Lakeside District Ranger
Kate Klein, Black Mesa District Ranger

EXHIBIT C
TO DEBRA SIROWER'S AFFIDAVIT



Debra A. Sirower
 Direct: 602-364-7153
 Fax: 602-716-8452

September 8, 2005

By Fax (928) 333-5966 & U.S. Mail

Elaine J. Zieroth, Forest Supervisor
 Apache-Sitgreaves National Forests
 U.S. Dept. of Agriculture
 P.O. Box 640
 Springerville, AZ 85938-0640

Bryan Cave LLP
 One Renaissance Square
 Two North Central Avenue
 Suite 2200
 Phoenix, AZ 85004-4406
 Tel (602) 364-7000
 Fax (602) 364-7070
 www.bryancave.com

Re: Removal of All Horses from Apache-Sitgreaves Forest

Dear Ms. Zieroth:

Thank you for returning my call this afternoon.

As I stated on the phone, my clients are still disappointed that the Forest Service stands by its position that all horses living within the Apache-Sitgreaves National Forests are strays and/or trespass livestock. As I advised you, we have signed affidavits of local residents who readily confirm that wild horses have lived in the area well before the Rodeo-Chediski fires in 2002 and the horses you seek to remove are not simply "stray" or "trespass." We have local eye witness reports back as early as the 1970s. Unfortunately, the U.S. Forest Service is adhering to its position that none of the horses in the forest are "wild" within the definition of the 1971 Act, despite the nearby Heber Territory Wild Horse sanctuary dedicated by Congress in the 1970s.

The purpose of this letter is to advise you that unless the U.S. Forest Service agrees to delay its award of any bid for removal indefinitely, or until we can reach amicable resolution, we have no choice but to apply for an ex parte (or without notice) temporary restraining order tomorrow in federal court. If you are willing to refrain from awarding a bid until we are able to resolve this dispute, please call me first thing tomorrow or as soon as possible. Otherwise, we will be seeking such relief tomorrow.

Thank you for your time.

Very truly yours,

Debra A. Sirower

DAS:ck

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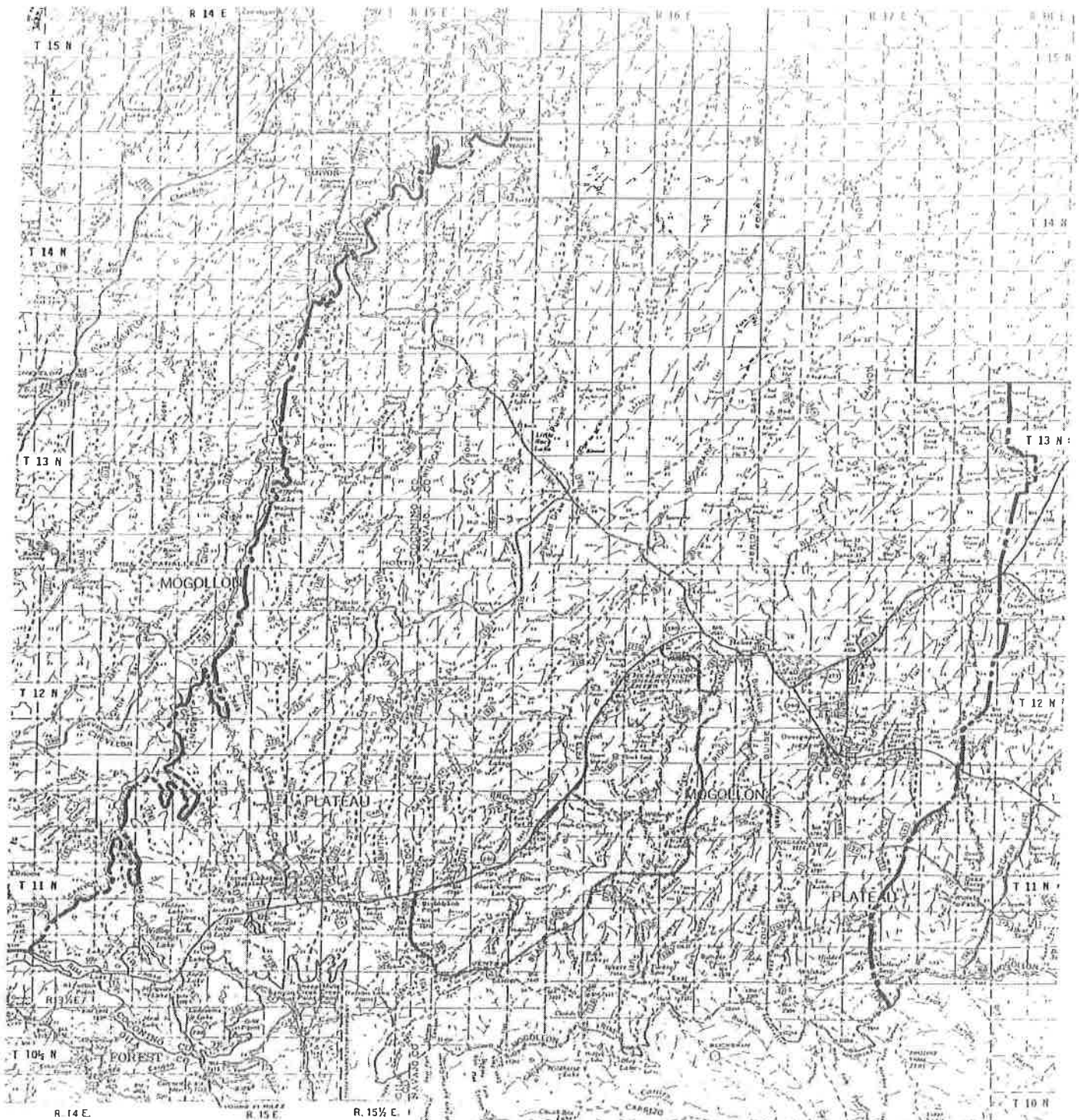
Date: September 8, 2005
From: Debra A. Sitower Telephone: 602-364-7153
Sender's Direct Fax Number: 602-716-8452
To: Elaine J. Zieroth, Forest Supervisor Fax Number: 928-333-5966
Company: U.S. Dept. of Agriculture Telephone:
Matter N002578 Number of Pages Including Cover: 2
Message:

To Sender:

Do you wish to be contacted when fax is sent?

YES NO

Exhibit J



**HEBER RANGER DISTRICT
SITGREAVES NATIONAL FOREST**



ARIZONA

1972

Scale

1 1.5 0 3 2 3 4 5 Miles

LEGEND

-  Ranger District Boundary
-  National Forest Land

TERRITORIAL HABITAT LIMITS

Wild Horses - December 1971

Boundary

Winter

Summer



Part II. Excess Animal Removal. Submit the following information summarized by Region for FY 90 and FY 91. 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>FY 90</u>		<u>FY 91</u>	
	<u>Horses</u>	<u>Burros</u>	<u>Horses</u>	<u>Burros</u>
1. Total number captured and removed from territories (total of items 1a, 1b, 1c, and 1d.				
a. Number Excess Destroyed				
(1) Old, sick, lame	0	0	0	0
(2) Unadoptable	0	0	0	0
b. Deaths after removal				
(1) Natural Causes	0	0	0	0
(2) Accidental	0	0	0	0
c. Animals transferred BLM. 1/				
d. Excess animals adopted through FS or BLM programs but remain responsibility of FS. 2/	0	0	0	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	0
2. Number of titles granted this Fiscal Year.	0	0
3. Number of deaths after adoption this fiscal year.	0	0
4. Number of adopted animals eligible for granting title, but no title issued.	0	0

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.

Exhibit K

Eastern Arizona Counties RAC
Project Proposal Form

AS-33

1. **PROJECT NAME:** Removal of Feral Horses from the Rodeo-Chedeski Fire Area

Proposed By: Randall L. Chavez
Phone/e-mail: 928-368-5111
rchavez02@fs.fed.us

2. **NEPA:** Is the project NEPA sufficient? Yes ___ No ___ If no, when will it be? **Not Needed**

3. **LOCATION:** County-Navaho Ranger District-Lakeside (attach vicinity map or site map)
Is the project within a wilderness or inventoried roadless area? Yes ___ No X

4. **PURPOSE OF THE PROJECT:** (place an X in every applicable category)

Road/trail maintenance, obliteration, or decommissioning* ___

Stream or watershed restoration * X

Improve forest ecosystem health X

Improve wildlife or fish habitat ___

Control of noxious and exotic weeds ___

Re-establish native species' ___

Other: (describe)

* Please explain here how this project fits this category:

5. **PROJECT DESCRIPTION:**

This project is to remove the feral horses that have been established in the Rodeo-Chedeski area after the fire. The fences between the Fort Apache Reservation and the Federal lands was destroyed by the fire but has been rebuilt since. During that time, 300 – 400 head of feral horses migrated onto the Black Mesa and Lakeside Ranger Districts. These herds are currently multiplying and have the potential to double in size in 1 -2 years. Approximately 10 million dollars has been spent on watershed protection in the Rodeo-Chedeski fire area and these herds are disrupted the post-fire ecological recovery process. Damage has been observed after reforestation projects, native seed planting, extensive used travel corridors, and watershed stabilization projects. Arizona Game and Fish Department has also expressed a concern that these herds can impact wildlife habitats, as well. Arizona State Livestock Board will have control of the animals after they are captured. This project would be conducted under a Forest Service contract with an experienced contractor. The contractor may be using methods, such as portable corrals with spring loaded gates, using gentle horses to lure horses into corrals, ect. Contracting cost per head could range from \$100/head to \$300/head, on an average of \$200/head.

6. **COST:** Total cost of project: **\$100,000**

Amount of funding requested from the RAC: **\$25,000** (Includes 5% FS admin cost)

Can the cost be leveraged with partners? **Yes** If yes, describe:

The Forest Service has \$40,000 that would be contributed toward this effort and the Habitat Partnership Committee is being asked for \$40,000 also.

Can the project be phased –in over time? **Yes** If yes, explain:

Not all horses will be captured during this first round; there will have to be another round.

**Eastern Arizona Counties RAC
Project Proposal Form**

Add 5% to the project cost to include FS administrative costs = total RAC funds requested

7. SOCIAL IMPACT: Describe how the project: a) will affect public safety b) will benefit the community economically c) will provide educational opportunities d) will improve quality of life for nearby communities or visitors. How many people will this project impact?

This project will benefit all forest visitors by improving visual esthetics to the land and having recreation experiences without observing large herds of horses. Nearby communities will not have to worry about their horses trying to escape and becoming part of these herds or having their horses infected with diseases from feral horses that have not been vaccinated.

8. Describe expected outcomes including how the project will meet or exceed desired ecological conditions or stewardship objectives. Estimate the amount of timber, forage, or other commodities and economic activities, including any new jobs generated as part of this project.

By removing these feral horses, the post-fire ecological recovery process will not be impacted and watershed conditions will be able to stabilize without interruptions. Currently not permitted livestock is allowed into the burned area to provide recovery, removal of the horses will allow us to regain control of most of the use to the forage. In some areas in the burn, forage has doubled in production, this will continue if adequate moisture is received.

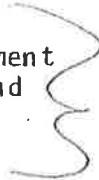
The county will have 1-3 jobs created for this project, due to the interest of local contactors from Navaho County.

9. Describe the monitoring plan, including funding needs that track and identifies the positive or negative impacts of the project and provides for validation monitoring. The monitoring plan shall include an assessment of whether or not the project 1) met or exceeded desired ecological conditions, 2) created local employment or training opportunities, including summer youth programs such as the Youth Conservation Corps, and 3) improved the use of, or added value to any products removed from lands consistent with the purpose of this Act.

Monitoring for this project will be conducted by the Forest Service and Arizona Game and Fish Department and will be by reduction of animal numbers. Arizona Game and Fish keep a count of number of horses during their annual flight surveys each year. The goal is for total removal of the feral horses.

MAJOR PROGRAM CHALLENGES/NEEDS: From a field perspective, what are the major challenges/needs facing the Wild Horse and Burro Program within the Forest Service today? Provide information relative to this question as a scoping exercise preparatory to the WH&B Activity Review to be conducted in FY 92. Examples could include: monitoring needs, data information needs, FS/BLM relations, management strategies etc. Many of these undoubtedly will relate to funding levels; do not just indicate the need for increased funding, but rather the program needs/activities that additional funding could provide.

Elimination of incidental feral horses and burros from formal management consideration to reduce impacts on management resources, personnel and time. The A/S "herd" should not be recognized at all.



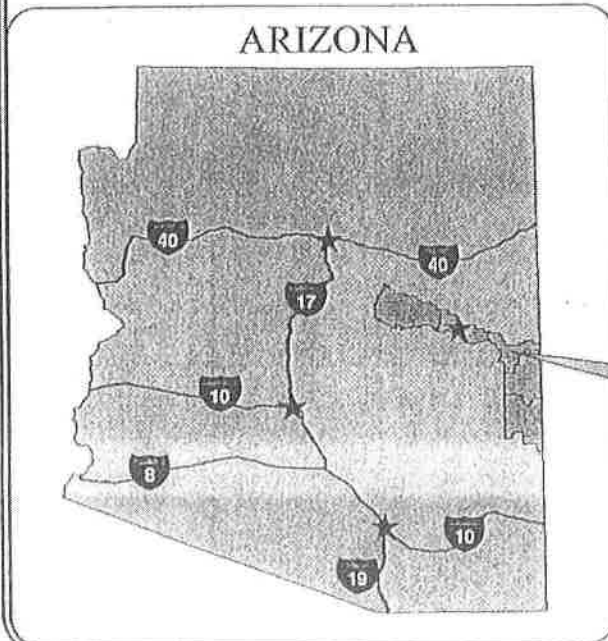
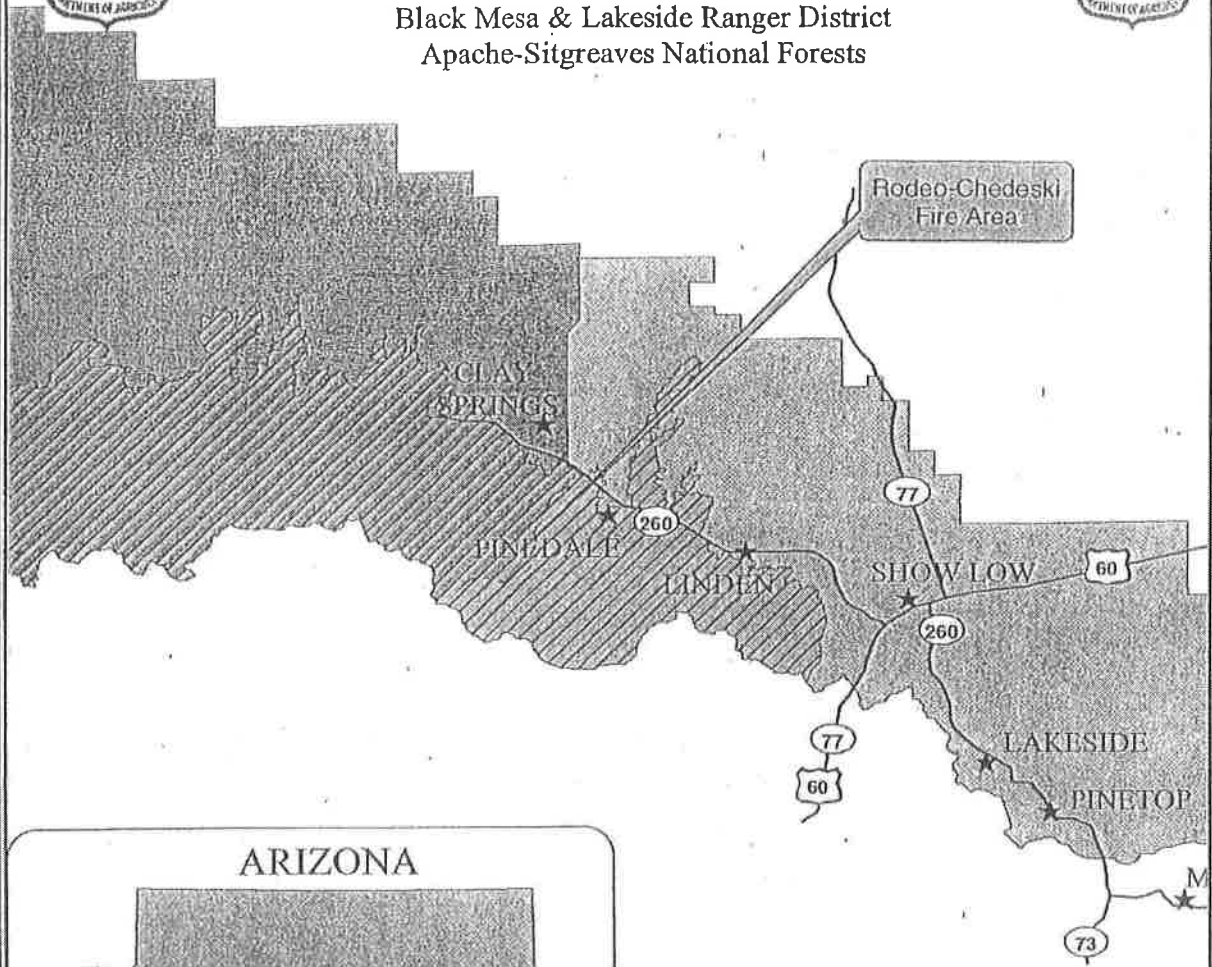


Vicinity Map

Feral Horse Removal Project

Black Mesa & Lakeside Ranger District

Apache-Sitgreaves National Forests



Apache-Sitgreaves
National Forests



**ATTACHMENT 8
DISK**

G



U.S. Department of Agriculture
Office of the General Counsel

Mountain Region
Albuquerque Office

P.O. Box 586
Albuquerque, NM 87103-0586

Phone: (505) 248-6020
Fax: 1 (844) 282-1192

July 24, 2019

Farris Jean Gillman, Esq.
Snell & Wilmer
One Arizona Center
400 East Van Buren Street
Suite 1900
Phoenix, Arizona 85004-2202

Re: Correspondence re Heber Wild Horse Territory

Dear Ms. Gillman:

Thank you for your letter of July 1, 2019, on behalf of the International Society for the Protection of Mustangs and Burros. I will address each of your points in turn, below:

The Forest Service remains aware of its obligations under the March 13, 2007 Stipulation adopted in *In Defense of Animals, et al. v. U.S., et al.*, No. CV-05-2754 (D. Ariz.) ("Stipulation"). Those obligations include an agreement "to refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until the Forest Service completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA" The Forest Service continues to abide by that agreement.

You state that the Forest Service failed to provide your client with any form of notice with respect to a report that was generated by the Heber Collaborative Working Group. However, the Stipulation does not speak to any requirement to provide specific notice regarding such a report. Rather, the Stipulation, in terms of notice obligations, only references an "appropriate environmental document pursuant to NEPA," and arguably, a "written Heber Wild Horse Territory Management Strategy." Neither document has been completed by the Forest Service at this juncture. Once those documents are finalized for public review and comment, the Forest Service will provide appropriate notice consistent with its obligations under NEPA and the Stipulation.

Your letter also states that the Forest Service has not met its obligation under the 2007 Stipulation regarding a boundary fence between National Forest System land and the Fort Apache Indian Reservation. You claim that: "[t]he Forest Service agreed to construct and maintain" the boundary fence, to notify your client "of the time frame within which it intends to complete the fence," and to "then make efforts to actually complete it within that timeframe." However, the Stipulation only states that "[t]he Forest Service will continue to coordinate with

the White Mountain Apache Tribe for repair and maintenance of the boundary fence,” an obligation that was made contingent on the availability of appropriated funds.

Despite ongoing funding constraints, the Forest Service has continued to comply with its commitment to “continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence” since the execution of the 2007 Stipulation. For example, in 2015, Forest Service staff from the Apache-Sitgreaves National Forests met with tribal members to discuss the Forest Service’s reconstruction of the boundary fence on the Apache National Forest (for approximately nine miles from the vicinity of Reservation Lake, south to Reservation Creek), as well as the reconstruction of a portion of the boundary fence on the Sitgreaves National Forest. The Forest Service also discussed with tribal members mutual funding limitations that impacted boundary fence maintenance needs, and together discussed exploring various funding solutions. In January 2017, the Forest Service created and staffed a new Regional Wild Horse and Burro Coordinator position, in part to work with the White Mountain Apache Tribe on horse issues. The Coordinator participated in an initial informal meeting with tribal members in August 2017, and commenced formal outreach with the Tribe’s range program in February 2018. Since that time, the Coordinator and tribal representatives have engaged in regular cooperative discussions regarding tribal horse issues and the Heber Wild Horse Territory, to include boundary fence matters and securing funds for maintenance needs.

In response to your comments regarding the Heber Collaborative Working Group, they are misplaced. Contrary to your assertion, the Forest Service does not have any statutory duty to include your client in the working group, nor does the Stipulation compel your client’s inclusion in the working group. Moreover, the Forest Service did not control the working group. The group was sponsored by Arizona State University, with Southwest Decision Resources serving as facilitator. These parties were responsible for organizing the group, selecting participants, planning agendas, setting parameters for group discussions, and deciding on any resulting work product. I understand that the group encompassed participants with a wide range of interests and perspectives, including participants representing horse advocacy organizations. Indeed, your letter indicates that an individual who was affiliated with your client’s organization did participate, but dropped out of the group on her own volition.

While the working group was formed for the purpose of providing a proposal to the Forest Service regarding the management of the Heber Wild Horse Territory, that proposal will be considered and evaluated by the agency, along with other pertinent information, during the NEPA process. As part of that process, the public, including your client, will have the opportunity to participate in reviewing and commenting on that information, as well as the opportunity to submit additional data (such as the information you included with your letter), once the Forest Service commences formal scoping as required by NEPA and 36 C.F.R. § 220.4(e). The Forest Service recognizes its obligation under the Stipulation to involve your client in the scoping process, once it begins, and to consider your client’s comments during that process. However, as the Stipulation notes, your client’s comments “are not entitled to any different weight or consideration than any other member of the public.”

The remainder of your letter raises issues with the working group report (i.e., the determination of an appropriate management level, allocation of Animal Unit Months for the Heber Wild Horse

Territory, and the utility of birth control drugs). I would encourage your client to submit this information, and any other information it deems pertinent, once the Forest Service commences the NEPA process.

If you have any questions regarding the above, please feel free to contact me at (505) 248-6020.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leigh Sellari".

Leigh Sellari
Assistant Regional Attorney

H

Farris Jean Gillman
(602) 382-6244
fgillman@swlaw.com

November 21, 2019

Leigh Sellari
Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
P.O. Box 586
Albuquerque, New Mexico 87103-0586
Email: leigh.sellari@ogc.usda.gov
dawn.dickman@ogc.usda.gov

Dear Ms. Sellari:

I am writing to you once again on behalf of my client, the International Society for the Protection of Mustangs and Burros (“ISPMB”). Having received your last letter, we remain disappointed with your response.

Given your contention that the Heber Collaborative Working Group (“Working Group”) operated wholly independent from the Forest Service, we trust that the Forest Service will scrutinize the Working Group’s recommendations considering the applicable law and history of the Heber Wild Horse Territory. To the extent that the Forest Service takes Working Group’s comments into consideration, it is imperative that the Forest Service evaluate these recommendations through the lens of the Working Group’s pervasive and frankly hostile bias against the Heber wild horses, and by extension, the wild horse advocates. Moreover, the ISPMB withdrew its challenge to the Apache-Sitgreaves Forest Management Plan in 2015 primarily because the Forest Service assured my client that ISPMB’s comments and concerns would be addressed through the Working Group. The Forest Service’s refusal now to consider my client’s response to the Working Group report runs counter to the spirit of that prior understanding between the agency and my client.

ISPMB will certainly reiterate its concerns once the scoping period has begun; however, (1) given the severity of the Working Group report’s bias, (2) the previous understanding between the Forest Service and ISPMB concerning ISPMB’s involvement in the working group, and (3) the fact the Forest Service has the Working Group report to consider as the agency begins framing the scoping process, it was essential that ISPMB provide you with its comments to the Working Group report.

Leigh Sellari
Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
November 21, 2019
Page 2

Additionally, it is unacceptable that the Working Group did not appear to have access to the record of the lawsuit between the Forest Service and ISPMB, and subsequent correspondence. Those documents are part of the administrative record. That record clearly informs the reliability of other Forest Service data that the Working Group clearly relied upon. For instance, knowing that the Forest Service rangers in the area did not know there was a wild horse territory is an important qualifier to the Forest Service's contemporaneous census data of wild horse herd. To the extent that any agency, party, or Working Group continues to ignore the record from that case (including the expert report that was prepared as a part of that proceeding), ISPMB will continue to reiterate that any conclusion those entities come to will be innately flawed. The Forest Service cannot ignore facts that it does not like.

Concerning the boundary fence, ISPMB is pleased to hear that the Forest Service has been partnering with the White Mountain Apache, but disappointed that the partnership has not progressed beyond discussions about funding. It has been over a decade since the Stipulated Settlement Agreement was executed. The fact that the Forest Service has not made real progress suggests that there has been a lack of good faith effort to meaningfully act on this issue. Until the boundary fence is completed, there will continue to be challenges to the legitimacy of the Heber wild horse herd's designation as wild horses. Additionally, the fence is essential to help allay concerns of vehicle/horse collisions.

Finally, pursuant to the Stipulated Settlement Agreement, I ask that you provide notice to myself and my client once the scoping process begins, using the following contact information:

Farris Gillman
Snell & Wilmer L.L.P.
One Arizona Avenue
400 East Van Buren Street
Suite 1900
Phoenix, Arizona 85004-2202

fgillman@swlaw.com

Karen Susseman
President
ISPMB
P.O. Box 435
Rapid City, SD 57709

ispmb@ispmb.org

Very truly yours,

Snell & Wilmer

Farris Jean Gillman

Leigh Sellari
Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
November 21, 2019
Page 3

FJG/mel
cc: Anthony Merrill

4821-9302-2125

Snell & Wilmer

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December 10, 2019

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

Leigh Sellari
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Leigh Sellari
Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
December 10, 2019
Page 2

Additionally, it is unacceptable that the Working Group did not appear to have access to the record of the lawsuit between the Forest Service and ISPMB, and subsequent correspondence. This is clearly shown in our prior communication. (See Attachment A).

Those documents are part of the administrative record. That record clearly informs the reliability of other Forest Service data that the Working Group clearly relied upon. For instance, knowing that the Forest Service rangers in the area did not know there was a wild horse territory is an important qualifier to the Forest Service's contemporaneous census data of wild horse herd. To the extent that any agency, party, or Working Group continues to ignore the record from that case (including the expert report that was prepared as a part of that proceeding), ISPMB will continue to reiterate that any conclusion those entities come to will be innately flawed. The Forest Service cannot ignore facts that it does not like. This is clearly shown in our prior communication. (See Attachment A).

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Leigh Sellari
Dawn M. Dickman
USDA OFFICE OF GENERAL COUNSEL
December 10, 2019
Page 3

Very truly yours,

Snell & Wilmer



Farris Jean Gillman

FJG/mel
cc: Anthony Merrill

4821-9302-2125

ATTACHMENT A



Anthony W. Merrill
Attorney
Direct: 602-364-7174
Fax: 602-364-7070
anthony.merrill@bryancave.com

VIA FEDEX

August 16, 2007

Ms. Kate Klein
United States Department of Agriculture
Black Mesa Ranger District
2748 State Highway 260
Overgaard, Arizona. 85933

**Re: Heber Wild Horses/The National Environmental Policy Act
("NEPA") Administrative Process**

Dear Ms. Klein:

Pursuant to the instructions set forth in Mary Ann Joca's letter of May 21, 2007, I am enclosing with this letter certain documents from the litigation leading up to the NEPA scoping process. These documents, and the entirety of the information contained therein, should be included as public comments with respect to scoping the NEPA process outlined in the parties settlement agreement dated March 14, 2007.

This submission should not be considered exhaustive. We intend to submit further information and comment, which may include additional litigation materials, once the Forest Service has issued the NEPA scoping document and formally opened the matter for public comment.

Below is a summary of those items to be included in the scoping process and as part of the administrative record in this matter:

- Verified Complaint and Application for TRO, filed September 9, 2005 in Case No. CV-05-2754-PHX-FJM, including as exhibits affidavits of various Heber area residents conclusively demonstrating the historic presence of unbranded, unclaimed horses on public lands associated with the Apache-Sitgreaves Forests for well over 30 years prior to the Rodeo-Chediski fire;
- Federal Defendants Response in Opposition to Plaintiff's Application for Preliminary Injunction dated October 28, 2005 and Plaintiffs Reply in Support of Preliminary Injunction dated November 21, 2005;

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*And Bryan Cave,
A Multinational Partnership,
London*

- Hearing transcript regarding the preliminary injunction that occurred on December 9, 2005 before the Hon. Frederick J. Martone;
- Arizona Federal District Court Judge Frederick J. Martone's Preliminary Injunction Order and findings regarding the litigation, dated December 13, 2005;
- The Administrative Record produced by the Defendants in the litigation;
- Deposition testimony of Elaine J. Zieroth, Kendell L. Hughes, Randall Chavez, Deb Bumpus, Ed Collins, and Kate Klein;
- Defendants Responses to Interrogatories and Requests for Production, with associated documents produced in the litigation dated October 30, 2006;
- Expert report of Mary Ann Simonds regarding the existence of wild horses on those public lands associated with the Apaches-Sitgreaves Forests dated March 5, 2007;
- Photographs of horses in the area taken in the fall of 2006, conclusively showing the lack of any branding, Bates numbers IDA000140 – IDA000250; and
- Congressional record text honoring the wild horses of the rim country, prepared and read into the record by Congressman Raul Grijalva dated June 6, 2007.

Although you should review each of the attached documents in detail, please be aware the Judge Martone, in his Order of December 13, 2005, expressly found the evidence of fly-over counts regarding the number of horses in the protected territory to have only de minimis evidentiary value. Moreover, the deposition testimony plainly shows that the Forest Service has utterly, and without justification, failed to properly manage the protected territory or those wild horses on the associated public lands. In addition, the Forest Service representatives could not provide any cogent reasoning for claims that: (1) the horses currently on the Forests are not wild; (2) that the horses only appeared in after the wildfires of 2002; (3) the White mountain Apaches Tribe owned or claimed the horses; or (4) claims that the "original" wild horses died out in 1993 due to an allegedly sterile stallion.

Moreover, the Forest Service has made certain representations that it intends to create a wild horse management plan and then remove all wild horses not found within the arbitrary geographical borders of the protected territory. Please be aware that paragraph 4 of the parties settlement agreement specifically provides that:

The Parties hereby agree that wild horses are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Wild Free-Roaming Horses and Burros Act of 1971 as amended. The Forest Service will work with the public, including Plaintiffs, in the development of a written Heber Wild Horse Territory Management Strategy in accordance with the provisions of the Act.

Note the reference to wild horses as a internal part of public lands (unqualified). Also, the last sentence requires the Forest Service to create a management plan for the territory in accordance with the Wild Horse Act. CFR Section 222.25, one of many federal regulations interpreting the act,

provides that protection for the wild free-roaming horses remains the same even if they were to move or migrate off of protected territories onto lands of other ownership or jurisdiction. Thus, the Forest Service's refusal to acknowledge those unbranded, unclaimed horses on public lands outside the territory would be in error.

Indeed, paragraph 5 of the agreement is the operative section regarding the actions the Forest Service must take with respect to the horses. This sections clearly does not restrict the Forest Service's obligation to merely the Wild Horse Territory, stating:

The Forest Service agrees to refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until the Forest Service completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy. The Forest Service will involve the public, including the Plaintiffs, in scoping for this analysis. The Forest Service will provide Plaintiffs with specific notice of the document and consider Plaintiffs' comments on the same, however, Plaintiffs' comments are not entitled to any different weight or consideration than any other member of the public.

Finally, from information received through FOIA requests, I understand that the Forest Service intends to prepare solely an Environmental Assessment ("EA"), as opposed to an Environmental Impact Statement ("EIS"). NEPA requires the Forest Service 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)); National Wildlife Fed'n. v. Spespy, 45 F.3d 1337, 1343 (9th Cir. 1994). As a preliminary step, an agency may prepare an EA to decide whether the environmental impact of a proposed action warrants preparation of an EIS. See Blue Mountains, 161 F.3d at 1212 (citing 40 C.F.R. § 1508.9). If the EA establishes that the agency's action may have a significant effect upon the environment, the agency must prepare an EIS. See National Parks & Conservation Ass'n. v. Babbitt, 241 F.3d 722, 730 (9th Cir. 2001).

NEPA defines "human environment" as "the natural and physical environment and the relationship of people to that environment." 40 C.F.R. § 1508.14. Agencies must interpret human environment "comprehensively to include the natural and physical environment and the relationship of people with that environment." Id. The plain language of NEPA makes clear that federal agencies must comply with the EIS requirement to "the fullest extent possible." 42 U.S.C. § 4332(c). NEPA requires agencies to take into account the environmental impacts of a proposed regulation on the physical "world around us." Bicycle Trails Council of Marin v. Babbitt, 82 F.3d 1445, 1466 (9th Cir. 1996). An agency must prepare an EIS if potentially affected parties raise substantial questions as to whether a proposed rule may cause significant degradation of some human environmental factor. Id.

Here, the parties have agreed that "wild horses are by law an integral part and component of the natural system of the public lands." Clearly, any decision regarding the management or removal of horses having even the slightest possibility of being wild will greatly affect the quality of the human environment. In this case, where substantial evidence exists indicating that these horses are in fact

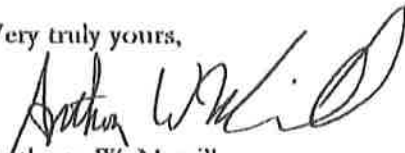
Kate Klein
August 16, 2007
Page 4

Bryan Cave LLP

"wild," the Forest Service must prepare an EIS. Hopefully the Forest Service views the EA as only a "preliminary step" in this process.

I remain optimistic that we can avoid further litigation in this matter, but that is dependent on the Forest Service's full and fair consideration of the facts at hand. Please feel free to contact me if you have any questions.

Very truly yours,



Anthony W. Merrill

AWM/ba

586612

Kate Klein
August 16, 2007
Page 5

Bryan Cave LLP

bcc: Mary Ann Joca

The Holbrook Argus.

VOL. XII

HOLBROOK, NAVAJO CO., ARIZ., TUESDAY, OCT. 1, 1907

No. 20

DR. PRIGES' CREAM BAKING POWDER

**A Pure, Wholesome, Reliable
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The cream of tartar used in Dr. Price's Baking Powder is derived from grapes in the exact form and composition in which it occurs in that luscious, healthful fruit.

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**Its Use a Protection and
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Alum Food**

THE LOCAL FIELD....

News of Interest Picked Up By ARGUS
Reporters in Holbrook and Vicinity.

**A Young Lady, formerly of
Holbrook, Weds a Young
Business Man of Los
Angeles**

Married—At Los Angeles, Cal., Sept. 23d, 1907, Miss Myrtle M. Woods to Mr. Carol Pearson, both residents of Los Angeles. Miss Myrtle will be remembered as being the youngest daughter of Mrs. M. J. Woods, who six years ago removed from Holbrook to Los Angeles. The young couple surprised the family and friends by being quietly married at the residence of the minister who performed the ceremony two days in advance of the day for which preparations were being made for the wedding.

The groom is a young man engaged in the grocery business on Boyle Heights in that city, in which locality the happy couple will reside in the future. The Argus joins friends in wishing them bon voyage over the sea of matrimony.

Walter McLaws, of Joseph City, has just shipped in a standard bred Percheron stallion from the east. This is no doubt the finest horse of that breed ever brought to this country.

Death of Doctor Parks

Doctor Parks, who came to Holbrook from Missouri about one year ago, is dead. He had been in ill health the greater part of his life. About a month ago he was taken worse and had to remain in bed the greater part of the time. The best medical attendance and the most careful nursing could do nothing against the fatal disease that was gradually sapping his life. The remains were shipped to his parents at Deer Run, Missouri, last Thursday evening.

While Harry Scorse was out with supplies to his sheep camp in the mountains of the Apache Reservation, he met with a very exciting adventure. While sleeping out all alone with only a saddle for a pillow and a saddle blanket for bedding he was suddenly awakened by a bear as big as the Standard Oil Company walking over his bed, one of the monster's claws cutting a deep gash across the left side of his hip. Mr. Scorse was without a weapon of any kind and absolutely defenseless so had to take what was coming to him. Fortunately the bear was not on the warpath

and passed quietly along about his business. It was a bright moonlight night and Mr. Scorse says he never knew before how small the Rocky Mountains really are until he had a chance to compare them in size to this bear.

J. D. Owen, brother of Contractor J. H. Owen, of Los Angeles, is in Holbrook this week hiring teams for the new government building to be erected at Leupp. Mr. Owen was successful in hiring the required number of teams from J. P. Richards, of Joseph City. The contract calls for a dormitory 425 by 256 and four smaller buildings besides water mains and sewers. The contractors expect to employ sixty men and twelve teams for the next six months.

The following people from Snowflake and vicinity left Friday evening for the Salt Lake conference: J. W. Flake and Mrs. Flake, Mr. and Mrs. N. S. Hansen, Mr. and Mrs. Bradshaw,

John Palmer, Miss Mary Brimhall, Hugh Willis, Miss Laura Ballard, Ed Solomon and wife, Mrs. Lewis, Hiram Cheney, Mr. Palmer and Miss Brimhall, Mr. Willis and Miss Ballard will be married in the Temple.

Red Holcum and Charlie Osborn, who are engaged in capturing wild horses above Heber, were Holbrook visitors for several days last week. They report fair success in this rather novel enterprise. They claim that some of the horses are so wild that they have begun to grow wings like a wild goose so they will be able to fly at the least suspicion of the approach of man.

Mr. W. H. Clark has been appointed commissioner for Navajo County for the Arizona Territorial Fair to be held at Phoenix in November. The secretary of the fair has been sending out some very attractive circulars. It is certainly the duty of every citi-

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GENERAL MERCHANDISE



We have on hand now a full line of Studebaker spring wagons, consisting of bugle-boards, mountain wagons, etc.

Lowest prices on application

No. 211 Concord - spring Oakland Wagon

Narrative of History of Wild Horses on Mogollan Rim

As told to Dr. Pat Haight

By Jinx Pyle, Payson, Arizona

Descendant of Pioneer Pyle Family who were Among First Settlers of Mogollon Rim

Referred by Arizona Historian, Marshall Trimble

August 12, 2005

I spoke with Jinx Pyle by telephone. Jinx is 60 years old and has lived his entire life in the Mogollon Rim area. He gave me the following history of wild Spanish Mustangs on the Mogollon Rim in Arizona (Heber Territory):

The Pyle family is an Arizona pioneer family and has been in the Mogollan rim area since 1874 when his great grandfather settled under the rim. His grandfather, Floyd, was born under the Mogollon rim in 1890. They have been ranchers all of their lives in the Mogollon rim area (Heber Territory). One of his grandfathers was a guide for Zane Grey.

According to Jinx, the diaries of Father Kino describe the original establishment of the wild horses on the Mogollon rim and throughout Arizona. The horses were brought to Arizona when Father Kino and the Conquistadors accompanying him, traveled across Arizona. As they traveled, when they came to good areas that would sustain cattle and horses, they would leave a bull and several cows and a stud horse and mares in the area to breed and create herds for the Spanish to replenish their food and horses as they came back.

From these original horses of Spanish blood (Andalusian, Spanish Barb, Spanish Colonial Horse), the mustangs on the Mogollon Rim were established. Jinx says there were hundreds, perhaps thousands of Spanish mustangs prior to as late as 1911. At that time a large ranch was established in the Mogollon Rim area, the Hash Knife Ranch, and the cowboys rounded up most of the wild mustangs because they were excellent ranch horses and the cowboys enjoyed rounding up and being with wild horses.

Many of the ranchers, including the Hash Knife ranchers and his grandfather ran their mustangs and their quarterhorses mixed with wild mustangs on the Rim in the Apache-Sitgreaves area during the period 1914 to the 1930's and later. From time to time, the tamed wild mustangs and the quarterhorse/mustangs would get away and, while the cowboys were very good at getting them back, it is Jinx's contention that occasionally one of the stud horses and a mare or a few mares probably would stay loose and breed.

Thus, if people have been seeing horses in the Heber Territory, including the seven originally counted by the FS, there may be offspring of those original tamed wild mustangs who got away from the ranches among them and will definitely show the traditional characteristics of Spanish mustangs or Spanish mustangs mixed with quarterhorses.

Jinx did not really say if he thought the FS contention that they all are trespass horses from the White Mountain Reservation might be true but he did say that he thought some of them may be offspring of original wild mustangs who escaped over the years from 1914 on or offspring of wild mustangs or wild mustangs that were mixed with quarterhorses from the big ranches up through the 1930's.

Jinx did say that there also were herds of wild Spanish mustangs in the White Mountains at the same time they were on the Rim and the Apaches caught most of them because they valued the horses. There may be some ancestors of these wild Spanish mustangs on the White Mountain reservation if a few escaped the Apaches or got away or were mixed with other horses.

It is Jinx's contention that some of the 400 horses to be removed by the FS would be direct descendants of wild horses on the Mogollon rim and would have been in the Apache-Sitgreaves Forest prior to 1971 if some of them are offspring of horses that escaped from the big ranches. They will have the traditional Spanish mustang look he said. He says the cowboys favored the ones who were most like Paso Finos because they moved very quickly and sometimes they would mix the Spanish mustangs with Paso Finos and with quarterhorses to produce a horse that was very hardy, quick and agile. He believes it is possible that some of the horses may be offspring of these original ranch horses or of the Spanish mustangs that escaped.

Jinx said he would be happy to sit down and talk with me again if I would like to talk with him more about this.

He suggested the following references:

The Diary of Father Kino

The Hash Knife Cowboy, Stella Hughes



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HASHKNIFE COWBOY

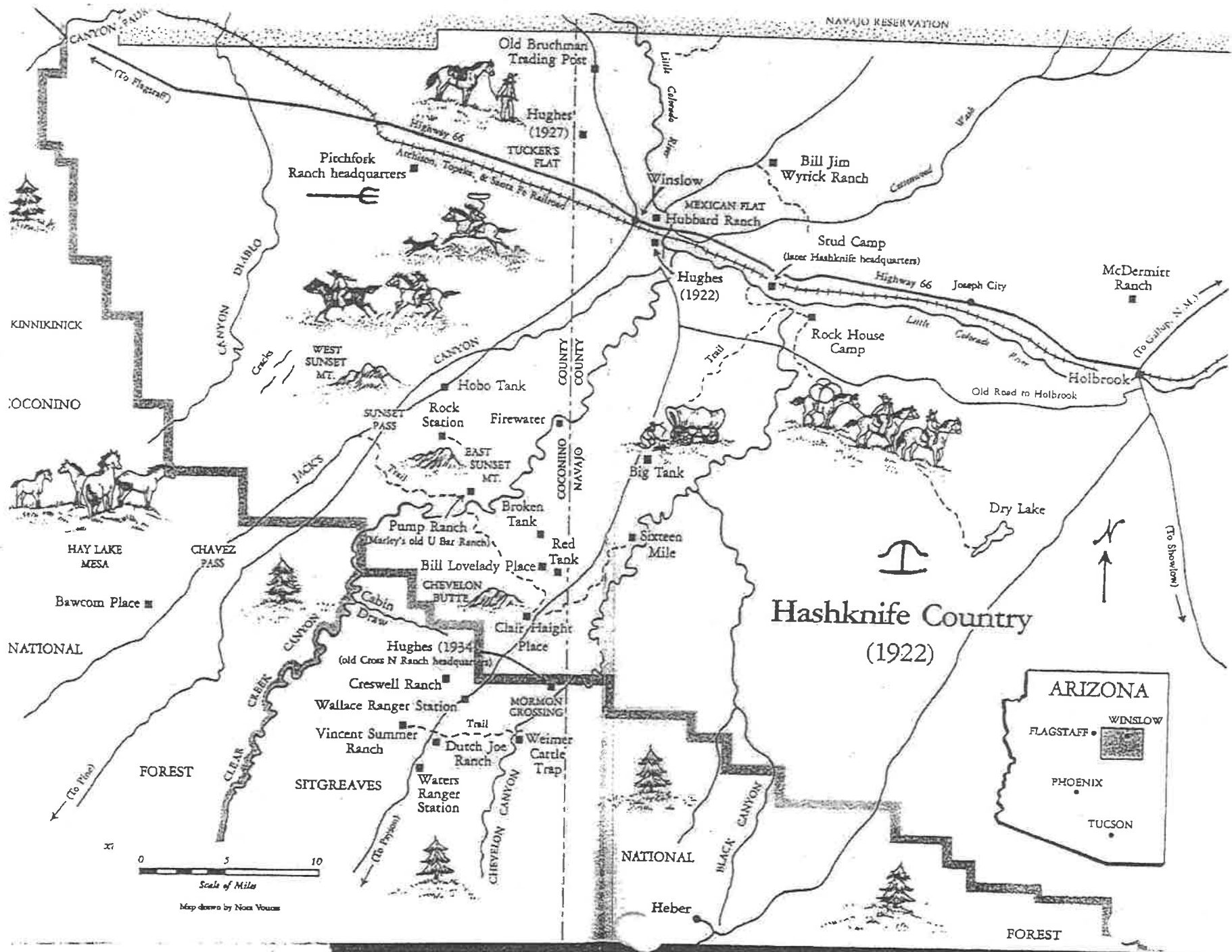
Recollections of Mack Hughes

STELLA HUGHES

Illustrated by Joe Beeler

The University of Arizona Press
TUCSON, ARIZONA

3 1730 02508 3150



Hashknife Country
(1922)



Scale of Miles
0 5 10

Map drawn by Noaa Younes

Wild Horses



Farmer Jones liked chasin' broomies about as much as any man I ever saw. He passed on his love for the sport to his two boys, Dick and Boyd, and after they moved from Mexican Flats to the Bawcom Place at Hay Lake Mesa, we got in a lot of wild horse runnin' with them. There were bands of wild horses running all the way from Mormon Lake, out of Flagstaff, clear to Heber on the Mogollon Rim. There were scads of them running at Hay Lake and Kinnikinick, because this was the kind of country the broomies liked best. This area was on range owned by the Babbitts and was part of their Pitchfork Ranch.

The country around Sunset Pass was a natural for the wild horses, too. Grass was belly high and there was plenty of water in the canyons. Here the wild ones could see for miles. If they were crowded too much they could leave the plateaus and hit for timber not far away. Farther up, cedars and piñons grew thick for miles; a bunch of broomies could hide out there and you'd not see them if it wasn't they had to come out to water in the man-made stock tanks and in the canyons.

I learned the wild ones preferred open country, as their main defense was their speed. They had a wonderful sense of smell, yet it seemed to me they relied on their speed in making a getaway after they *sighted* their enemies, instead of running after getting their smell. Other wild animals might like to hide out, but the broomies were like the antelope, they wanted to *see*. I learned that wild horses stayed on a home range, and hardly ever grazed out farther from water than four or five miles, as long as their feed held out. They wouldn't drift off their range in a storm like cattle do. They'd stay within one general area all their lives, say twenty square miles, as long as their water didn't dry up, and they weren't run a lot by *mesterieros*, as Pat called anyone making a business of chasing and catching mustangs. Hardly any of us called the wild ones mustangs, but they were commonly called that in Nevada, and I noticed the Texans did, which meant about one out of every third cowboy in northern Arizona.

There sure wasn't much money to be made in runnin' wild horses, but it was lots of fun. One year at Sunset Pass there were so many broomies they were eating out the range. The Babbitts encouraged the removal of any wild horses running on their grass but they frowned on any cowboy on their payroll spendin' very much time chasin' the broomtails. In the 1930s the Forest Service made a concentrated effort to thin out the herds of wild horses running on the forest reserve in northern Arizona. At that time they offered five dollars a head for every wild horse shot and the ears turned in. But before that, when we were rounding them up, we were strictly on our own, and our operations was sanctioned only by the ranchers.

Early in the summer of 1929 Farmer Jones asked me to bring a couple of my toughest and fastest horses and come up to help him and his boys, Dick and Boyd, along with Hebe Petty, Jones's son-in-law, do some serious broomie chasin'. We went to work building corrals and long wings made of burlap strung between cedar trees and posts. We worked our heads off and wore caluses on our hands, and if any one of us had been *forced* to work that hard to build fence, we'd have quit and rode to town.

The first big drive we made we caught forty head, but not a one was worth over ten dollars. Tom Crabtree, a horse trader in

Winslow, bought some of them for five dollars and paid seven dollars for some of the younger studs we'd castrated. He hardly bothered to even look at the old mares and baby colts. I traded a few of my share of the catch to the Navajos, who never did seem to have too many horses to suit them, even though the Navajo Reservation was overrun with thousands of worthless ponies, none of them a shade different than the scrubby wild ones I traded them. I traded old One-eyed Jim, a Navajo who owned a bunch of cattle, three head of young studs with long heads and peaked hind ends for two good cows, both due to calve.

Some of the young studs we castrated right away, and after one or two days to let them heal, we started breaking them and sold some for ten dollars a head to town boys. At any one time we'd have ten to fifteen head of colts tied to stake logs, all learning their lessons about ropes and how to stake without getting tangled up and killing themselves. In a few days the wild ones learned to quit running on the rope, and by taking them to water each day we soon taught them to lead. The logs we used for staking had to be big enough to hold a good-sized horse to where he could move it a few inches but not drag it off. If it was too heavy and solid, the first time the broomie ran to the end of the rope he could very well break a leg or his neck when he was jerked back. An ideal log would budge about ten inches when seven hundred pounds of running horse came to the end of the stake rope. At that, some of them turned end over end and skinned themselves up and got rope burned, but they soon learned respect for the rope and that nice gentle log, and within a week we were riding them all over the flats on short rides. Me and Dick and Boyd spent hours every evening petting and gentlin' the better prospects. We used up gallons of bacon grease doctoring all the skinned places and rope burns they'd gotten in their struggles with the stake logs.

At the beginning of that summer, before the rains started, we camped at the head of Dog Valley, northwest of Sunset Pass. In the cedars and along some shaley rock country were two or three deep cracks we had to keep an eye out for. These narrow cracks were in almost solid rock and real deep—some said they were bottomless. One long crack, over a half mile in length, was nar-

row enough in places that we could jump our horses across easy. Other places the crack widened out and it was risky for any horse to try to jump. We stayed away from these cracks if we could, as they were spooky things, and not a one of us would have dreamed of riding in this area after dark. Once I dropped some rocks in one, and after awhile I heard a splashing sound.

One day I was crowding a small bunch of broomies towards a hold-up herd of gentle horses being held by the other men near the entrance to our trap. I was closing in on them when I came to one of these cracks. I was riding a short-coupled, brown horse I called Badger, and in the heat of the chase I misjudged the distance and tried to jump where it was far too wide. Even as Badger gathered himself and left the ground, I knew he wasn't going to make it. I threw myself forward out of the saddle and landed on my hands and knees. Badger hung his front feet on the rim of the crack and scrambled to get his hind feet under him. Then he lost his balance and started slipping backwards. I caught the reins and pulled on them as hard as I could, but they slipped through my hands like they were greased and I lost sight of Badger. When the dust settled on the rim I looked down and couldn't see a thing. Not a sound came out of that black hole in the ground, and all I could hear was my heart pounding in my ears. It had happened so fast I'd not had time to get scared, but I was one sad broomie chaser when I walked back to where the others were and told them about the accident. The broomies I'd been chasing had crossed below me and they'd all run into the hold-up bunch and been caught.

I was put out of business for a few days as I'd used all my cash to buy my share of the chuck and grain for my horses, and I didn't have a dime to buy a new saddle. I asked to borrow Jim's saddle and had to go get it up where Jim was working as a fire guard on the Mogollon Rim. Jim's saddle had twenty-four inch swells, which I hated, so as soon as I had the money I finally did send down to Porter's in Phoenix and got a good used saddle for thirty dollars.

After losing Badger, who'd been one of the best broomie-chasin' horses I had, I rode one of Hebe Petty's horses as a relief mount, until one day we jumped a bunch of wild ones in the



"Badger hung his front feet on the rim of the crack and scrambled to get his hind feet under him, but he lost his balance and started slipping backwards."

breaks of Jack's Canyon. Jones ran right up on a big, black, bald-faced gelding that was branded. Jones roped the black, and the moment the horse felt the loop settle around his neck, he turned and led like a well-broke saddle horse. The black was branded P A T, and we found out Monte Walters had lost him some years back. I put my borrowed saddle on this P A T horse and he didn't even offer to buck, but he'd trot around loose as a goose, and every little bit he'd jump and kick at my feet. One hard ride and he quit this, and I found he could outrun any wild horse that ever lived, so instead of calling him Pat, which would have been natural because of his brand, I named him the Gallopin' Goose. He sure didn't take the place of good ol' Badger, though, and I grieved over the loss of my little, brown horse.

Once in awhile some rancher would offer five dollars a head for any of their strays we caught that had thrown in with the broomies. There were plenty of branded horses running with the wild ones, and we'd keep up those we thought would be worth a reward and notify the owners to come and get them. I used Gallopin' Goose for two weeks before Monte Walters sent a kid over to the Bawcom Place to pick him up. Monte sure didn't send no five dollars with the kid, but I didn't care, for by that time I'd gotten my fill of riding that limber-gaited, spine-jarrin' stray.

One day after corralling a bunch of broomies in a pole corral, I roped a big blue-roan mare that wore a brand. She had saddle marks and some old scars, showing that at some time or other she'd worn a work collar, and Jones said she'd been running with this wild bunch for a couple of years. When I pulled on the rope she led right up to me, rolling her nose. I reached up to take my loop off her neck, and she reared and pawed me on top of the head. I jumped back and got tangled in the coils of my rope and away she went, tearing around the corral, dragging me and scarin' the other horses. The first thing that hit the ground was the back of my head, and my eyes were filled with dirt. The other horses ran all over me and when the mare finally stopped and I got loose, I was in a terrible shape. I was so skinned up and sore I could hardly get out of bed in the mornings for a week.

While we were running broomies that summer Farmer Jones had two hundred hogs he kept at the Bawcom Place, and all the

crippled horses and old mares that weren't worth a cent Jones shot and fed to his hogs. Those hogs cleaned the bones slick as a whistle, and after they'd been feeding the hogs horsemeat for a few weeks, you wouldn't dare ride a horse near them. Them hogs could rip a horse's belly out in a minute. They were so bold they'd attack a man on a horse the moment they saw you. Farmer Jones raised a lot of corn and fed it to the hogs along with the horsemeat, but for some reason the hogs seemed to prefer meat over corn any day.

Near the Bawcom Place was a huge corral made of pine slabs set right in the ground, close together and ten feet high. We worked for days stringing up wire and hanging burlap on it for wings. Where the cedars were thick we'd cut brush and pile it in the gaps, and finally we had a lane a mile long leading to this big corral. The country below the corral was open and unfenced and ideal for making drives. We caught seventy-five head of broomies, along with some branded horses, before the ones that got away became so wise we couldn't crowd them within a mile of our wild-horse trap.

Once in awhile we'd run some young studs that had been whipped out of an old stud's band, and sometimes there'd be two or three of these youngsters running together. They never let up trying to steal mares to make up their own band. One day we ran onto an old stallion all by himself, and he was a sorry sight. He must have been twenty-five years old and he was so battle scarred he looked like a paint. Both ears had been chewed off almost to stubs and one eye was out. When he saw us with that one good eye, he cocked his head to one side and circled around in a high trot givin' us the once over. Then he let out a blast that sounded like a train's whistle and took off in a lumbering lope. He looked in fair shape and wasn't lame, so we just sat our horses and watched him out of sight. Not a one of us wanted to see the old warrior go for hog feed.

On the Fourth of July we all knocked off running wild horses and went to Winslow to attend the big rodeo held at the ball park

north of town. The rodeo stock contractor had sent us word to bring in any old outlaw horses we might have that would buck. We had some, all branded geldings, that had been turned out by their owners because they were so rank and mean. These horses wouldn't be used in the bucking-horse contest, but would be for anyone wanting to make a little "mount money." This meant the rider was paid so much just to put on a good show, and it didn't matter if the cowboy was bucked off or made a qualified ride. In fact, it was better if the rider got bucked off fast, and the harder he hit, the better the crowd liked it. Pay for putting on an exhibition ride was usually three dollars. A lot of young fellows got their start in rodeoing by riding horses just for mount money.

Instead of a wild-horse race that year the rodeo committee staged a wild-mule race. The LaPrade Dairy was just a mile or so north of the ball park. The LaPrades raised all their own work mules out of Percheron mares and big Spanish jacks. They had a bunch of young bronc mules that weighed from twelve to thirteen hundred pounds, and some of them were three or four years old and had never even been halter broke. I guess the LaPrades just raised too many for their needs, and the big mule colts ran out in alfalfa fields and grew up wild and free without a care in the world. We drove ten head of these young bronc mules to the rodeo grounds the day before, and that alone was worth the price of admission had anyone been there to see the fun.

Ed Janeway, who was still working for the Hashknives, was entered in the wild-mule race, and he tried to talk me into being his swamper. I told him to go to hell in a hurry, because I was entered in the calf roping and if I served as his swamper I might not be able to tie a calf the next day—or for that matter, the next week. Ed just laughed in his big hearty way and talked Cleburn Creswell into being his swamper instead. Ed offered Cleburn half of the forty silver dollars being put up for the winner of the wild-mule race. I wouldn't have weakened if it had been a hundred silver dollars.

The mule race was the last event of the day, and when it came time for it, five mules at a time were run into the bucking chutes and haltered. The halter rope was handed to the contestant's swamper, who was on horseback. Then the gate was opened and

the swamper was supposed to lead the mule into the middle of the arena and wait until all ten contestants were ready and the whistle blew to start the contest. Then each rider was to saddle his mule, mount and ride him to the end of the arena, go around a barrel, and come back down to cross the finish line in front of the chutes. Well, that's the way it was supposed to be, but, when Cleburn was handed the lead rope of a big mule with a head the size of a water barrel and the gate was opened, this wild mule climbed right into the saddle with Cleburn. Cleburn lost his turns on the saddle horn with the lead rope, and when the mule left there in a hurry, Cleburn held onto the rope and was dragged from his saddle. Cleburn knew Ed would kill him if he lost the mule before the event even started, so he hung on for dear life.

The mule headed for the far side of the arena, going a hundred miles an hour, with Cleburn trying to get enough purchase with the seat of his pants in the soft arena dirt to bring the runaway to a halt. Cleburn was skimming along so fast it looked like his britches were on fire. About that time the whistle blew for the event to start and Ed had to run, carrying his heavy saddle, clear down to the end of the arena, where the two of them finally got the mule stopped and facing them. By this time all the buttons on Cleburn's shirt were ripped off so he just shed the shirt and used it to blindfold the mule.

Ed had let his cinch out to the last notch, but his latigo was still a little short and he was able to take only one lap through the cinch ring. He pulled on it as tight as he could, hoping the saddle wouldn't turn; then he mounted and Cleburn pulled off the blind and Ed's mule left there like a scalded cat.

Meanwhile, two other contestants had managed to get their mules saddled and, after mounting, they began trying to haze them down to the end of the arena and get them around the barrel. The trouble with this setup was that LaPrade's dairy was beyond the end of the arena, and all the mules—except Ed's—bucked a few jumps and lit out for the dairy just like homing pigeons. They jumped the ball park fence with the greatest of ease and ran over people, cars, and ditches until they were back at the dairy barns. Every one of the mules got away and followed the leader, and Ed had the field to himself.

Ed won the mule race simply because he was young and tough and strong as an ox. He was able to manhandle his mule around the barrel by whipping him alongside the head with his hat, and once that was accomplished Ed had no trouble getting the mule to run—lucky for him, in the right direction. They flew across the finish line in front of the chutes, made a wide circle—never slacking their speed, and headed back down to the end of the arena once more. Here Ed's one turn with the latigo gave out and his saddle fell off and Ed was plastered against the arena fence. His mule never checked his speed as he hit the gap the others had made, and in two minutes he joined his partners at the dairy.

There were a good many empty saddles scattered about and cowboys on foot, but all the swampers had left the arena in a vain attempt to catch their mules. Poor Cleburn not only lost a good shirt, but he wore the seat of his britches plumb out. He had a terrible black eye and a sprained wrist, plus rope burns that took a week to heal. I didn't win any money in the calf tying the next day, but I congratulated myself for having enough brains to stay out of that wild-mule race.



Before the end of the summer Mother and the little boys came out to stay with us while we were camped at Hobo Tank. She and the little boys slept in a little board shack; the rest of us had our bedrolls scattered all over the flat. Emmett and Ernest were old enough to ride with us, but Boyd and Little Pat stayed in camp with our mother during the day. One morning I was gettin' ready to chase some broomies, and I saddled a horse called U Bar Roanie, who was what we called a blind buckner. He just closed his eyes and would have bucked off into the Grand Canyon if it had been out there in front of him. This time he headed for the little shack, and Mother saw him coming. She ran out of the door with a white tea towel in her hand waving it in his face trying to turn him. I yelled at her to get out of the way and she jumped back inside the door just as Roanie hit the shack and the whole end of it collapsed. Roanie never slowed down and bucked out across the flat until he got winded and threw up his head to see where he was going. A blind buckner like that can sure get a

cowboy in trouble, but the horse always seems to come out of it unscratched.

My mother wasn't hurt, nor was Boyd or Little Pat, but it nearly scared the daylights out of them. The roof on the end of the house had caved in on top of the cupboard of groceries and had mashed the table and benches to splinters. A big jug of syrup had broken all over the tin plates, and cornmeal and beans were mixed together, along with some coffee and salt. Op Roanie had done a pretty good job of house wrecking.

Wild horses was easy to catch compared to gathering horses that was once tame and had gone to the wild bunch. These horses were wise and not one bit scared of a man on a horse. The Hashknives had a bunch of broodmares running free in the Chevelon Butte country, and they were gathered only once a year when we brought them in to brand their colts. Some of these mares got awfully spoiled about corralling and some would even get away year after year.

Bill Lovelady had a Box H brown horse that had gotten away and was running with this bunch of spoiled mares. Lovie had this brown horse caught up any number of times, but never long enough to ever break him. The brown was eight years old and barely broke to lead when Lovie asked me and a friend, Frank Hollaway, to help him catch this horse and we said we would. The brown horse was the leader of this band of mares, and you couldn't turn him once he'd made up his mind to cut out from the bunch. He would either run over you or under you—he wasn't particular how he did it, but he always managed to get away. No one ever wanted to ruin a good horse in runnin' the brown horse down, so that's why Lovie asked me and Frank to help relay him. Lovie said he'd made up his mind to either catch the horse or shoot him if he could get within rifle range.

The brood mares' range ran from the mouth of Chevelon Canyon on the Little Colorado River south to the U. S. Forest line. On the west it was bordered by Clear Creek, and this made one huge range of thirty-five square miles, at least. There were a few holding pastures around stock tanks and the homesteaders had

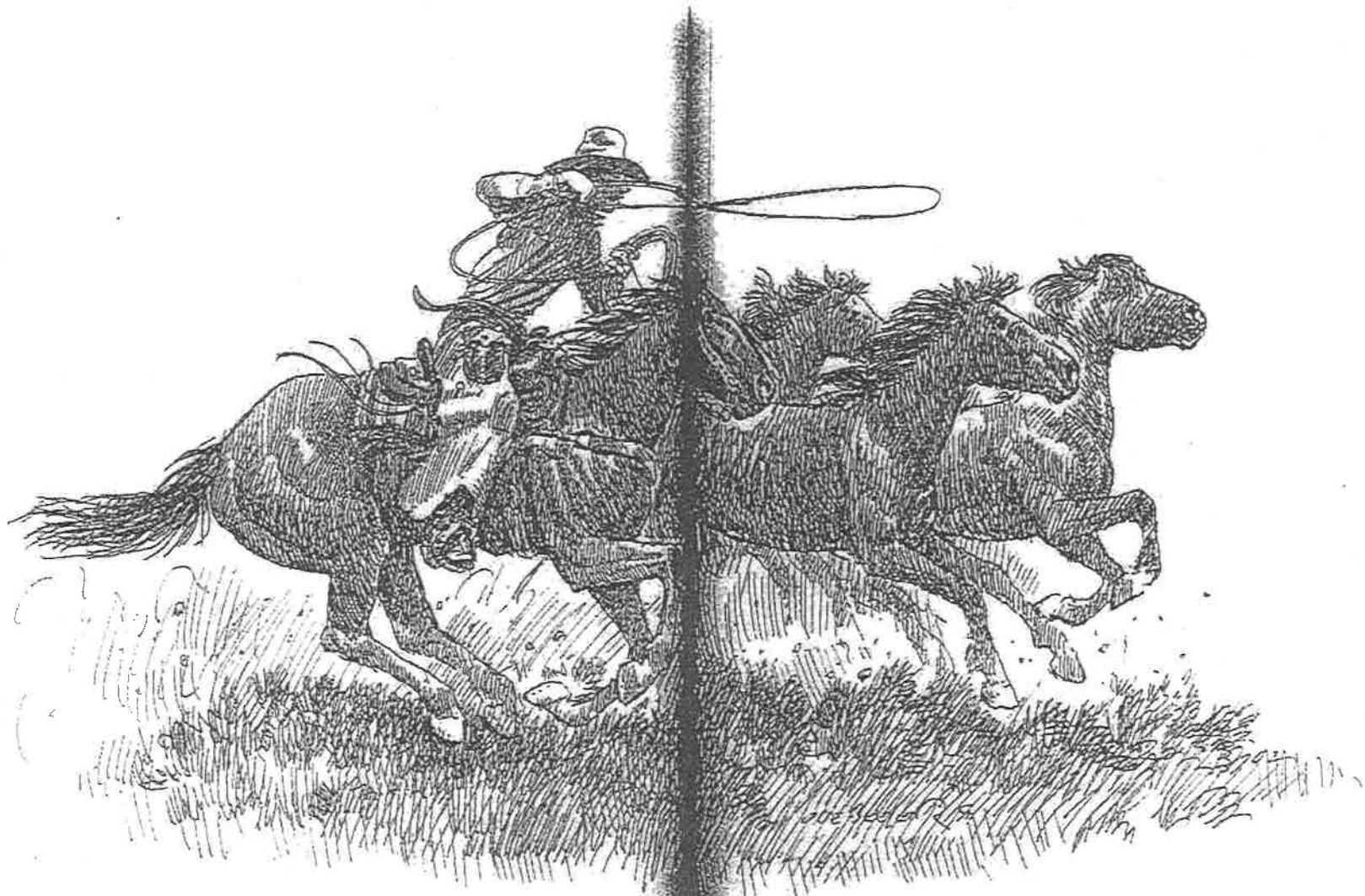
their sections fenced; otherwise, the horses could just about run on forever in a giant circle.

Lovie set up a little greasy-sack camp over at Big Tank, and one morning early me and Frank and Lovie rode out to find this Box H runaway. The sun wasn't two hours high when we ran onto him with a bunch of mares and big colts. I took to him first, as our plan was for me to run him awhile and try to bring him to the place where Lovie and Frank would be stationed on fresh horses. We spotted him at Firewater, right on the rim of Clear Creek Canyon. The Box H brown took off to the south the minute he sighted us and he and the mares ran a mile or so, but one at a time the mares started dropping out as they got tired. Most of them were heavy with foal.

I was mounted on a big buckskin, tough and hard from plenty of ridin', but in order to save him I was ridin' bareback. The brown stayed far in the lead and ran hard, although I didn't press him. We passed Broken Tank and in no time Red Tank came in sight and was passed. None of the mares were left by this time and it was just a race between me and the brown horse. Not really a race, 'cause I just stayed a certain distance behind and at no time did I crowd him. I wanted him to choose the route and he did just what I knew he'd do—he turned towards the National Forest boundary and ran along the fence ways. I pulled up and he headed back down country on his own, bound for Big Tank, where Frank was to take the second turn.

Some horses, after running a long distance and getting far enough ahead, will slow down and trot and get some of their wind back, but not this brown horse. No matter how far in the lead he got, he just kept going in a long, hard gallop like some kind of a machine. I pulled my horse down to a slow lope and, when we came in sight of Big Tank, I saw Frank take off after the brown. Frank was riding a fine horse called Tops, and they really poured it on for the first mile. I was sure Frank was going to be able to rope the brown, but he called on some reserved strength, and Frank never got within throwing distance.

You can see a long way in that country, and it seemed the farther they ran, the greater the distance between the brown and Frank got. Their dust finally went out of sight ten miles or so



*"The Hashknives had a bunch of brood mares running free
in the Chevelon Butte country, and they were gathered
only once a year."*

where me and Lovie watched, up on a little rise. I stayed with Lovie at Big Tank because we knew if Frank roped the brown he'd be back, and if he didn't catch him, we figured he'd be able to turn him back south when they came to the mouth of Chevelon Canyon. The Little Colorado was fenced there, and the Box H brown would have to turn back unless he jumped the fence and swam the river.

While me and Lovie waited for Frank's return, I caught up another horse called Sunnybrook, a big Cross N horse, and this time I saddled up. Lovie was mounted on a brown horse named Stormy, branded D Y on his left thigh. It was shortly after noon when we saw Frank coming back towards Big Tank, with the Box H brown still some distance in the lead. Both him and Frank had slowed down a lot since we'd seen them a few hours before, but the brown didn't look like he intended to quit. Frank's tough, grain-fed horse was dinked.

Lovie got stationed on top of a little red hill and, when the Box H brown came by, Lovie took after him. Lovie only ran him a few hundred yards and roped him right around the neck. I was ready with my rope cocked and ran in and heeled the brown and we stretched him out on the ground between us. Lovie let out a whoop and got off and started putting a hackamore over the brown's head. The horse's lungs were working like a bellows, and puffs of dust blew out from in front of his nostrils. But, even as I watched, suddenly the bellows stopped and I saw his eyes roll back in their sockets, and the brown horse died before Lovie could finish fastening the hackamore.

Kneeling by the still, sweaty form, Lovie hesitated a moment, then reached down and grabbed a handful of sand and flung it from him in an angry motion. I thought he wasn't going to say a word, but after getting his hackamore off the dead horse he turned to me and Frank. "He wasn't pushed—he could have stopped any time," he said. Then he mounted Stormy and the three of us rode back to camp.

Later Frank told us the brown had run all the way to the mouth of Chevelon Canyon, turned there, and run all the way to Clear Creek bridge before he had turned back south. The round trip had to have been forty miles or more, and Frank said he'd

pulled Tops up several times to let him get his wind. We figured the Box H brown had run better than seventy-five miles, all within about six hours. I never liked to kill a horse and I would rather have seen the Box H brown run wild and free the rest of his life, and none of us felt good about the day's work.

There was one time I killed a horse on purpose, but I figured it was the only thing I could do to save my saddle. In the 1980s a good horse cost far more than a saddle, but in 1929 in Hashknife country, saddles were expensive and horses were a dime a dozen. That summer me and Ira Hays was riding at Big Tank, and among the band of mares there was a blood-bay gelding with black points that belonged to George Roberts. George called him Apache and had told me I could have the horse if I could catch him. The day I got lucky and roped Apache, Ira was with me and was riding a sorry little broomie he'd broken only a few weeks before. Wanting to see what kind of a gift horse I had, I saddled him the next morning. I was able to hold him up, and he didn't buck—not then, he didn't—but about twenty minutes later he blew his plug and bucked hard for a hundred feet, and then stepped in a dog hole and turned completely over with me. When Apache jumped up, he ran off with my saddle. Ira came loping up on his broomie and asked me if I wanted him to try to catch the runaway. I knew Ira couldn't keep in sight of Apache's dust if it came to a chase, so I walked back to the shack and got my go-go and went up on a little hill and told Ira to go way out around Apache, who was grazing about a mile away, with the bridle reins dragging. Pretty soon Ira got the horse headed below me in a little draw. I hid down and when Apache passed within rifle shot I killed him, as my saddle was damned sure worth five times more than that runaway.

Bill Lovelady had another horse called Shorty that he lost to the wild bunch one time. Whenever we were runnin' broomies in the general area Lovie's horse was supposed to be in, Lovie would beg us to catch and bring ol' Shorty home to him. Lovie had gotten the horse from Vern Gillette in the Tonto Basin and

Shorty had headed for home the first chance he got. On his way, he had thrown in with a bunch of broomies running along the Mogollon Rim and liked it so well he just stayed. That's where we gathered Lovie's runaway, when we were camped at a place called Hole In The Ground. The next morning I saddled Shorty, as I just wanted to see what the horse would do. Lovie had always told me how bad Shorty could buck. I'd seen Lovie saddle Shorty up and lead him for a mile before getting on, and then hold the horse up and sweet-talk to him half a day before he'd break him into a lope. I'd never actually seen Shorty do anything.

So I saddled Shorty and just climbed aboard without untracting him and reached up with both spurs to the point of his shoulders and raked him good. I was fixin' to make one hell of a bronc ride and put on a show for the boys. All ol' Shorty did was kick up and squeal, and he barely left the ground. I almost fell off from laughing so hard, because that's all I could make Shorty do. Why, any widow woman could have ridden him bareback.

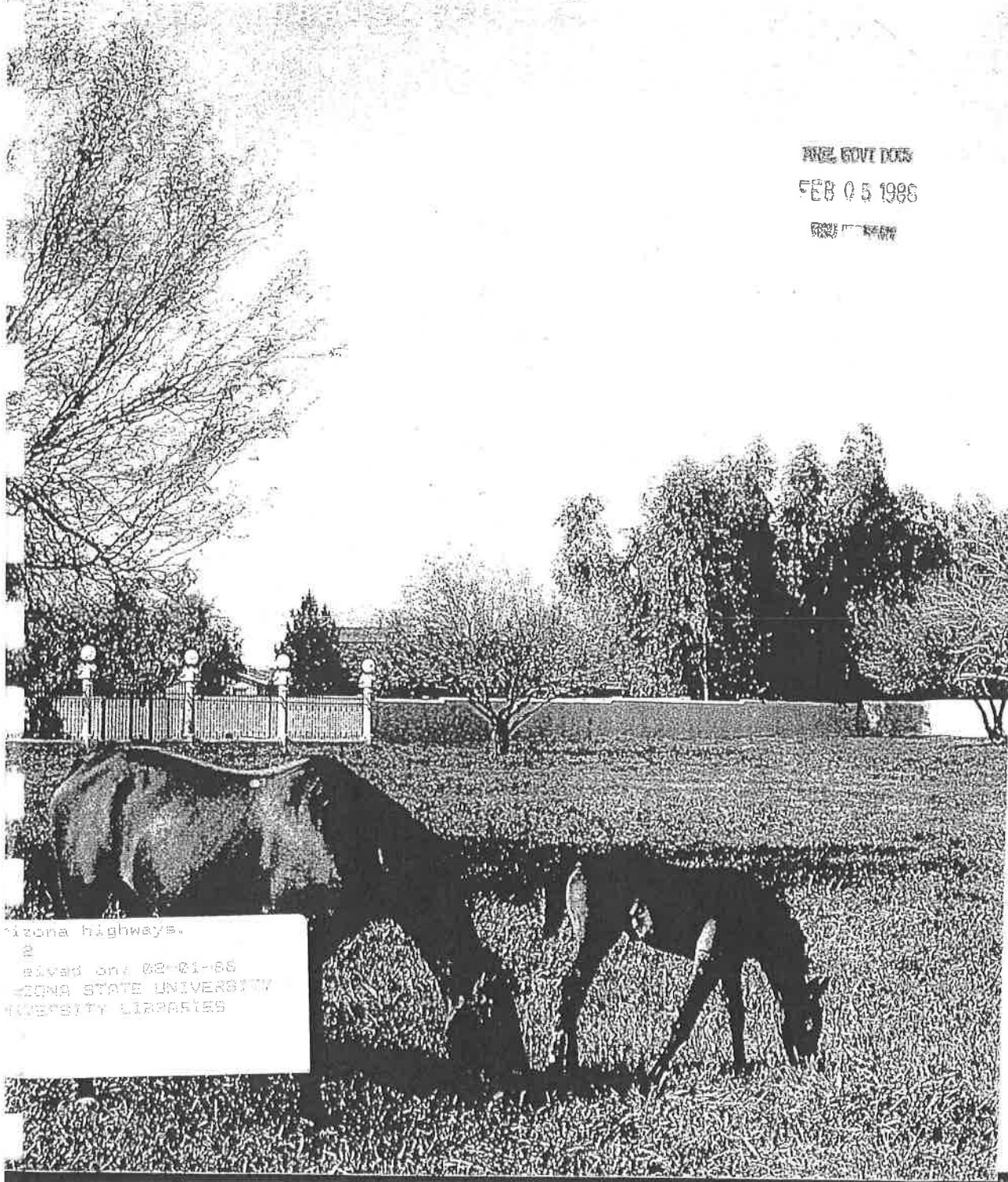
After I returned the horse to Lovie, he didn't keep him a month when Shorty got away again, with his hobbles on. He soon hopped and jumped all the way back to Hole In The Ground and took up with his favorite bunch of broomies. Someone saw Shorty the next fall with just one piece of the hobbles still tied to one ankle. Some horses never get over wanting to go back to the wild bunch.

ARIZONA HIGHWAYS

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(FRONT COVER) *Living a pampered existence, a mare and her newborn colt graze peacefully in a lush pasture at Karbo Arabian Farms in Scottsdale. For more on Arizona's horses, turn to page 4.* PETER ENSENBERGER

(OPPOSITE PAGE) *Celestial jewels sparkle in a dark desert sky. A summer view of the Milky Way and foreground silhouettes from Squaw Peak Park and the Superstition Wilderness come together in an evocative scene fashioned by a fertile imagination. A portfolio of the photographer's images, along with a look at how he creates them, begins on page 22.* FRANK ZULLO



They range from the fierce and the proud to the meek and the mild, from wild mustang to high-strung Thoroughbred to gentle hayburner. They're the ...

of Arizona



TEXT BY JOAN BAÉZA * PHOTOGRAPHS BY PETER ENSENBARGER

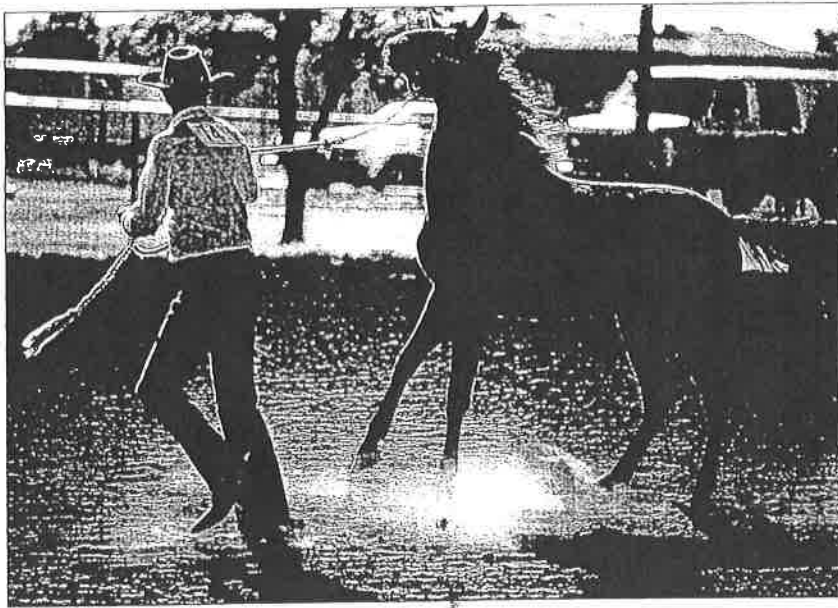


For a wild horse, the price of freedom from rope and bit is the vigilance of keen senses and a brave heart. He learns to walk as soundlessly as a deer and to shy at the scent of man. He has many ene-

mies - drought, snow, cold, parasites, predators, old age, injuries. Add to these the potential danger of poisonous plants and animals, thorns, quills, and disease. A mare may die foaling, a stallion may be mortally wounded in combat.

I gained respect for feral horses when I lived on an old homestead near Deer Springs on the Mogollon Rim. Often, their courage and character were matched by our own half-wild horses, mountain born and bred.

One still summer night, I lay in bed listening to the rage of stallions under a full moon and the screams of mares running along the fence line two miles away. Next morning, I realized a big black stallion with a white spot on its forehead, the notorious leader of a wild band, had come to steal our filly, Sara. Zair, our gentle blue colt, had run to the corner of the fence to meet the challenge and defend the filly he had grown up with. He was small, even for a desert Arabian, and could have been



(PRECEDING PANEL, PAGES 4 AND 5) Wild horses still roam remote areas of Arizona in small bands like this one in the Cerbat Mountains. Many are descendants of an original purchase of 150 head by the Hualapai Indians in the 1870s with money Brig. Gen. George Crook paid to his Indian scouts. In time, the horses escaped or were set free, went feral, and prospered through interbreeding with ranch stock in the Kingman area.

(INSET, PAGE 5) A Navajo pony grazes on sparse vegetation in Monument Valley.

(ABOVE) In the first event of its kind in Arizona, members of the International Society for the Protection of Mustangs and Burros got a chance to show the progress they had made with their adopted animals in the show-ring. At the registration desk, a precocious yearling appears to be entering himself in the competition.

(TOP) For some entries, the excitement of appearing before a crowd proves too much, and they balk at entering the ring.

killed with one head-shattering blow, or have bled to death from wire cuts. But the breeding of centuries gave him the determination to stand his ground.

We found the little Arab grazing in the meadow. He was bruised and bloody, but his palomino filly was beside him. They nickered softly to each other. When we walked up the ridge, we found a half-mile of fence ripped out and the ground pummeled by hooves.

Later that summer, elk snapped the new barbwire fence, and Zair disappeared. We tracked him for three days without success. On the fourth morning, he was back in the meadow, grazing contentedly with Sara and a new harem—a young bay mare and a white mare with blue eyes. They were wild as deer.

The black stallion whose tracks we had found along our fence was a legend in the Rim country. Bruce Mortenson, U.S. Forest Service range management officer, had sought him for years. Once he came upon the black grazing with several mares.

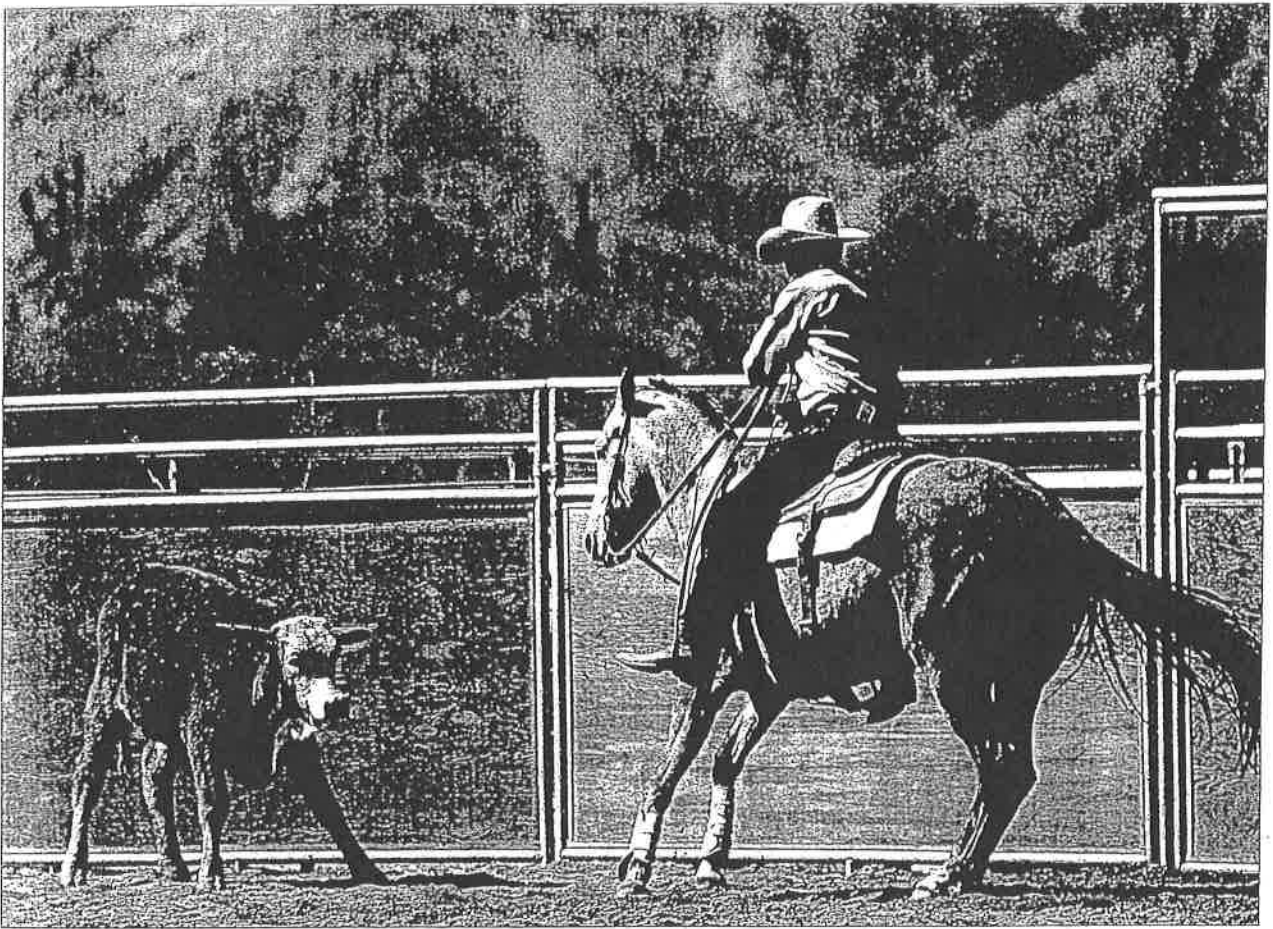
"He raised up his head and stared holes right through me," Mortenson recalled. "Then he charged the truck, and he reared up and pawed the air in front of it. If he had hit the windshield, he would have kicked it in."

I always considered it a privilege to catch sight of the black nipping at his mares, pointing them this way and that, reminding them who was in charge. But less romantic souls wanted to rid the national forest of wild horses, because they competed with cattle and deer for grass and browse; so every year the Forest Service reluctantly but dutifully tried to catch them.

One year the black and his band were trapped by the lure of salt blocks in a strong pole corral, and then auctioned off. But the man who bought them never loaded the stallion into his stock trailer. The black charged him, teeth bared; then, said Mortenson, the animal "sailed over the fence like it wasn't even there."

Eventually, the stallion gathered up another bunch of mares—bays and buckskins, mostly—on the Fort Apache Indian Reservation, where hundreds of bands belonging to the tribal cattlemen's associations run free on the open range. The mares weren't "broomtails," but swift well-built horses with hard feet, straight legs, and good heads. A mix of genes, like the black himself.

Every bloodline of the horse world seemed to have merged in the black stallion; try to visualize a kind of quarter horse-Thoroughbred-mustang-Morgan. Or maybe a descendant of the mythical "Black Wind Horse" the Apaches said was the Sun Deity's favorite; that horse also was



V. L. (Doc) Doberty and one of his prized cutting horses confront a defiant calf in a Tucson corral as they prepare for competition.

black as obsidian with a white spot on his forehead. The black symbolized power; the white spot, intelligence.

The next year, the big black and five of his mares were gutshot in cold blood by vandals and left to die in a meadow where once they peacefully grazed. That same summer our wild bay mare foaled. We found her licking a pure black colt with a white spot on his forehead. We named him Sabache, "obsidian."

Thousands of free-roaming horses still run on public and Indian lands in Arizona. Some are inbred, ill-formed, even diseased mustangs; but many, like the big black, are sturdy descendants of sound cow ponies or cavalry mounts, toughened by generations of hardship.

Pioneer cowboys considered the Mogollon Rim the best horse country in the world, and more than a few old-timers have told me their happiest times were spent chasing wild horses at breakneck speed through the

pinies. A grainfed shod horse could usually get close enough to a wild horse so that a man could use his rope; but what might happen after that was anybody's guess.

Since the 1500s, when Jesuit priests drove remudas of Andalusian horses north from Mexico to the Spanish missions and presidios on the frontier, horses and men have been working partners in Arizona. The introduction of the horse changed the lives of the Athabaskan people forever.

For ages, migratory groups of Indians had packed their belongings on dogs, while they hunted and gathered food where they could. But within a century of the Spaniards' arrival, Apaches and Navajos had become horse people—living, hunting, and raiding on horseback; trading horses to Plains Indians for buffalo meat and hides, to white men for guns and ammunition, to Pueblo Indians for grain, fruit, and vegetables.

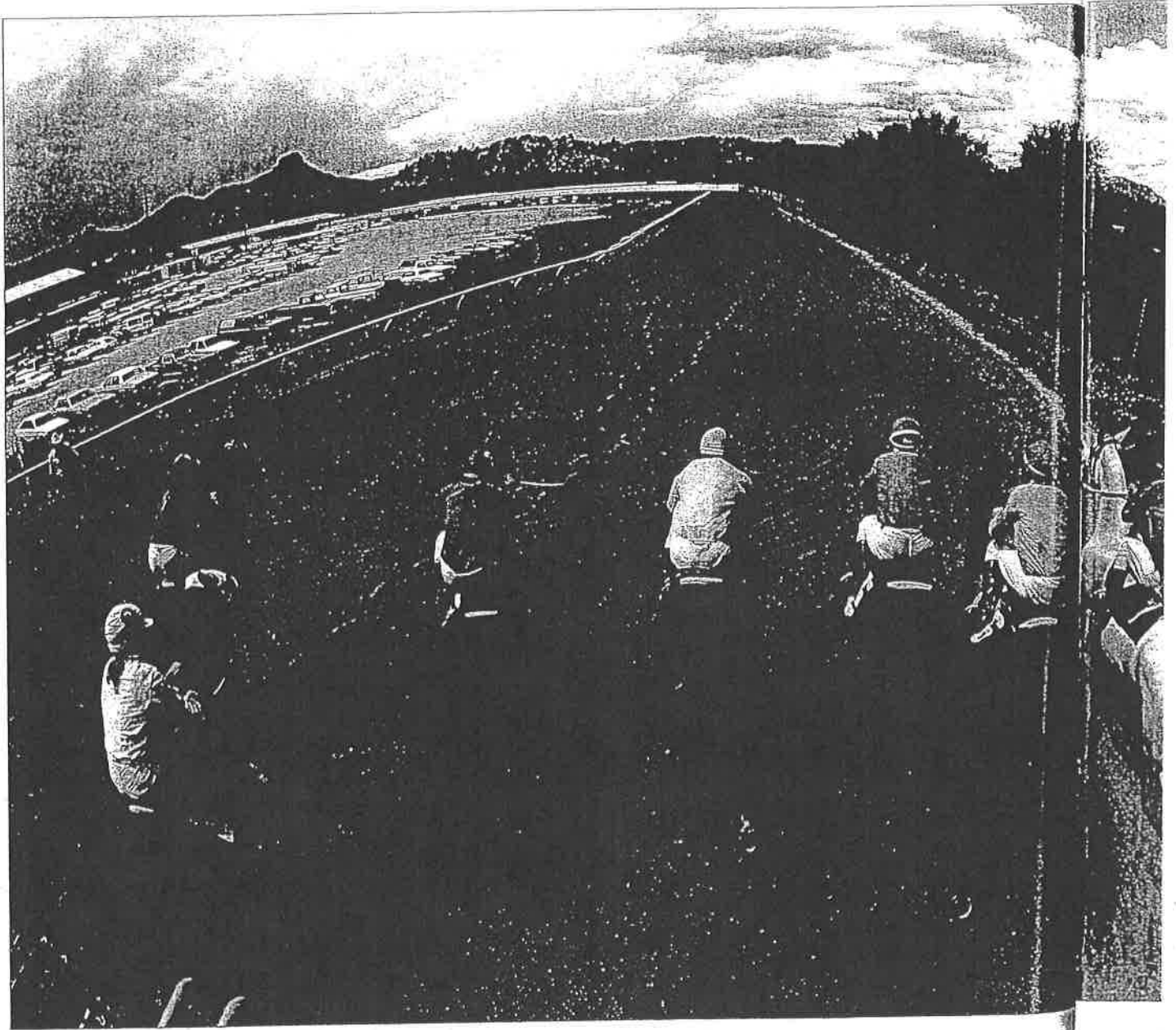
They considered horses a gift from the gods. Navajos sang for their strength, beauty, and health, and Apaches received

visions from a "guardian horse" who protected them and led them to find more fine horses.

As Mexican and Anglo settlers increasingly peopled the Southwest, they brought livestock with them, and, by the late 19th century, life on the Arizona frontier centered around horses. They helped plow fields, skid logs, haul freight, pull stages, work cattle. They also played a vital role in the courting of young ladies, and in the enforcement of (and, on occasion, escape from) the law. Summer entertainment featured matched races and rodeos where cowboys could show off prized horseflesh.

Long after the horse-and-buggy days passed into history, horses were still highly valued on Arizona's cattle ranches. Even today, nowhere is the partnership between man and horse more important. A working cowboy may not remember the names of his relatives, but he remembers the names, colors, and quirks of all the horses he has ever owned.

But the man who traditionally knew a



horse's temperament best was the horse-breaker, because he was the one who staked life and limb on his knowledge of a particular colt. Day after day he worked patiently, teaching the animal to lead, to wear a saddle, to balance the weight of a rider, to respond to the reins, and finally, to work cattle.

And that brings us to the cow horse, made famous by the folklore of the American cowboy. Almost any horse can be taught to work cattle, but relatively few are born with "cow sense." When a born cow pony sees cattle, his ears perk up, his nostrils flare, and his muscles quiver. A cow-

boy has only to read his horse to find strays.

Even more rare is the animal with the combination of strength, agility, and intelligence to be a cutting horse, a special animal that must be quick as a cat and know what a cow is thinking before the cow does. Its task requires working into a herd and separating the cattle to be sold, or, at branding time, cutting off unbranded calves from their mothers.

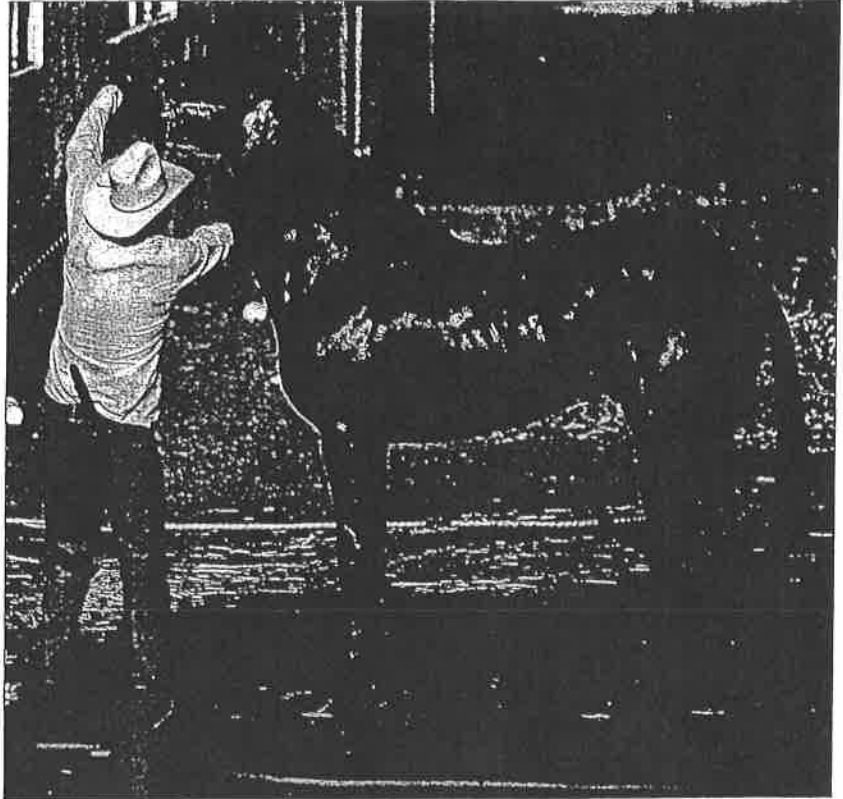
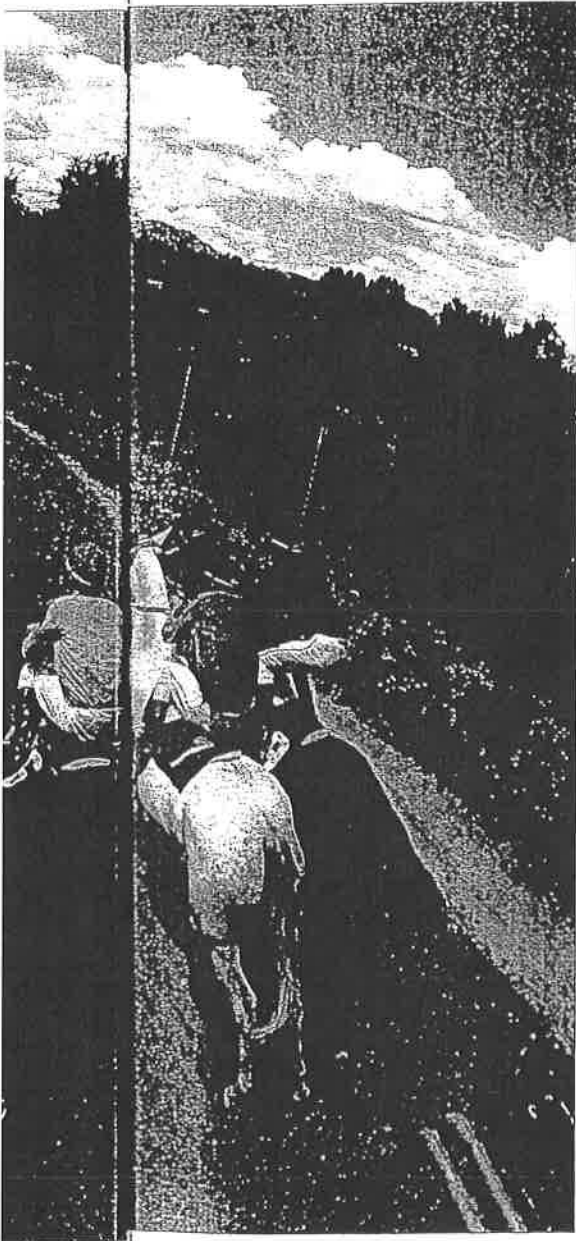
C. P. Honeycutt, a 76-year-old Maricopa wheat and cotton grower, has worked with horses all his life. When he was eight years old, he and his brother drove a band of them ahead of the family's covered wagon

through the dusty streets of Dallas. Since 1956 he's been training and riding cutting horses competitively, and he is the first Arizonan to be inducted into the National Cutting Horse Association Hall of Fame.

"I've always liked horses, but I didn't see my first cutting horse show until I watched animals from the King Ranch in Texas performing at Tucson," he said. "That's when I got the bug."

He knew he was in the cutting horse business to stay when he bought Chick Jay, a quarter horse foaled on the King Ranch. In 1959, at the age of five, Chick Jay became a national grand champion cutting horse.

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(LEFT) Charging from the starting gate at Prescott Downs in a crowd of taut muscles and colorful silks, eight Thoroughbreds demonstrate athletic skills refined through centuries of selective breeding.

(ABOVE) For this lean running machine, a sponge bath and a rubdown are reward for a good morning workout at Phoenix's Turf Paradise.

(RIGHT) Veteran trainer Zenon Lipowicz develops a bond of trust with his Thoroughbreds before subjecting them to the rigors of racing.



llas. Since ng cutting s the first e National of Fame. didn't see I watched Texas per at's when l

ing horse t Chick Jay, ng Ranch. ay became ting horse,

scoring more points at San Francisco's Cow Palace than any horse before him. Since then, his record has been tied but never surpassed.

"Chick was mean. He acted real 'studdy.' He tore up more good horse trailers than any horse I ever had—and he'd bite you," said C.P. "If he hadn't been such a good horse, I'd have sold him. He'd fight you on the ground, but once you got on him, he was all heart. He'd die for you."

A colt with good potential, C.P. believes, is "real sensible" with a lot of natural curiosity. "He'll walk right up to you. You can pretty well tell in two or three months if

he's going to be a top horse. A cutting horse has got to have everything — cow sense, athletic ability, intelligence, heart."

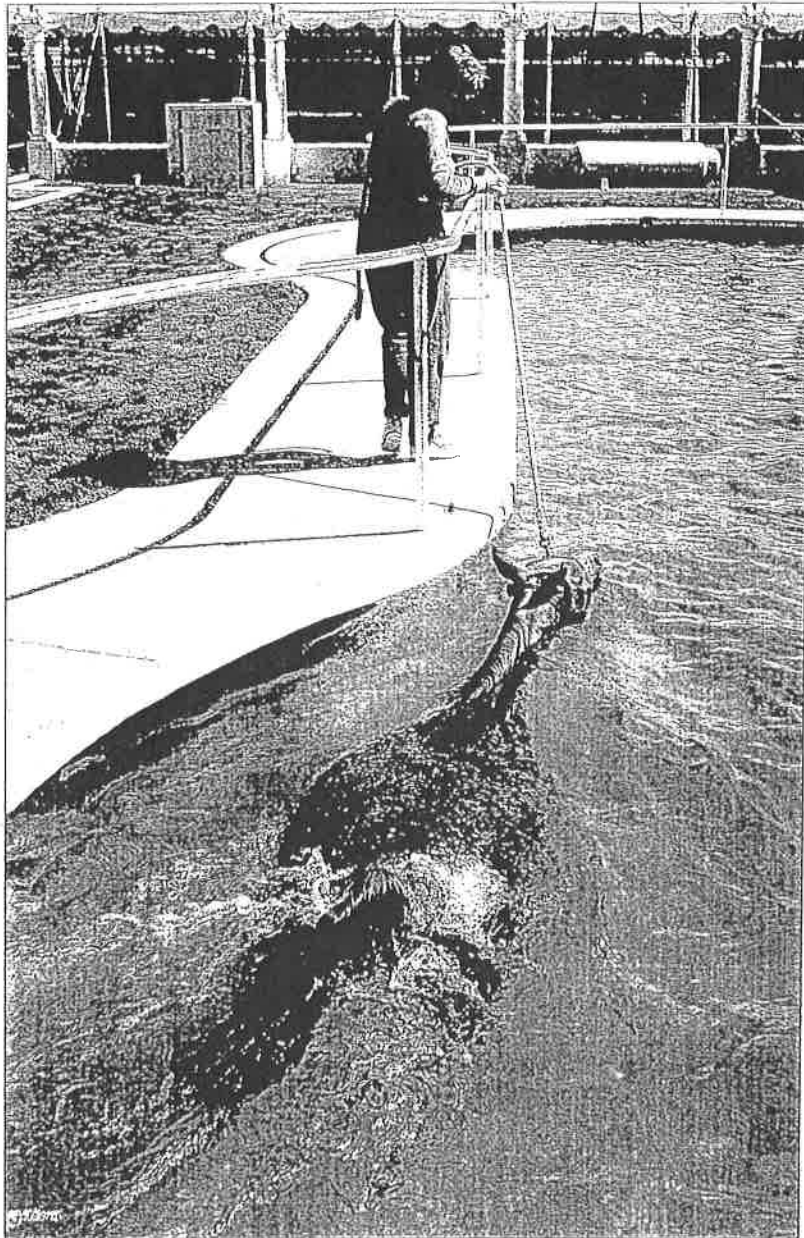
He insists that "patience is the best trainer." Chick Jay required more than his share, but "I never whipped him or jerked him around. I made him like me. He could spot me in a huge crowd at a show and he'd nicker to me."

C.P. at 76 is still riding cutting horses and promoting shows in Arizona. "Cutting horse shows are so fascinating, I just can't get enough of them. I still want to promote the biggest cutting horse show in the world right here in Arizona."

More than breeding, more than conformation, it is the will of a horse that determines what he is. For a racehorse that will is fixed on one purpose — to win. All that kept his wild ancestors alive — strength, instinct, coordination — is concentrated in his moment of glory.

The racehorse, especially the Thoroughbred, has superb athletic skills, a single-minded disregard for pain or danger, and a noble recklessness of spirit.

Among humans, the fever of racing seems to be just about universal, and in the sport of horse racing is found its most



(LEFT) A few laps around the equine swimming pool at Karbo Arabian Farms in Scottsdale provide both exercise and therapy for injuries.

(ABOVE) From the stately stalls to the polished, skylighted ceilings, accommodations at the Karbo barns are everything an aristocratic Arabian could want.

(RIGHT) This purebred colt, scion of a long and distinguished bloodline, will soon begin a training program that may lead to a successful career in the show-ring and lucrative stud fees.

popular and romantic expression.

Few racing enthusiasts are without an opinion about what makes a horse run, of course, but no one knows a racehorse as well as its trainer. And no Arizona trainer is more respected than Polish-born Zenon Lipowicz.

"Understanding horses is something that is born in you. It's in your genes," said Zenon. "You must love horses to understand them."

His grandfather had a Thoroughbred farm in Poland, and both Zenon and his father raced in international steeplechase events. Zenon studied animal breeding at

the university in Warsaw, and was working at a racetrack when a Canadian rancher commissioned him to buy Polish Arabians. Eventually he emigrated to the United States, and he now runs a breeding program and trains Thoroughbreds as manager of Sir William Farm in Scottsdale.

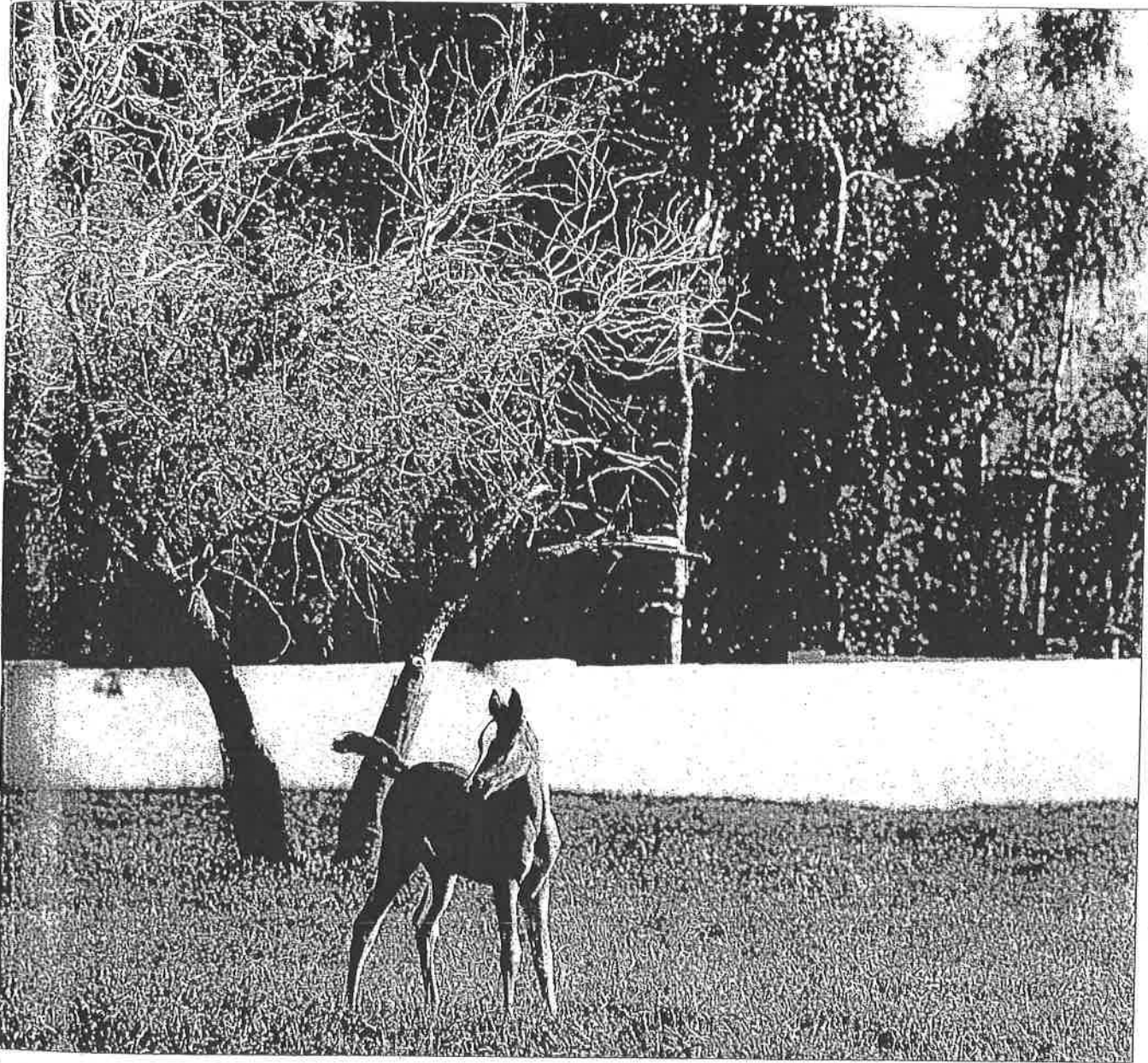
Lipowicz believes a good horse trainer is an artist. "You can compare him to a sculptor, who has a piece of stone and a vision of what he wants to create. A trainer gets a young green horse, and he knows what he wants to achieve after a period of time.

"His most important tools are his methods of feeding and conditioning. Like the

sculptor, he must know the strength and texture of his material. If a trainer pushes a horse too soon, he may destroy him for life. To understand a horse, he must know the pedigree. Genetic factors are very strong with horses. Most receive their speed by heredity. Some are fast apparently by accident.

"First, we build confidence within the horse. The horse must trust the human and know the human will take care of him; later, because of that trust, he can take the stress of training and racing.

"We go very slow under the saddle. We don't want to lose the confidence we have



built up. When he's psychologically ready, we start....

"The race track puts more nervous stress on a horse than any other sport. It's not the same kind of stress in any other situation. It's a matter of precision; you have no margin for error. The most important part of the training concerns the animal's central nervous system and psychology.

"A horse with the will to run and win must have a strong, perfect nervous system. He must put forth a maximum of effort whether he feels like it or not. To work with racehorses requires the same kind of effort in a man. I think to train race-

horses, you must give more of yourself."

Every morning during racing season at Phoenix's Turf Paradise, Zenon Lipowicz is at the track in the early light. Old injuries have slowed him down, but he is still putting out "a maximum of effort" to train the splendid animals he loves.

They are myth in motion. They seem to breathe fire — to fly. Almost more dream than reality, horses of the oldest pure breed in the world have made themselves at home in Arizona.

Today Scottsdale touts itself as the "Arabian Horse Capital of the World," attracting

thousands of buyers and onlookers to the All Arabian Horse Show every February. It combines sales with spectacle, generating an estimated \$40 million to \$50 million each year. Bids on Arabian show horses start at about \$10,000.

The horse that carried Bedouins across vast deserts and conquered much of a continent for Islam 1,300 years ago is today being treated as royalty on Arizona breeding farms.

On Tom Chauncey's Arabian Farm in Scottsdale, horses sleep, blanketed, in spotless stalls. At 7:00 A.M., they are fed individual formulas of oats, alfalfa, and



vitamins. After breakfast, the blankets come off and the animals are groomed with three different sizes of brushes while listening to music. At 9:00 A.M., they are ridden in the desert or exercised in a corral. Afterwards, the horses are splashed with a body bracer and rinsed off. While drying, they walk in circles on the mechanical walker.

The noon meal consists of more oats and hay. After a short nap, it's off to the swimming pool and 10 laps. Then it's shampoo-and-rinse time, and back on the mechanical walker until dry. After supper, the horses are blanketed again and tucked in for the night.

To prevent injuries and infection, all breeding is done by artificial insemination, in a horse "boudoir" with stained glass windows.

The owner lives more modestly. Tom Chauncey, a "Horatio Alger" from a farm in East Texas, came to Phoenix in 1926 at the age of 13 and took a job as bellboy at the old Adams Hotel. From that humble start, he eventually built a radio and television empire.

Horses are in Chauncey's blood. His great-great-grandparents raised dapple grays for the Continental Army on a Virginia farm at the time of the American

Revolution. Today he is committed to breeding Arabians, and gets much satisfaction from "touching them, feeding them carrots, talking to them." An injury has left him unable to ride.

"An Arabian horse can do anything," Chauncey said. "It must also be classic in conformation, and beautiful. If you breed that out of them, you fail. You try to bring the best of everything together — hybrid vigor, stamina, appearance. What you get out of it is the satisfaction of improving a breed that's 5,000 years old."

Most, perhaps, but not all Chauncey Arabians are owned by millionaires. Thirteen-



(ABOVE) *The pride and intelligence associated with the Arabian pedigree are apparent in Debbie Feingold's gelding Barshala.*

(LEFT) *An alert young Arabian shows off before an auction gallery of potential investors at Star World's Scottsdale Sale Center, where a million dollars may change hands in an afternoon.*

(RIGHT) *Arizona today boasts more pleasure horses than ever before. Riding into the sunset is a familiar sight on the state's webs of riding trails.*

year-old Debbie Feingold of Scottsdale dreamed of having a horse of her own, but couldn't believe it when her physician father came home one day and said he had bought her an Arabian gelding named Barshala. She boarded Barshala at Chauncey's farm and took riding lessons on Saturday mornings. She learned to groom and care for him as well as ride him in the show ring. Last year, amid the glitter of the world's biggest Arabian show, Debbie won high score in the state for the 13-and-under age class in three different events.

Barshala is more than an outlet for Debbie's competitive spirit. The bond between a horse and a teenage girl is mystical. "He's everything to me," she said. "I can talk to him and tell him my problems when I can't talk to anyone else."

Although working cowboys humorously maintain there's no such thing as a "pleasure horse," most Arizona horsemen would disagree. More often than not, a pleasure horse is part of the family. It may be a purebred Arabian show horse, or a working cow pony gentled by the hands of children. Choosing that family horse is more a matter of

instinct than knowledge, according to the John Snyder family of Lakeside.

Chris "Sparky" Snyder rides a Lippizan named Jasmine, "Jazz" for short. Her daughter Maryfaith is training three-year-old Sugar, an American saddlebred-quarter horse cross that she refers to as Silly Filly. Sparky's husband, John, a former game ranger, rides a stout horse named Red. "The first time I saw him, I thought he was dead. He had just been ridden 80 miles, and he was sleeping in a corner of the corral," he said.

When John went to work for the Arizona Game and Fish Department in 1978, rangers had to oversee an entire district. His included hundreds of square miles of the Mogollon Rim, White Mountains, and Blue Primitive Area. The only way to do the job was on horseback.

Now John is manager of the Pinetop-Lakeside Sanitary District. Said Maryfaith, "The only thing Dad talks about is sewers, until we get him out on horseback in the mountains."

John values the freedom and privacy horses make possible. "You can take off with a packhorse and be what you want to be, go where you want to go, without any

peer pressure, any need to wear a tie or shave. Spark and I both work in offices. I wear a tie all day at work. When I'm out on horseback, my behavior is normal. It's in an office that it's abnormal, for me."

Sparky added, "Sure, horses are expensive and a lot of trouble. But how many people can climb on a pet and take off to see parts of the country other people don't get to see? It's always an adventure for our family."

To Maryfaith, the family horsebreaker, horses are an investment. "You get too many bruises to give them up," she said. She worked for a riding stable last summer and enjoyed showing other people the mountains. "From the road, all you can see is a field or a ridge. On horseback, you find things you didn't know were there — an old cabin, a sawmill, logging road, wild berries and nuts, bear and elk."

Sarah and Christine, the younger daughters, don't do much riding, but they enjoy the family camping trips. At least twice a year the Snyder family camps in one of Arizona's remote areas. Recently they've ridden in the Superstition Wilderness, the Painted Desert, and along the Lower Blue River. In addition to improving their horsemanship, the family has learned survival skills. "It makes you think, learn to be adaptable," Sparky said. "If you get in a tight spot, you find some way out of it."

Today, there are more horses in Arizona than ever before. Organized mounted groups are found in nearly every community. Their activities range from trail building and maintenance to conservation projects, from search and rescue operations to sponsorship of horse shows, rodeos, and trail rides.

In the electronic age, the horse is a reminder of simpler times when mankind was part of the natural world. For many of us, no machine can ever replace a good horse. ☐



Joan Baúza, a staff writer for White Mountain Publishing, also teaches creative writing at Northland Pioneer College. She has lived and ranched in Navajo County for 36 years and has recounted her experiences in Ranch Wife, written under the name Jo Jeffers.

Peter Erisenberger is picture editor of Arizona Highways.

REX ALLEN
WILLCOX'S
FAVORITE SON

THE GREAT
MOUNTAIN
ENDURANCE
RACE
MAN AGAINST
HORSE

ARIZONA HIGHWAYS

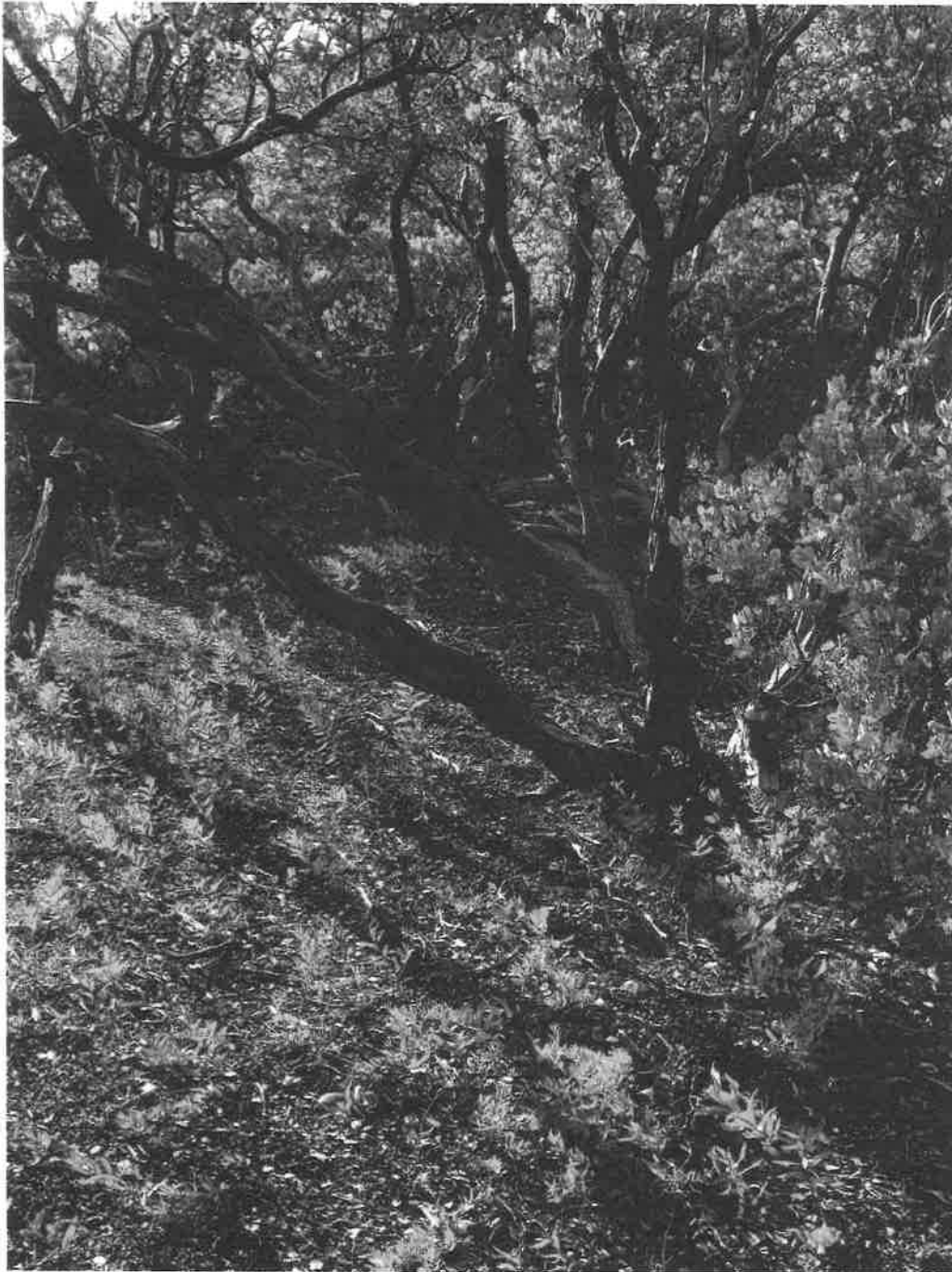
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EXPOSED

WYATT EARP'S
FRONTIER
TOMBSTONE





70th



RICHARD MAACK

PAGE 10



TOM WIEWARDT

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CARITON PHOTOGRAPHIC

PAGE 24



CARITON PHOTOGRAPHIC

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COVER STORY PAGE 4

The Un-reel Tombstone
 What was the 19th-century town really like? Not what films and books may have led you to think. Would you believe the town had telephones and an ice-cream parlor?
Tombstone's Yesterday Lives Again PAGE 10
 The annual Hellsdorado Days held on the third weekend of October recalls all the shoot-'em-up incidents that may — or may not — have happened in the town's boisterous past.

PORTFOLIO PAGE 24

Beautiful Fall Color in Ramsey Canyon
 Every year when autumn arrives, it's time once again to photograph the change of seasons in Ramsey Canyon.

ENTERTAINMENT PAGE 12

The Great Man vs. Horse Race
 In seven hours, the first horse appeared on the horizon. An hour later, no more runners or riders had appeared. Then, far off in the distance, a small dot began moving toward us. It was a runner.

PEOPLE PAGE 34

Rex Allen: the Man behind the Movies
 From radio's WLS National Barn Dance in Chicago to stardom in Hollywood Westerns, Arizona's yodeling cowboy found himself following the lead of his boyhood idols Gene Autry and Roy Rogers.

SMALL TOWNS PAGE 38

Willcox, U.S.A.
 "The old heart of Willcox is only about four or five blocks, but these streets are filled with history," says our author, "small-town history and small-town pride."

HISTORY PAGE 18

Cecil Creswell Was No Lady
 They called her a criminal, a cattle rustler, and a mean, rough old woman. But that was only one side of this legendary character.

FOCUS ON NATURE PAGE 16

Those Sociable Javelinas
 It's not known why these porkers from south of the border are currently so abundant in Arizona, but they are definitely a delightful addition to our wildlife, says our zoologist author.

DEPARTMENTS

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 When Newton B.F. McCord died, he wanted a grave site in the Tonto National Forest. And, by golly, he got it.
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 It's official neckwear, but it's not a bolo.
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 High in the Mazatzal Mountains this backcountry route is extremely rugged, but the view from the top is forever.
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 From the summit of the Chiricahuas' Silver Peak, you can savor the incredible visual delights laid out at your feet.

(OPPOSITE PAGE) *Manzanita* is supposed to spend its life as a modest shrub, but sometimes the plant sprouts more than just delusions of grandeur, as our author discovers on a back road trek into the Mazatzal Mountains near Phoenix. See story on page 50.
 JERRY SIEVE
 (FRONT COVER) The shadow of legendary lawman Wyatt Earp looms large in Tombstone, a town so shrouded in mythology that the reality of life in its frontier heyday will astonish aficionados of the "Town Too Tough to Die." See story on page 4. BOB BOZE BELL
 (BACK COVER) Waterfalls tumble down a rocky terrace below vivid bigtooth maple and velvet ash trees in Ramsey Canyon, an artist's palette of autumn color. See portfolio on page 24. MARK S. THALER



T H E A S T O N I S H I N G D O U B L E L I F E
O F F R O N T I E R R A N C H E R

BY BOB THOMAS



Looking at the remains of Cecil Creswell's old homestead and buffeted by the ever-present wind that whistles down from Sunset Pass, I realized what the old-timers meant when they called life here "hardscrabble."

The burned-out house with its plastered walls of lath and chicken wire fallen inward sits in a little bowl of red earth surrounded by a few sickly looking sagebrush clumps and windblown piles of dried tumbleweeds for decoration.

It's a spare, unattractive setting, somehow fitting for the scene of so much fighting, shooting, rustling, and, in the end, the death of Juanita Gale Creswell, known around Winslow as Cecil.

As I poked about the ruins with Janice Griffith, director of the Old Trails Museum in Winslow, I marveled at the hard labor that Cecil went through building her home.

She did all the work: mixed cement and river sand for the concrete floor and porch, laid the red sandstone walls for part of the house and plastered walls for the rest, and engineered a complicated roof gutter system that led to a handmade cistern that held the precious rain-water so necessary if a woman wanted to wash her clothes or shampoo her hair.

There were no conveniences such as running water or electricity on Cecil's lonely spread. She read her books by the light of a Coleman lantern and had to carry water for cooking and drinking from Clear Creek a half mile away.

"Gee, you don't really get an idea of what she must have gone



*Cecil
Creswell*

through living out here until you visit this place," said Griffith. "She must have been one tough lady."

Cecil — no one knows why she called herself by that name — is a legend among the residents in Winslow.

As a decorous young woman, she had worked as a Harvey Girl at the Winslow Harvey House. When she died March 5, 1954, she was under arrest as a

cattle rustler, quite probably the only 20th-century woman rustler in Arizona.

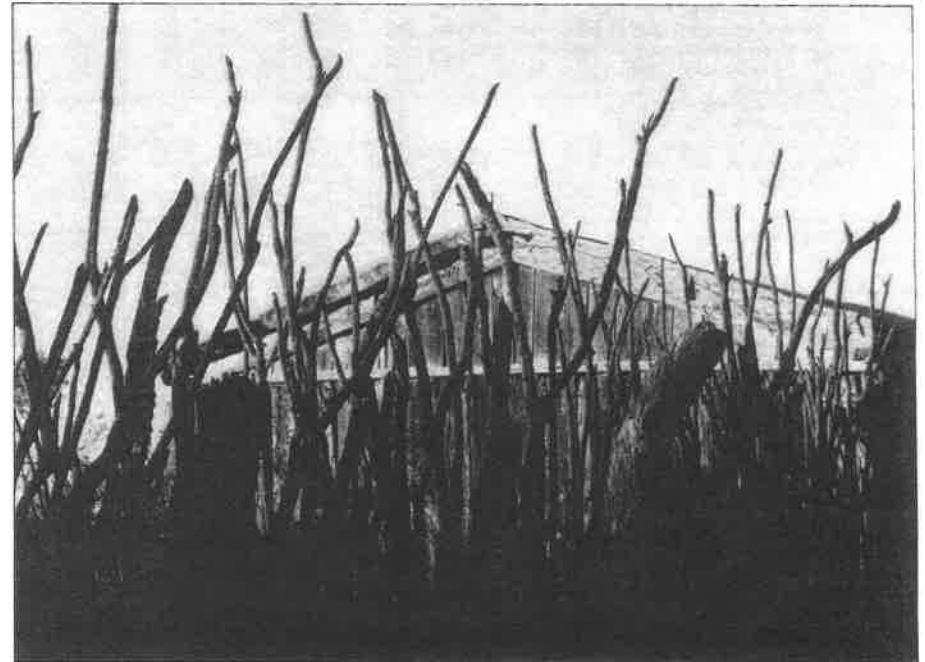
The women who knew Cecil are united in saying she was a kind, gentle, fun-loving person who was forced into a life of crime by local ranchers who resented her arrogance and independence, the way she dressed as a man, and her unusual skill with a horse, a lariat, and a gun.

"The men of this town wanted to teach her to keep her place," Inis Myers of Winslow confided to me. "That's the way they were, and still are, if you ask me."

Men who had run-ins with Cecil, especially those involved in shooting scrapes with her, called her "a criminal, a cattle rustler, a mean, rough old lady."

While Janice Griffith and I were examining Cecil's homestead, six miles southeast of Winslow, in the summer of '93, John Thompson, whose ranch adjoined Cecil's homestead, happened to drive up and stopped to ask what the two of us were doing there.

Thompson, 82, also is a Winslow legend. Reputed to have been the



(OPPOSITE PAGE) A woman's options were few in the early 1900's when Cecil Creswell struggled to survive in a harsh land dominated by males. But survive she did, transforming herself from a proper Harvey Girl to a hard-riding, gun-toting cattle rustler. It was her thieving that led to a confrontation with the law and a final tragedy. NAVAJO COUNTY HISTORICAL SOCIETY

(ABOVE) Though of slight stature, Creswell was strong and athletic, qualities that enabled her to do a man's work on her hardscrabble ranch. The corral that Creswell made of tree limbs and railroad ties still stands next to her barn.

A deputy sheriff who knew her said that Creswell loved horses and could break wild mustangs better than the toughest cowboys. RICHARD MAACK

Cecil Creswell

richest man in the area — some believed him to be a millionaire — and notoriously close with his money ("He could squeeze a dollar and come up with 99 cents," one man said). Thompson was Cecil's greatest enemy.

"She was a witch, about as worse a witch as you could meet," Thompson told me standing beside his battered pickup truck a few feet from where Cecil died.

Thompson, a life-long bachelor with some odd habits, had a small house beside Interstate 40 on the outskirts of Winslow, but he never slept there. Instead he spent his entire life, winter and summer, sleeping outdoors on the hard ground. In November, 1993, he was found dead of natural causes out on his range.

A small, wizened man with trail dirt ingrained in the wrinkles of his face, Thompson caught fire when I asked him about Cecil.

"She was a troublemaker, I tell you," he said, his small sunken eyes blazing in memory.

"She was half Sioux Indian and half German Dutch. That's a heck of a combination. You ought to have seen her loping her horse along, her hair flying in the wind like a wild woman.

"She shot at me quite a bit. Once I got a complaint against her for felonious assault for shooting at me. [Cecil, according to accounts, shot the horn off his saddle while he was sitting on it.]

"She'd jaw at me at the gate in my fence, but I'd just ride through [her land]. Once, when I was riding back, she was hiding in the brush, and she called out to me, 'Hey, John,'" recalled Thompson.

"I just froze. I knew who it was. I just kept on riding like I didn't hear her. Then she started firing, and those big old bullets went past so close I could have reached out and caught them," he said.

"I could sit here all day and talk about her. And I'm just telling you good things, not what she was really like," he said.

"But I don't want to get involved with all that again. She was a woman, and it comes out bad if you say things against a woman. You can't fight a woman. You just as well fight your hat," Thompson said, shuffling his worn cowboy boots in the red dust of the road.

He acknowledged, however, that many in Winslow blamed him for Cecil's death.

"After the shooting, a lot of people in Winslow thought I was the bad guy," Thompson told me. "I was flying to Phoenix

one day, and a woman who had the seat beside me asked if I was the Thompson in the Winslow shooting. I didn't say anything. But she knew. After a while she got up and moved to another seat, so you know she didn't like me."

But Thompson wasn't the only man who ducked Cecil's bullets. Cowboys and hunters complained that whenever they neared her ranch, rifle bullets would zing past their ears.

Dale Hancock, 57, a prominent Winslow contractor, as a youth had several shooting incidents with Cecil.

Once he and several other Thompson employees ran afoul of Cecil while they were building a barbed wire fence between the Thompson ranch and her spread.

"We saw her driving a small herd of



(ABOVE) A photo taken in 1929 shows Creswell, right, with a visiting friend near her ranch.

In later years, Creswell became hardened and reclusive, showing only her rough exterior. At the end, people were surprised by how she lived inside her home, which was described as "feminine" and "neat as a pin."

(OPPOSITE PAGE, ABOVE) Creswell, third from the right, posed with fellow employees in front of the Winslow Harvey House sometime after her arrival in Arizona in 1918.

Like most of the Harvey Girls, Creswell soon found a husband.

BOTH NAVAJO COUNTY HISTORICAL SOCIETY (OPPOSITE PAGE, BELOW) Remnants of Creswell's ranch house sit on a lonely, windswept plain near Winslow.

RICHARD MAACK

Thompson's cattle toward her ranch, and when she saw us she grabbed her gun and started shooting," Hancock said in an interview.

"She kept us pinned down all day," he said. "Every time we started to move, she'd take a shot at us until it got too dark to see."

Because of past troubles with Cecil, Thompson had advised his workers to carry guns when building the fence. Each complied, said Hancock, but it was difficult to work, keep an eye out for Cecil, and still keep a rifle handy. Often, he said, they laid their weapons down and gradually moved away from them as they worked.

"That's when she'd ride up with a big knife on her hip and her rifle aimed at you over the saddle," Hancock said.

The intimidation continued during the whole fence-building episode. Often the men returned to the site in the morning to find that Cecil had roped the posts and used her horse to pull them down, forcing the crew to repeat the work.

"She'd shoot at us nearly every day, usually from about a quarter of a mile away. That's a long ways, I know, but it's close enough when somebody is shooting at you. I can tell you she kept us scared all the time," he said.

"She was a character, tougher than any man. She wore a man's clothing. I think she wanted everyone to think she was a man. But I tell you, she was a criminal, a cattle rustler, a mean, rough old lady," he said.

"If she wanted to hit the men, she would have," said a friend, Mary May Bailey of Winslow. "Cecil was a perfect shot."

Bailey, a native of the area, remembers when Cecil, tanned leather-brown and dressed in Levi's, a man's shirt, and wearing cowboy hat and boots, would ride her horse, Pig, into Winslow, tie him to a parking meter, and go into Babbitt's Store to do her grocery shopping.

Most of the time, Cecil didn't have much money and bartered fresh beef to Babbitt in exchange for groceries. The beef, of course, was rustled.

"If she didn't have any beef, she shot and butchered a burro — they were running free all over the range — and sold the meat to Babbitt's as beef," Bailey told me. "Cecil would laugh about it when she told us."

But Cecil was not always that way. People in Winslow remember her as a gentle, feminine girl, friendly and with a warm interest in small children.

"I first met her in 1934 or 1935," said

Myers. "I knew of her when she was a Harvey Girl, and later, when she moved to her ranch, my husband and I lived nearby on another ranch. She was always a good neighbor, a frequent guest in my home, and was always a perfect lady."

"Cecil never got out of line. She took an interest in my two small girls, who were two and three at the time, and would play with them when she came to the house," Myers said.

Mack and Stella Hughes, of the tiny community of Eagle Creek in eastern Arizona, lived next to Cecil's ranch for a time, and Cecil would often ride over to visit.

"She was a good neighbor," said Stella Hughes. "But I think Cecil should have been born at an earlier time. She thought of herself as a woman of the Wild West, and I think

she would have been perfectly at home in the times of Pearl Hart and Calamity Jane."

Mack Hughes, who started riding for the Hashknife Ranch in 1922, said many in Winslow knew Cecil was rustling cows, but it was considered to be for the purpose of meat, rather than profit, and thus forgivable under the old tradition of the range.

"I knew Cecil when she was still a Harvey Girl," he said. "She'd change into some Western clothes and come down to our barn and try to get us to let her ride one of our horses. She was a pretty good rider."

Cecil's birth name was Olive Dove Van Zoast, and she lived on a farm near the small town of Olivet, South Dakota. Sheriff's records say she ran away from home when she was 14. She came to Winslow as a Harvey Girl about 1918.



Harvey Girls were waitresses renowned for their good breeding, high morals, and steadfast devotion to hard work. They were often a dream come true for the lonely cowboys, miners, and railroad men in the West. Many girls found romance and exchanged their black-and-white Harvey Girl uniforms for a wedding ring.

Cecil was one of them.

Mary May Bailey, whose father, Jot Stiles, ran three trading posts on the Navajo and Hopi Indian reservations, recalled that she first met Cecil in Tuba City, where she and her husband, George Creswell, a Bureau of Indian Affairs livestock inspector, had a home.

"Cecil was very attractive, sort of blond hair and about 5 feet, 4 inches and slim. But she had a lot of strength and a lot of athletic ability," said Bailey. "She was very friendly then and knew everyone and loved to go to dances. She was probably in her late 30s when George died."

Something died in Cecil about the same time. She experienced a sharp drop in her comfortable, even prosperous, life-style.

"You've got to remember that in those days a single woman did not have much choice. Careers were few. If you had an education, you became a schoolteacher or worked as a secretary. If you didn't — and Cecil didn't — you took in boarders or did washing or you made pies," said Bailey.

At the same time, the Great Depression had chilled the nation with millions of men out of work. There was no welfare, no food stamps, no emergency shelters or halfway houses, no Medicare, and no Social Security. Rural towns like Winslow were especially hard hit.

After the death of her husband, Cecil moved back to Winslow where George Creswell had a 160-acre homestead near Clear Creek and settled on the vacant land.

"Cecil ate a lot of beans in those days. Everyone did during the Depression," said Bailey. "You felt lucky to get a few extras like a little flour, maybe some coffee and sugar, even, maybe some pork fat."

In financial straits, Cecil apparently married one man, a rancher named Moon Mullens who was killed by lightning while riding the range in Lordsburg, New Mexico, and lived in cotton-law relationships with two other men.

"I think Cecil had some horrendous experience during this time," Bailey told me. "Something that profoundly changed her personality. She was always very guarded in her conversations. She would greet you if she met you on the street, but there was never any small talk," said Bailey.

"I think my father was the only man she had confidence in. She always trusted my

Cecil Creswell

father, ever since the trading post days in Tuba City. She gave him all her valuables to keep for her, and when she was in town she would go see him, and they'd have long talks. Cecil knew what was coming long before it happened, and she told my father what would take place."

By this time, Cecil was dressing like a man and doing a man's work.

"She hired out to local ranchers as a working cowboy, and she earned her wages. She could out ride and out rope any cowboy. But it's a rough old life to be a cowboy, and she'd have to work in all kinds of weather just to earn grub money," said Bailey.

Trying to survive on her little ranch, the 120-pound woman performed backbreaking work. With her own hands, she built her house, a chicken coop, a 40-foot-long sandstone wall with stones so heavy that two men could hardly lift them.

Cecil also built a 100- by 200-foot corral out of eight-foot-tall mesquite limbs wired together. Then, using just a pick and shovel on the stony ground, she dug a large water catchment basin, or tank, to water her livestock. A hand-dug well beside her home failed to reach water.

"She was an unbelievable woman," said former Deputy Sheriff Jim Brisendine, who was present when Cecil died and who now lives in Fruitland Park, Florida.

"Her real love was horses," Brisendine said in an account of Cecil's life and death deposited in the Old Trails Museum.

"She would go up in the mountains in the Apache-Sitgreaves National Forest and catch wild mustangs and break them to ride. She broke wild horses the best cowboys in the country would shy away from," Brisendine said.

"Cecil rode a huge black stallion that she had trapped, broke gentle, and kept for her own. She always rode like a champion and treated her horse like it was a child," he said.

She also was rustling cattle, a fact that was common knowledge and the source of endless talk in cowboy bars.

But, being a woman, Cecil did her rustling a little bit differently than a man.

Needing a bull for her cows, she rustled Tombo Kaufman's big light-colored bull and herded it to her ranch. There she roped and threw the 800-pound animal, marking it with her Rafter 3 brand. Then she took a bottle of red Henna hair dye and proceeded to dye the hide of the entire bull a dark

reddish brown that resembled the color of a Hereford.

Kaufman, for a full year, rode past Creswell's ranch — and his bull — and never recognized it.

She also stole Fred Stubblefield's fishing boat, which he had tied up in Clear Creek. Using a lariat and her horse, Cecil dragged the boat overland to her ranch and used it as a cattle watering trough. Stubblefield, a Winslow resident, never found out who stole his boat until Cecil's death.

"Cecil had no one to speak up for her. I'll grant you that she was a renegade and troublemaker, but she was a survivor and everything she did was done to survive," said Mary May Bailey.

"Her whole life after she became a widow was based on survival. No woman would

go out on the range and work like a cowboy unless she had to. Think about it. Here was a woman who was very rebellious because she was never able to earn a good living like she did as a Harvey Girl."

Some ranchers overlooked Cecil's rustling of a few head here and there because they knew she was living in poverty.

Other ranchers, led by Thompson, complained repeatedly to authorities about Cecil's depredations. The law, records show, was reluctant to crack down on a woman. Cecil was warned, hauled before a judge, lectured, and put on probation time after time.

Most people in the area knew she was stealing in order to eat. At least four retired cowboys told me that there wasn't a jack-rabbit alive for miles around Cecil's spread because she shot them all for food.

Someone — Winslow rumor said it was the late Ben Pearson, Navajo County sheriff — would take boxes full of groceries and supplies to Cecil's house knowing she was almost starving and too proud to ask for help.

But fate and tragedy were gathering about Cecil like circling vultures.

She was arrested in 1949 and placed under a peace bond for shooting at the late Sam Duran, a cowboy working on the Kaufman Ranch. Then in July of 1952, she was charged with fence cutting and trespassing and fined \$300. In August of the same year, she was charged with cruelty to animals for shooting a bull owned by Thompson. She was fined \$150 and given a suspended jail sentence.

In 1954, after an 18-month investigation by the Livestock Sanitary Board, Cecil, now 62 and her hair completely white, was accused of rustling.

However, the charge was kept secret by sheriff's deputies until Cecil could be lured to Winslow on a pretext.

While she was in town, deputies went out to her home and confiscated all her guns. But one, her favorite .30-30, remained hidden away.

The next day, Sheriff Pearson and Deputy Brisendine, Livestock Sanitary Board inspectors, and a number of local ranchers arrived at Cecil's place.

"I had never been in Cecil's home before," said Brisendine, "and was really impressed with how well it had been kept. The room was as clean and neat as a pin. The walls . . . were covered with pictures



(ABOVE) Creswell rode a big black stallion she called Pig. She had caught and broken the wild horse herself, and folks said she treated it "like a child."

(OPPOSITE PAGE, ABOVE) Local stock inspectors examine a calf Creswell had marked with her Bar 3 Bar brand. Previously the calf bore the Four Dart brand registered to another rancher. Today both of the Creswell brands, Bar 3 Bar and Rafter 3, are registered to other ranchers, and they can be spotted on cattle roaming the range near Winslow and Holbrook.

NAVAJO COUNTY HISTORICAL SOCIETY (OPPOSITE PAGE, BELOW) With no money to buy supplies, Creswell had to travel great distances to find the materials to build her corral fence. That it is still standing testifies to the quality of her workmanship.

RICHARD MAACK

she had painted. They looked as though they had been painted by a professional artist. She had painted landscapes, desert scenes, and pictures of wildlife that were absolutely fantastic."

Cecil slept in the kitchen. The room containing her paintings was "very feminine and furnished with fairly new and good blond [colored] furniture." She had used a hot iron to carefully burn in her Rafter 3 brand on each piece of furniture.

Evidence of Cecil's rustling was irrefutable. Twenty-one head of stolen cattle and one stolen horse were found on her ranch. They came from five different ranches. Also found were the remains of 10 butchered cows.

Pearson told Cecil she was under arrest for rustling.

Brisendine said, "I was leaning against the fence when she came over and asked, 'Jim, would it be all right if I walked up to the house and used the bathroom?'"

Brisendine gave her permission, and "she had no sooner left . . . when it dawned on me that she had no bathroom in her house. A bunch of men can't follow a woman to the rest room; [and] we did not bring a matron [a woman deputy] along with us. It was one of the biggest mistakes we could have made.

"I was beginning to feel a little nervous, not knowing what was going through her mind. I was expecting to hear the crack of her .30-30 carbine any second, and from that distance she could pick us off one at a time."

Then the men heard the muffled shot of

a rifle. "I thought to myself, 'This is it. We will have to shoot her, or she will shoot us,'" said Brisendine.

The men waited for a few minutes then went to the front door, which was locked. They called out to Cecil several times without an answer, and Pearson decided to kick in the door.

"I was not eager to do this because we could be looking at the bad end of her .30-30 rifle when we got inside," Brisendine said.

But Cecil was dead. "She was kneeling on a chair that was near her bed like she had been praying. It was one of the most sickening sights that I had ever seen. An old woman that had worked like a dog all her life was now dead because we had failed to bring a matron with us when we came to the ranch," Brisendine said.

Cecil's suicide created a sensation in Winslow and a backlash of anger against the officers. There is still anger.

"I rode for the old Hashknife outfit for 40 years, and everyone — those who knew her and knew of her circumstances — said she should of been just left alone. She was just trying to live, to get by," Nelson Goldsberry, a retired Winslow cowboy, told me.

"The old-timers in Winslow were so outraged at Cecil's death that they threatened to kill the officers," said Goldsberry.

A search of Cecil's home disclosed a number of manuscripts of poetry and Western fiction written in longhand. There was no money found on Cecil's body or in the house. A bank book showed that her account had been emptied four years earlier.

There was not one item of women's clothing in the house. But under her bed were dozens of worn-out Levi's rolled up and wrapped with barbed wire.

Brisendine said there were no groceries in the house at all, not even a box of salt or pepper. The only food was a pot of beef — rustled beef — simmering on the back of the stove.

Postscript: Cecil's will left her ranch to a friend, lawyer Dewey McCauley of Winslow. Cecil's sister, Mrs. Ruth Moore, her only living relative, was located in Ogden, Kansas. Although the sisters had been estranged for 20 years, and Moore avowed to Brisendine that she had no love for Cecil, McCauley turned over Cecil's ranch to her in order to keep it in the family.

Moore promptly sold it to John Thompson, Cecil Creswell's hated enemy. ☐

Bob Thomas, a longtime Arizona journalist, says that if Cecil Creswell had lived in the 1880s, she would have been enshrined in Old West lore with the likes of Belle Starr and Calamity Jane. He also wrote the "Along the Way" column in this issue.

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GENERAL BULLETIN No. 2

ARIZONA PLACE NAMES

BY
WILL C. BARNES

NAMES

*Names are such enchanting things.
Ever do they bring to me
Beauty — vision — lift of wings —
Song—and scent—and mystery.*

—CATHERINE PARMENTER.

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One Dollar and Fifty Cents.

ABBREVIATIONS

A. G. W.	A. G. Wells, President of the Santa Fe R. R.
A. T. & S. F. R. R.	Atchison, Topeka & Santa Fe Rail Road.
E. P. & S. W. R. R.	El Paso & South Western Rail Road.
G. L. O.	General Land Office, Washington, D. C.
Ind. Res.	Indian Reservation.
Lat.	Latitude.
Long.	Longitude.
N. F.	National Forest.
N. M.	National Monument.
N. P.	National Park.
P. M.	Postmaster.
P. O.	Post Office.
q. v.	which see.
R.	Range.
Sec.	Section.
sic.	written thus—so spelled. Used to indicate unusual spelling by the original writer.
Sp.	Spanish.
S. P. R. R.	Southern Pacific Rail Road.
T.	Township.
U. S. G. B.	United States Geographic Board, Washington, D. C.
U. S. G. S.	United States Geological Survey, Washington, D. C.
U. S. N. F.	United States National Forest.
U. S. F. S.	United States Forest Service.

The name of the postmaster is for the *first* one appointed unless otherwise stated.

FOREWORD

For more than thirty years the author has been gathering information from old timers, Indians, Mexicans, cowboys, sheep-herders, historians, any and everybody who had a story to tell as to the origin and meaning of Arizona names.

Many versions have been discarded because they could not be verified. One of the most puzzling matters is the unfortunate habit of many writers of ascribing their origin and meaning rather vaguely to "the Indians"; "an Indian word"; or "the Indians called it so"; etc., etc.

With more than twenty separate tribes in the State one naturally asks "What Indians?" To which there is usually no direct answer.

Another difficulty has been to pin the accounts down to dates and places. Frequently a story told so often as to have become almost a fact to the teller has been discarded because it was lacking in historical accuracy.

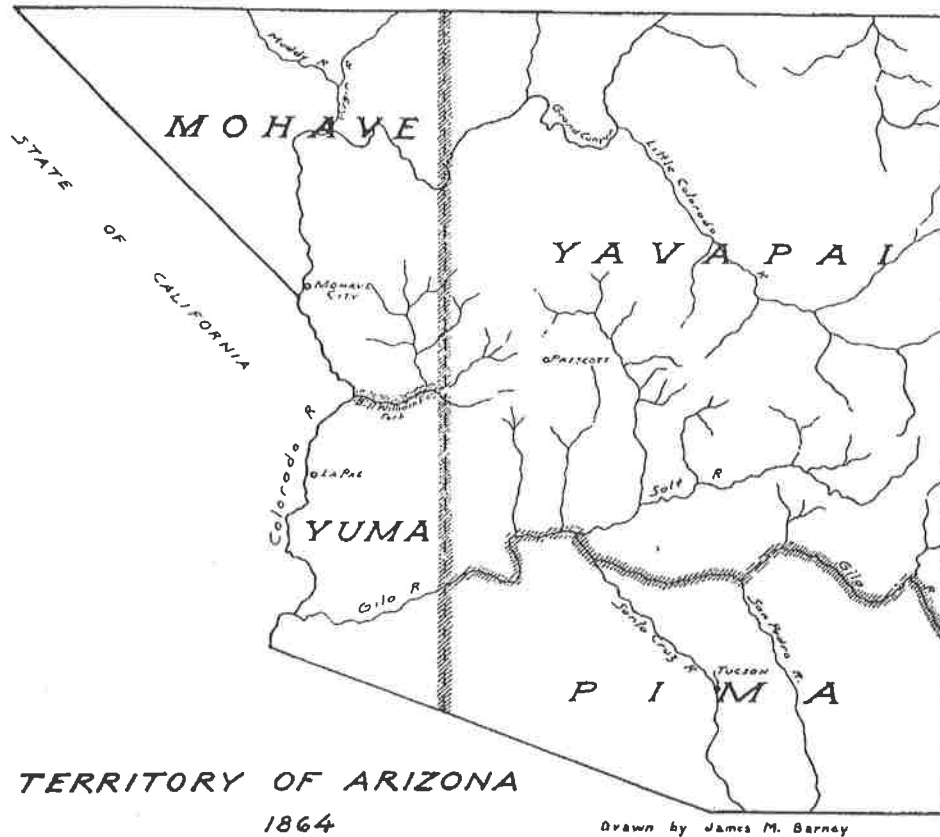
That there will be just criticisms of these pages goes without saying. Errors will creep in, mistakes occur. Men's memories are poor substitutes for the written word. Unfortunately few pioneers kept written records of their experiences. As far as possible every statement made in this volume has been checked. In some cases two different stories covering the same place or occurrence have been given because neither could be proven and each seemed worthy of credence. In such cases the reader must draw his own conclusions.

In the compilation of this material I have drawn upon those historians who have delved deeply into Arizona's early days. The statements of these writers do not always agree. Occasionally it has been necessary to estimate the value of each and give credit accordingly.

One hesitates to mention names lest those be overlooked to whom credit is due. There are some, however, who must be especially mentioned. The careful research of Dr. Elliot Coues, the eminent Army surgeon of pioneer Arizona, who followed day by day, mile by mile, the trail made across Arizona and the written record left by Padre Garces, has been a source of value. My good friend and one time superior officer of the old Army days, Captain John G. Bourke, 3rd U. S. Cavalry, in his several books has furnished innumerable dates, incidents and names of importance. With Mrs. Summerhayes' intimate story of the old Army life, *Vanished Arizona*, they will live as long as any written history of the State.

Among others who wrote of their Arizona experiences are the brilliant but eccentric Poston with his captivating rhymes; J. Ross Browne, world traveller; John C. Cremony, captain in the California Cavalry Column of 1862; Sylvester Mowry, ex-army officer, writer and one of the early Arizona mine operators; James O. Pattie in his *Personal Narrative*, and Ralph Pumpelly who wrote entertainingly of his travels in Arizona.

Often quoted, always dependable, is the *Hand Book of American Indians*, by Frederick W. Hodge, an outstanding source of information on this subject. Father Berard Haile's *Navajo Dictionary* has explained the meaning of many Navajo names, while *The Franciscans in Arizona* has furnished facts and dates of great value.



Showing Arizona's original four counties—Established by the First Territorial Legislature, Prescott, September 28, 1864.

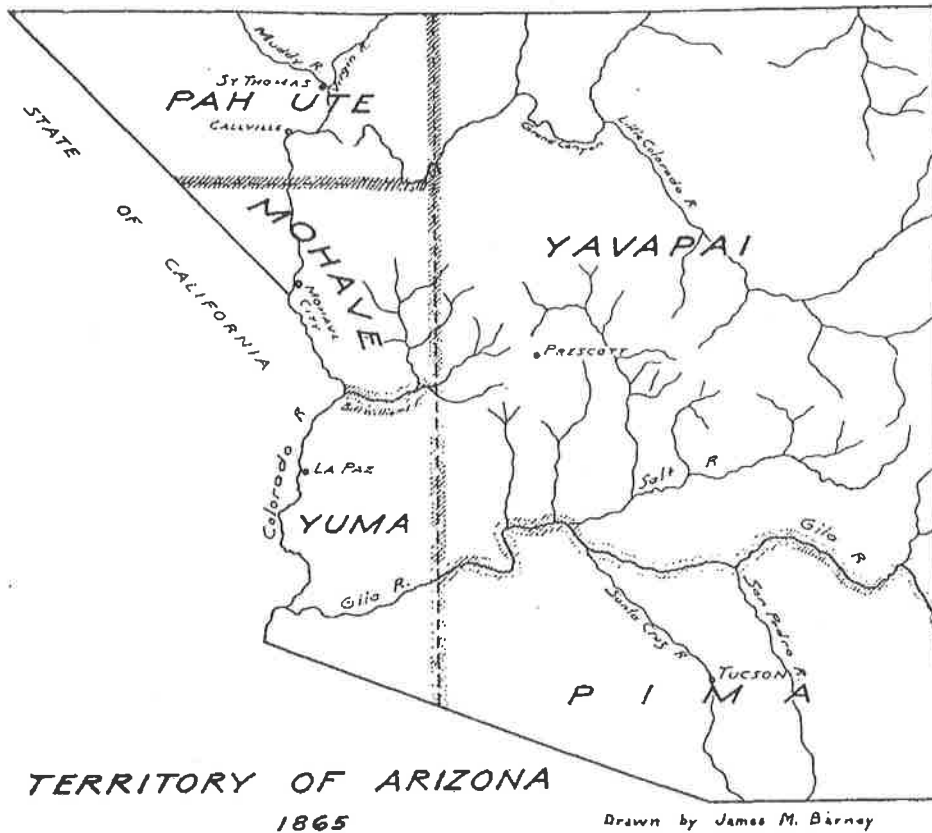
Herbert Gregory's *Monograph on the Navajo Country* and Ross' *Routes to the Desert* have been freely quoted, as also Dellenbaugh's books on his experiences in the Grand Canyon. The writings of the intrepid, one-armed Major Powell, the explorer of the Grand Canyon, have cleared up many questions as to names and places in and along the mighty chasm.

Easily at the head of the list of modern writers is Colonel James H. McClintock, former State Historian of Arizona and author of *Mormon Settlement in Arizona*, and a three volume *History of Arizona*. Farish, another former State Historian, has compiled a very readable account of early events which taken with the famous *Fish Manuscript* of the State Historian's office have been of great value as sources of information. Fish deserves more than passing notice. His work, done under most unfavorable circumstances while a merchant in a Mormon village, without a library at hand, unaided in his research, has discovered much new material and added tremendously to the knowledge of early times, especially among the

Mormon settlements. It is most unfortunate that his manuscript has not been published.

Many entertaining and instructive notes have been taken from Walter Burns' *Tombstone* for which acknowledgment is made to the publishers. It is impossible to mention every writer who has been drawn upon in this search for facts regarding Arizona names. I have tried to give full credit following every extract or reference. Here and there the reader will find items carrying quotation marks but lacking names. These to a large extent are "mosaics" taken from several writers or authorities.

The author owes much to the members of the Forest Service in Arizona. They have done everything possible to discover the



Pah Ute county created by act of Second Territorial Legislature in December, 1865. Congress granted this area to the state of Nevada, May 5, 1866. Act of the Second Territorial Legislature creating Pah Ute county, repealed by the Sixth Territorial Legislature, January, 1871.

origin and meaning of many local names. Nor can he overlook the splendid services of his wife. Her keen judgment and sound advice as to what should be retained and what discarded has been invaluable.

Paul Shoup, president of the S. P. R. R. Co., and A. G. Wells of the Atchison, Topeka and Santa Fe R. R. have cooperated heartily

in searching out the origin and meaning of names of stations on their lines. Through the kind offices of these gentlemen the various division superintendents and local station agents of these roads have rendered valuable aid.

In addition, I am deeply indebted to the many friends throughout the State, some of them strangers, who have answered my many letters asking for information. To one and all, historians, authors, forest officers, cowboy and shepherd friends, railroad and postal authorities, old timers generally, the author herewith offers his most sincere thanks.

A list of "First Things in Arizona" which I have included I trust will prove as interesting to the reader as the compiling has been to me. No doubt some of them will be disputed.

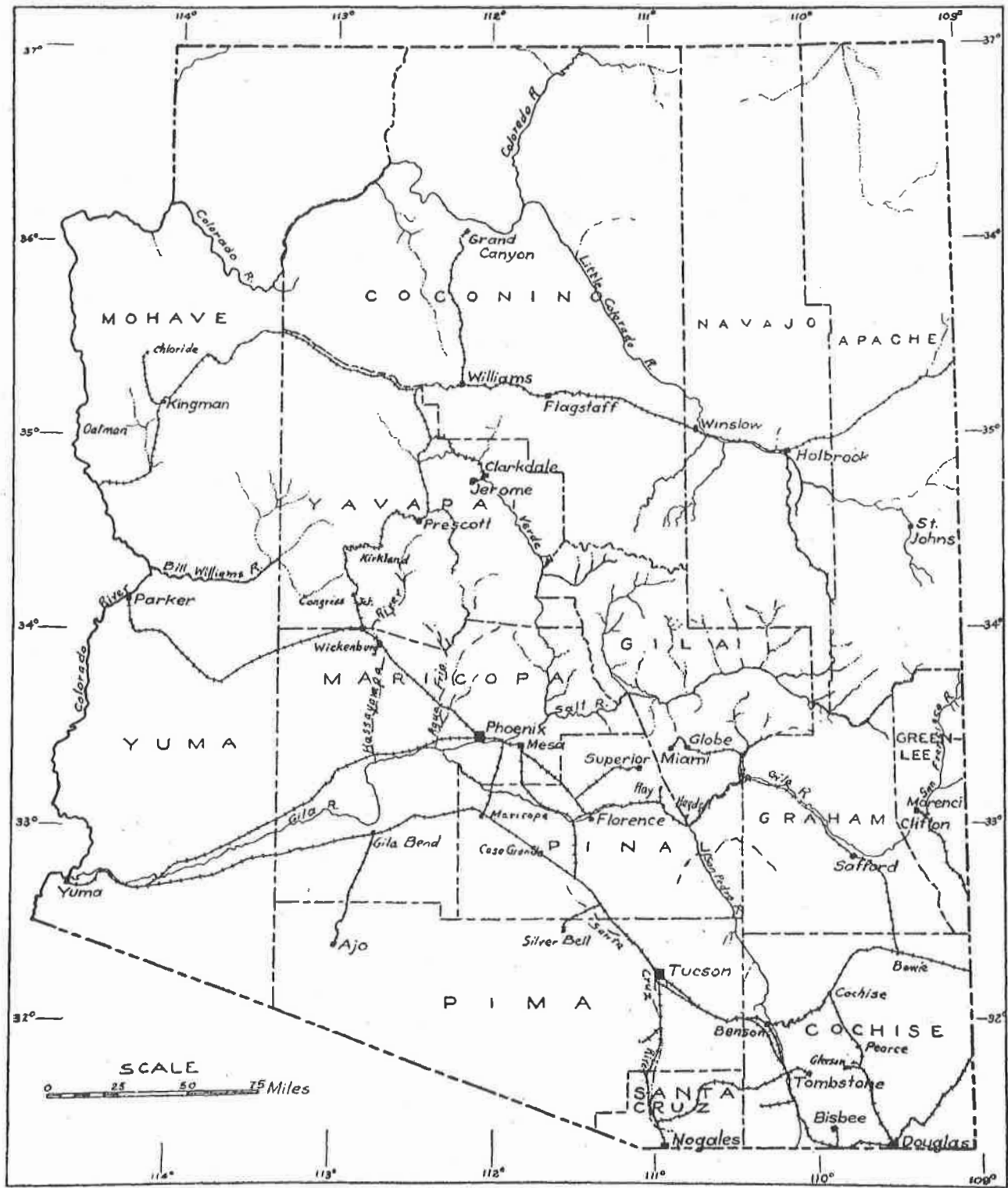
The author realizes that the book will no sooner be off the press than errors and omissions will be discovered and regretted. These can be taken care of in a later edition, if and when such becomes possible. Suggestions and criticisms will be gratefully received.

It was the judgment of experienced geographers and historians that as far as possible the location of each place or thing should be given either by government surveys or by latitude and longitude, and also that each should be followed by a list of maps on which the name could be found. In many instances the maps do not agree as to names or spelling. In such cases the matter is explained.

The first establishment of every post office in the territory or state of Arizona, with the date and name of the first postmaster, has been taken from the records of the United States Postoffice Department in Washington.

The law establishing the United States Geographic Board at Washington provides that its decisions as to the correct official names, with the spelling, of all geographical places in the United States, shall be adhered to by all government bureaus, in official reports, bulletins, maps, charts, etc. The printed decisions of the Board have been followed in this volume.

WILL C. BARNES.



State of Arizona, 1934.

ARIZONA PLACE NAMES

BY
WILL C. BARNES*

Abbie Waterman Peak Pima Co. Roskruge Map, 1893.

In T. 12 S.; Rs. 8 & 9 E. Hornaday, *Camp Fires on Desert and Lava*, writes:

"North of Robles well-in-the-desert rose the Roskruge range, Sam Hughes butte, and the Abbie Waterman mountains. Beyond Abbie's real estate holdings were the Silver Bell mines." *Arizona Gazetteer* of 1881 says: "The Abbie Waterman is a silver mine of great promise which is being vigorously prospected by its owners." A note in the Arizona Pioneers Historical Society Library of Tucson says the camp was first called "Silver Hill." Old timers say that the peak was named for Abbie Waterman, wife of Governor Waterman of California. They claim that she was the first white woman to climb the peak.

This is an error. The identity of Abbie Waterman is well established through George Roskruge and others who knew her and her husband. She was the wife of J. C. Waterman who came to Arizona from Missouri and lived at Oracle for several years.

The peak was named for Abbie Waterman, but the range was named Waterman mountains q. v. for Gov. Waterman who was not related to her.

Abra Yavapai Co. Railroad Maps.

Sp. "a fissure, a gorge." Station on Ash Fork-Phoenix branch of A. T. & S. F. R. R. 29 miles south of Ash Fork. Is near a deep canyon, hence name given it by engineers.

Acacia Cochise Co.

Station on E. P. & S. W. R. R. About 4 miles from Douglas. Origin unknown.

Acme Mohave Co.

Station on A. T. & S. F. R. R., established about 1881. "Just another name," A. G. W. Later changed to Topock, q. v. P. O. established April 15, 1902, John R. Livingston, P. M.

Adair Navajo Co.

About 2½ miles west of Showlow on Fools Hollow. Mormon settlement established 1878. Called Fools Hollow because "nobody but a fool would try to make a living there."

After Wesley Adair, member of Company C, Mormon Battalion. He lived here for a time then moved to Showlow. His son, Aaron, lived on the place for some years after that. P. O. established as Adair Dec. 4, 1899, Jesse J. Brady, P.M. See Fools Hollow and Bagnall.

*Former Assistant Forester and Chief of Grazing, U. S. Forest Service; Former Secretary U. S. Geographic Board.

On Gregory's map, 1916, as Bodaway mesa, which is doubtless the correct spelling and name.

Broncho Creek Cochise Co. Smith Map, 1879.

Rises in Dragoon mountains; flows southwest into San Pedro river near Old Presidio of San Pedro.

Broncho Mine

See Brucknow mine.

Bronco Mountain Coconino Co. G. L. O. Map, 1921.

In T. 17 N., R. 8 E. Coconino N. F. Near head of Beaver creek. "At one time there was a large number of wild or bronco horses running here."

Brookbank Canyon Navajo Co. Map, Sitgreaves N. F., 1924.

Dry wash west of Heber heading in T. 11½ N., R. 15½ E. Enters Pearce wash in sec. 8, T. 14 N., R. 17 E. After J. W. Brookbank who located here in 1884. He later lived at Holbrook.

Brookline Cochise Co. G. L. O. Map, 1909, 1921.

Station Calabasas and Fairbank branch railroad. At eastern corner Babocomari Grant.

"A small stream comes into the San Pedro from the west. Town is located at the point where the S. P. line crosses the stream or brook. Hence Brookline." Letter, A. L. Henley, P. M.

Brooklyn Pima Co. G. L. O. Map, 1892.

Early day mining camp near Quijotoa in T. 15 S., R. 2 E. "The mine was called the Brooklyn. The owner came from Brooklyn, N. Y." This was one of several townsites laid out on slope of Quijotoa mountain. See New Virginia, Virginia and Logan City.

Brooklyn Peak Yavapai Co. Map, Tonto N. F., 1927.

In sec. 4, T. 9 N., R. 4 E. On Prescott N. F. North side of Squaw peak. After nearby Brooklyn mine.

Brownell Mountain and Settlement Pima Co. U. S. G. S. Map, 1923.

Store and settlement Papago Ind. Res. near lat. 32° 20', long. 112° 10'. According to P. A. Schilling of Ray, the Papago name for this mountain is "Ta-vo-num," meaning "a small hat."

"Mr. Brownell, the store keeper at Brownell, in the Quijotoa range, was a Civil War veteran and miner who discovered this copper mine at the foot of the mountain. Mine and settlement named for him." Letter, Col. J. J. Munsey, Sells.

P. O. established April 3, 1903, Frank Brownell, P. M.

Bruce Canyon Santa Cruz Co. G. L. O. Map, 1921.

Canyon between the Huachuca mountains and Canello hills. Rises west side Huachuca military reservation, runs north into Babocomari creek on grant of that name. Part of it is called Sycamore canyon. After Charles M. Bruce. See Mount Bruce for history.

Bruce, Mount Santa Cruz Co. U. S. G. S. Map, 1923.

In T. 20 S., R. 18 E. Northeast end Mustang mountains. After Charles M. Bruce, nearby cattleman, secretary of Arizona Territory May 8, 1893, and later Assistant Commissioner of General Land Office at Washington, D. C. under President Wilson.

a hole here and there as against Wet Beaver creek, the other fork, which was never dry.

Dry Lake Navajo Co. U. S. G. S. Map, 1923.

Large open basin often filled with flood waters most of it coming from the Phoenix wash. In N.W. corner T. 15 N., R. 19 E. Frequently goes dry. The Hashknife (Aztec Cattle Co.) outfit about 1888 dug several long ditches to drain into it flood waters from Pierce, Phoenix and other washes. More than six thousand range cattle and probably a third as many wild horses often watered here in dry seasons, 1888 to 1896. Quite a dry farming settlement here now called Zeniff. q.v.

Dublin Graham Co. R. R. Maps.

Station Globe division Arizona-Eastern R. R. 10 miles west of Safford. So called by William Garland who built this road. He was a native of Cork, Ireland. q.v.

Dude Creek Gila Co.

In upper Tonto basin. "Small creek on East Verde draining into east side of that stream about 6 miles from its source. Frank McClintock had a ranch on this creek and gave it this name." Letter, Fred Croxen, Forest Ranger.

Dudleyville Pinal Co. Hamilton Map, 1866;
G. L. O., 1921.

In sec. 25, T. 5 S., R. 15 W. On San Pedro about one mile south Gila river. Stage station owned and run by the Harrington family about 1879. "Dudley Harrington was the father. Dudley was a family name and he wanted his post office so called. They compromised on Dudleyville." Letter, Fred W. Lattin, Winkelman. One authority says place was first called Wharton City but who Wharton was nobody knows. P. O. established May 8, 1881, as Dudleyville. P. O. records in Washington show it changed later to Feldman, q.v.

Dugas Yavapai Co.

The Dugas family had a ranch here. P. O. established Nov. 11, 1925, Mrs. Gertrude H. Dugas, P. M.

Dunbar's

See Tres Alamos.

Duncan Greenlee Co. U. S. G. S. Map, 1923.

In T. 8 S., R. 32 E. Elevation 3,642 feet. An early settlement. Formerly a heavy cattle shipping point. On Gila river about 25 miles above Solomonville. Close to New Mexico line, on old Arizona and New Mexico R. R. Named in 1883 for James Duncan, a director Arizona Copper Co. Was first called Purdy, q.v. P. O. established as Duncan October 11, 1883, Charles A. Brake, P. M.

Duncan Mohave Co. G. L. O. Map, 1928.

In T. 29 N., R. 16 W. Early mining camp on head Grapevine creek. Close to line Hualpai Ind. Res. Origin not known.

Dunlap Graham Co. G. L. O. Map, 1892.

In T. 6 S., R. 19 E. P. O. and ranch headquarters on Aravaipa creek. After Hon. Bert Dunlap, who ran cattle here 1882 to 1896. Dunlap was several times elected to Territorial Legislature. P. O. established Mar. 22, 1883, Bert Dunlap, P. M. Changed to Aravaipa in Apr., 1892.

Wickyty-wizz Canyon Mohave Co.

Side canyon of Colorado river on Hualpai Ind. Res. where a squaw man named Spencer once lived. See Spencer.

Bourke says: "Capt. Thomas Byrne, 12th Infty., knew that if this small tribe—the Hualpais—went on the war path, it would take half a dozen regiments to dislodge them from the dizzy cliffs of the Music, Diamond and the Wickyty-wizz."

Wide Ruin Wash Apache Co. U. S. G. S. Map, 1923.

Heading in T. 24 N., R. 28 E., about 10 miles northeast of Wide Ruin, runs southwest, joins Pueblo Colorado wash to form Leroux wash in T. 21 N., R. 23 E. "Named for a pre-historic, ruined palace, 400 feet square, built across a narrow wash. It contains a rock walled well. Navajo name is 'kin-tquel,' a wide or large house." Gregory.

Wild Band Pools Mohave Co. Smith Map, 1879.

Southeast of Pipe springs, west side Kanab wash, near Hanging rock." Father Escalante visited and camped at these pools in 1776. So named later on because of bands of wild horses which watered here." Bolton.

Wildcat Canyon Coconino and Navajo Cos. U. S. G. S. Map, 1923.

Rises at Rim in Coconino county, running northeast into Navajo county, joins Chevelon Fork in T. 14 N., R. 15 E. So named by Robert (Bob) Casbeer, sheepman, whose herds were raided here one night by a wildcat which killed a large number of sheep. Previous to this, not named.

Wild Cat Peak Coconino Co. U. S. G. S. Map, 1923.

Elevation, 6,648 feet. On Navajo Ind. Res. near lat. 111°, at northwest corner Hopi Ind. Res. "The Navajos call it 'nic-dot-soe' or 'nish-duit-so'—'mountain lion.'" Gregory describes it as "On the Painted desert. An igneous needle east of Mormon ridge."

Wild Horse Canyon Gila Co. Map, San Carlos Ind. Res., 1917.

T. 1 S., R. 21 E. Stream rises south slope Gila mountains, flows southwest into Gila river, west of Calva station, on railroad, San Carlos Res. "For several years there was a band of wild horses running along this canyon. They were rounded up and shipped out or killed during the government's campaign to eradicate dourine among Indian ponies about 1910."

Wild Horse Lake Navajo Co. Map, Apache N. F., 1926.

In sec. 23, T. 10 N., R. 15½ E. Fort Apache Ind. Res. "D. B. (Red) Holcomb, who lived at Phoenix Park now called 'Hokum' Ranch, once built a trap corral here to capture wild horses." See Phoenix Park.

Wild Rye Creek Gila Co.

When first settlers arrived here country was covered with luxurious growth of wild rye. Grows today in protected spots only. See Rye creek.

Wilford Navajo Co.

On Black canyon, 6 miles south of Heber. Named for President Wilford Woodruff, of Mormon church. Settled by John Bushman and others from St. Joseph, 1882. Was quite a prosperous colony, 1883, the creek was running strong, a tannery

Hi Karen

I put this together in 2005 in pamphlet form, and distributed it locally. 'Hope this gives you the info you need. (don't remember what was in that little box on Page 2.

You will note that this all started in 2005. Joe was a member of the Eastern Arizona Counties Resource Advisory Committee (a Federal Appointed Committee). The request for \$25,000 was made to this committee.

We had been riding in the Sitgreaves Forest and knew the horses to which they made reference. Joe 'smelled' something wrong and encouraged the other members to deny the request and vote NO!, which they did.

We were in Court when Tony made his presentation. The Fed's position was actually comical, Just watching the Judge's face. He tried so hard to maintain an indifferent expression, but on occasion he couldn't quite keep back that slight look of laughter out of his eyes.

The rest is history and still going!!!

Have fun with this!!!

Gerri

Bounded by FR 300 (Rim Road) and Rte 260 from Forest Lakes to Show Low, AZ

WILD HORSES ON THE ARIZONA RIM



Photo Credit: Pamela Reed (c) 2005

The Wild Horses of Apache Sitgreaves National Forests

Arizonan's very own living symbols of our rich American history

As he crossed Black River at Big Bonita Creek and approached a meadow where Francisco Coronado had camped in 1540 near a trail used in the 1870s by U.S. Cavalry General George Crook and his troops, Arizonan and former Secretary of the Interior Stewart Udall said, "I am reminded of the extent to which, for many centuries, horses played a major role. This very forest has been the scene of a dramatic pageant of military horsemanship. If we had a time machine to go back, we would have watched young Spaniards, in the summer of 1540, astride the first European horses ever to stomp the ground in what is now the American West (Arizona Highways, April 1984)." Many experts agree that the first true ancestor of the Apache Sitgreaves National Forests (ASNF) wild horses roamed North America during the prehistoric era and then migrated to Eurasia where they evolved into the modern horse as we know them, were domesticated and spread throughout Europe including to Spain.

Historical documents provide much evidence that some of the ASNF wild horses are ancestors of the first horses reintroduced in North America by Francisco Coronado in 1540. In his search for the seven cities of gold Coronado spent much time on the Mogollon Rim and in ASNF. He brought with him scores of mounts. Servants drove more horses to be used as remounts. When they camped, the horses were allowed to graze and run in the meadows of ASNF. In 1653, the letters, maps and diary of Father Eusebio Kino demonstrate that he brought more horses to the Rim, on an apostolic exploration to possibly expand his ministry. Later, General George Crook brought mounted soldiers to the region using a trail close to the Coronado trail. The wild horses of ASNF have a rich history of military equitation



Photo Credit: top photo, Gerri Wager

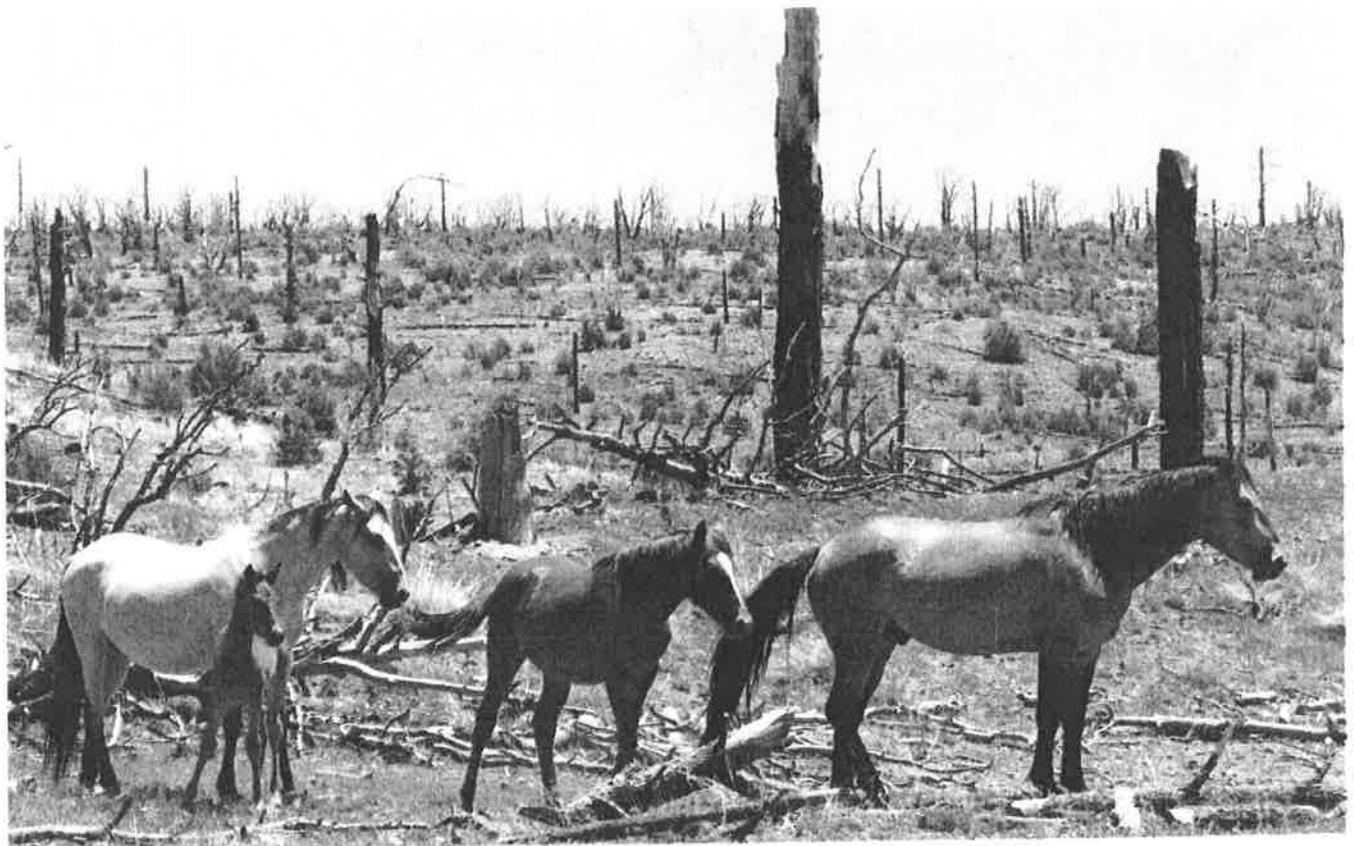


Photo Credit: Barbara Reis

Timeline of the History of the Apache Sitgreaves Wild Horses (ASNF)

Prehistoric era: Ancestor of the horse roams North America

Circa 30,000 BC: Ancestor of horse migrates to Eurasia, is domesticated and ultimately traded to European countries including Spain.

Circa 20,000 BC: Prehistoric cave drawings dated circa 20,000 BC on the Spanish Iberian Peninsula show that wild horses have roamed the Spanish Iberian Peninsula for thousands of years. Some of these horses are domesticated and selectively bred to become the modern Andalusian. At about the same time, the wild Sorrai horse evolves in Spain with its characteristic buckskin color, dun line, black mane and tail, and black markings on the legs. Some of the Sorrai horses are domesticated and incorporated into Spanish horse bloodlines.

Circa 700-800 AD: The African Barb comes to Spain during the invasion of the Berbers and is bred with Spanish stock to become the Spanish Barb.

1540 – Francisco Coronado and his expedition to the Seven Cities of Gold travel over the Mogollon Rim near Pinetop, McNary, Vernon and St. Johns bringing scores of Spanish horses including Barbs and Andalusians. Horses are allowed to forage in some areas of the Rim and Apache Sitgreaves National Forests. Coronado Expedition marks the re-introduction of the horse to the West and to North America including in Apache Sitgreaves National Forests. Muster roles and ships logs note numbers of horses and colors of horses including black, chestnut, bay, and buckskin, colors of many of the wild Apache Sitgreaves horses today.

1653 - Father Eusebio Kino makes an apostolic expedition to the Mogollon Rim and Apache Sitgreaves National Forests “to the borders of the land of the Apacheria.” Father Kino, an ultimate horseman, brings Andalusians, Barbs and Jennets from Spain to Mexico where they are kept at his Mission Dolores. The horses are used on the 1653 expedition as mounts for Father Kino and Spanish soldiers who accompany him. Scores more are herded as remounts and some left in areas of good forage on the Rim and in Apache Sitgreaves Forests to breed as more remounts on the trip back.

1870's - General George Crook brings mounted cavalymen to the Mogollon Rim and Apache Sitgreaves National Forests near the Coronado Trail and Crook's Trail is established. Some of the mounts likely run and breed with the wild Spanish horses already established in Apache Sitgreaves by the Coronado and Kino expeditions.

1971 – The Wild Horse and Burro Act is passed providing federal protection for unmarked, unbranded, free-roaming wild horses and burros on Bureau of Land Management Land (BLM) and United States Forest Service (USFS) land and mandating that the horses and burros be managed in viable numbers. The Act declares that the wild horse is the living symbol of the West and mandates that wild horse and burro territories be established to protect wild horses and burros.

1973 – Approximately 20,000 acres in Apache Sitgreaves National Forests in the Black Mesa District were established as the Heber Wild Horse Territory to protect wild horses as mandated under the 1971 Act.

January 15, 1974 – USFS attempts to have Heber Wild Horse Territory disbanded making the argument that only five “trespass horses” remain who go back and forth between the White River Apache Reservation and Apache Sitgreaves National Forests. The USFS argues that there are only five remaining wild horses who will die out but no census count or evidence of this is provided. The Heber Wild Horse Territory is not closed.

February 1, 1989: Mack Hughes narrates to his wife, Stella Hughes, the *Hashknife Cowboy*, his memoirs of cowboy life on the sprawling Hashknife Ranch in New Mexico and Eastern Arizona circa 1922. In the chapter on wild horses, Hughes describes thousands of wild horses called broomies by the cowboys running on the Rim and the delight the ranchers took in running with the broomies. Some of the broomies were caught and tamed to become excellent ranch horses. Continuous wild horse sightings in Apache Sitgreaves National Forests are documented in the Hughes book, in Jo Baeza’s Arizona Highways February 1988 story *Horses of Arizona*, and by residents through narration and pictures from the early part of the 20th century through the present.

July 19, 2005 – The USFS fails to manage the Heber Wild Horse Territory as mandated by law, fails to provide a management plan for the wild horses and the Territory, fails to keep accurate counts of wild horses in and associated with the Heber Wild Horse Territory and Apache Sitgreaves National Forests for years prior to July 19, 2005. Yet the USFS issues solicitation for bids to have unbranded, unclaimed free-roaming wild horses in Apache Sitgreaves National Forests removed as what they call “trespass horses” and hauled to Holbrook auction house on July 19, 2005. Solicitation is done without required compliance of a full study of the impact on the environment as required by law under the National Environmental Protection Act (NEPA). In addition, the USFS has never done a NEPA or the required development of a management plan for wild horses in Apache Sitgreaves National Forests and for the almost 20,000 acre Heber Wild Horse Territory set aside for the wild horses by Congress as a sanctuary. The USFS provides no evidence of any investigation of any kind to support the “trespass horse” assertion. However, historical documents and affidavits of residents together with photographs provided by residents to attorneys for the horses demonstrate a continuous presence of the ASNF wild horses generations before the Rodeo Chediski fire.

September 9, 2005 – Attorneys Debra Sirower, Christine Broucek, and Anthony Merrill, for the firm of Bryan Cave LLP, file a civil action asking first for a Temporary Restraining Order (TRO) and writ of mandamus, second, Preliminary Injunction and, third hearing of a lawsuit in the Federal District Court for the District of Arizona, Phoenix, on behalf of plaintiffs: In Defense of Animals, the International Society for the Protection of Wild Mustangs and Burros, the Animal Welfare Institute, Patricia Haight and Richard Potts. The suit alleges that the USFS has failed to do a full NEPA as required under the law, that the USFS must do a full NEPA and that the removal of the horses be stopped pending a full NEPA and development of a management plan and that a writ of mandamus be issued ordering the USFS to do these things. Federal District Court Judge Fredrick Martone hears the case.

September 9, 2005 - Judge Fredrick Martone issues a Temporary Restraining Order enjoining the United States Department of Agriculture (USDA) and USFS from rounding up, removing or awarding a bid for capture of horses in ASNF.

December 5, 2005 – Attorney Anthony Merrill presents oral arguments before Judge Fredrick Martone for a preliminary injunction (PI) preventing the removal of horses in ASNF until the lawsuit can be fully litigated.

December 19, 2005 – Judge Fredrick Martone grants the PI and enjoins the USDA and USFS from awarding a bid for capture of horses in ASNF, and capturing and removing horses in ASNF until a final judgment is entered in the case.

March 13, 2007 – Plaintiffs and defendants enter into a stipulated agreement stipulating that the USFS will do a full and complete NEPA and develop a management plan for unbranded, unclaimed free roaming horses in the Heber Wild Horse Territory and on associated lands in ASNF and that plaintiffs will be kept informed regarding the NEPA process. Plaintiffs reserve the right to object to any portion of the NEPA and to re-file suit.

September 2, 2008 – USFS issues scoping document indicating they may keep only a very small number of wild horses on the almost 20 thousand acre Heber wild horse territory. Attorney Anthony Merrill writes USFS a letter pointing out to them that a decision statement is inappropriate and unsatisfactory in a scoping document meant only to set out how the NEPA will be done.











































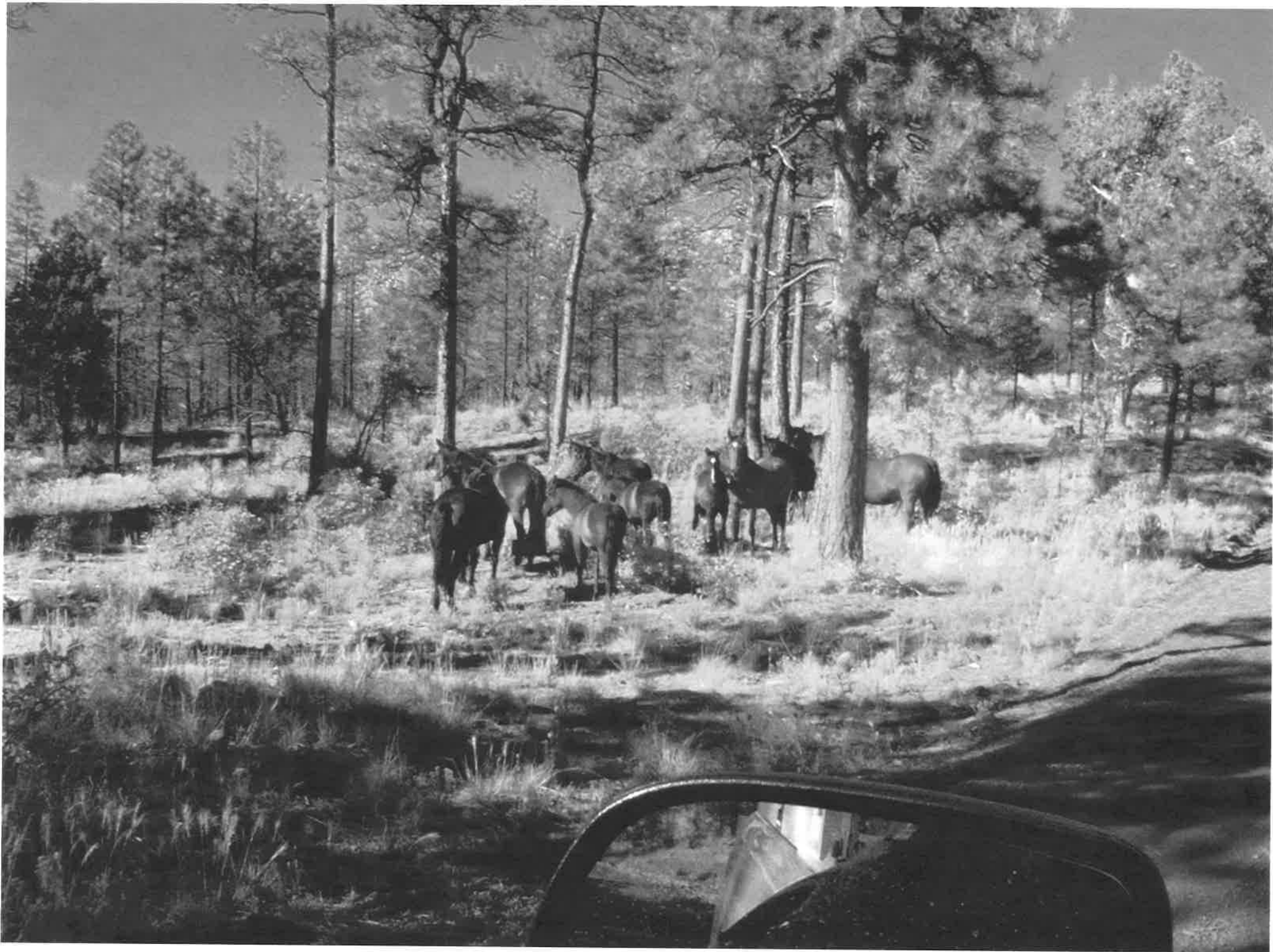


























Oral history interview with Doy Reidhead [with transcript], April 3, 2006. ...



▼ Transcript

DOY REIDHEAD INTERVIEW
Ecological Oral Histories Collection
Collection number: NAU.OH.2005.111.16

[BEGIN TAPE 2005.111.16A]

Lowe: My name is Norman Lowe. I'm doing an interview for the Ecological Oral History Project with NAU's Cline Library. Here today is Doy Reidhead, who's a long-time rancher. We're at his home just southwest of Holbrook, Arizona, and it's April 3, 2006, nine in the morning.

Mr. Reidhead, I'd like you to answer a few questions here this morning with us. Can you tell us a little bit about your family's history with the ranch and this region? When did your family originally come to this region?

Reidhead: Oh, they come to this region in 1879. My great-grandfather was commissioned by Brigham Young to help Charlie Shumway drive his herd of cattle from Utah to Arizona. And then he went back home, he went back to Utah, married my great-grandmother, which her name was Goosindy [phonetic], and then he.... His dad was already down here. His dad had been called by Brigham Young.

Lowe: What was his name?

Reidhead: John. He lived at Woodruff, over here on the [Little] Colorado [River], Silver Creek. But my great-grandfather come on the cattle drive with Charlie Shumway, then he went back and sold what he had, got him a good team and wagon, and married my great-grandmother, and come to Holbrook--or come to Navajo County. They settled what they called--today it'd be Lone Pine Dam, below Show Low on Show Low Creek. That was the first settlement. Then he moved from there to the [Hopen?] Ranch, which would be south of Linden. Then from there, he moved to Show Low. And that was all in the area.

Mrs. Reidhead?: They named Hopen Ranch, Reidhead.

Reidhead: They had a town named Reidhead.

Lowe: Oh! And that was located where?

Reidhead: Up south of Linden. And then later on they changed it to.... When the postal service come into being, the postal service changed it to Linden.

Lowe: I see.

Reidhead: That's no big deal. They was the first settlers here. My grandfather was the first white child born in that area.

Lowe: And his name was?

Reidhead: His name was Charles Oscar [phonetic]. He was born in 1880. But he created--I remember the story--he created a dairy, and moved down there north of Whiteriver. And his job was to produce milk and cheeses and what not for the soldiers that was stationed at Ft. Apache. And he started a little cow herd--him and a guy by the name of Charlie Thought [phonetic], I believe. I'm not sure of the name. Anyway, they got a pretty good cow herd that developed on the Apache Indian Reservation, along with that dairy they had. And when the fort closed down, he moved out of there and brought his cow herd and come back to Show Low.

My dad was born in 1900, and he fell into the horses and cows. In them days, that's all we knew. Horses was transportation, cows was livelihood. I remember Dad was a good cowboy. We always had horses and ranches all my life growin' up. And that's about as far as I can take you . Lots of Reidheads in the country, most of 'em were sawmillers.

Lowe: Okay. But there's several of 'em doin' ranching too?

Reidhead: Several of 'em was ranchers. But they was a big family--Reidhead--two or three different families. That's kind of a history [unclear] of it's own [unclear] in part. When I come into the picture, I can remember horses and cows.

Lowe: Okay. And you were born in Show Low?

Reidhead: Yeah, in Show Low, in 1933.

Lowe: Okay, and where was your family then--they were on a ranch?

Reidhead: I was born in the big Reidhead home, which is still a historical site--tryin' to get to be one--it's still standin' in Show Low, the oldest building there. And they're tryin' to get it in the historical society. My son's workin' on it right now.

Lowe: At that time, Show Low was a small town.

Reidhead: That town, there's about fifty people there, maybe. When I married her, she was from Linden, which was a ranch out west of Show Low. We moved into Show Low to try to make a livin', and worked at the sawmills, and worked at various jobs. Then I took a job cowboyin' for Borden Ranch, which is Bill Borden, which is an old--started his ranches here in the 1930s. In fact, he bought one of my dad's permits. My dad was runnin' horses, and shipped the horses to Los Angeles for four cents a pound, rode the train to Los Angeles with 'em, 600 head. Got back, he had barely enough money to get back home.

Lowe: Six hundred head! That's a lot of horses.

Reidhead: That was in the Great Depression. I was born in the Great Depression, see. My first job was a \$1.10 an hour, after I was married. [Hm, I think perhaps he meant to say \$1.10 a day, or maybe even week. (Tr.)] That was 1951. We was married when we was seventeen, and you had to.... There wasn't nothin' to make a livin' with except your two hands: work at the sawmill or work on the county roads. Jobs was scarce and hard to come by, and pay wasn't very big, but it didn't cost you much to live, either. And I fooled around and got in the truckin' business, buyin' and sellin' lumber, haulin' it to Phoenix. Then I went in the loggin' business, I worked for Southwest Forest Industries for twenty years, haulin' logs--loggin' contractor, do it all. But I always had this cow deal in the back of my head, and there it was, I wanted to go ranchin'. And so the Forest Service was gettin' [so] hard to work for in them days in the timber, that I decided I'd sell out. So I sold my loggin' outfit in 1974, and I bought a little ranch over here on the Milky [phonetic] Wash in 1968. That's between here and St. Johns. I had a chance to come and buy this ranch then. This was the old Kooney Jeffers [phonetic] Ranch, which was started--he come here in 1941, from New Mexico. And the other ranch belonged to Everett Hinkston [phonetic]. He come here in about 1941, and they was both runnin' ranches here. Kooney Jeffers was an old-time cowboy, and a good one. And then he sold out. This realtor, the guy sellin' the ranches, put the two ranches together, sold 'em to a guy by the name of Rulen Goodman [phonetic]. There was 150 sections in the Jeffers Ranch and 120 sections in the Hayston [phonetic] Ranch. And then in 1974, I sold my ranch on the Milky and gathered up enough money to come down here and made a down payment on these ranches.

Lowe: So how big was the outfit?

Reidhead: It was 270 sections.

Lowe: What kind of labor did you have--you had some help with that?

Reidhead: Well, yeah, mostly my family--mostly my boys--and hired some help. Some Indian boys worked for us. We started out runnin' cattle. We bought 2,300 cows with the ranch.

Lowe: What was the ranch's name?

Mrs. Reidhead?: Doy Reidhead.

Lowe: Just the Doy Reidhead Ranch, okay.

Reidhead: That's what we called the ranch, is the Doy Reidhead Ranch. It was two ranches sewed together, the Jeffers Ranch and the Hankston Ranch.

Lowe: And your brand was what?

Reidhead: VP on the left ribs.

Lowe: And then what was the next change? Did you run that for a while that way?

Reidhead: Well, we stayed with it. The place up here on Silver Creek, [unclear] [Little] Colorado [River] and Silver Creek had a good well on it, so we built a nice farm up there, about a 250-acre farm, me and my sons.

Lowe: What were you growing on the farm?

Reidhead: Alfalfa and corn. We put a feed lot up there, and we fed our own cattle. I put my calves in there in the fall, and it'd work good one year, and the next year it'd reverse itself.

Lowe: Just 'cause of weather changes, huh?

Reidhead: No, due to the market change. You know, you gotta live with the market. One year I could get sixty cents for my calves, loaded on the truck, off the cows. And I'd take 'em to the feed lot and feed 'em, put corn and grain in 'em. The next spring when I had 'em weighin' 700 pounds, they was worth fifty cents. So I didn't make a dollar--I lost money. Feedin' cattle, when the market changes, calves can jump--in them days, ten cents was big. But it would usually drop ten cents one way or the other. Well, ten cents is the difference in success and failure.

Lowe: Yeah, that's the real stock market, isn't it? ups and downs.

Reidhead: We operated this ranch that way for eleven years. It was doin' good, keepin' the bills paid, doin' great. And then we decided.... We heard rumors that that ranch would be took away from me over there, with this relocation deal. So me and Michael Hoff, Sr., [phonetic], which is passed on now, and a fellah by the name of Merlin Maxwell [phonetic], and a boy that works for the Cattle Growers, by

the name of John Olson [phonetic], I believe is his name--John something--a good guy, smart kid. We flew to Washington, D.C. and met with Barry Goldwater, and that was somethin', us ol' cowboys in Washington, D.C. I was scared to death of the airplane. I got there, I was like a hog on ice. But anyway, we finally got--this John set us up with these appointments with Barry Goldwater. I think there was one other congressman out of Arizona, maybe.

Lowe: Like Udall?

Reidhead: Maybe. Might have been Udall. But Barry Goldwater told us just what we wanted to hear, and we come home with a relaxed state of mind, that the Indians had plenty of land without worryin' about some of my land--lease land. But my hands was tied because I didn't own that land, it was lease land, New Mexico and Arizona Land Company, which was developed--that company come by when the government give all this land to the railroads to put the railroad through here. Part of it went to an outfit that was called Aztec Land and Cattle Company, which is the old Hashknife Ranch, which this is the old Hash Knife Ranch. This is [twelve livin'?).

Lowe: That was a really big ranch.

Reidhead: Yeah, it was part of the old Hashknife. Well, part of it went to, the [Dow Fifty?] called it New Mexico and Arizona. Well, that was a hundred sections of New Mexico and Arizona land out there.

Lowe: So a lot of your land was checkerboarded with private and state land?

Reidhead: State and some private. That over there was a hundred sections of New Mexico and Arizona land. Sixteen sections of state, and four sections of deeded. Well anyway, they wanted 25,000 acres. The Indians come there to look at my ranch, a tribe, a busload of Indians, and I showed 'em the ranch. And I've always liked Indians, some of my favorite people, been around 'em all my life. Anyway, I told this old boss of the outfit that if he wanted to buy a good ranch, go out there and buy that Spurlock [phonetic] Ranch. It was a better ranch than this ever thought of bein'. [unclear] Mr. Spurlock was a great rancher. He started in Young, Arizona, and he knew all the country, and that's where he settled. I said, "He needs cows." Ran [phonetic] Spurlock was his name. Sure enough, the old guy took my word for it, and went to buy the Spurlock Ranch, which they did. But then they decided they needed a little more, and a fellah by the name of Fitzgerald, Raymond Fitzgerald [phonetic], owned 25,000 acres of deeded land next to the Spurlock Ranch. So there was a four-way trade, New Mexico and Arizona would get rid of me, and trade with Raymond Fitzgerald this ranch, deeded, a hundred sections deeded, and the state [unclear] transfer, and the deeded he'd get. And he'd trade it for that 25,000 acres out there. So they bought me out, and traded the old Hankston Ranch for the 25,000 acres. And then they took six sections down there at Tucson, by the mission, wherever the mission was, the old San Xavier Mission.

Lowe: San Xavier Mission, yeah, south of Tucson.

Reidhead: That's what they got for their land, and Fitzgerald got my place, and the tribe got the Spurlock Ranches and the Fitzgerald Ranches. That was supposed to finish the Navajo-Hopi land dispute, which it ain't settled today. It never will be settled, I guess. But anyway, they misplaced me in

the deal. [unclear] I decided I'd buy the Gibson permit up there, and the ranch, which was half--he had a winter ranch off on Aztec land, deeded, and a great forest permit, took him plumb to the Mogollon Rim, all across there, where the big fire was. All that was burned. Well, I had that permit, I bought it.

In the meantime, I was goin' big time. I had lots of cows and lots of cowboys and was runnin' a good ranch. About that time, the old forest rangers I'd always worked with, retired. And they run in some new management, and we was havin' some drought years, and the Forest Service had been busy raisin' jack pines and piñon and junipers. (

Mrs. Reidhead?: Elk.)

Reidhead: So they clogged our country plumb up. And then the Game and Fish is busy raisin' these elk. They both started about the same time. They shipped these elk in here out of Wyomin', hauled 'em out to the [Dessen?] Ranch on wagons and teams, and turned 'em loose in the early 1930s. And then they started raisin' these elk. Well, about the time I got in the ranchin' business--or in the Forest Service business--the trees choked out, and some dry years to boot, and then some new Forest Service personnel changes, environmentalists.... Everybody was tryin' to run the Forest Service. Maybe you've been around enough to know what was goin' on. It was one guy bangin' here, and one guy bangin' there. Anyway, in three years, me runnin' the ranch to the best of my ability according to their speculations and expectations, keepin' my cattle clean, keepin' my fences up, keepin' the tanks clean, keepin' the work done, I thought I was doin' all I could do. Well, anyway, they decided the permit needed cut in half. So they cut it in half. Well, then my financiers that financed the whole thing, they got nervous. Here we buy a million-dollar forest permit, and now it's worth a half million dollars. So I had to compensate to that. And then, you know, just one thing led to another. After that, I decided to sell the damned place, try to pay the debts. Well, I sold the place, and lacked a million dollars of payin' the debt. But that's all right, I was a pretty big operator. I took a million less than I give for the outfit, you see what I mean?

Lowe: Wow. Uh-huh.

Reidhead: But I'd made pretty good money up there and I thought that'd offset maybe half of it.

Lowe: About what year did you sell that in?

Reidhead: In 1988. I bought it in 1983. But they cut the permit in half, then it lost a lot of its value, you see what I mean.

Lowe: So that was a pretty big ranch, huh, the Gibson Ranch?

Reidhead: Well, Old Man Gibson started that way back in the thirties, you know.

Lowe: I had a question, do you remember the sheep industry?

Reidhead: Yeah.

Lowe: Was it very big in this country?

Reidhead: Well, it used to be. Yeah, it was big.

Lowe: Did any of your family get involved in sheep operations?

Reidhead: Yeah! Big time! My dad always said he'd rather have a sheep than he would a cow. They loved 'em--moneymakers.

Lowe: Moneymakers--until after the war, I guess, and then the market [unclear].

Reidhead: Yeah, well.... And then the price of wool went down, and they quit eatin' sheep. And sheep [unclear]. But I [unclear] sheep. When I went to the Gibson Ranch and bought that, there was [unclear] big sheep permit on Wildcat, Wildcat and Sheldon [phonetic]. And all that whole mountain was sheep country: the Shivarias [phonetic] the [unclear] the ol' Hacos [phonetic], that was all sheep country.

Lowe: I see. So they actually ran sheep on the same ranch where you were running cattle?

Reidhead: Yeah, twenty years earlier. And the Forest Service didn't like sheep, so they converted everything. In fact, after I sold this ranch to a fella by the name of Steve Bragg [phonetic] out of California, the Gibson Ranch--I kept the old Jeffers Ranch--and then I went and bought Frank Eramuzdi's [phonetic] permit out there. They just changed him from sheep to cattle, and he had a place, all new fences and a beautiful permit. [unclear]

Lowe: Now, you like horses, I understand.

Reidhead: Yeah, I've raised a lot of horses.

Lowe: Do you use horses a lot in the operations?

Reidhead: Well, we had about fifty head of saddle horses at one time, to keep everybody mounted here. You get together on that Gibson Ranch, or that Eramuzdi permit, you had to put in some long hours--big permits.

Lowe: Yeah, to get the cows through the trees.

Reidhead: We had lots of trees and canyons, and that Gibson Ranch was about twenty-five miles across the south boundary. And then you neighbored the Ft. Apache Indian Reservation. Fences was always in bad shape, run more wild horses up there that come over the fence than you did cows. But that's some of the political politics we was into, see. I didn't know all this when I bought the permit. I thought.... Nigel [phonetic] got up there, and he counted 180-200 wild horses there.

Lowe: Oh, wow.

Reidhead: It had a big snowstorm in 1967, and just smashed the fences down, and then horses come up over there, got on the Forest Service, off the reservation. Nobody was cowboy enough to drive 'em back. They fixed the fence good, but left the horses on this side. So the old ranger that was up there, a great old guy, he just wanted the horses gone. And I'll tell you why he wanted 'em gone. This might be a.... He was afraid they'd make a wild horse refuge. Now here we're already gettin' into some stink. You see what I mean? He said, "If these horses don't get moved, we're gonna have trouble with this. They'll take this and make a wild horse refuge out of it." So he said, "I'll build the traps, and we'll [salt?] catch these horses." "All right, that's fine." "You take 'em to sale and sell 'em, and whatever you get is yours."

Lowe: So they were unbranded?

Reidhead: Yeah. But they'd give me a bill of sale to 'em. They was unbranded, and on Forest Service land. So we built them traps and [salted?]. We caught 187 horses. I'd unload 'em out of the traps and load 'em in a trailer and haul 'em to sale. A hundred dollars was a big price on 'em. The time was.... We had double the time we was gettin' paid for the horses, but it took a lot of time.

Lowe: Oh, yeah, these were wild horses.

Reidhead: Yeah, plus the traps they built. But we pretty well cleaned it up. And then today--they had the big fire, three years ago, or four, the fire took out the fence, and now the horses, they got the same problem again.

Meanwhile, this Steve Bragg, he had enough of the ranchin' business, so he sold this thing to John Seibert [phonetic], a big contractor out of Phoenix, he owns Wheeler Construction Company--a good guy, and really a good operator. And he bought the.... He [unclear] a little bigger country, so I was seventy years old, and I decided.... He wanted this piece of land I had out here at West Camp, a block of about sixty sections, and I sold that to him three or four years ago. And I kept about 20,000 acres here, and I had a section of deeded land here, with this house on it. My brother built my fireplace, and I didn't want to leave my fireplace. We was too old to go anywhere else, so we decided to raise a few horses and a few cows and settle down so we could make a livin'. That's where we are today.

Lowe: Still raisin' a few cows and some horses.

Reidhead: Yeah, and we've pretty well kept the debt paid on the whole place. We've been here thirty-one years. We've been big time, and now we're little time. But at my age, I'm about where I want to be.

Lowe: Yeah.

Reidhead: My son [unclear] the old farm, and a good portion of the ranch--my sons and grandsons have it. But they bought it after I'd sold it to this Steve Bragg. They took that sale to Steve Bragg, took all it, brought off that little lost on the price of what the ranch is worth today, and what it was worth when I bought it--you see what I mean? I just got into a position where the elk is takin' what grass is growin' up there, and the bulk of their country was down a little lower, there'd be jack pines--the

Forest Service name for it is P.J., which is piñon-junipers, and they just [unclear] forced all the grass out, there's no grass. You had a five-mile strip in a national forest that was reduced to zero.

Lowe: Wow. Right. Well, that's what I want to ask you a few questions about, is some of the ecological changes you've seen. And definitely the piñon and juniper have really come in strong, huh?

Reidhead: You couldn't even ride a horse through it! You'd have to build trails through it, to just ride through it, to go out on the flats where the cows get a little higher up in the pines--see what I mean?

Lowe: Uh-huh.

Reidhead: And then the big flats where the grass grew.

Lowe: That was one of the reasons for reducing the cattle capacity, I suppose, is because the grass was goin' away.

Reidhead: You look back on it now, had no choice. The trees just--they wouldn't cut a tree here--it's an unpardonable sin to cut a cedar tree.

Lowe: Right. They wouldn't let the fire burn to get rid of the trees.

Reidhead: They wouldn't let the fire burn. And the elk just kept a-growin' bigger and bigger. And the elk found out they couldn't make a livin' in the piñon and juniper, so they learned to come down where the forest ended and these ranches begin--like the Gibson winter ranch and all this country, this twenty-mile strip between the [Little] Colorado River, you might say, and the pine trees for thirty miles.

Lowe: Right. And this is more grassy country out here.

Lowe: Big flats, and some cedar pushin' has been done, a lot of it. A lot of eradication on it.

Mrs. Reidhead?: (inaudible)

Lowe: Okay, we did.

Reidhead: I pushed thousands of acres of cedars. I could see it comin', and got with Aztec and pushed 'em--[unclear] CS over here.

Lowe: Did you see a good response, did the grass come back?

Reidhead: Oh, great! Doubled your capacity. But, you know, one man can only do so much. I pushed thousands of acres of cedars on this ranch, on the Gibson Ranch--I kept a cat workin' all the time.

Lowe: Did you do some chaining or cabling also? Or just individual trees?

Reidhead: Pushed and burned. Cables will just kill half of 'em and leave half of 'em roots in the

ground. Tried that route. A lot of these [unclear] no higher than that chair, and you couldn't cable 'em. You could cable the mature trees, you couldn't cable.... But where they was more more [unclear] fifty little saplings. In other words, all at once, in about a ten-year cycle, it just closed the country off with piñon and juniper. And this ain't changed a bit. I can take you up there and show you two-thirds of it, you can't even get through it a-horseback.

Lowe: Yeah. Yeah, really thick. Now, when you were young, did ranchers use fire to help burn off trees? Or not even then?

Reidhead: Well, in the old days there was no fightin' fires. Didn't have nothin' to fight fires with. My dad tells the story they used to run more wild horses in this country than they do everything put together now. And the wild horses wasn't hurtin' nothin'.

Lowe: That's 'cause there's a lot of grass that was here.

Reidhead: If you look at the old pictures, you'll see big purdy pines and lots of open space. You see what I mean? That was the history, when the pioneers come to [unclear] this forest, that's what it looked like. If you don't believe me, dig up some of the old pictures.

Lowe: I've seen 'em.

Reidhead: All right, the Forest Service come in there and just took over this.... Put out all the fires, and did no thinning of any kind--just protect the trees. And they had the ways and means and could hire enough men to put the fires out, see. So it stopped the lightning fires. That's what happened then. Then we get into this period where we got all these people comin' to Arizona. All of 'em want to go to the pine trees and cool off. Ninety percent of the people live in the valley, the lowlands. And the big kick, everybody come to the mountains. Well, the Forest Service owned the whole dangd [unclear]. The Forest Service is tryin' to please the ranchers, and the Forest Service is tryin' to please the tourists.

Lowe: And then you start gettin' enough second homes built out there, that nobody wants fire to burn.

Reidhead: And this just went crazy from there, you know. It's just a combination of a lot of things [unclear]. [unclear] big-time ranchin' business is all this people movement was comin', see.

Lowe: Right. I'd like to ask you about some things you've seen about the watershed and hydrology changes. Over the years you've probably had a lot of springs on some of your ranches.

Reidhead: Well, they all dried up.

Lowe: Do you think it was because of the trees, or what?

Reidhead: Oh, it's a combination of things. When I was a kid, I can remember lots of big snowstorms, you know.

Lowe: Yeah, more snow in the winter then, and it would recharge the water table.

Reidhead: I remember as a kid growin' up I rode horses all my life. I'd ride east--I lived at Taylor--ride west to Taylor on what they called Cottonwood Wash, and Dobson [phonetic] Wash, which started at the Mogollon Rim. Twice a year, them streams would run. There'd be enough snow water, and then in the fall we'd always get big rains. Seemed like they always run, but it's just a combination of we just took a dryin' trend here.

Lowe: Yes, definitely the last seven, eight years it's been pretty dry. So many of the springs you remember have gone dry.

Reidhead: Well, hell, they went dry right in front of your face--a bunch of 'em. I'd think, "Well, next spring it'll come back." Well, next spring, they didn't. I had a permit up here on Sheldon, I bought from Frank Aramooshti [phonetic], and there's one big pasture there they call the Waters Pasture. And the first Forest Service camp was set up, up there on a spring, a big spring--DeWaters [phonetic] Spring, they called it. Well, I'd had that permit about two years, and it went dry, and it was still dry when I left there three years ago. It never did come back. And that was a big spring. Run into less shovelin'.

Mrs. Reidhead?: There was always a stream in Hart Canyon, too.

Reidhead: Then Hart Canyon, that was always runnin'--it went dry. You know, just in the ten years that I was on this permit up there--eleven years.

Lowe: So they had some cottonwoods or sycamore and willow along those?

Reidhead: Well, them trees took a lot of water. You can't blame anybody but the weather-maker. Just one of them deals.

Lowe: Yeah. Some of those trees dyin' too? Are some of the cottonwoods or sycamores dying?

Reidhead: Ah, hell, you can see more dead trees up around Heber you could haul off if you had a big loggin' outfit. They protected a lot of them trees, and now they're all.... That's another thing, they quit cuttin' the timber.

Lowe: So you've seen changes in the little lakes and dirt tanks [unclear] too, I guess, they've dried up.

Reidhead: Oh, yes. Yeah. You might build a tank, I'll build some tanks that ain't caught water since I built 'em. It just don't seem like it rains like it used to.

Lowe: Not as much.

Reidhead: That's part of it.

Lowe: Have you noticed much about erosion over the years?

Reidhead: Ah, no, that seems to be....

Lowe: I remember Pat Spurlock talkin' to be about how this Puerco River has really cut down in his lifetime, since [unclear].

Reidhead: Well, it blows in and blows out. I don't see a lot of change.

Lowe: Okay, so you're not seein' a lot of change--just with the weather cycles, huh?

Reidhead: I don't see.... I've been in Arizona on the Puerco River thirty-one years, and I can't see a lot of difference. Maybe one big flood will change it, and then five years later it'll revert back to where it was. You might only have one big flood in five years here. I don't see much.

Lowe: Some places, like at Navajo, I guess it used to flood out onto the flood plain.

Reidhead: Well, yeah.

Lowe: And some places it doesn't anymore--it just goes down the channel.

Reidhead: We got other things that's happened here. We got APS dug these deep wells to furnish this power plant with water. All this between here and Holbrook, right down here, that was always artesian water when I come to the country.

Lowe: Oh, you had artesian water here?

Reidhead: Yeah! From here to Winslow! And now they're havin' a cow the other day, in that a'tesian, what they call the Meadows. And now that artesian just dried up, you can see where it runs occasionally. You can see salt--salt water in this country. You can see where the salt water's run. It's colored the ground, but no more water.

Lowe: So the wells are drawin' the water table down?

Reidhead: Yeah, the wells have dropped down.

Lowe: How good is the water under here?

Reidhead: Well, right here is the best water in the world.

Lowe: Pretty sweet?

Reidhead: You cross the river, and you need whiskey to chase it with. (laughter)

Mrs. Reidhead?: [unclear] right here when you turn to come up [unclear].

Reidhead: You got a big fault here somewhere.

Lowe: Oh, okay.

Reidhead: You cross the river, and you can't drink it. Right here is pure water.

Lowe: Great. Good for you.

Reidhead: That's why I settled here.

Lowe: About how deep is it here?

Reidhead: A hundred and twenty feet, the best water you ever seen.

Lowe: Pretty good. Okay, good deal.

Reidhead: I've done that, lowered my bowl at times [unclear]. I've been here twenty years without ever.... I've had to drop my bowls twice.

Lowe: Okay, so it's gone down maybe twenty feet or something?

Reidhead: It's gone down ten feet, which is quite a bit.

Lowe: You don't do irrigation here now, do you ?

Reidhead: No, not here. Just down the hill, they are. There's some pumps went in down there before APS used their political clout. You can't drill an irrigation well here now in this area. Took away from us.

Lowe: On another topic, what have you seen about the weeds, like salt cedar and that coming in?

Reidhead: Well, between these tamaracks that pretty well took over, and this camel [tar?], and they claim the old Hashknife cows brought that in, and the thistles. We've got as many undesirables growin' here now as we do desirables--maybe more.

Lowe: So you have seen a big increase?

Reidhead: Yeah. But I think these tamaracks--if we didn't have these tamaracks.... When I was a kid, there used to be big cottonwoods all up and down the creek, a beautiful place. Hell, I can take you up here, and I owned twenty-five miles of that country at one time, them rivers.

Lowe: Along the river?

Reidhead: Yeah, along the Puerco, ten miles up the [Little] Colorado [River]. I can show you old deadwood layin' around, cottonwoods two to three foot [in diameter] that died and blowed over. But the tamaracks has choked out all the cottonwoods, which cottonwoods ain't no good either, but

they're purdy to look at.

Lowe: Yeah, they're pretty to look at, some shade.

Reidhead: But you go down there and try to find a cow in them tamaracks and if you're the best Mormon in the world, you'll be cussin' before you get out of there. It's just teared that river over. It's kind a like the piñons and junipers up there, but piñon-juniper will grow on nothin'. These tamaracks have to have a lot of water.

Lowe: Right. Did you see tamarack over on your Gibson Ranch, too?

Reidhead: No. Not away from this river. You can find a tamarack anywhere on this ranch that I got left. You can find lots of thistles. In fact, the thistles has got so bad, they blow your fences over. We've had three years of bad drought here, and the only thing that's growed is thistles. They get as tall as that chair.

Lowe: Yeah, the tumbleweeds.

Reidhead: Tumble up over your fence, and then the wind will.... Then we get one of these 65-mile-an-hour winds, and there goes a mile of fence, just flat. Gotta go burn thistles or scrape 'em off, and put up the fence. That's [a hazard?]. We all had a bad loco deal in this country.

Lowe: Is it bad here, the loco weed?

Reidhead: Yeah. Comes and goes.

Lowe: So it affects your horses sometimes?

Reidhead: Yeah, moisture affects what loco does.

Mrs. Reidhead?: [unclear] dry after it's been green is almost worse than the rain.

Reidhead: But all-in-all, it's a pretty tough life. If you want to sum it all up, it's pretty hard to make it all work.

Lowe: Yeah. I want to ask you a little bit about wildlife, what you've seen out here. What do you know about the antelope populations? Have they come up and down?

Reidhead: I have plenty of 'em. They survive.

Lowe: They survive? You still have antelope out here?

Reidhead: I can show you 200 head today.

Lowe: Two hundred! Oh, so not so bad here, then. They've left a lot of places in the north country

here, like on the rez [i.e., reservation] and what not, but you still have 'em here.

Reidhead: Game and Fish called me about ten years ago and wanted to know if it'd be all right if they could dump a load of antelope on my ranch. I said, "Hell, I don't know how I can get along without 'em." I don't want 'em dumped on my ranch, but I think they either got dumped or come here. I've always had a lot of antelope here.

Lowe: You've always had 'em, okay. And on your other ranches, did you have antelope on those others?

Reidhead: Well, on the lower end, plumb to the timber. Antelope run plumb through the piñon-juniper. They kinda quit at the pine trees.

Lowe: You mentioned that big storm back in 1967 and '68. That killed a bunch of antelope up by Flagstaff and what not. Did it really hurt 'em here too?

Reidhead: Yeah. It killed a lot of everything.

Lowe: Oh yeah, your cattle too.

Reidhead: Just put 'em in jail and kept 'em there 'til they starved to death. That snow was seven foot deep, and they just tromped themselves a place to stand while it stormed, and their bodies melted what snow hit 'em, I guess. When the storm was over, they was in a snow fence, six foot, seven foot high. Nobody could get 'em out. These ranchers, I was busy helpin' my brother-in-law plow to them cows with caterpillars or big four-wheel-drive loaders, and built a trail and drove 'em out. They'd come out if you opened that trail.

Lowe: Uh-huh. So the big snow drifts were causing like corrals, like you say.

Reidhead: Yeah. But you get in around the cedars, up a little higher, where I was workin' and helpin' him, they'd get under the cedars for protection, and they just tromped their way around that cedar. And then when the storm's over, it's six, seven foot high--a snow fence, they couldn't get out. So you had to go find 'em on a Ski-do, and then plow to 'em. If you'd open a trail, they'd come a-walkin'. We opened a trail, they'd be fifteen miles the next morning, just walkin'. We'd put a bale of hay about every half-mile, and they'd just follow one bale of hay to the next, and just kept comin'.

Lowe: Okay, you were trying to lead them out of that [unclear].

Reidhead: We led 'em outta there with hay. He had 150 head, and we put 'em all on his headquarter ranch in Linden in twenty-four hours. Didn't put a horse down there. Just plowed the road out and let 'em walk. That was 1967.

Lowe: My goodness. Yeah, how about coyotes and other predators? [unclear]

Reidhead: Oh, we've always had coyotes, and always will, I guess. Here around Holbrook the biggest

predators is dogs.

Lowe: Really?

Reidhead: We've had, in my day here, we've had several bunches, killer packs, you know. I had twelve cows killed right here, south of us here about two miles, in two weeks.

Lowe: Twelve cows in two weeks! That's a lot of coyotes then.

Reidhead: It wasn't coyotes--these town dogs.

Lowe: Oh, dog packs, feral dogs.

Reidhead: Kill for pleasure, just like wolves. We got a guy here, an old buddy of mine, trapped them dogs. So we got rid of that problem. There's always somethin' here that interferes with your business, so to say.

Lowe: Okay. Tell me a little bit more about the elk situation. You said elk were reintroduced in this country back in the 1930s, and the numbers didn't change too much for a while, and then when did the elk really explode?

Reidhead: Well, one of the reasons they exploded--and they won't tell you this--they hauled the elk in here all the time.

Lowe: Oh, they kept haulin'. Okay.

Reidhead: They'd get elk out of these other states, see, that would become available. They dumped elk right up here by Woodruff, right where there wasn't even elk habitat. They dumped a load of elk in there.

Lowe: Do these elk migrate much, or do they pretty much stay in the same....

Reidhead: These elk go where the feed's at.

Lowe: That's a complaint that I've heard: cattle you can rotate and whatnot.

Reidhead: You don't rotate elk.

Lowe: They stay where they want to stay.

Reidhead: They go where they wanna go.

Lowe: Yeah. So you've seen some overgrazing from elk, huh?

Reidhead: Everywhere you look. They'll take a browse country or a brush country that you use to

winter on, and instead of just taking the leaves, they'll take the bark. Over there in that Cliff Rose [phonetic], that country, and that mahogany--they just love to strip that mahogany to nothin'. It grows in these rock canyons, all this heavy sandstone rock canyon--beautiful place to winter cattle, you know. But the elk's pretty well ripped it. Some of the things we've faced through, it don't hurt to be a millionaire to ranch, but it sure helps. I doubt seriously that.... I think there might be only one ranch left in this country that was here when I come to this country.

Lowe: One ranch that stayed in the same family, huh?

Reidhead: Yeah.

Lowe: Which ranch would that be?

Reidhead: That'd be part of the Jeffers Ranch that Bill Jeffers, the young Bill, has got.

Lowe: Located where?

Reidhead: Young Bill Jeffer's has got a ranch north of town that runs to the reservation line. And it's deeded land--they deeded it--and that's the only ranch here that's the same. I could show you probably 15,000 head of cattle runnin' here when I come here thirty-one years ago. There was probably 15,000-20,000 head of cattle. And I don't believe you can go count 2,000 today. That's what a drastic change we've had. Can you believe that?

Lowe: That's pretty amazing, yeah. And the land hasn't necessarily bounced back, just from rest or anything.

Reidhead: It just got too hard to survive on.

Lowe: Right. Weather changes, and like you say water hasn't come back.

Reidhead: And what guys that's tryin' it now is guys that had money to spend, they needed to spend. You might know a little about that. And that's the ones that just--the romance of the cattle business is what it amounted to. The romance has about gone out of it for me. (laughter) But there was a dozen good ranches in this end of Navajo County when I come here. The Jeffers Ranch is the only one that's still in one piece, and it ain't a very big ranch--like a hundred sections. The Oaxaca Ranch, a lot of it's been sold off, and the boys are still runnin' some of it. And then the Gibson Ranch and part of this ranch, was acquired by John Seibert [phonetic], and he's still.... But he's only runnin' 700 cows. The fire burnt the mountain off, he can't go up there. I got it cut in half, and since he bought it, it's cut 100 percent. So that's.... And the last I heard, I haven't talked to Mr. Seibert in a while, I heard he was movin' to Kansas where he could run cows.

Lowe: Yes, several cows per acre, instead of a hundred acres per cow.

Reidhead: Yeah. Flakes used to run lots of cattle. They're down to just a trickle. This Milky Ranch run a lot of cattle, and that's been acquired by land investors, and just pretty well took off the map.

Lowe: So you were president of Cattle Growers, you said like in the late seventies.

Reidhead: Yeah.

Lowe: So their numbers are dwindling, I guess, in the county.

Reidhead: Well, most of the ol' boys who had ranches are dead, and their kids either didn't have it in their system--you gotta love it to do it--or else have some money siphoned in to you from somewhere. You know what I mean?

Here's another thing: I went along, I was in the cow business thirty-five years, and we used to deal in, oh, the cattle buyers come and offer you twenty-five cents, and if you could get him up to twenty-five and a quarter, you was a pretty good promoter--or he could get you down to twenty-four--six bits--he was a pretty good trader. Just dealt nickels and dimes, you see, kind of off a base price. And then come up, and it'd jump a little bit in the seventies, eighties--sixty cents was a good fair calf price. An old cow was worth twenty-five. And then about three years ago, this thing just doubled, see. So everybody's got a chance to get quite a bit of money out of a cow now, except there ain't nobody raisin' any cows to speak of.

Lowe: Yeah, that's the challenge all right. Okay, one last question area I had was about recreation.

Reidhead: About recreation, well, there never has been a hell of a lot here on this ranch--just hard work. But up on that permit, I think that's probably one of the biggest things wrong with the permit, if that's what you want to know.

[END TAPE 2005.111.16A, BEGIN TAPE 2005.111.16B]

Lowe: This is Tape B for the oral history interview project. I'm Norman Lowe doing the interviewing, and Doy Reidhead here is answering a few questions for us. So my next question was about your observations about changes in recreation over the years and what not. Were there any dude ranches around here where people from the valley would come up?

Reidhead: When I was a kid, there were a lot of dude ranches, but then they just disappeared--nobody willin' to put up with the dudes, I guess. I'm talkin' about people comin' from New York so green they could hide in the grass. But that's disappeared.

Lowe: That's kind of disappeared and what not?

Reidhead: About the fifties.

Lowe: But then the recreation started in [unclear].

Reidhead: Oh! the recreation started with the campers and hunters, and just people gettin' out of the valley, and reunions, and everybody wanted to go to a purdy place.

Lowe: Has that created problems with land management [unclear] ecological?

Reidhead: To a certain extent.

Lowe: They haven't really trashed the place too bad, huh?

Reidhead: Well, where they can get to, yeah! But they're limited as to what they can get to. But you take a beautiful campground, like Hart Canyon, and thousands of 'em on the forest, but the Forest Service keeps 'em cleaned up, and do pretty good. I'd say they're pretty much overused, but the Forest Service has done more to help on that end of it, than any other end.

Lowe: That's true. So you've seen a big change in the Forest Service's focus [from] when back in the forties they were focused on production and helping the producers.

Reidhead: Yeah, markin' timber.

Lowe: And very little of that now.

Lowe: Seein' about developin' water, interested in timber and cattle.

Mrs. Reidhead?: Well, the spotted owl is actually....

Reidhead: What the Apache-Sitgreaves produced--that's all they had to offer. That was the sole means of everybody's financial opportunities in this part of the state of Arizona, was the timber and the ranching. There wasn't no jobs, there wasn't no little bitty towns. And then people would raise gardens and milk cows--you know, just existed. We're talkin' about the complete turnover. And what turned this over is all this population explosion, and then the money change picture. Anybody can finance a car, everybody can get a credit card. Well, you can't pay the damned credit cards off, you never get the car paid for, but you paid it off before it gets [unclear] get another-un, and pay it off on the credit card to get another-un. I don't know how it works, but it works.

Lowe: Yes.

Reidhead: A great influence of people in that.... Let's take the town like Show Low. [It] was the poorest town that I ever seen. And now it's the richest town you ever seen, property values 300 percent higher, or 1,000 percent higher, and everybody can find a job. All kinda jobs. They got all these big schools to run. They got all the big-city jobs. Take the Holbrook area: get into [unclear] inside [unclear]. You don't want to hear this, but Holbrook's prit near a 100 percent government town. We've got the government of the state, we've got all these Indian deals here, we've got the college here. The State Highway [Department] got a big headquarters here. The county's got the sheriff's office, all the county offices. I mean, 90 percent of the people around here work for the government.

Lowe: Right. Originally, it was based on some production, agriculture and that, and it's really changed.

Reidhead: So that's how Holbrook's changed. Show Low and them, where the pine trees are, the old people that had the property--anybody that had the property has more money than they can spend now. It's a different world. I don't think the Forest Service is interested in sellin' any grass, or sellin' any timber. I think them days has come and gone. They've pretty well proved it.

Lowe: Do you think the Game and Fish is getting a handle on the elk situation?

Reidhead: They don't want a handle on the elk situation. They ain't never gonna have it.

Lowe: People love to come up here and hunt the elk?

Reidhead: I was readin' a little piece in the paper yesterday. Some guy that went around.... And that's a pretty exciting business. Some guys went around the Ft. Apache Indian Reservation, took pictures of lakes--prettiest place in the world, you know. As far as I'm concerned, the Ft. Apache Indian Reservation, they took God's best country and made the Ft. Apache Indian Reservation. But anyway, he made a little about the elk, a prize bull elk on the Apache Reservation is worth \$40,000.

Lowe: Wow. I'd heard from \$5,000 to \$10,000.

Reidhead: In that little write-up you can pay \$40,000, they'll give you two weeks and a guide, or two guides, and furnish everything. You bring your gun and yourself. They want \$40,000 for a trophy bull. That's what the write-up said. I've heard this [unclear]. That's how big the elk business is.

Lowe: Yeah, but they can market a product like that. But here you're not allowed to.

Reidhead: They're not allowed to, they're kind of goin' through the back door to do this. I've seen now they've come out with a lottery deal. You apply for a permit and buy a lottery ticket too. And then this lottery ticket gives you a chance to draw you an elk permit--another way to get some more money. They're underfinanced, I guess. But anyway....

Lowe: Yeah, a lot of demand for that. But it's a different set of rules on the reservation [unclear].

Reidhead: They're doin' their own deal--timber, everything. They pretty well took and made it completely tribal owned and controlled. In other words, there ain't no more brain trust down there that's not members of the tribe. Which is probably good. I think they're doin' a better job than we are.

Lowe: Yeah, very different situation. They're focusing, at least, on some of the resources, because they can harvest [unclear] people in it.

Reidhead: They've learned they might be cuttin' too much timber, and they might be growin' too many trees. They want some tourist dollars.

Lowe: You ever been involved much with the reservation? Have you gone over there, taken tours, or worked with any of those people?

Reidhead: No, I just know the people, know the country, logged a lot on it, yeah.

Lowe: Oh, you have done logging there?

Reidhead: Yeah, a lot of logging when they was in the timber-sellin' business, and then they put the big mill in at Whiteriver, Cibicue. See, my uncles and relatives all had to sawmill at Carrizo and Cibicue. My Uncle Ed, him and Old Man Cardon [phonetic] bought the first timber sale at Carlsdale [phonetic], and that was reservation timber, and built sawmills in Show Low, which is just five miles from the boundary. But then they had to guarantee to work 80 percent Apache people, see. That's the way it started.

Lowe: Okay. So your family's had heavy involvement in the timber and cow business.

Reidhead: Yeah. Due to me in the timber and workin' so many Apaches, I knew 'em and loved 'em, they're good people. Hard workers. You know, the time has completely changed where they don't--nobody needs to work anymore, I guess.

Lowe: Right, they've shifted away from agriculture too. I mean, the children and....

Reidhead: They found out that their scenery is worth more than their timber.

Lowe: Yeah, good point.

Reidhead: Everything you do down on that reservation, you pay. You buy a permit to camp, you buy a permit to fish. Everything pays. The forest is a little cheaper--this side is a little cheaper to have recreation in.

Lowe: Okay. Well, I've asked you the questions I had. Any final [unclear].

Reidhead: That do it?

Lowe: I think that'll do it for me.

Reidhead: Well, I've--closin' this thing out--I've rode horse probably as far as anybody could probably ride a horse, in the last thirty years--spent my life a-horseback, and I've enjoyed every minute of it. The only bright spot I got, I got a grandson that's just as crazy about the cow business as I was. He's a carbon copy. I can look back and I try to advise him to don't get too involved in this cow business, it'll break your heart.

Lowe: Yeah.

Reidhead: But through the years I've enjoyed it, it's been a good way of life. And I'm still satisfied with where I'm at today. I don't guess you could want any more, you know. I'm not able to look after big ranches no more--don't want to. Like I say, the romance is gone out of it.

Lowe: But you still have family involved. Well, that's good. All right, well, thank you for your time, and I guess that'll end the interview.

Reidhead: Well, I hope it don't completely flunk.

Lowe: No. No, it's good perspective. They have a form they'd like you to sign, [giving] your consent that we can tape this. And they have someone that transcribes it, writes out the words. And then there's a monologue or a book being done, of little short stories. So we'll take some information out of here, and then a photograph or so that you'll do, and it will be part of a chapter. And it may be like two pages or something per ranch. If that's all right, to do that in this book with other ranchers.... And people can also go on the Internet, on the Web, and they can pull up these interviews if they want to hear your voice and hear a little bit about what you're talking about, as well as the other twenty ranchers, and that NAU has the right to share this with the public, essentially, because it's a library.

Reidhead: Well, don't get me in a damned.... You can get in serious trouble, you know, with some of your words--especially these elk hunters.

Lowe: I don't think you've said anything that I haven't heard....

Mrs. Reidhead?: He didn't say anything about the spotted owl.

Lowe: Oh, yeah.

[END OF INTERVIEW]

▼ Item Description

Call number

NAU.OH.2005.111.16

Item number

107049

Creator

Reidhead, Doy (/digital/collection/cpa/search/searchterm/Reidhead%2C%20Doy/field/creato/mode/exact/conn/and)

Title

Oral history interview with Doy Reidhead [with transcript], April 3, 2006.

Date

2006

Type

MovingImage

Description

CONTENT: Mr. Reidhead discusses the history of the Doy Reidhead ranch. Specific topics of this interview include: cattle; sheep; wildlife; water; Holbrook and Showlow, AZ.; and significant snow storms.

Collection name

Ecological Oral Histories Course (MLS 599) (/digital/collection/cpa/search/searchterm/Ecological%20Oral%20Histories%20Course%20(MLS%20599)/field/relati/mode/exact/conn/and)

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Subjects

Ranches--Arizona (/digital/collection/cpa/search/searchterm/Ranches--Arizona/field/subjec/mode/exact/conn/and)

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Elk (/digital/collection/cpa/search/searchterm/Elk/field/subjec/mode/exact/conn/and)

Weather--Arizona (/digital/collection/cpa/search/searchterm/Weather--Arizona/field/subjec/mode/exact/conn/and)

Doy Reidhead Ranch (/digital/collection/cpa/search/searchterm/Doy%20Reidhead%20Ranch/field/subjec/mode/exact/conn/and)

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Places

Holbrook (Ariz.) (/digital/collection/cpa/search/searchterm/Holbrook%20
(Ariz.)/field/covera/mode/exact/conn/and)

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Master mimetype

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Master file format

avi

Master pixels horizontal

720

Master pixels vertical

480

Duration

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Master audio channel numbers

2

Master audio sampling rate

48000

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29.970

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The effects of immunocontraception on harem fidelity in a feral horse (*Equus caballus*) population

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ABSTRACT

Feral horses on Shackleford Banks Island, North Carolina, are managed by the National Park Service in order to reduce their impact on the fragile barrier island ecosystem. Management techniques include removal of young horses and immunocontraception of many of the mares using Porcine Zona Pellucida immunocontraceptive. This immunocontraceptive reduces the number of horses that need to be physically removed from the island, but there is concern that the contraception may be influencing the social behavior of the contracepted mares. We investigated the effect of immunocontraception on harem stability by tracking the number of harem changes of each adult mare through the breeding season over two seasons. In both seasons the mares that had been treated with the immunocontraceptive changed harems significantly more than mares never treated (2007 $P=0.037$ and 2008 $P=0.016$) and visited significantly more harems (2007 $P=0.021$ and 2008 $P=0.011$). The number of years treated did not have a significant effect on the number of harem changes (2007 $P=0.145$ and 2008 $P=0.848$), nor did the number of years a mare had been off contraceptive once the contraceptive was discontinued (2007 $P=0.443$ and 2008 $P=0.826$). Additionally, there was no significant difference in harem changes between mares that were actively contracepted and mares that had been treated in the past but were not currently actively contracepted (2007 $P=0.336$ and 2008 $P=0.533$). These results indicate that the PZP immunocontraceptive has a significant effect on harem stability and that once a mare has been contracepted the behavioral effect of the contraceptive treatment may not be readily reversed.

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1. Introduction

Feral horse populations are often considered to be a nuisance due to their competition with livestock and their effect on native habitats (Rubenstein, 2001). Although commonly associated with grassland habitats, feral horses also occur on barrier islands, where they have been shown to

have significant effects on native flora and fauna (Turner, 1969). De Stoppelaire et al. (2004) found that feral horse grazing had a significant negative impact on dune formation and contributes to dune erosion. Overgrazing of marsh areas may result in a loss of important nursery habitat for many marine species (Levin et al., 2002). Due to the impact of feral horse populations on the environment, populations are often actively managed to reduce population size through a variety of strategies, including selective removals, adoption programs, and fertility control (Rubenstein, 2001).

Feral horses generally associate in harems or bands consisting of up to three adult males, a group of adult females,

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and their offspring (Linklater et al., 2000; Rubenstein, 1981, 1986). Although these social groups are generally stable (Klingel, 1975; Linklater et al., 2000) several studies have documented harem changes by adult females (Blumenshine et al., 2002; Rubenstein, 1981; Stevens, 1990). Harem stability has been found to positively correlate with yearly (Rubenstein, 1986) and lifetime reproductive success in females (Kaseda et al., 1995), possibly because mares that are more stable are able to devote more time to grazing and thus are in better condition to support a foal (Rubenstein, 1986). Females that change harems less frequently are more likely to reproduce and produce foals that survive to independence than mares that change harems more frequently (Rubenstein and Nuñez, 2009). Linklater et al. (1999) proposed that stable relationships between females and a harem male or group of males serve to reduce intraspecific aggression and the resultant reproductive costs. Altering harem stability may therefore alter overall reproductive rate, effective population size, and patterns of genetic diversity critical to maintaining long term stable populations. Thus, successful management of feral horse populations requires an understanding of how management strategies may alter social structure.

Population management through contraceptive use may minimize disturbance to social structure by preventing reproduction without altering group size or composition (Garrott and Taylor, 1990). Porcine Zona Pelucida (PZP) immunocontraception has been proposed as a contraceptive agent because it can be administered remotely through the use of darts, is relatively inexpensive, and has been shown to be safe and effective in many animal species (Barber and Fayrer-Hosken, 2000; Martinez and Harris, 2000). Immunocontraception with PZP is also temporary, lasting approximately two years in horses when conventional dosing schedules are used (Powell and Monfort, 2001), although treatment for over seven years may not be reversible (Kirkpatrick and Turner, 2002).

However, the results of studies that have assessed PZP impact on social behavior in feral horses are inconsistent. In a study of Assateague Island horses, no impact on social behavior was noted (Kirkpatrick et al., 1995). Other studies have found no effect on aggression initiated or received, activity budgets of mares, sexual behavior, or proximity to stallions (Powell, 1999; Powell and Monfort, 2001). In contrast, Nuñez et al. (2009) documented an increase in harem changes, number of harems mares associated with, and reproductive behaviors in treated mares. This study was conducted over a span of five weeks, included a limited number of mares, and occurred during the non-breeding season (Nuñez et al., 2009). Given the potential impact of increased rate of harem change on individual fitness, additional study is clearly necessary to determine if there is a significant effect of PZP immunocontraception on harem changes.

In this study we investigated the effect of PZP immunocontraception on harem stability of the feral horse population on Shackleford Banks, North Carolina, USA, during the course of two breeding seasons. We examined the number of harem changes each mare on the island made and the number of harems each mare visited during

the course of the 2007 and 2008 breeding seasons. Every mare on the island was included in the analysis and data were collected over a period of several months each year. Given the previous work conducted by Nuñez et al. (2009), we hypothesized that contracepted mares would change harems significantly more often than control mares over both seasons and that contracepted mares would visit more harems than control mares. We also analyzed the effect of foaling status on harem changes, hypothesizing that mares that foaled during the survey year would change less than non-foaling mares.

We also attempted to relate the historical record of immunocontraception with the current patterns of harem changes. We examined the relationship between number of years contracepted, number of consecutive years contracepted, or number of years off contraception and harem changes. We predicted that harem changes would increase as the number of years contracepted increased and the number of consecutive years contracepted increased. Conversely, we predicted that the number of harem changes would decrease as the number of years off contraception increased. Finally, we examined the number of harem changes made by females that were actively contracepted in comparison to those that had been contracepted in the past, but were not currently contracepted. We predicted that actively contracepted mares would change harems more than mares with lapsed contraception.

2. Materials and methods

2.1. Study area

Shackleford Banks is a small barrier island located approximately 3 km off the coast of North Carolina, USA, in Cape Lookout National Seashore. The island is approximately 17 km long and 1 km wide with a variety of habitats including beach, swale, dunes, salt and freshwater marshes and maritime forest (Rubenstein, 1981). Individual horse bands are generally distributed along the entire island but individual harems occupy home ranges within a portion of the island. These home ranges can be grouped into far-east, mid-east, and western distributions. Each area contains at least one permanent water source, although digging may be necessary to access the water. Subjects in all areas of the island were observed for this study.

2.2. Study subjects

There are currently approximately 120 horses on the island. Most horses on the island are found in harems including one to two males and a group of mature females and their immature offspring. Several harems have an alpha stallion and a beta stallion. Over the course of the study, harem sizes ranged from a single male and a single female to two males, multiple females, and multiple offspring. Both sexes disperse from their natal harems as found in other feral horse populations (Feh, 1990). Territoriality has been reported on the island in the past (Rubenstein, 1981), but does not appear to exist currently. This change may be the result of reduced water sources in the eastern end of the island where territories were found. Harems and soli-

tary stallions tend to be found within the same general area of the island from season to season and year to year. There is some movement between areas, especially by dispersing juveniles, but most adult horses settle into one area of the island. There are exceptions – during a particularly dry summer several harems shifted areas or expanded their home range in order to access a better water source and there is more overlap between harems occupying the mid-east and far-east areas than between those in the mid-east and the west.

The minimum population of Shackleford horses is fixed by federal law at 100 horses (Prioli, 2007), and the National Park Service limits the population to approximately 130 individuals to reduce the potential for damage to the island ecosystem. The immunocontraception program was initiated in 2000 to reduce population size and control population growth (Nuñez et al., 2009). The contraceptive is administered by dart gun by the National Park Service between February and April every year. Each dose contains 100 µg of PZP mixed with 0.5 cm³ of either Freund's Complete Adjuvant, Modified, *Mycobacterium butyricum* (Calbiochem, Gibbstown, NJ, USA, #344289) for initial doses, or Freund's Incomplete Adjuvant (Sigma, St. Louis, MO, USA, #F5506) for subsequent doses (S. Stuska, personal communication; Nuñez et al., 2009). Booster doses are administered at least 14 days after the initial dose. At the initiation of the program eight mares were chosen as controls, chosen from eight distinct genetic lineages present on the island. These controls have never been contracepted. One additional control was added in 2007 in order to increase the age variation in controls and is included in the data analyzed for 2007, but died before the breeding season in 2008.

We observed harem affiliations for every mare on the island. Only mares that had dispersed from their natal harems were included in the analysis: nine controls and 55 contracepted mares in 2007 and eight control mares and 57 contracepted mares in 2008. The contracepted mares consisted of any mare that had ever been treated with the contraceptive, regardless of whether they had been treated in the previous year. We included all mares ever contracepted as there is some evidence that the contraceptive effect may last longer than one year (Powell and Monfort, 2001) and it is important to determine if contraception at any point changes the mare's subsequent behavior.

2.3. Behavioral sampling

The study was conducted by multiple observers supervised and trained by the primary investigator (J M). All observations were collected during the breeding season. Observations were collected between May 22nd, 2007 and July 29th, 2007 and between May 22nd, 2008 and August 12th, 2008, totaling 2965 total sightings in 2007 and 2985 total sightings in 2008. A sighting was defined as an independent positive identification of a mare and her harem association. Each observer recorded initial sightings upon identifying individuals. Unless a mare changed harems more than 20 min after the initial sighting no additional sightings were recorded of the harem by that observer unless the harem was independently identified at a later

point in the day. If two observers identified the same individuals within 20 min only one identification was included in the sightings count. Harem changes were recorded regardless of their timing during the observation session. Individual horses were identified by freeze brand, distinctive markings on the face and body, color, and sex.

Harems were located an average of five times a week during 2007 and approximately four times a week during 2008. Each mare was sighted an average of 46.3 times in 2007 (S.E. 1.70) and 45.9 times in 2008 (S.E. 1.64), or approximately every 1.2 days (2007) and every 1.6 days (2008). After examining the standardized Z score, no individuals were found to be outliers, and there was no correlation between the number of sightings and harem changes for either year (2007 $P=1.82$ and 2008 $P=0.502$). Each time a harem was located the harem members were all individually identified and the composition was recorded along with the GPS location of the harem. The number of harem changes for each mare on the island was quantified as a change from one harem to another over successive sightings. All sightings from all observers were compiled for each season and each move from one harem to another was counted. Absence from a harem without a sighting in a different harem was not counted as a harem change as in some rare cases mares were found without a harem stallion. The number of harems a mare visited was quantified as the number of harems a mare was affiliated with over a given season.

2.4. Statistical analysis

We analyzed the effect of contraception on the mean number of harem changes per individual per season using Mann–Whitney U tests. The Mann–Whitney U test was selected given the non-normality of the data and the large difference in sample size between the control (nine in 2007, eight in 2008) and contracepted (55 in both years) mares, which may cause problems when using t -tests (Zar, 1999). One-tailed tests were used as we predicted that contracepted mares would change harems significantly more than control mares given the previous work by Nuñez et al. (2009). Effect size provides a measure of the strength of the relationship between the variables and was calculated using G-power (Faul et al., 2007) for a one-tailed t -test, which provides a reasonably equivalent estimate for the Mann–Whitney U analysis (Zar, 1999). Data were analyzed independently for each year and statistical outliers (one per year) were eliminated from the analysis. In this study both statistical outliers were contracepted mares that changed harems repeatedly over the season. Eliminating the outlier in each year made the analysis more conservative.

We examined the effect of age on harem changes using nonparametric correlation (Spearman's rho) between age on June 1st of the survey year and number of harem changes during that survey season. We ran Mann–Whitney U tests to determine if the average age differed between control and contracepted females. We also ran Kruskal–Wallis tests to determine if mares that foaled during a given survey year changed harems less than mares that did not foal based on their contraceptive status. All mares that foaled during the survey year (not just during the data collection season)

were included as mares that foaled even if the foal did not survive. The mares eliminated as statistical outliers for earlier analyses were also eliminated from the age and foaling analyses.

To investigate the impact of historical contraception patterns on current behavior, we analyzed the effect of total number of years contracepted, number of years contracepted consecutively with the survey year, total number of years ever consecutively contracepted, and number of years off contraception prior to the survey year on harem changes using Kruskal–Wallis tests. Our assessment of contracepted status in a given year was based on National Park Service records, and included only contraception attempts deemed successful (solid hit with the dart and immunocontraceptive solution ejected from the dart) were included. We analyzed the effect of active versus lapsed contraception on harem changes using Mann–Whitney *U* tests. Mares were considered to be actively contracepted if contraception had been administered in the past two years (Powell and Monfort, 2001). Again, data were analyzed independently for each year and statistical outliers were eliminated from the analysis. All analyses were conducted in SPSS 15 (SPSS Inc., 2006).

3. Results

3.1. Immunocontraception and harem changes

During 2007, there were nine controls and 55 contracepted mares; of the contracepted mares 25 received PZP in the previous year and 20 had not. Sixty-six percent of mares changed harems at least once over the season, with most changing harems multiple times. One individual mare changed harems 26 times over the course of the field season (the outlier in 2007 – a contracepted mare). Additionally, 70.9% of contracepted mares (39 of 55) changed harems at least once while 33.3% of control mares (three of nine) changed harems. Contracepted mares changed harems significantly more than control mares (Mann–Whitney $U=157.00$, one-tailed $P=0.0415$, effect size (d)=0.61). The mean number of harem changes for contracepted mares was 3.62 ± 0.606 S.E., while the mean number of harem changes for uncontracepted mares was only 1.44 ± 0.766 S.E. (Fig. 1). Contracepted mares also visited more harems than control mares (Mann–Whitney $U=145.5$, one-tailed $P=0.021$, effect size (d)=0.80). The mean number of harems visited for contracepted mares was 2.73 ± 0.213 S.E., while the mean number of harems visited for control mares was 1.67 ± 0.333 S.E.

During 2008, there were eight controls and 55 contracepted mares; 20 contracepted mares had received PZP in the previous year and 37 had not. Seventy-three percent of mares changed harem at least once, with a maximum of 27 harem changes (the outlier for 2008 – a different contracepted mare). In 2008, 77.2% of contracepted mares (44 of 57) changed harems at least once while only 50% of control mares (four of eight) changed harems. Again, contracepted mares changed harems significantly more frequently than control mares (Mann–Whitney $u=124.5$, one-tailed $P=0.0205$, effect size (d)=0.92). In 2008, the mean number of harem changes for contracepted mares

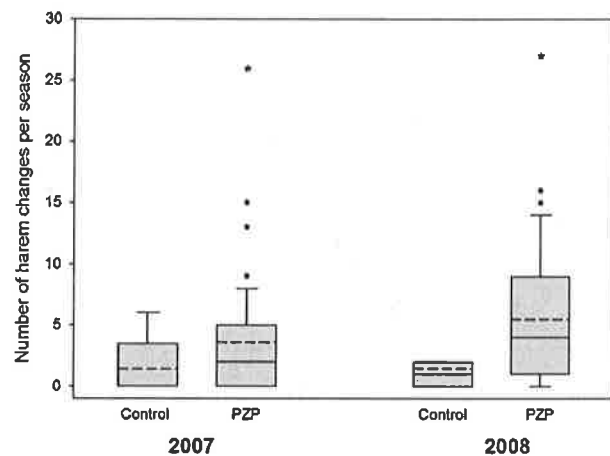


Fig. 1. Box plot showing the number of harem changes by contraceptive status for both 2007 and 2008 with median (solid line), mean (dashed line), and statistical outlier (asterisk). The statistical outlier is presented, but not included in analysis.

was 5.47 ± 0.758 S.E., while the mean number of harem changes for control mares was only 1.50 ± 0.732 S.E. (Fig. 1). Contracepted mares visited more harems than control mares (Mann–Whitney $U=115$, one-tailed $P=0.011$, effect size (d)=1.10). The mean number of harems visited for contracepted mares was 3.05 ± 0.222 S.E., while the mean number of harems visited for control mares was 1.63 ± 0.263 S.E.

3.2. Age and harem changes

Age of the mare was not found to correlate with harem changes in either year (2007 $\rho=-0.073$ (61), $P=0.569$, 2008 $\rho=-0.023$ (62), $P=0.854$). Additionally, average age was not significantly different between contracepted mares and control mares (2007 Mann–Whitney $U=200.5$, $P=0.403$, 2008 Mann–Whitney $U=139$, $P=0.084$).

3.3. Foaling and harem changes

In 2007, six control mares foaled and four non-control mares foaled; two non-controls had been off PZP for at least a year while two others had been contracepted the previous year. In 2008, seven control mares foaled and eight non-control mares foaled; again two mares contracepted the previous year foaled. In 2007, the 92% of treated mares did not foal while in 2008 90% of treated mares did not foal. There was a significant difference in the number of harem changes between mares that foaled and those that did not foal in 2008 (Mann–Whitney $U=240.5$, $P=0.042$) and a borderline significant difference in 2007 (Mann–Whitney $U=165.0$, $P=0.054$). In both cases mares with a foal changed harems less than mares without a foal. There was no significant difference in the number of harem changes between mares that were previously contracepted and foaled, mares that were controls and foaled, and mares that did not foal (Kruskal–Wallis 2007 $P=0.120$, $df=2$; 2008 $P=0.112$, $df=2$), but in both years mares that had previously been contracepted and foaled changed harems less

than contracepted mares without foals and more than control mares with foals.

3.4. Prevalence of harem changing

The distribution of harem changes each season significantly differed from the Poisson distribution (2007: Chi-square = 269.11, $df = 10$, $P < 0.001$; 2008: Chi-square = 761.15, $df = 10$, $P < 0.001$) suggesting that harem changes are not random. In general, there were more mares at the extremes and fewer mares in the center of the distribution than expected in a Poisson distribution. Prior to the immunocontraception program only 10.8% of mares changed harems in the same study area (Rubenstein, 1981) as opposed to the 66% and 73% found over the two seasons of this study. This difference was significant for both years (2007: Chi-square = 316.293, $df = 1$, $P < 0.001$; 2008: Chi-square = 401.599, $df = 1$, $P < 0.001$). In 2007, 94% of harems experienced at least one mare changing into or out of the harem and in 2008 97% of harems were affected by the harem changes.

3.5. Historical PZP treatment and harem changes

The number of years treated with PZP did not have a significant effect on the number of harem changes (Kruskal–Wallis 2007 $P = 0.199$, $df = 6$; 2008 $P = 0.871$, $df = 7$), nor did the number of years a mare had been off contraceptive after it had been discontinued (Kruskal–Wallis 2007 $P = 0.310$, $df = 4$; 2008 $P = 0.823$, $df = 5$). The number of years a mare had been treated consecutively with the survey year did not have a significant effect (Kruskal–Wallis 2007 $P = 0.273$, $df = 7$; 2008 $P = 0.093$, $df = 4$), nor did the maximum number of years a mare had ever been consecutively treated (Kruskal–Wallis 2007 $P = 0.782$, $df = 6$; 2008 $P = 0.889$, $df = 6$). There was no significant difference in harem changes between mares that were actively contracepted and mares that had been contracepted in the past but were not currently actively contracepted (2007 Mann–Whitney $U = 275.0$, $P = 0.196$, 2008 Mann–Whitney $U = 365.0$, $P = 0.751$).

4. Discussion

It is important in any management program to reduce the impacts of the management on the natural behavior of the population, though the importance of preserving behavior is often overlooked (Clemmons and Buchholz, 1997). In a highly social species such as feral horses it is critical to ensure that management strategies do not negatively impact social behavior. The results of this study indicate that the PZP immunocontraceptive used to control population numbers on Shackleford Banks Island has a significant negative effect on harem stability and that this behavioral effect is more persistent than the physiological contraceptive effect documented in previous studies (Powell and Monfort, 2001). This study demonstrates that the negative effect of the PZP immunocontraception on harem stability during the non-breeding season (Nuñez et al., 2009) was also present in the breeding season and that age was not related to number of harem changes in a

given season. The significant increase in the historic rate of harem changes (from approximately 10% to approximately 66 and 73%) indicates that the overall rate of harem changes has increased since the immunocontraceptive program was initiated. Additionally, the high percentage of harems affected by harem changes indicates that the change in stable social structure after PZP immunocontraception affects the entire population, not just the mares contracepted.

Although the control sample size in this study was necessarily small due to management concerns, the replication of these results over two breeding seasons increases our confidence in the significance of differences in harem changes between contracepted and control mares. Given that mares stayed in the same general area, they frequently revisited the same harem several times during the season. The average number of harems visited for all mares was 2.58 in 2007 and 2.88 in 2008. Contracepted mares visited more harems than control mares in both years. It is important to note that some mares changed harems several times over the course of a week or even a day. High temporal resolution is critical to insure that these rapid harem changes between small numbers of harems are documented.

4.1. Impacts of historical contraceptive treatment

The fact that the number of harem changes did not differ among mares contracepted for different numbers of years, or different numbers of consecutive years, suggests that any exposure to PZP contraception may alter female behavior in fundamental ways. Additional years of contraception did not result in a higher number of harem changes, indicating that contracepting for multiple years does not decrease social stability further. However, increasing the number of years between contraception did not mitigate the behavioral effect of the contraception as expected. Surprisingly, mares that were not currently contracepted but had been in the past did not change harems less than mares that were actively contracepted. These analyses indicate that contraception schedule does not seem to mitigate the behavioral effects of the contraception and that the behavioral effects of the PZP contraception may persist long after the contraceptive should no longer be physiologically effective.

4.2. Influence of foals on harem fidelity

As seen in the non-breeding season (Nuñez et al., 2009), mares that had foals changed harems less than mares without a foal, regardless of their contraceptive status. The presence of a foal may increase mare fidelity. Unfortunately, it is difficult to separate the effect of the contraceptive itself from the result of the contraceptive – a lack of foals. If the presence of a foal is a driver of harem fidelity all contraceptive strategies may reduce social stability. Although not significantly different, the pattern of harem changes suggests that previously contracepted mares with foals may change more than controls with foals, but less than contracepted mares without foals suggesting that the contraceptive may have an effect beyond the presence of a foal. The failure to find a significant difference in this com-

parison may be due to low sample size. Further studies should be conducted with higher sample size to determine if contracepted mares with foals change harems at the same rate as control mares with foals.

It is possible that foaling returns mares to pre-contraceptive behavior – the sample size of this study was simply too low to conclusively answer this question. Relatively few mares that had been previously contracepted, but were not currently contracepted, foaled in either year – two out of 30 in 2007 and six out of 37 in 2008. Further studies should be conducted to determine if contracepted mares cease changing harems the season after they are reproductively successful or if they continue to change harems at a higher rate than mares that are never treated.

4.3. Potential motivations for harem infidelity

While it is clear that PZP immunocontraception causes a decrease in harem fidelity in this population regardless of season, it is unclear if this decrease is due to male or female choice. Males have been shown to discriminate between females based on female reproductive success in many taxa (Berglund et al., 1986; Berven, 1981; Johnson and Hubbell, 1984; Jones et al., 2001; Szykman et al., 2001; Verrell, 1985). This male choice may result in males defending reproductively successful mares (as evidenced by their foals) more than contracepted mares, allowing contracepted mares to change harems more often due to reduced male attentiveness. Previous studies found increased herding of mares with foals, but no difference in harem tending behaviors between currently contracepted mares and controls (Ransom et al., 2010). Alternatively, continuous cycling may lead to increased breeding attempts (Ransom et al., 2010) and male harassment of contracepted females. Contracepted females may elect to change harems more frequently to escape harassment or in an attempt to become pregnant. Future work aimed at distinguishing between male and female choice would be of particular interest.

4.4. Fitness impacts of decreased harem stability

Finally, the pervasive pattern of decreased harem stability may affect individual fitness of both males and females. In feral horses the breeding season corresponds to the foaling season (McCort, 1984) and thus a decrease in harem stability may lead to decreased grazing time while caloric demands on lactating mares are highest (Pagan, 1998; Pilliner, 1999) and decreased body condition even among mares that do not change harems. Ransom et al. (2010) found no difference in grazing time between treatment groups, but did not consider the overall effect of decreased harem stability on grazing. With decreased social stability, males may be required to spend more time guarding their harem to prevent harem changes. This increase in time spend guarding harems may lead to reduced time grazing and result in lowered body condition for the harem stallions. Future work will test if body condition of males

or females has decreased since the implementation of the immunocontraception program.

4.5. Management implications

The contraception of the majority of adult females on the island may have substantially changed the social structure of the population, and it is unclear if contracepted mares will ever return to pre-contraception social stability. Immunocontraception using PZP offers many potential benefits, but managers should also consider the potential impacts PZP may have on social structure and stability. One of the key benefits of PZP immunocontraception is the temporary nature of the contraceptive affect. However, even if mares can be physiologically restored to reproductive condition; their continuing propensity to move may reduce their subsequent fitness and complicate management. The persistent behavioral effects are not reduced by manipulating the number of years treated with PZP, so reducing these behavioral effects may not be possible.

Given that PZP immunocontraceptive is administered to a wide variety of species including deer, African elephants, feral water buffalo, feral burros, elk and more than 95 species of zoo animals (ZooMontana, 2000), it is critical to further examine the behavioral effects the contraception may have on other species. Although immunocontraception does not have some of the potential physiological effects of steroidal contraceptives and while behavioral effects may vary with different social systems present in different species, this study indicates that social behavior can be changed by PZP immunocontraception. If, as is known in horses, social behavior affects reproductive success, population management may be complicated by lingering changes in social dynamics. Managers of other species treated with PZP should be cautious in assuming that PZP immunocontraception ameliorates the behavioral effects of other types of contraception.

5. Conclusions

This study, combined with previous work, demonstrates that there is a significant effect of PZP contraception on behavior in feral horses. Contracepted mares changed harems significantly more often than control mares. Further, a high percentage of mares change harems over the course of each season, indicating that this change is affecting the entire population. The duration of contraception does not have an effect on harem changes, nor does the duration of time off contraception reduce harem changes. Mare behavior is altered after contraception and this alteration appears to be long-lived. Given the pervasive behavioral effect of the PZP immunocontraception and the duration of this behavioral effect, it is especially important to investigate the potential costs of the reduction in harem stability to both sexes regardless of the direct effect of the contraceptive.

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Immunocontraception in Wild Horses (*Equus caballus*) Extends Reproductive Cycling Beyond the Normal Breeding Season

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Abstract

Background

Although the physiological effects of immunocontraceptive treatment with porcine zona pellucida (PZP) have been well studied, little is known about PZP's effects on the scheduling of reproductive cycling. Recent behavioral research has suggested that recipients of PZP extend the receptive breeding period into what is normally the non-breeding season.

Methodology/Principal Findings

To determine if this is the case, we compiled foaling data from wild horses (*Equus caballus*) living on Shackleford Banks, North Carolina for 4 years pre- and 8 years post-contraception management with PZP (pre-contraception, n=65 births from 45 mares; post-contraception, n=97 births from 46 mares). Gestation lasts approximately 11–12 months in wild horses, placing conception at approximately 11.5 months prior to birth. Since the contraception program began in January 2000, foaling has occurred over a significantly broader range than it had before the contraception program. Foaling in PZP recipients (n=45 births from 27 mares) has consistently occurred over a broader range than has foaling in non-recipients (n=52 births from 19 mares). In addition, current recipients of PZP foaled later in the year than did prior recipient and non-recipient mares. Females receiving more consecutive PZP applications gave birth later in the season than did females receiving fewer applications. Finally, the efficacy of PZP declined with increasing consecutive applications before reaching 100% after five consecutive applications.

Conclusions/Significance

For a gregarious species such as the horse, the extension of reproductive cycling into the fall months has important social consequences, including decreased group stability and the extension of male reproductive behavior. In addition, reproductive cycling into the fall months could have long-term effects on foal survivorship. Managers should consider these factors before enacting immunocontraceptive programs in new populations. We suggest minor alterations to management strategies to help alleviate such unintended effects in new populations.

Introduction

The extirpation of predator species has resulted in the expansion of free-ranging ungulate populations in North America [1], necessitating their regulation. Immunocontraceptive management has become increasingly popular as culling programs are seldom well-received by the general public. In females, the most common form of immunocontraception, porcine zona pellucida (PZP), stimulates the production of antibodies that bind sperm receptors on the egg's surface, thereby preventing sperm attachment and fertilization [2].

In recent decades, the wild horse (*Equus caballus*) has become a model for evaluating the effects of PZP, thanks chiefly to the seminal nine-year study of contracepted mares on Assateague Island National Seashore [3]. Subsequent research on this population has shown that PZP has little to no effect on recipient physiology or behavior [4], [5], [6]. For example, in Assateague horses, PZP has no effect on the duration of individual estrous cycles [6], and researchers have reported only minor ovulation failure and depressed urinary oestrogen concentrations with repeated applications [4]. However, behavioral research on the horses of Shackleford Banks, North Carolina, and other wild ungulate species suggests that PZP affects the reproductive physiology of recipient animals [7], [8], [9]. In each of these studies, females treated with PZP extended reproductive behaviors into the non-breeding season. While these results are consistent with an extension of ovulatory cycling into the post-breeding season when most females are normally anovulatory [10], [11], this possibility has not yet been tested.

Mares are seasonally polyestrous and extended estrous periods have been documented [11]. Tropical species, for example, are less strictly seasonal, and in some cases, reproduce throughout the year [12], [13]. In addition, variability in the cycling schedules and receptivity of individual mares [14], and the performance of estrous behavior and copulatory activities during the non-breeding season [15] have been documented in temperate species. Such variation in ovulatory scheduling and receptivity suggest that the seasonality of reproductive behavior in *Equus caballus* females is characterized by a substantial degree of plasticity. As the physiological state of contracepted animals has been significantly altered, the possibility of prolonged extended cycling is even more feasible.

In wild horse societies, the harem is the core social group, consisting of usually one, but sometimes two or three harem male(s), one to several female(s), and their offspring [16], [17], [18], [19], [20], [21]. Harem males will sometimes fight to acquire mares from other groups, but stallions almost always retain their mares [18], [19], [20], [22]. In temperate environments, food availability is lower during the fall and winter months and free-ranging horses will alter their activity to maximize food intake and reduce energetic costs [23], [24]. Mares are typically anovulatory at this time and sexual behavior in males is largely absent [11], [14].

On Shackleford Banks, increased reproductive behavior in the post-breeding season by mares has resulted in increased male attentiveness [9]. Such behavior (by males) has been shown to restrict the movement of females, thus reducing their grazing efficiency [21], [25]. The occurrence of this behavior during a time of year when animals typically increase group spread to acquire adequate forage [19], [24], represents a change in behavior fundamental to the animals' survival [26], [27]. Offspring

conceived during the post-breeding season are likely subject to decreased resource availability as lower quality forage can affect mares' ability to produce sufficient milk [27]. Finally, regardless of the timing of titer decline post-treatment [9], [28], [58], when anti-PZP antibody titers decrease during the fall months [28], [29], extended reproductive cycling among recipient mares will increase their chances of conception, thereby lowering the vaccine's overall efficacy. Determining whether PZP recipients are likely to extend reproductive cycling is therefore of great importance if managers are to limit animal numbers while still maintaining functional, healthy populations.

Here we use the birth dates of foals to estimate dates of conception for PZP recipient and non-recipient mares on Shackleford Banks, North Carolina. Gestation length in wild horses is 11–12 months [30]. Therefore, dates of conception can be reliably estimated as approximately 11.5 months prior to birth. Breeding normally occurs from March through August, with most births occurring in April and May [11]. Given the extension of reproductive behavior in PZP-treated mares [9], we hypothesize that PZP recipients will extend cycling into the non-breeding season more often than will non-recipients. Therefore, when PZP recipients conceive and give birth, they will do so later on average and over a wider range of months than will non-recipients.

Methods

Study area

This study was conducted on Shackleford Banks, a barrier island located approximately 3 km off the coast of North Carolina, USA. The island was 15 km in length, and varied between 0.5 and 3 km in width. The horse population on Shackleford Banks has been co-managed by the National Park Service and the Foundation for Shackleford Horses since 1996.

Study subjects

The reproductive units of Shackleford horses are typical of feral equids. They are coherent harem groups of one, or sometimes two or three stallion(s), one to several mare(s) and their offspring [18]. Predominantly, the harem groups are not territorial and animals move within overlapping home ranges, although this has not always been the case [18].

Management

PZP Contraception In January 2000, the National Park Service began the application of PZP for the purposes of immunocontraception. The National Park Service administers PZP in the spring (late February through April) each year. Mares receive their initial treatment at 1.5–2 years of age. Each injection includes 100 micrograms of PZP with an adjuvant (combined at the darting site). Initial doses include Freund's Complete Adjuvant, Modified, *Mycobacterium butyricum* (Calbiochem #344289). All succeeding doses include Freund's Incomplete Adjuvant (Sigma #F5506). In a given year, an average of 63% of all reproductive mares are inoculated with the vaccine (range=37–88%). The authors of the present study are not and have never been in charge of making management decisions regarding this herd.

Gathers and Removals The National Park Service began their management of the Shackleford Banks population prior to the use of PZP, performing five gathers between November 1996 and January 2000. During these gathers the majority of the population was rounded up and individuals testing positive for equine infectious anemia were removed and either euthanized or quarantined. As such forms of management could conceivably influence reproductive cycling, we analyzed foaling dates before and after gathers (but before contraception management) using a linear mixed effects model (see Statistical Analyses).

From January 2000 – January 2008, 38 foals (conceived due to contraception failure or administration scheduling) were removed from the island for the purpose of population control. The majority of removals (92%) were conducted in the January following the foals' birth.

Foaling Data

We recorded foaling data before contraception management (1995–1997) during a study of mother-infant behavior [31]. We obtained foaling data for 2000 and post-contraception years (2001–2008) from the National Park Service at Cape Lookout National Seashore, North Carolina. Although PZP was first administered in 2000, foals born in this year were conceived before contraception management. As such, we considered 2000 a pre-contraception year.

We identified individual horses by color, sex, age, physical condition, and other distinguishing markings including freeze brands. We monitored pregnant mares 2–3 times per week to ensure accurate estimation of foaling date. Births are not commonly witnessed, as mares will generally give birth away from their harem group [31]. This does not significantly affect the determination of birth dates because typically, mares return to their groups within hours (depending on the length of the foaling process and the mares' and foals' condition afterward). In the event that we did not locate mares for more than one week, the birth dates of new foals were estimated by comparing the condition of the foals' coat, mane and tail hair, and locomotor ability to that of foals for which the exact age was known. Using these methods, we were able to estimate birthdays within a range of 1–2 days to 1 week. Focal animals in this study were observed from a minimum of 15 m away at all times. The observers did not obstruct or manipulate the animals' natural behavior in any way. As such, approval for this study by a review board or ethics committee was unnecessary.

We designated births as coming from current recipient, prior recipient, or non-recipient mares. Current recipients received PZP treatment the year they conceived (the year previous to foaling). Prior recipients received PZP treatment at some point earlier in their lifetime, but not the year of conception. Non-recipients had never received PZP at the time of conception.

Physical Condition

Physical condition is an important factor to consider when monitoring reproductive behaviors. Animals in better condition will have more resources to allocate to mating behavior and physiology than will animals in poorer condition. We assessed mare condition via rump scoring. We determined rump scores examining the curvature of the line between the tailbone and the point of the hip. Scores were based on a scale from 1 to 5; a score of 1 being the poorest [32].

Weather Data

We collected all climatology data from the Morehead City WNW Station at 34° 44'N; 76° 44'W, approximately 8 km from the study site. We obtained all data from the National Climate Data Center (2009) [33].

Statistical Analyses

We analyzed data in R version 2.11.1 (R Core Group, Vienna Austria) and JMP, version 7 (SAS, Cary NC, USA). We used Fligner-Killeen tests to determine if variation in foaling dates differed before and after contraception management and between PZP recipients and non-recipients. This test is more conservative than Fisher's or Bartlett's tests and is less sensitive to outliers and non-normal data [34]. Results from these tests show Bonferroni corrected *P*-values.

We used linear mixed effects models to analyze monthly weather patterns. These statistical models included year as a random effect and the following fixed effects: linear through fourth order polynomial functions of month (to account for nonlinear fluctuations in temperature and rainfall), management regime (before or after contraception management), and two-way interactions with management regime. We selected best fit models using Akaike's Information Criterion adjusted for small sample size (AICc). Because temperature data were temporally autocorrelated, we included an autoregressive moving average correlation structure [35]. For each year of the study, we calculated the mean of the monthly residual values from both the rainfall and temperature models from July through November. We included these terms in the mixed effects models described below to determine if weather affected foaling date.

To test for differences in foaling date with PZP treatment, while controlling for pseudo-replication and unequal variances, we used a linear mixed effects model. The model included mare ID as a random effect and a function allowing different variances across groups (pre-contraception management, post-contraception management non-recipient, post-contraception management current recipient, and post-contraception management prior recipient) [35]. We included mare age as a covariate, as this has been suggested to influence female reproductive behaviors and physiology [36], [37]. Additionally, a one-way ANOVA revealed no differences in mare age among treatment groups ($F_{2,84}=2.03$, $P=0.14$), suggesting that age did not confound differences among groups. From the above mixed effects model, differences in foaling dates among current, prior, and non-recipients were calculated using an F-test for linear combinations [35].

As gathers could have affected foaling date, we used a linear mixed effects model to test for differences between foaling dates before and after gathers (but before contraception management). After controlling for weather and mare age, mean foaling date did not differ before and after gathers ($P=0.63$). Additionally, the range of birth dates did not differ significantly between these groups (SD before gathers = 1.04, SD after gathers = 0.77, $P=0.36$). Finally, AICc from our analysis of foaling dates (see [Results](#)) suggested that combining data before and after gathers yielded a more parsimonious model than did separating those categories (AICc separating pre- and post-gathers = 551.02, AICc combining pre- and post-gathers = 550.60). Consequently these groups were combined as pre-contraception management animals for all analyses.

To determine whether the number of PZP applications (total or consecutive) or the number of years between pregnancies (total or consecutive) influenced foaling date, we ran separate linear mixed effects models using these as predictor variables. Each model used only data from PZP recipients and included mare ID as a random effect. To determine if results from this analysis could be influenced by year, we ran a linear mixed effects model on post-management, non-recipients predicting foaling date by year.

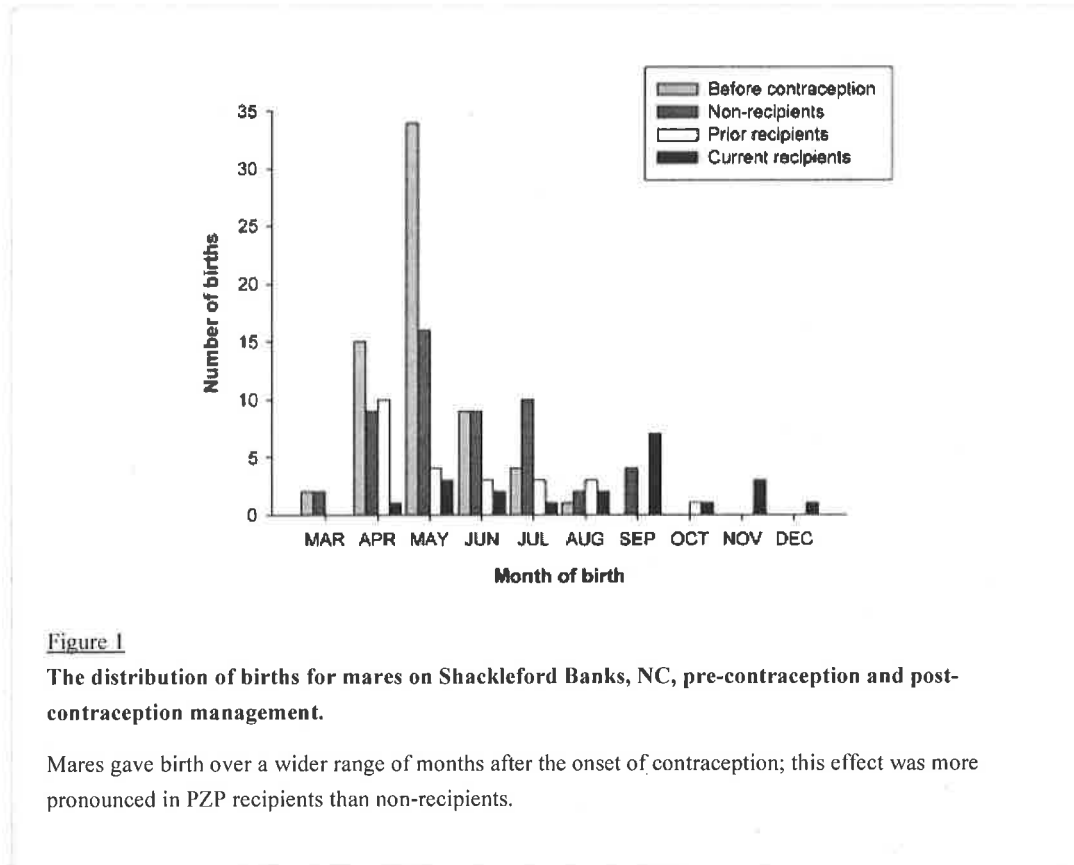
We analyzed PZP efficacy using a generalized linear mixed effects model with a binomial error distribution and mare ID as a random effect [38]. This analyzed the probability of conceiving using age at first PZP application and the number of consecutive PZP applications as fixed effects. All mixed effects models initially included two-way interactions, which were removed if their P -values were >0.10 .

Results

Foaling

After contraception management, foaling occurred over a broader range of months than before contraception management (see [Fig. 1](#), SD pre-contraception = 0.91 months, SD post-contraception = 2.04 months; Fligner-Killeen Test for Homogeneity of Variances: Median Chi Square = 28.10, $P<0.0001$; pre-contraception: $n=65$ births from 45 mares over 4 years; post-contraception: $n=97$ births

from 46 mares, over 8 years). In the eight years following contraception management, mares receiving PZP foaled over a broader range of months than did non-recipient mares (see Fig. 1, SD recipients = 2.40 months, SD non-recipients = 1.54 months; Fligner-Killeen Test for Homogeneity of Variances: Median Chi Square = 11.76, $P=0.001$; recipients: $n=45$ births from 27 mares; non-recipients: $n=52$ births from 19 mares).



On average, current PZP recipients gave birth 3.36 months later than did pre-contraception mares, according to our linear mixed effects model, which controlled for heterogeneity of variances, weather influences, and mare age (estimate=3.36, SE=0.51, $t=6.64$, $P<0.001$; overall model: Likelihood ratio (compared to null model): 40.79, generalized $r^2=0.48$, $P<0.001$). Mares that had received PZP earlier in their lifetime, but not during the year of conception (prior recipients), gave birth 0.90 months later than pre-contraception mares on average (estimate=0.90, SE=0.40, $t=2.27$, $P=0.03$). Non-recipient mares that never received PZP themselves, but gave birth after the general population was managed with PZP, gave birth 1.01 months later than pre-contraception mares on average (estimate=1.01, SE=0.25, $t=4.04$, $P=0.001$). This translates into current PZP recipients giving birth 2.34 months later than non-recipient animals and 2.46 months later than prior recipients (F-tests for linear combinations: $F>16$, $P<0.001$ for each comparison). Furthermore, birth dates were about 0.38 months later for each degree centigrade above average in the latter half of the breeding season and 0.05 months later for each centimeter of rain above average (temperature residuals July-Nov: estimate=0.38, SE=0.13, $t=2.84$, $P=0.001$; rainfall residuals July-Nov: estimate=0.05, SE=0.03, $t=1.83$, $P=0.07$). In general, mares gave birth 0.05 months earlier for every year of age (estimate=-0.05, SE=0.02, $t=-2.03$, $P=0.05$).

Among mares treated with PZP, those receiving a higher total number of applications foaled later in the season than did those receiving fewer applications, with each additional application associated with a 0.5 month delay in foaling date (Linear Mixed Effects Model: estimate=0.55, SE=0.21, $t=2.61$, $r^2=0.65$, $P=0.01$, see [Fig. 2A](#)). In addition, each consecutive PZP application was associated with a 0.8 month delay in foaling date, on average (Linear Mixed Effects Model: estimate=0.83, SE=0.23, $t=3.64$, $r^2=0.65$, $P<0.0008$, see [Fig. 2B](#)). While the consecutive and total number of PZP applications were highly correlated, comparing the AICc between the prior two models suggested that the number of consecutive PZP treatments more accurately predicted month of birth than did the total number of PZP treatments (AICc total=202.96, AICc consecutive=196.83). The number of years that mares did not conceive (total or consecutive), however, did not correlate with foaling date (Linear Mixed Effects Model: total years: estimate=0.31, SE=0.26, $t=1.19$, $r^2=0.57$, $P=0.24$; consecutive years: estimate=0.26, SE=0.28, $t=0.92$, $r^2=0.44$, $P=0.36$). It is unlikely that these patterns resulted from a general trend across years, as birth dates among non-recipient animals did not change with calendar year (Linear Mixed Effects Model: $r^2=0.17$, estimate=0.05, SE=0.09, $t=0.57$, $P=0.57$).

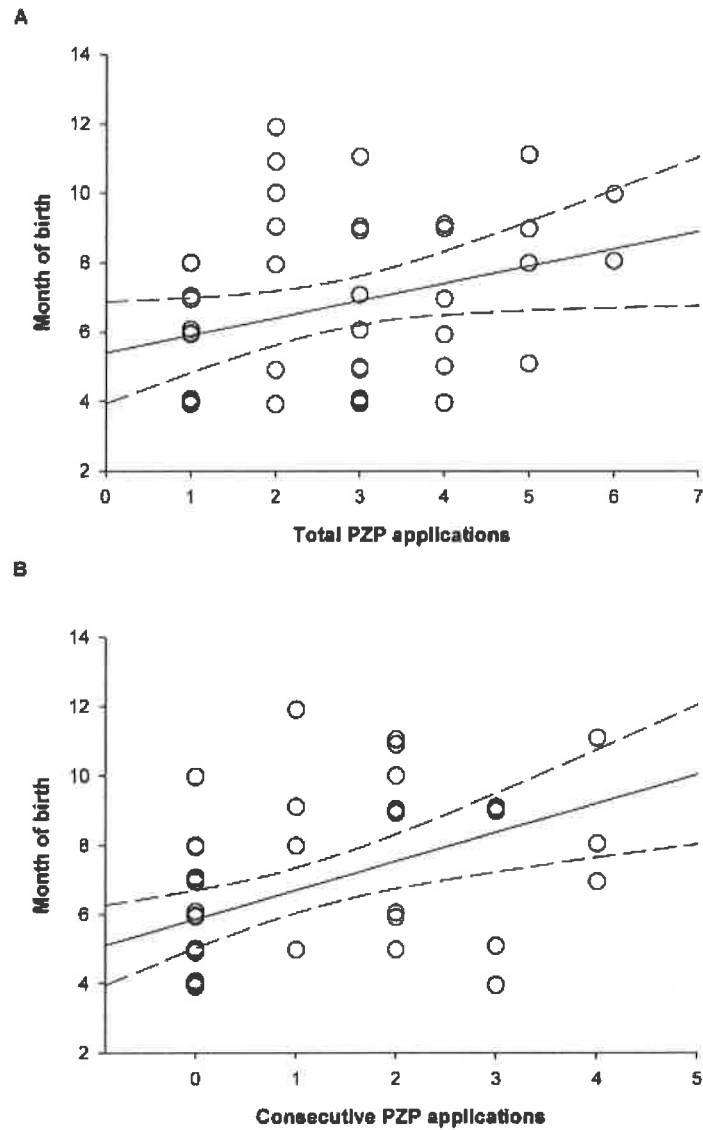


Figure 2

Birth month and number of A) total PZP applications, and B) consecutive PZP applications.

In the events of ties, month of birth has been jittered by 0.2 years to allow clear visualization of every individual. Mares receiving more applications of PZP foaled later in the year on average than did mares receiving fewer applications. Although the number of total and consecutive applications is highly correlated, AICc suggests that the number of consecutive applications explains more of the variation in the data.

Mare Condition

A generalized linear model, which controlled for mare age, showed that among post-contraception animals, recipient mares (both current and prior) were in better physical condition, with rump scores approximately 0.4 points higher than those of non-recipients (overall model (compared to null model):

Chi Square=7.74, $P=0.05$; PZP treatment: estimate=0.38, SE=0.15, Chi Square=6.13, $P=0.01$; age: estimate=-0.005, SE=0.06, Chi Square=0.007, $P=0.93$; PZP treatment \times age: estimate=-0.02, SE=0.06, Chi Square=0.13, $P=0.72$).

Weather

The best fit model of monthly mean temperature showed that overall temperatures were approximately 0.6°C warmer after the onset of contraception management (see [Fig. 3A](#); overall model: Likelihood ratio (compared to null model) = 358.40, $P<0.0001$, generalized $r^2=0.88$; month: estimate=-8.49, SE=-.97, $t=-8.78$, $P<0.0001$; month²: estimate=3.88, SE=0.29, $t=13.43$, $P<0.0001$; month³: estimate=-0.45, SE=0.03, $t=-13.70$, $P<0.0001$; month⁴: estimate=0.015, SE=0.001, $t=12.20$, $P<0.0001$; contraception management (before): estimate=0.58, SE=0.27, $t=-2.13$, $P=0.06$). The best fit model of monthly precipitation showed no overall differences between the periods before and after contraception management, but there were significant interactions between month of the year and the periods before and after contraception (see [Fig. 3B](#); overall model: Likelihood ratio (compared to null model) = 38.43, $P<0.0001$, generalized $r^2=0.20$, $P<0.0001$; month: estimate=-11.19, SE=4.96, $t=-2.25$, $P=0.03$; month²: estimate=3.66, SE=1.46, $t=2.51$, $P=0.01$; month³: estimate=-0.38, SE=0.17, $t=-2.27$, $P=0.02$; month⁴: estimate=-0.01, SE=0.006, $t=1.88$, $P=0.06$; contraception management (before): estimate=6.99, SE=4.22, $t=1.66$, $P=0.12$; month \times contraception management (before): estimate=-2.97, SE=1.43, $t=-2.07$, $P=0.04$; month² \times contraception management (before): estimate=0.22, SE=0.11, $t=-2.03$, $P=0.04$).

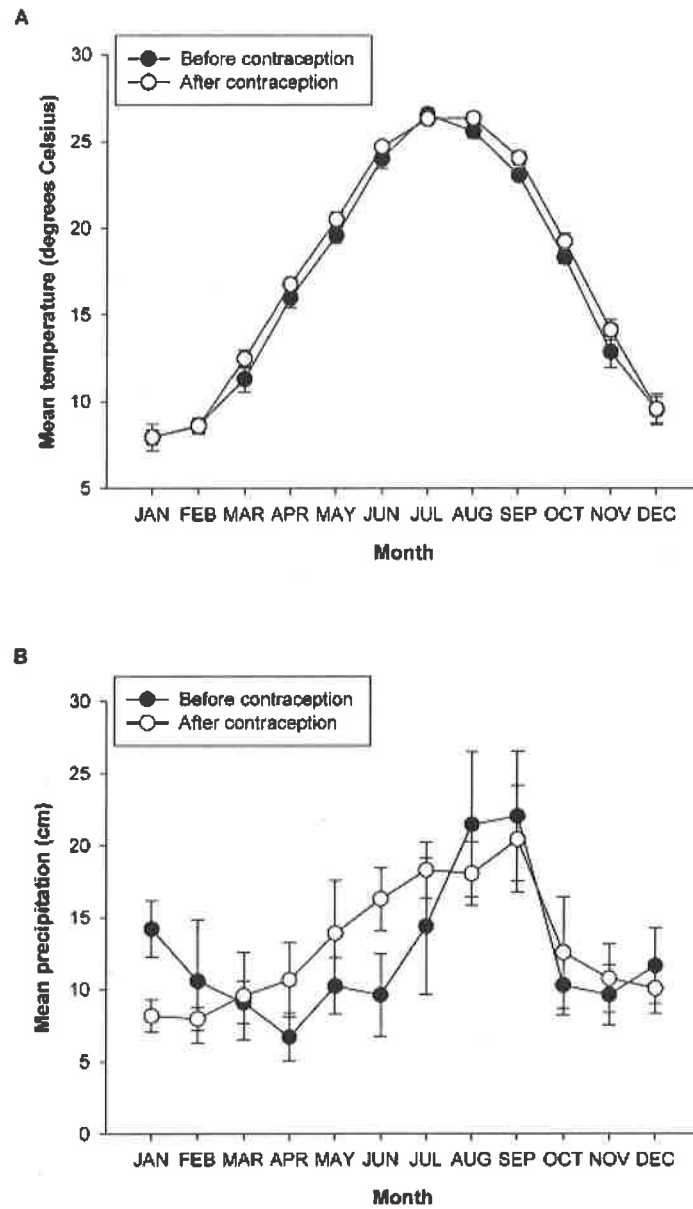


Figure 3

Weather data for six years pre-contraception (1995–2000) and eight years post-contraception (2001–2008) management.

Data were collected from Morehead City, North Carolina, approximately 8 km from the study site (Shackleford Banks, North Carolina). Temperatures (A) were marginally warmer post-contraception than they had been pre-contraception. Overall rainfall (B) did not differ before and after contraception, though the seasonal patterns were marginally different pre- and post-contraception.

PZP Efficacy

We defined PZP efficacy during the year of administration as the number of vaccinated mares that did not become pregnant divided by the total number receiving the vaccine. Across the first four consecutive PZP applications, this efficacy declined from 97% to 87%, returning to 100% after five or more consecutive applications (see Fig. 4). A generalized mixed effects model shows that this pattern is significant, even when controlling for mare age (overall model with binomial error distribution: Log Likelihood=-61.79, $P=0.01$, generalized $r^2=0.17$; consecutive PZP applications: estimate=2.98, SE=1.20, $z=2.49$, $P=0.01$; (consecutive PZP applications)²: estimate=-0.51, SE=0.22, $z=-2.33$, $P=0.02$; age at first PZP application: estimate=0.10, SE=0.05, $z=1.84$, $P=0.07$). Prior research has shown that five to seven years of consecutive PZP treatment can be associated with ovulation failure [4]. The present dataset is consistent with this result, as no mare receiving the vaccine for five or more consecutive years became pregnant.

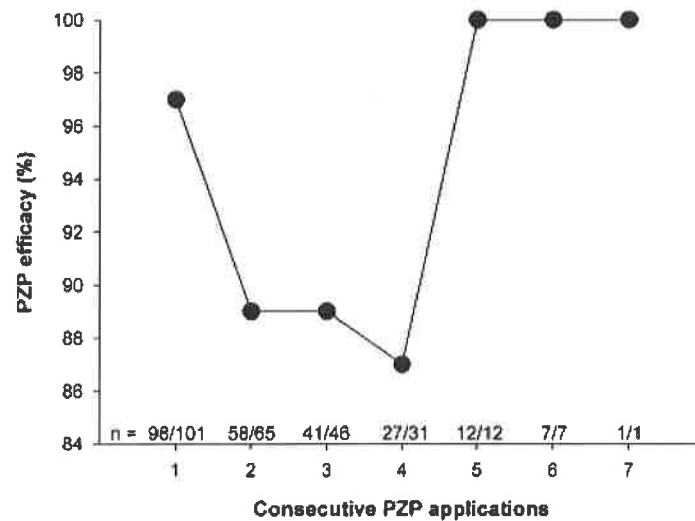


Figure 4

PZP efficacy and number of consecutive PZP applications.

PZP efficacy was defined as the number of recipient mares that did not become pregnant divided by the total number of mares receiving the vaccine. Across the first four consecutive applications, PZP efficacy declined, returning to 100% after five or more consecutive applications (5–7 applications have been shown to result in ovulation failure and decreased oestrogen levels [5], [40]).

Discussion

Here we show that PZP recipients exhibited a change in their reproductive schedule: recipient mares gave birth over a broader time period than did non-recipients, with current recipients giving birth later in the year than prior recipient and non-recipient mares. Given that gestation in wild horses lasts approximately 11 to 12 months [30], this change indicates a corresponding change in the schedule of ovulatory cycling. Contraception with porcine zona pellucida is popular amongst managers specifically because it effectively reduces the odds of conception without the application of exogenous steroids [2]. Long-term studies on Assateague Island have reported that PZP has little to no effect on reproductive hormone levels, the schedule of reproductive cycling, or the social behaviors of recipient animals [4]. However, studies in other wild horse populations have shown that recipient mares both initiate and

receive more instances of reproductive behavior during both the breeding [39] and non-breeding seasons [9]. This study provides the first evidence that mares treated with PZP can extend ovulatory cycling beyond the normal breeding season. This suggests that populations of wild ungulates can vary in their response to similar contraceptive treatment. Careful consideration of baseline population dynamics should be made prior to treatment in order to fully assess possible PZP effects.

Foaling Date

Mares receiving PZP at any point during their lifetime gave birth over a broader time period than did non-recipient animals. This larger variance among PZP mares is likely driven by the fact that current recipients gave birth later than did prior recipients (see [Results, Fig. 1](#)). Moreover, mares receiving more consecutive applications foaled later in the season than did mares receiving fewer applications. Increases in the average interbirth interval for recipient mares did not seem to be driving this result, as foaling date was not affected by the number of years (cumulative or consecutive) that mares failed to conceive. This discrepancy may be due to high variability in the conception and foaling dates of treated mares. First, it is less likely that an animal vaccinated with PZP will conceive at all, thus reducing sample size. Second, due to contraceptive failure, some treated mares will conceive during the normal breeding season, further increasing variability. Interestingly, prior to the application of PZP, the average month of birth did tend to increase with interbirth interval (Linear Mixed Effects Model: estimate = 0.30, SE = 0.17, $t = 1.82$, $r^2 = 0.06$, $P = 0.07$) [22], demonstrating at least some plasticity in the scheduling of reproductive cycling in Shackleford mares. On Assateague, PZP recipients experience normal reproductive cycling and mate at rates similar to non-recipients [40]. However, when such behavior fails to result in conception over several years, it follows that individuals extending reproductive cycling will be able to achieve conception later in the year if the contraceptive effects of PZP have decreased sufficiently [28], [29].

Because feral horses are highly social, such changes can have cascading effects on other group members and throughout the population. Our research has shown that after contraception management, PZP recipients both attract and initiate more instances of reproductive behavior [9] and are more often the harem male's nearest neighbor during the fall/winter (Nuñez, unpublished data), indicating that group spreads are reduced. Such changes represent an increase in energy expenditure and a potential decrease in nutrient intake during a time of year when sufficient energy reserves are at a premium [27]. Moreover, early foal development in unmanaged populations typically occurs during the spring and summer when resources are plentiful [11], [27]. Offspring born in the fall/winter months face nutritional and thermoregulatory challenges not experienced by their counterparts born during the normal foaling season, potentially making developmental benchmarks difficult to achieve [27].

Such predictions are not consistent with data from Assateague Island where mares show increased survival, only minimal physiological side effects, and no behavioral or demographic changes [4], [5], [6]. In addition, foal survival does not differ between foals born in or out of the normal foaling season [41]. However, on Shackleford Banks, recipient mares change groups more often, elicit and receive more instances of reproductive behavior, and receive more harassment from harem males [9], [42]. Given these differences in mare response to PZP management in the two populations, it follows that predictions based on the data from one site are not necessarily applicable to the other.

These population differences may be due to the scheduling of PZP administration at the two sites. When the contraception program on Assateague began in 1994, the priorities for treatment followed a hierarchical approach based on the previous breeding success of the population, ensuring that all mares were given an opportunity to reproduce [3]. Females for which there was a high priority for treatment included those that had produced at least one surviving offspring. Low priority females included those that were less than four years of age. Females greater than four years old that had not produced

surviving offspring did not receive treatment. In addition, the plan stipulated that only mares that had produced at least three surviving offspring or two generations of offspring would receive more than three consecutive years of treatment. Foals were not to be removed as removal increases a mare's reproductive success in the subsequent year [43], [44], [45]. Finally, it was recognized that this plan was subject to change as the population numbers decreased [46]. In the present study, Shackleford mares were contracepted between 1.5 and 2 years of age and received an average of 3.4 ± 0.2 (mean \pm standard error) consecutive years of contraception, regardless of their productivity. To further control population numbers, foals born to these mares (due to contraception failure or changes in the application schedule), were likely to be removed. This difference in PZP administration and subsequent discrepancy in early life experience may contribute to the behavioral differences between the populations, as the ability to conceive with a harem male is likely critical to establishing lasting harem fidelity [16] and the retention of foals (until at least two years of age) is important to maintaining normal reproductive function [43], [44], [45].

Possible Mechanisms

Although the effect was more pronounced in recipients of PZP, both recipients and non-recipients showed a wider range of foaling dates after contraception management (after 2001). While relatively rare, such extended periods of estrous have been documented in several equine species. Tropical species, for example, have been observed to reproduce throughout the year [12], [13], [47]. Similarly, studies of temperate species have shown that individuals can vary significantly in reproductive timing [14] and estrous behaviors during the non-breeding season [15]. Our data show that Shackleford mares exhibit at least some plasticity in their reproductive cycling. This plasticity enables mares to time their reproductive cycling according to ecological, sociological, and physiological cues.

For example, our results show that the reproductive changes exhibited by Shackleford mares correlate with warmer temperatures occurring later in the calendar year, after contraception management. Increases in rainfall late in the breeding season also correlate (albeit weakly) with later births. Both warmer temperatures and increased rainfall could result in higher resource availability [27] and afford females the additional reserves necessary to extend reproductive cycling into what is typically the non-breeding season.

The physical condition of mares may also play an important role in the extension of reproductive cycling. On Shackleford Banks, recipient mares are currently in better physical condition than are non-recipients. This is likely due to the fact that successfully contracepted mares are unconstrained by the costs of pregnancy and lactation [48]. Recipient mares will therefore have more resources to allocate to additional reproductive cycles. This effect of PZP, coupled with warmer temperatures occurring later in the year, may act to increase a mare's chances of conceiving later in the calendar year, if PZP antibody titers are sufficiently low [29].

Additionally, extended cycling in non-recipient mares could be influenced by the physiology and behavior of recipients. Shackleford males exhibit higher rates of sexual behavior towards recipient females during both breeding and non-breeding seasons [9], [42]. These overt social stimuli may entrain some non-recipients to continue reproductive behaviors and cycling into the early fall. Such stimuli are commonly used to induce receptivity in several domestic species including horses [49], pigs [50], and cows [51]. In the wild, courtship signals from conspecifics advance gonadal cycles or maturation in several taxa, including mammals [52], [53], [54], birds [55], amphibians [56], and reptiles [57]. Given the importance of social cues in the timing of reproduction among such diverse species, this possibility warrants further investigation in Shackleford mares.

Finally, the declining efficacy of PZP with increased consecutive applications is likely a contributing factor to the later foaling dates of recipient mares. Lyda and colleagues' research with captive, wild mares has shown that antibody titers against PZP remain high for up to ten months after initial treatment [28]. In addition, research with both Shackleford and Assateague horses has shown that initial applications of PZP are often effective over multiple years [9], [58], suggesting that antibody titers can remain high for longer. However, laboratory research has shown considerable variability in anti-PZP titers [29], as did Lyda and colleagues' work in which half the mares treated with PZP and Freund's Complete Adjuvant fell below contraceptive levels within the ten months of study [28]. Our data show that increasing the number of consecutive applications can reduce the single year efficacy of PZP by roughly 10%, indicating that either antibody titer or reactivity can decrease more rapidly with consecutive applications. Such patterns could result from the induction of immunological tolerance [59], which reduces responsiveness to self-tissues or repeatedly encountered, non-pathogenic antigens [60]. PZP is designed to mimic host tissue and induce an immune response against self tissue: the recipient's own zona pellucida [2]. As such, it seems reasonable that at least some animals would mount tolerance mechanisms to combat this autoimmunity. In addition, the repeated application of a specific antigen generates an antibody response that is increasingly more specific to that particular antigen [29]. The antibodies produced by mares against porcine zona pellucida should, therefore, become less cross reactive with horse zona pellucida over time. Of course, PZP efficacy will vary depending on mare age and timing of inoculation [61]. Regardless, if PZP recipients extend reproductive cycling and behavior into the non-breeding season, any decrease in efficacy that leaves them fertile in the fall/winter will help drive increases in late season conception.

Although the removal of offspring can induce estrous cycling in ungulate species [62], it is unlikely that the removal of foals has influenced foaling date among PZP-treated mares on Shackleford Banks. Thirty-nine foals (conceived due to contraception failure or administration scheduling) have been removed from the island. Approximately 55% of these foals were born to non-recipient animals. The majority of foal removals were conducted in the January following foal births. Given that non-recipient animals did not give birth later than September and most recipient animals gave birth before December, it is unlikely that foal removals in January induced late-season estrus in Shackleford mares. It is equally unlikely that increases in mare condition due to the alleviation of lactation costs resulted in early resumption of estrus the following spring [27]. If that were the case, during the early spring months we would expect to see an increase in the number of foals born to mares subjected to offspring removal. This is not borne out by the data. Still, the removal of foals is ill-advised as it increases mare fecundity the following year [43], [44], [45].

Management Implications

When the alternative (gather and removal) is considered, PZP is currently managers' most humane and effective option for population control. However, careful study of the animals' demography, physiology, and behavior is necessary prior to and during treatment to ensure that a) the potential effects of PZP can be assessed accurately, and b) within managerial constraints, unintended effects of PZP are ameliorated. Differences in habitat, resource availability, and demography among conspecific populations will undoubtedly affect their physiological and behavioral responses to PZP contraception, and need to be considered. For instance, while Assateague horses show no behavioral and only minor physiological responses to PZP, horses on Shackleford Banks [9], [42] and in the western United States [39] alter social and reproductive behaviors in response to PZP. Our data suggest that mare condition and warming trends may present additional complications. Increases in physical condition and changes in average temperature may interact with management regimes, enabling mares to alter their reproductive physiology even further. Moreover, these data emphasize the importance of study during

both the breeding and non-breeding seasons. Much of the research showing little to no effect of PZP on feral horse behavior or physiology has been performed exclusively during the breeding season [4], [5], [10], potentially missing important differences in recipient response.

If population numbers are managers' primary concern, our data show that giving five or more consecutive applications of PZP will result in 100% contraception efficacy. This is consistent with data from Assateague where mares receiving 5–7 consecutive PZP applications exhibited ovulation failure and decreased urinary oestrogen concentrations [5], [40]. However, if managers are tasked with the maintenance of natural behaviors and foaling schedules, consecutive PZP applications should be avoided. Research has shown that one application of PZP is often effective over multiple years, exhibiting yearly efficacy declines similar to that of 2–4 consecutive treatments (on Shackleford) [9], [58]. Our data show that current recipients gave birth later than both prior recipient and non-recipient animals. However, prior recipients of PZP gave birth on schedules similar to non-recipients, suggesting that breaks between treatments can ameliorate unintended behavioral and physiological changes in recipient animals. Contraception on such schedules will still maintain lower pregnancy rates, but will allow for the birth of a manageable number of offspring which are also important to the maintenance of normal behaviors [9]. These foals should be allowed to remain in the population for at least two years as earlier removal has been shown to increase a mare's reproductive success in the subsequent year [43], [44], [45]. Additionally, subadult, dispersing females should be allowed to settle into harems and have at least one foal before receiving contraception [16]. Management regimes such as this would of course necessitate a higher minimum population level. Additional research is needed to determine whether these larger, but still limited population sizes could achieve management goals. If so, this could prove a cost-effective means of controlling animal numbers while maintaining their natural physiology and behavior.

The broader implications of this research are considerable. As this study suggests, the physiological and behavioral effects of PZP are not fully understood. Still, the vaccine is currently administered to many different species including white-tailed deer, *Odocoileus virginianus* [7], elk, *Cervus elaphus* [8], black bears *Ursus americanus* [63], and African elephants, *Loxodonta Africana* [64]. As with conspecific equid populations, habitat, resource, and demographic differences among species will affect their responses to PZP contraception and need to be considered. For social species like the horse, a proper balance between managing population size and maintaining a more natural physiological and behavioral regime is particularly important.

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Contraception can Lead to Trophic Asynchrony between Birth Pulse and Resources

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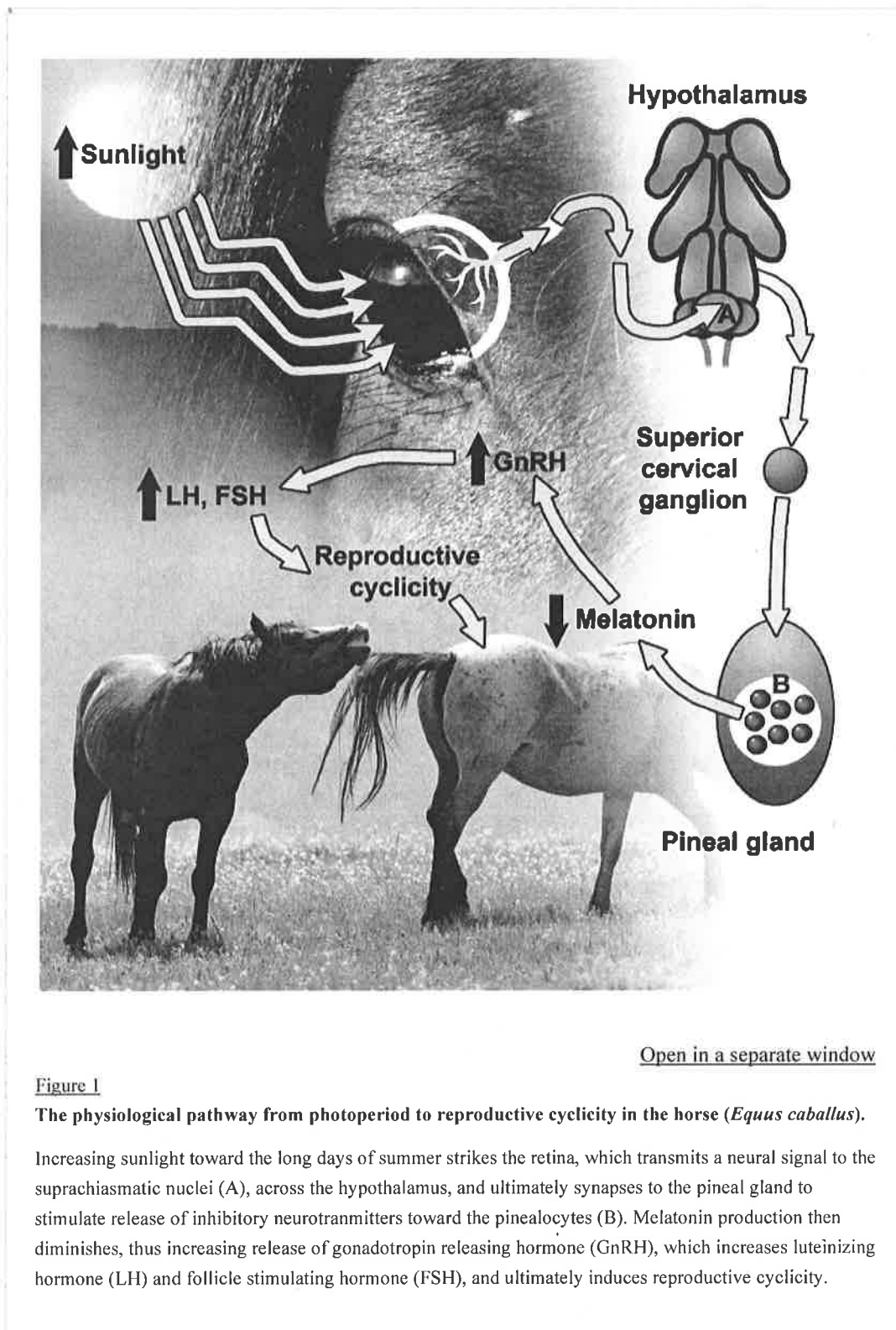
Abstract

Abiotic inputs such as photoperiod and temperature can regulate reproductive cyclicality in many species. When humans perturb this process by intervening in reproductive cycles, the ecological consequences may be profound. Trophic mismatches between birth pulse and resources in wildlife species may cascade toward decreased survival and threaten the viability of small populations. We followed feral horses (*Equus caballus*) in three populations for a longitudinal study of the transient immunocontraceptive porcine zona pellucida (PZP), and found that repeated vaccinations extended the duration of infertility far beyond the targeted period. After the targeted years of infertility, the probability of parturition from post-treated females was 25.6% compared to 64.1% for untreated females, when the data were constrained only to females that had demonstrated fertility prior to the study. Estimated time to parturition increased 411.3 days per year of consecutive historical treatment. Births from untreated females in these temperate latitude populations were observed to peak in the middle of May, indicating peak conception occurred around the previous summer solstice. When the post-treated females did conceive and give birth, parturition was an estimated 31.5 days later than births from untreated females, resulting in asynchrony with peak forage availability. The latest neonate born

to a post-treated female arrived 7.5 months after the peak in births from untreated females, indicating conception occurred within 24–31 days of the winter solstice. These results demonstrate surprising physiological plasticity for temperate latitude horses, and indicate that while photoperiod and temperature are powerful inputs driving the biological rhythms of conception and birth in horses, these inputs may not limit their ability to conceive under perturbed conditions. The protracted infertility observed in PZP-treated horses may be of benefit for managing overabundant wildlife, but also suggests caution for use in small refugia or rare species.

Introduction

Phenology of nearly all biological phenomena is influenced by natural abiotic events and is reflected in traits evolving to maximize fitness [1]. Births of many large mammal species, for example, occur in annual pulses that are regulated by seasonal cues such as photoperiod and temperature [2]. Increasing sunlight and temperature that accompanies the transition from winter to spring can trigger a physiological response in the pineal gland that initiates reproductive receptivity (Figure 1) [2]–[4]. This ultimately influences when females may conceive and thus when offspring are born. For example, feral horses (*Equus caballus*) in the northern hemisphere typically begin reproductive cyclicality in early spring and continue until late autumn; consequently, we may posit that conception should naturally peak near the longest day of sunlight (summer solstice) and parturition should peak 335–342 days later (duration of equine gestation [5]). This pattern should result in synchrony of the birth pulse with spring, when climate and forage availability for the dam can contribute to increased neonate survival.



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Human actions have the potential to perturb such phenology. Resource managers are increasingly considering transient contraceptives to help limit growth of wildlife populations when species become locally overabundant and risk depleting resources or altering natural communities [6], [7]. These agents

are especially appealing to managers of protected species and small populations because fertility of treated individuals may return when the transient contraception wears off [8]. However, the transient nature of many fertility control agents and variation of individual responses to those agents introduces uncertainty toward persistence of infertility and the timing of births thereafter. Cascading trophic asynchrony between birth pulses and seasonal resource peaks can have profound effects on the population ecology of wildlife species [9]–[12]. Observed changes in such phenology and their implications have garnered much attention in climate change science [13], [14], but more direct anthropogenic influences, such as fertility control, remain almost completely unstudied. Unintended persistence of contraception, and consequent phenological changes in births, may compromise the ability of populations to recover after catastrophic stochastic events and threaten viability of small refugia populations.

The immunocontraceptive porcine zona pellucida (PZP) is becoming an increasingly popular management tool and has been used in at least 76 animal species worldwide [6]. This transient contraceptive may last 10–22 months per application, depending on the formulation and species [6], [15], [16]. The management appeal of PZP is that it is expected to be reversible, is relatively easy to apply, and has few known contraindications for individuals [17], [18]. Population-level contraindications are more uncertain, but some evidence suggests decreased fecundity among untreated females, decreased fidelity in social groups, and increased adult survival can occur in populations containing PZP-treated females [19]–[22].

The individual-level efficacy and behavioral implications of PZP were previously investigated in three free-roaming feral horse populations in the western U.S. [16], [23]. We have now followed each individual female in these same populations past their targeted infertile years to further evaluate return to fertility, phenology of births, and neonate survival. We hypothesized that duration of residual infertility would be a function of cumulative historical treatments. We also hypothesized that due to the expected individual response variability to treatment and the unknown and variable duration of infertility, post-treated females would give birth later in the year compared to untreated females, and those births would be asynchronous with forage availability. We expected that parturition timing would be constrained by photoperiod and temperature and that offspring born toward the end of this temporal window would have decreased survival.

Materials and Methods

Ethics Statement

All data for this study were collected in accordance with the Colorado State University approved Animal Care and Use Committee protocol 03-107A-02. All data collection was conducted with the permission of the Bureau of Land Management (BLM) on public lands they administer, and involved routine observations of feral horses, which are protected under The Wild Free-Roaming Horses and Burros Act of 1971 (U.S. Public Law 91–195, as amended).

Study Areas

The Little Book Cliffs Wild Horse Range, located in Mesa County, Colorado, U.S.A. (latitude 39°12'N, longitude 108°25'W), consisted of approximately 14,600 ha of sloping plateaus, sagebrush (*Artemisia* spp.) parks, and 4 major canyon systems. Elevations ranged from 1,500 m to 2,250 m. The study area was characterized by dense stands of Colorado piñon (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*). Population size varied from 131–179 horses during 2005–2011 and was distributed in bands of 2–9 horses. Mean annual temperature was 11.5°C (minimum=–26.7, maximum=41.1°C). Mean total annual precipitation was 235.4 mm (range=184.4–300.2 mm), typically falling in a monsoonal pattern of late summer rains.

McCullough Peaks Herd Management Area in Park County, Wyoming, U.S.A. (latitude 44°35'N, longitude 108°40'W), consisted of 44,400 ha of primarily open sagebrush steppe. Elevations ranged from 1,200 m to 1,964 m. Population size ranged from 169–236 horses in bands of 2–17 individuals during 2007–2011. Mean annual temperature was 8.0°C (minimum=−30.0, maximum=37.8°C) and mean total annual precipitation was 271.2 mm (range=168.9–389.1 mm).

The Pryor Mountain Wild Horse Range, located in Bighorn County, Wyoming and Carbon County, Montana, U.S.A. (latitude 45°04'N, longitude 108°19'W), consisted of roughly 16,000 ha of low desert, foothill slopes, forested montane slopes, steep canyons, and isolated grassy plateaus. Elevations ranged from 1,190 m to 2,625 m. Vegetation types varied greatly from lower to higher elevations of the range with lower elevations dominated by sagebrush communities, mid elevations dominated by curl-leaf mountain mahogany (*Cercocarpus ledifolius*) and Utah juniper communities, and high elevations dominated by limber pine (*Pinus flexilis*), subalpine fir (*Abies lasiocarpa*), and alpine bluegrass (*Poa alpina*). Mean annual precipitation was 161.4 mm (range=96.7–233.4 mm) and mean annual temperature was 7.1°C (minimum=−33.9, maximum=40.0°C). The population ranged 171–233 during the study and was arranged in bands of 2–12 individuals.

Treatments

Free-roaming female feral horses were formerly treated with PZP for 1–5 years at all three study sites [16]. The conventional liquid form of PZP was designed to provide infertility through only a single year per inoculation, and this form was used at Pryor Mountain beginning in 2001 and at Little Book Cliffs beginning in 2002. The date of annual inoculation ranged from Jan. 5–Dec. 4, which reflects the time of year when each female was initially vaccinated, perpetuated by annual efforts to locate and re-vaccinate them remotely. These re-vaccination times varied for each horse and year due to occasional difficulties in accessing the sites as well as individual variation in horses' tolerance of humans.

The time-release form of PZP consisted of a single inoculation of liquid PZP simultaneously applied with 3 pellets designed to release PZP in a bolus fashion at 1, 3, and 12 months, for a total of 22 months of targeted infertility [16]. All females in the treatment group at McCullough Peaks received time-release PZP in October 2004. No females were re-treated with PZP unless they had produced a foal during post-treatment. All females that were re-treated were omitted from our study at that time.

We defined post-treatment for this study as beginning two full parturition seasons after the final inoculation of conventional PZP or after the single inoculation using PZP time-release pellets. For example, if a female received a conventional PZP inoculation in autumn 2004, then she was presumably contracepted in 2005. This meant she should not produce an offspring, but could conceive at some time in 2006. The first post-treatment year would then be 2007. If that 2004 inoculation was time-release PZP, then the first post-treatment year could have been as early as 2007.

Data Collection

We observed post-treated females from 2005 at Little Book Cliffs and Pryor Mountain and from 2007 at McCullough Peaks until they died, were removed, were treated again by managers, or the end of 2011, whichever came first. We omitted data for one female from the Little Book Cliffs and six females from McCullough Peaks because they produced offspring in every treatment year and thus were never effectively contracepted. Females that produced offspring during treatment years, but not in every year, were retained because contraception could have occurred. The untreated female group consisted of all individuals in each population that had never been inoculated with PZP and were at least 4 years old at the first year of this study period. The minimum age of post-treated females at the first year of this study period was 4 years old. The resulting data arose from observations of 88 post-treated females (age 4–24 years) and 119 untreated females (age 4–23 years) (Table 1).

Table 1

Parturition data from untreated and porcine zona pellucida (PZP) treated female feral horses (*Equus caballus*) at Little Book Cliffs Wild Horse Range, CO, Pryor Mountain Wild Horse Range, MT, and McCullough Peaks Herd Management Area, WY, USA.

	Little Book Cliffs WHR (2005–2011)	Pryor Mountain WHR (2005–2011)	McCullough Peaks HMA (2007–2011)
Number of untreated females	41	44	34
Number of untreated females never producing offspring	6	11	15
Age of untreated females	4–23 yr	4–15 yr	4–21 yr
Number of post-treated females	22	38	28
Number of post-treated females never producing offspring	15	18	15
Age of post-treated females	6–21 yr	4–24 yr	4–20 yr
Observed parturition range for untreated females	Feb. 23–Sep. 1	Feb. 21–Sep. 3	Jan. 15–Sep. 7
Observed parturition range for post-treated females	Mar. 5–Dec. 22	Apr. 5–Sep. 29	Feb. 20–Aug. 4
Estimated parturition peak for untreated females	May 10 (Apr. 28–May 22)	May 14 (May 4–May 24)	May 19 (May 8–May 30)
Estimated parturition peak for post-treated females	Aug. 24 (Jul. 18–Sep. 29)	Jun. 18 (May 31–Jul 6)	May 4 (Apr. 14–May 24)
Estimated difference in peak parturition date (95%CI)	105.9 (69.7–142.1) days	34.8 (17.0–52.3) days	None

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Observation protocols followed Ransom et al. [16] for all three sites. For the Pryor Mountain site in 2010–2011, we also used data provided by the Pryor Mountain Mustang Center, WY, USA; these were collected under the same protocols. Throughout the study, 96.1% of all females and offspring (when present) were located at least weekly from April to October of each year. At Little Book Cliffs, 6–8 females were difficult to access weekly, but were located at least once per month. A single band containing two females at McCullough Peaks was not located weekly, but was observed at least monthly during 2007–2010. In 2011, that band was found only once and both females were observed with neonates. At Little Book Cliffs, we also used motion-activated infrared trail cameras at remote water points to provide supplemental observations. Observations during the winter were irregular and sometimes constrained by weather. It is possible that some offspring were born and died without being observed during the course of this study; however, given the intensity of observations, we believe this rarely occurred. We matched all neonates with dams based on observations of attachment (e.g., nursing, general proximity) during the early days and weeks of a neonate's life [24]. We did not attempt to

assess pregnancy in females that may have visually appeared pregnant but did not produce a viable offspring. Parturition probability was thus estimated from the frequency of live births per cohort as detected by direct observation.

We visually classified the body condition of each dam when we first detected her neonate in the field. This body condition score increased discretely from 1 to 9 as fatness increased [25]. Neonate data were collected concurrently and the general activity state of each neonate was categorized as vigorous, lethargic, or immobile. If neonates were resting when first observed, they were continually observed until the band became active again and neonate activity could be classified. Neonate date of birth was estimated subjectively by observing presence of an umbilicus, level of activity, and time elapsed since the dam was previously observed pregnant. The median time elapsed before a neonate was detected was only six days during the post-treatment observation years ($n=328$ neonates).

Data Analyses

Model structure We used mixed-effects regression models to estimate parturition probability, phenology, and offspring survival in the maximum likelihood framework [26]. Individual female was used as a random effect on the intercept term to account for the repeated observations (multiple years) of individuals over time. This was necessary to account for variation that may be present among individuals who were sampled repeatedly, though not always equally over time. Such variation may arise from the many biotic and abiotic factors that may affect conception, pregnancy, parturition, and neonate care. We also used population as a random effect on the intercept term to account for variation attributed to location and treatment regimen. We used the `lmer()` function in the `lme4` package in R version 2.14.1 (R Development Core Team 2011) to obtain all mixed-effects model estimates.

Parturition probability Parturition history for each female was known (binomial response of the female producing at least one offspring in the past or not) from direct observation of all females <12 years old at Little Book Cliffs and Pryor Mountain, and all females <9 years old at McCullough Peaks. All older females were documented giving birth at least once within that same time period. Parturition rates of feral horses typically increase for the first few years after females reach sexual maturity, remain high through middle age, and decrease in old age [16]; therefore, we included linear and quadratic effects of age in models of parturition probability. We rescaled age in the quadratic effect by subtracting the mean age of horses (9.98 yr across all populations), so the intercept term of the model corresponded to probability of parturition at mean age.

Total annual precipitation for the biological year prior to parturition (spring of conception through spring of parturition) was used as a proxy for forage abundance, and thus potential body condition at the year of conception. Daily surface climate data were obtained from the National Climate Data Center (<http://www.ncdc.noaa.gov>) for Grand Junction, CO (Station 53488, about 13 km southwest of Little Book Cliffs), Cody, WY (Station 481840, about 32 km west of McCullough Peaks), and Lovell, WY (Station 485770, about 21 km south of Pryor Mountain) for all years of the study. The complete model of parturition probability included the fixed effects of age, treatment, conception year total precipitation, and parturition history. We ran a secondary linear model (`lm()` function) for only the post-treated females that produced offspring in order to investigate the influence of age at first treatment and number of treatments received (1–5 annual inoculations). This secondary model only applied to horses at Little Book Cliffs and Pryor Mountain, where repeated inoculations of conventional liquid PZP were applied.

Parturition phenology We hypothesized that photoperiod and temperature were critical factors influencing phenology of conception, and thus phenology of parturition. Consequently, the model of parturition phenology included treatment and temperature at the approximate conception date as fixed effects, and individual and population as random effects on the model intercept. A supplemental model

was considered for post-treatment females at Little Book Cliffs and Pryor Mountain to assess the interaction of last treatment date and number of consecutive annual treatments as a fixed effect, also using individual and population as random effects. Because only one treatment was applied at McCullough Peaks and the actual decay rate of the time-release pellets was unknown, we could not apply this supplemental model for that site.

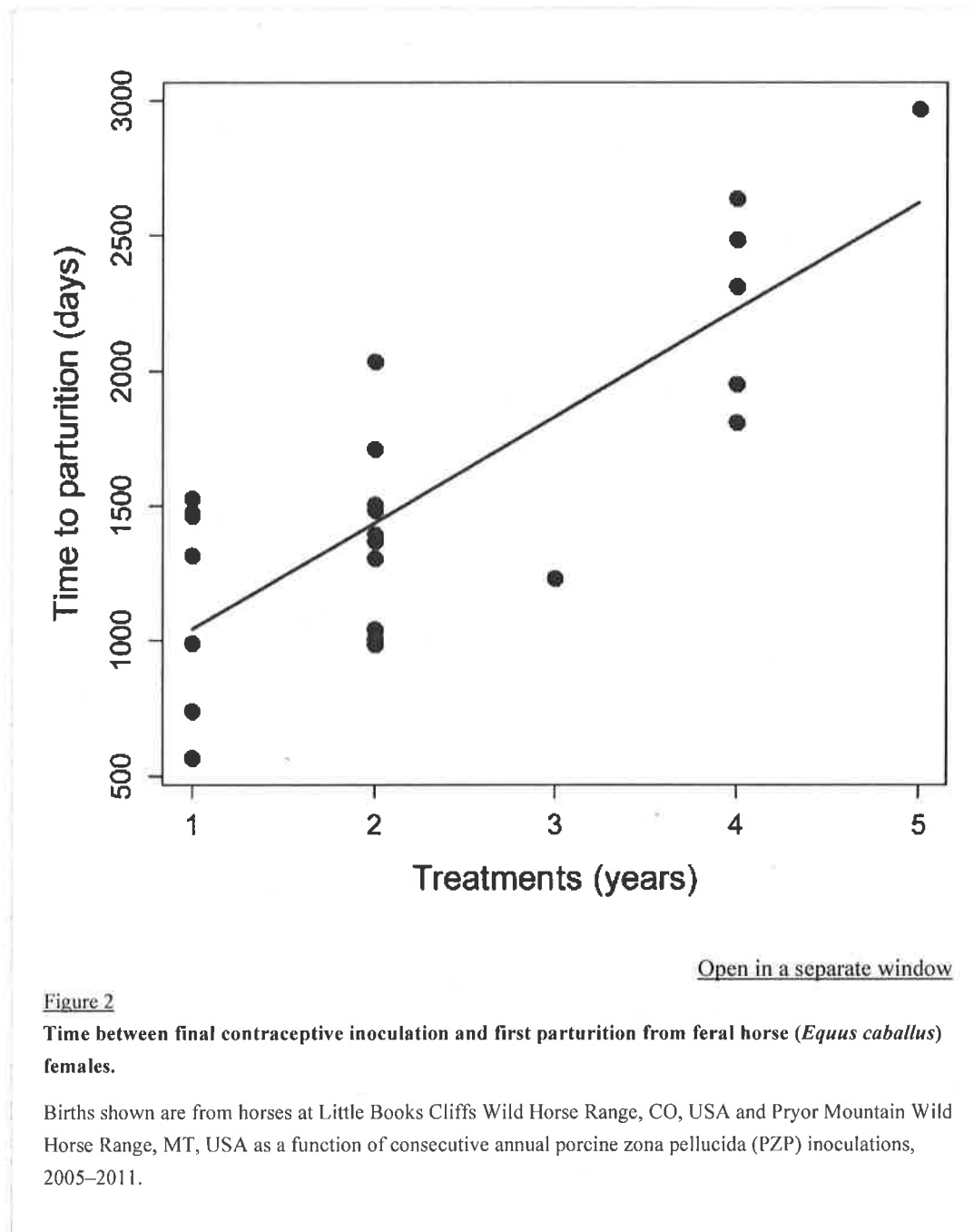
Survival Survival was a binomial response attributed to persistence of a neonate from parturition until the following year April observation or death during that time period. Managers removed 30 neonates from the range during their birth year, and those animals were not included in modeling survival. We hypothesized that survival was a function of treatment, dam age, dam body condition, mean winter temperature (Nov. 1–Mar. 31), and the temporal difference between birth date and spring peak available forage. We used Normalized Difference Vegetation Index (NDVI) data obtained from the National Aeronautics and Space Administration (<http://modis.gsfc.nasa.gov>) and reconciled using ArcGIS software (Esri, Redlands, California) to assess temporal variation in forage availability. The phenology product from Tan et al. [27] was used to generate date of mean maximum NDVI in each year across each study area. Mean NDVI was used as a temporal indicator of forage availability, but not forage abundance because tree presence and distribution can strongly influence magnitude of this metric.

Results

Parturition Probability

During the years of observation, 15–44% of untreated females and 47–68% of post-treated females never produced offspring (Table 1). Of all post-treated females in the study, 81% had successfully produced offspring prior to treatment and the remaining 19% were <4 years old when first inoculated. Likewise, 97% of all untreated females in the study had successfully produced offspring prior to or during the study period. The probability of producing offspring was strongly related to treatment ($z = -6.90$, $P < 0.001$) and age ($z = -2.93$, $P = 0.003$), and weakly influenced by total annual precipitation during year of conception ($z = 1.79$, $P = 0.074$). At mean age and mean conception-year precipitation, the estimated parturition probability for post-treated females was 25.6% (95% CI = 17.8–35.2%) and for untreated females was 64.1% (53.1–73.9%) if they had produced offspring in any year prior to the study. The estimated parturition probability was only 2.1% (1.3–3.2%) for post-treated females and 10.7% (7.0–15.9%) for untreated females that had never previously produced offspring. Parturition probability increased 0.497% (0.494–0.500%) per year of age for all females until age 10; after which it declined at the same rate. Population contributed to a small amount of variation in the model ($\sigma = 0.33$) but individual identity was more influential ($\sigma = 0.82$).

Of the 52 females that received 1–5 annual injections of conventional PZP (Little Book Cliffs and Pryor Mountain), 27 produced at least one offspring post-treatment. The length of time between last inoculation and first parturition ranged from 565–2,971 days and was strongly influenced by the total number of years a female was treated ($t = 5.18$, $P < 0.001$). Estimated time to parturition increased 411.3 (246.5–576.0) days per year of consecutive treatment (Figure 2). Neither age at first treatment ($t = -1.04$, $P = 0.309$) nor fertility history ($t = 0.01$, $P = 0.991$) influenced the length of time to parturition. The secondary model was not run for McCullough Peaks, where all 36 females were treated with the 22-month time-release PZP pellets on the same day. Thirteen post-treated females in that population produced an offspring during the 5 years of observation and the observed length of time between inoculation and first parturition ranged from 530–2,000 days.



Parturition Phenology

Births from all untreated females increased in frequency toward the summer solstice and decreased toward the winter solstice, and those trends corresponded with temperature and forage availability ([Figure 3](#)). Parturition from untreated females was similar between populations and ranged from Jan. 15–Sep. 7 ([Table 1](#)). Parturition from post-treated females ranged from Feb. 20–Dec. 22, and the estimated peak was 31.5 (17.0–46.0) days later than births from untreated females, after controlling for temperature at conception date. The latest neonate born to a post-treated female arrived 7.5 months after the peak in births from untreated females, indicating conception occurred within 24–31 days of the

winter solstice. Among the post-treated females that gave birth late and then did not produce a neonate the next year, there was some evidence that subsequent births began to shift back toward the phenology observed for untreated females ([Figure 3](#)).

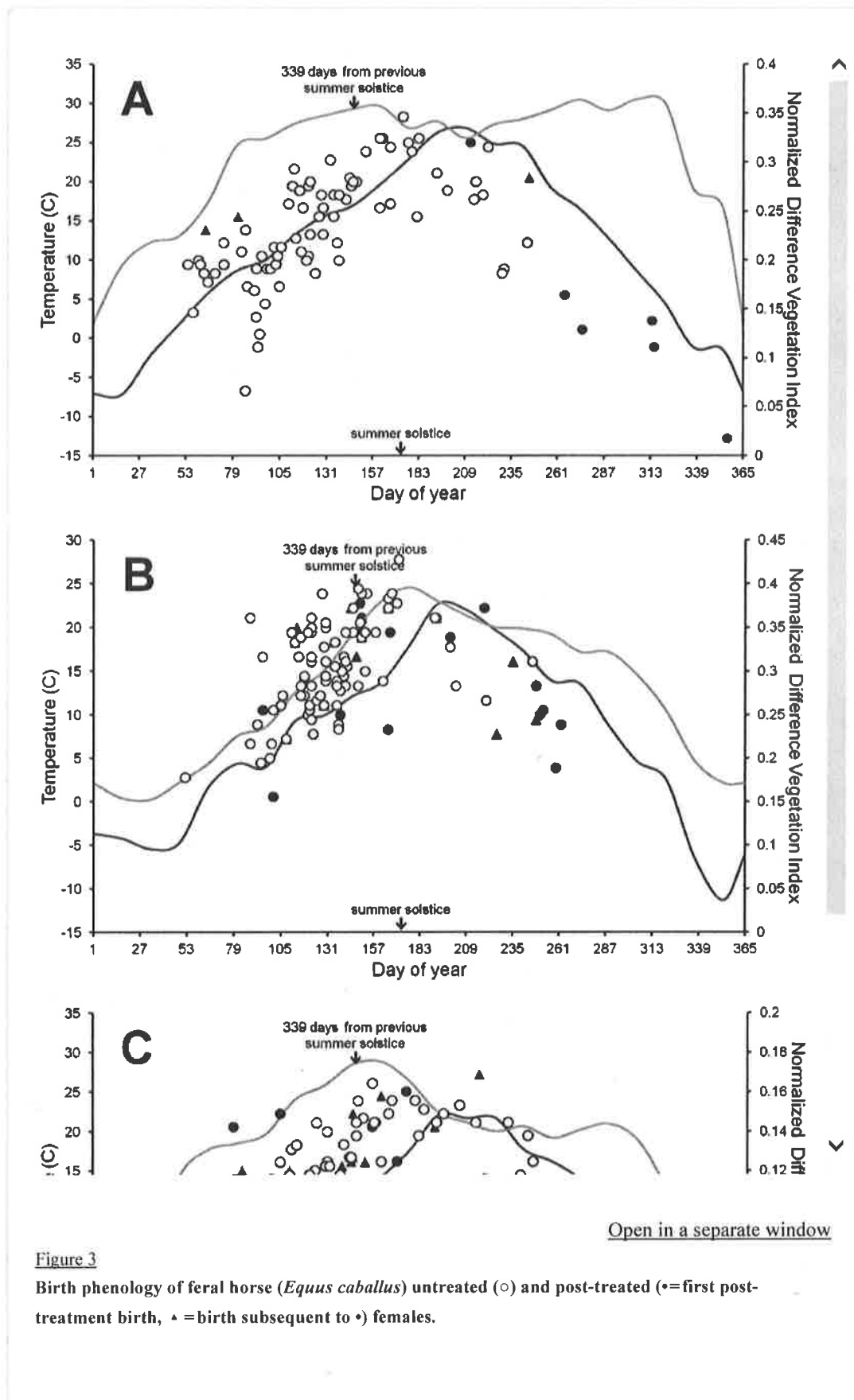


Figure 3

Birth phenology of feral horse (*Equus caballus*) untreated (○) and post-treated (●=first post-treatment birth, ▲=birth subsequent to ●) females.

Births are shown as a function of temperature at approximate conception date for populations at Little Book Cliffs Wild Horse Range, CO (A), 2005–2011, and Pryor Mountain Wild Horse Range, MT (B), 2005–2011, and McCullough Peaks Herd Management Area, WY (C), 2007–2011. Post-treated females were previously inoculated with the immunocontraceptive porcine zona pellucida (PZP). Mean Normalized Difference Vegetation Index (green) represents temporal availability of forage. Mean daily surface temperature is shown in red.

Survival

Nearly every neonate born was observed in a vigorous activity state, with the exception of four that were immobile (one to a post-treated female) and two that were lethargic (none to post-treated females). All six of those neonates died before the following spring. Body condition of dams at first observation of neonates ranged 3–9 (mean=5.73, 5.61–5.84). Eighty-five percent of neonates were observed alive in the spring following their birth. The estimated survival probability of a neonate born to a dam in mean body condition at spring peak greenness was 79.9% (67.9–85.4%). This probability decreased 11.4% (10.7–12.0%) with each 1-unit decrease in dam body condition. Survival declined 1.4% (1.4–1.5%) for every 10 days after peak greenness that parturition occurred.

Treatment ($z=-1.49$, $P=0.137$), band size ($z=0.67$, $P=0.500$), dam age ($z=-1.16$, $P=0.247$), and mean winter temperature ($z=0.89$, $P=0.372$) did not influence survival in this model; however, the treatment and winter temperature effects were disparate between sites. At Little Book Cliffs and Pryor Mountain, treatment weakly influenced survival ($z=-1.78$, $P=0.075$), whereas at McCullough Peaks it clearly had no influence ($z=0.01$, $P=0.993$). Likewise, mean winter temperature influenced survival ($z=-2.16$, $P=0.031$) at Little Book Cliffs and Pryor Mountain, but not at McCullough Peaks ($z=1.00$, $P=0.320$).

Discussion

Parturition Probability

The probability of post-treated females producing offspring was 38.5% lower than for untreated females, after controlling for differences due to age, precipitation during conception year, and fertility history. The return to fertility rates observed were highly variable and this may in part be due to the disparate abilities of individual females to raise therapeutic-level antibodies against PZP and the length of time those antibodies persisted above threshold concentrations [15], [28], [29]. A similar result was reported for horses at Assateague Island National Seashore, MD and VA, USA, where 68.8% of 32 female horses treated for three consecutive years with PZP became pregnant 1–4 years after the last treatment [8]. Only 3 horses were vaccinated for four consecutive years in that study: one became pregnant 3 years after the last treatment, another became pregnant after 4 years, and the third became pregnant after 8 years. In a similar, but critically endangered species, *E. ferus przewalskii*, only 45% of 20 females that had been inoculated with PZP for 3 consecutive years demonstrated fertility after 6.7 post-treatment years [30]. More surprisingly, 4 of 9 females in that study that had only received a single treatment (one primer injection followed by one booster injection) never produced any offspring after 4–8 years of observation. While the mechanism for explaining this protracted infertility in *E. ferus przewalskii* is unknown, some of the Assateague horses were found to have experienced ovulatory failure [31]. This is not the targeted physiological response of PZP vaccination, and the effect was highly variable between individuals due to the episodic nature of ovulatory failure, as opposed to a chronic condition. Studies of non-equid species have demonstrated atrophic changes in ovarian morphology, folliculogenesis, and reproductive endocrine function, indicating that prevention of sperm binding may not be the only mechanism acting on fertility in PZP-inoculated animals [32]–[35].

Parturition Phenology

Parturition phenology for North American feral horses has been shown to peak during May [36]–[38]. We estimated parturition from untreated females peaked May 10–19 across the 3 populations, which was 22–43 days before spring forage availability began to decline, and placed conception roughly 7–15 days before the longest day of sunlight (or 323–332 days from previous summer solstice). This phenology appears synchronized with the most abundant forage during the parturition period while females' metabolic needs should be elevated from late term pregnancy and lactation [39]. Our findings for PZP-inoculated females demonstrated a markedly different phenology. The estimated peak in parturition from post-treated females at two sites (Aug. 24 at Little Book Cliffs and Jun. 18 at Pryor Mountain) occurred as forage availability was declining; however at Little Book Cliffs where births were latest, the monsoonal rains provided a bimodal distribution in greenness (Figure 3A). The second peak in forage availability arrived Nov. 1, which was 69 days after estimated peak in parturition from post-treated females.

This protracted birth phenology resulted in parturition dates spanning 305 days for post-treated females as compared to 229 days for untreated females. Across all females in the 3 populations, the parturition season ranged nearly the entire year (341 days). This indicates surprising plasticity in birth phenology of temperate latitude horses given the physiological mechanisms thought to be driving reproductive cyclicity. At Shackleford Banks, North Carolina, USA, female feral horses exhibited estrus beyond the normal breeding season after being vaccinated annually with PZP for 1–6 years [38]. Based on the observed birth phenology in our study, this phenomenon occurred in our subjects as well; however, we recorded 81.4% of 328 documented births between March 1 and June 21. This suggests that photoperiod and temperature remain fundamentally important in regulating birth phenology, but several other mechanisms may be acting to help explain the wide range of birth dates observed. Follicular activity of the estrous cycle during the first half of the breeding season is characterized by more numerous large follicles and greater incidence of anovulatory waves [40]. Gestation length is variable and has been attributed to seasonal variations that influence nutrition of females [41]. The annual rhythm of luteinizing hormone (LH) secretion is partially regulated by photoperiod, but also has a strong endogenous component [42]. Age and fertility history of females can strongly influence the occurrence of a winter anovulatory period [43], as can melatonin sensitivity of individuals [2]. This litany of influences is compounded by the known variations in PZP immunocontraception efficacy and duration, as well as the uncertain mechanism of action that may be confounded with ovarian pathologies.

The protracted breeding season of PZP-vaccinated females found in our study, as well as by Nuñez et al. [38], indicates that horses that would normally conceive during their first or second reproductive cycle of the year continue to cycle throughout the year and then only conceive when contraception sufficiently decays. This inherently extends the breeding season and challenges the physiological constraints assumed to be regulating fertility. The 'self-correcting' trend we observed provides additional empirical support for the importance of such abiotic factors in birth phenology, but also illustrates that phenological shifts associated with the uncertainties surrounding immunocontraception may be short term. The long term effects of PZP treatment on population ecology are less clear given the behavioral components that can affect social networks, as well as fitness of untreated females in social groups [19], [21]–[23].

It should be noted that the protracted phenology detected at Little Book Cliffs and Pryor Mountain was not observed at McCullough Peaks, where the final bolus release of PZP is assumed to have occurred around July. This should have led to infertility persistence through the following July but appears to have persisted much longer in many individuals. Some variation in parturition phenology likely arose

from the unique immune response of each female to the vaccine, but this was not compounded by the widely disparate vaccination dates experienced at the other two sites, and thus a more consistent phenology was observed.

Survival

The ultimate consequence of altered birth phenology is survival. Collectively, survival of all neonates in our study was consistent with the mean survival rate (73.9%) derived from 12 historic studies on feral horse neonates [44]. Survival probability for neonates in our study was 79.9%, at mean body condition of the dam and at spring peak NDVI. This probability predictably decreased with decreasing dam body condition and with temporal distance between date of birth and spring peak NDVI.

Treatment did not influence survival in the global model, but was influential at the two sites where unseasonably late births were observed. The treatment effect on survival at Little Book Cliffs was somewhat ameliorated by the secondary peak in forage availability following the monsoons. Such fine scale ecosystem effects may be important considerations when assessing the potential for fertility control applications on specific populations.

Conclusion

Humans are increasingly attempting to manage the planet's wildlife and habitats with new tools that are often not fully understood. The transient nature of the immunocontraceptive PZP can manifest into extraordinary persistence of infertility with repeated vaccinations, and ultimately can alter birth phenology in horses. This persistence may be of benefit for managing overabundant wildlife, but also suggests caution for use in small refugia or breeding facilities maintained for repatriation of rare species. These results introduce ethical questions toward regulating populations with tools that may alter ecology of the species, but also offer quantitative insights that can be weighed with the depth of management need. The growing need for humane, non-lethal, population control measures also led us to empirical evidence that illustrates the physiological flexibility of horse reproduction in the race for fitness. Photoperiod and temperature are powerful inputs driving the biological rhythms of conception and birth in horses, but do not limit the ability of horses to conceive under perturbed conditions.

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Abstract

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Abstract

Porcine zona pellucida (PZP) immunocontraception was developed to provide a more humane, effective, and inexpensive method of population regulation for wildlife species. It has been used to regulate populations of several species including white tailed deer (*Odocoileus virginianus*), elk (*Cervus elaphus*), black bear (*Ursus americanus*), and the feral horse (*Equus ferus caballus*) with varying levels of success. Early studies on Assateague Island National Seashore, Maryland, USA, suggested PZP was as an ideal form of fertility control because it reduced the likelihood of conception to <10%, could be delivered remotely, was thought to be reversible, lacked debilitating physiological side effects, could not pass through the food chain, and showed minimal effects to social behaviors in a closed population of feral horses. However, research on Shackleford Banks, North Carolina, USA and on 3 western populations located in Little Brook Cliffs (Grand Junction, Colorado, USA), McCollough Peaks (east of Cody, Wyoming, USA), and the Pryor Mountains (Lovell, Wyoming, USA) has revealed behavioral and physiological side effects of long-term PZP use. When compared to untreated mares (those that have never received treatment), treated mares demonstrated decreased fidelity to the band stallion, increased and prolonged reproductive behavior, and an increased likelihood of extending reproductive cycling into the nonbreeding season. These effects were more pronounced in animals receiving more total and/or consecutive contraception treatments and can persist even after several years of treatment cessation. Finally, new data indicate that these changes to previously treated mares can affect the behavior and stress physiology of their band stallions, demonstrating the potential for the contraception of individuals to have population-level effects. These results are important to consider if we are to achieve both the effective management of feral horse populations in addition to the maintenance of their overall health and well-being.

Comments

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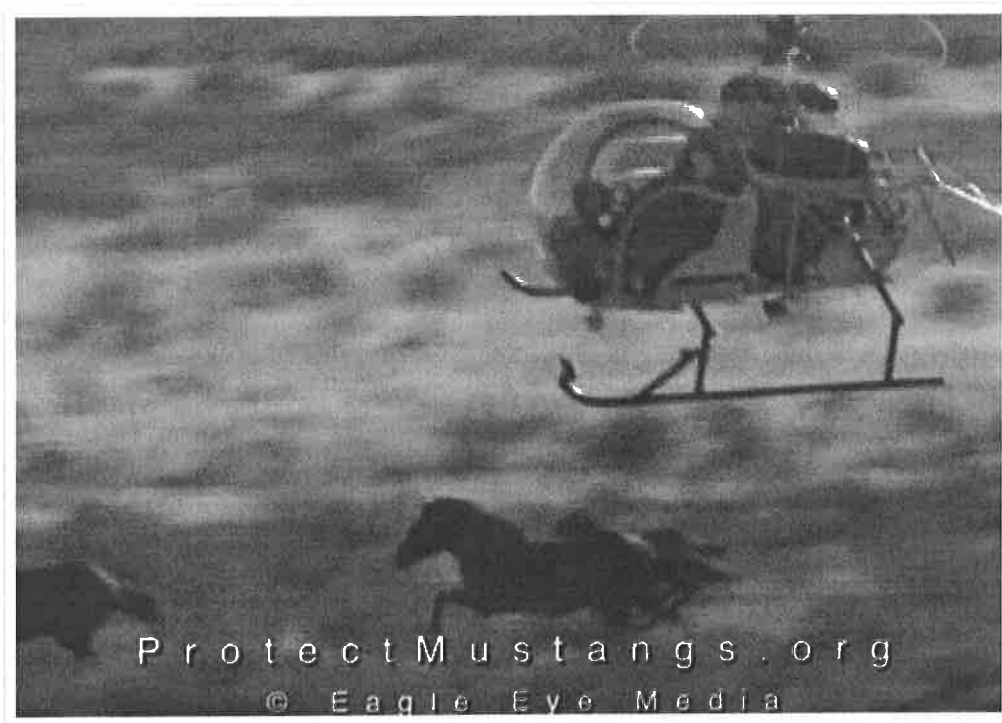
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Will There Be a Healthy Future for America's Wild Horses and Burros IN THE WILD?

Posted on September 25, 2016



(Roundup to administer Pesticide PZP for experiments)

PZP or Reserve Design? You Decide

By Craig C. Downer, Wildlife Ecologist, Wild Horse and Burro Fund

September 24th, 2016

On September 7th, 2016, I participated in the National Wild Horse and Burro Advisory Board rangeland tour of the Antelope Valley Wild Horse Herd Management Area (HMA); and on September 8th, I again participated in this board's official meeting at the historical Stockman's Hotel in Elko, Nevada. Though both tour and meeting provided for some public input, these were "one slick operation" by BLM officials and certain members of the board. This event aimed to convince all board members as well as the public of a "wild horse overpopulation crisis" with a pre-meditated selection of sites to visit and points to make. And I can well understand why a person with little knowledge and background on wild horse and public lands issues or with a pre-existing selfish agenda could be easily stampeded into accepting the over-population myth.

Indeed, on Friday, September 9th, the board voted 8 to 1 to recommend disposal of ca. 44,000 wild horses and burros currently in holding throughout the United States. If accepted by the BLM, such a recommendation would result in the cruel killing of most of these national heritage animals.

Being all too aware of how wild horses and burros have been set up to fail, all too aware of how they have been used as scapegoats for ecological problems that overpopulated humans have basically caused, I was relieved that BLM officials did not – at least for now – accept their appointed board's advice. I was also pleased to learn that BLM recently cancelled certain surgical sterilization experiments on over 200 captured wild mares in Oregon and others in Wyoming for which over \$11 million dollars had been allocated. The board's recommendation would have been tantamount to murdering nearly all of the 44 thousand horses and burros in holding. This proposed bloodbath created an enormous national and international outcry, becoming a global bone of contention. And I find it heartening to see evidence that so many people care about the wild ones and their right to live freely and naturally.

Horses and their burro cousins are highly-evolved beings, fellow sojourners on planet Earth, companions who have lived and labored alongside us humans for many generations –even several millennia! What horses and humans have experienced together concerning Life's unfolding story is truly awesome! Could this be why the cavalier disposal of the lives of so many horse souls rankles so deeply and with so many?

Today a great moral challenge stridently calls for us humans to more fairly and justly treat our fellow inhabitants of planet Earth. We must give these fellow conscious beings the life they deserve for a change! In the case at hand, horses present highly evolved

beings present here on Earth for millions of years of free and natural living, often in wide-open spaces. In diverse ecosystems, they have developed intricate relationships with an astounding diversity of plants and animals and in a way that is truly splendid. As an ecologist, I realize that they are mutually complementary to the other species of fauna and flora. And that they are extraordinarily beautiful should give us some clue as to why they are pleasing to Heaven.

Such realizations occurred to those who established the Wild Free-Roaming Horses and Burros Act of 1971 (WFHBA). This was one of the first times Americans decided to do something major that was genuinely good for a fellow species. And it defied centuries, even millennia, of human self-absorption, thoughtlessness, cruelty and greed. For rather than merely continuing to take from, we humans actually chose to give back to horse kind something of true worth and excellence: their natural freedom to live on their rightful natural land, or home. In other words, to be themselves!

Along with the Wilderness and similar acts, the WFHBA was a "great forward leap for mankind." Yet, an "all-points bulletin" today concerns our government's emerging plans for America's last remaining wild horses and burros. As a wildlife ecologist and even more as a human being who appreciates horses in the wild, I perceive their enemies not only among those traditionally opposed to them, but in our very government and even among people who claim to be wild horse advocates yet who are quick to overly compromise the future of these wild horses and burros as naturally living Earthlings! Why are the latter buckling under to the wild horses' and burros' traditional detractors and enemies? It seems that they are being duped into conceding to plans that will only ensure the decline of the wild herds? Many of us believe that this pusillanimous position must not pass! (No pasara! as we speakers of Spanish say.)

Core to what's wrong are the so-called "Appropriate Management Levels" (AMLs) that have been assigned to the legal wild horse and wild burro herds on their legal lands throughout the West, both on BLM and US Forest Service lands. And along with these, the failure to fairly allocate natural resources for truly viable populations. These AMLs are simply much too low! They are genetically non-viable and would result in underpopulated herds.

Any group of creatures that senses itself to be underpopulated usually "struggles to survive," as Charles Darwin so aptly stated. Herd numbers as well as the locations and sizes of Herd Management Areas (HMAs) have been too arbitrarily set to fit the demands of cattle and sheep ranchers, big mining corporations, expansion-hooked land developers, ORV rippers up of the land, and the kill-focused hunting establishment. As is so typical, the root of the problem lies with that thoughtlessness and greed that infects too many humans today. The consequence has been many millions of acres of zeroed-out, though still legal, herd areas, and herd sizes and the sizes and habitat composition

of HMAs (BLM) and Territories (US Forest Service) that are simply not adequate to the long-term survival needs of those wild horses and burros who still remain. To my very bones I feel that we humans must rise to the great moral challenge concerning the horses and burros and their right to live free. And this also has to do with our own success as a species, for it concerns obeying the laws of Higher Justice that govern the universe.

Truly realizing and living the noble intent of the WFHBA will make America great again, allow it to stand uprightly on solid moral ground. We shall learn to share the land and freedom with the wild ones, and this lesson shall be our salvation. We shall no longer restrict and exploit such "paragons of Nature" as the horses and their rightful lands in such a way that denies them their true place in the world we share with them as home. Today we have arrived at a crucial crossroad, a critical turning point:

Faulty PZP-type Choice for America's Wild Horses and Burros

Shall we only continue to restrict and distort the true natures of the horses and burros and to ever greater degrees, as well as their proper habitats here on Earth? Shall we only continue to deny them genuine freedom here on Earth by condoning marginally productive, water-deprived, and un-whole habitats that have been carelessly and deviously assigned for them? Shall we be cornered into accepting the application of harmful, FDA-classified pesticides such as Porcine Zona Pelucida, or PZP, GonaCon, SpayVac, etc.?

These drugs, vaccines, inhibitors of healthy horses – call them what you like – only distort and suppress the true health and well-being of vigorous wild horses and burros! And then do we expect the wild horses and burros so violated to fit into unfairly small and inadequate habitats that do not provide their long-term survival needs? No! Such marginal habitats, substandard population numbers, and biologically compromised individuals are simply unacceptable! They would not be genetically viable and would only set the horses and burros up for inbreeding suppression while at the same time preventing their filling their ecological niches in a harmoniously adapted way. And these animals already face enough survival challenges without having to deal with the violation of their most intimate parts!

Is PZP really a solution that works for the horses/burros?

I have participated in many wild horse and burro meetings and heard talks given by experts describing PZP and its actions on wild horses, including by PZP's inventor Dr. Jay Kirkpatrick and by Dr. Daniel Rubenstein, a behavioral zoologist who has studied PZPed wild horses in nature. I have also perused many scientific and popular articles

about the effects of PZP upon wild horses, both short- and long-term, and both upon individuals and their social groups.

Here are some of the major proven damages to wild horses caused by PZP:

(1) PZP weakens immune systems of individuals and their herds since it inhibits reproduction in horses with stronger immune systems. Horses with weaker immune systems are precisely those who reproduce in greater numbers in PZP-treated herds. Eventually, PZP weakens wild horse herds' overall immune systems. (Reference: Gray, M.E. & Cameron, E.Z. 2010. Does contraceptive treatment in wildlife result in side effects? *Reproduction* 139: 45-55.)

(2) Increased stress is experienced by mares who have been successfully darted by PZP and by other members of their social bands. This is because of PZPed mares' frustration in completing their natural reproductive cycle, which affects the other members of their bands. Ironically, it is precisely the mature and stable, more content and non-PZPed bands that do, in fact, cause a slowing of reproductive rates, as years of research by the International Society for the Protection of Mustangs and Burros (ISPMB) and others abundantly proves. (Reference: Sussman, Karen. 6/6/2015. Suspicious deaths with use of anti-fertility drugs. *ISPMB Journal*. www.ispmb.org/BirthControlDeaths.html.)

(3) PZP adversely affects mares' hormonal systems and consequently the social groups to which they belong. PZPed mares become irritable, aggressive, and more masculine, causing disharmony in their bands. PZP lowers estrogen and increases testosterone in mares and also produces ovarian cysts. Cysts increase testosterone levels. (Reference: U.S. National Library of Medicine. National Institutes of Health. Ovarian overproduction of androgens. (Reference: <https://www.nlm.nih.gov/medlineplus/ency/article/001165.htm>.)

(4) Auto-immune oophoritis, aka ovaritis or inflammation of ovaries, and also stillbirths result from PZP. Autoimmune oophoritis can lead to the development of other autoimmune diseases. (Reference: Kaur, K. & Prabha, V. 2014. Immunocontraceptives: New Approaches to Fertility Control. *BioMed Research International*, Vol. 2014, Article ID: 868196.)

(5) PZP-darted herds in Little Book Cliffs, McCullough Peaks, and Pryor Mountains wild horse legal herd management areas gave birth nearly year-round, i.e. 341 days, rather than in the normal spring season. This exposed PZPed wild mares and their offspring to extremes of temperature, and, consequently, to suffering and death. (Reference: Ransom, J.I. et al. 2013. Contraception Can Lead to Trophic Asynchrony between Birth Pulse and Resources. *PLoS ONE* 8(1): e54972. Doi: 10.1371/journal.pone.0054972.

(6) It is quite disturbing that PZP antibodies transfer to foals from the mare through the placenta while they are in the womb as well as through mare's milk. These antibodies react with and bind to the zona pellucida of female newborns. Yet, BLM regularly administers PZP to pregnant and lactating mares in spite of these published scientific findings. (Reference: Sacco, A.G. et al. 1981. Passage of zona antibodies via placenta and milk following active immunization of female mice with porcine zonae pellucidae. *Journal of Reproductive Immunology*. 1981, December; Vol 3, Issue 6: pages 313-322.)

(7) Weakening of immune system subjects wild horses to mal-adaptiveness to unforeseen major changes such as are occurring due to Global Warming, or catastrophes such as epidemics or wildfires. (Reference: Gray & Cameron, 2010, op cit.)

(8) PZP causes the immune system to attack and destroy the ovaries and produces a large variety of adverse effects. (References: Gray & Cameron, 2010, op cit.; Kaur & Prabha, 2014, op. cit.)

(9) By extending the lifespans of PZPed mares, PZP creates abnormal numbers of aged, sterile mares. This disadvantages younger horses, who continue to be taken away by BLM roundups to reach arbitrary AMLs. This appeases livestock or other wild-horse-adverse interests on the public lands, rather than respecting the General Public, whose majority values wild horses and burros and wants them to be fairly treated. (Reference: Knight, C.M. & Rubenstein, D.I. 2014. The Effects of Porcine Zona Pellucida Immunocontraception on Health and Behavior of Feral Horses (*Equus caballus*). Princeton University thesis, Dept. Ecology & Evolutionary Biology.)

(10) PZPed mares are no longer reproductively active in the wild horse population, thus diminishing the genetic viability of the herd. The resources they consume would otherwise contribute to reproducing adults and their offspring and maintain the vigor of the herd into ongoing future generations that adapt to ongoing environmental changes, thus assuring their long-term survival. (Reference: Ransom, J.I. et al. 2013, op. cit.)

(11) PZP is a safety hazard to humans, especially to females who administer it. (Reference: Devlin, M. and Protect Mustangs 2015. Fact Sheet: The Truth about PZP. <http://protectmustangs.org/?p=8749>.)

For these and related reasons, I believe that PZP will seriously harm and undermine the vigor of wild horse and burro populations that our nation's laws mandate us to protect and preserve, as well as to manage. The restoration and maintenance of herd vigor is essential to the ongoing ecological adaptation and long-term survival of each herd. Healthy reproduction is key to healthy wild horse and burro individuals, bands and herds. Tampering with reproduction produces a variety of aberrations that lead to dysfunctional and disordered wild horses. This results in a decline of the herds.

I have heard from many people who closely observe and/or live near wild horses treated with PZP. They describe many still-born or defective foals produced by mares in whom the effects of PZP have worn off, permitting them to again try to reproduce. Also please consider that after a few to several years of yearly application, PZP generally produces total sterility in mares, depending upon the strength of their individual immune systems. This calls into serious question the proclaimed "reversibility of PZP" to enable mares to reproduce again! To reiterate: of great concern is the fact that PZP is less effective in those mares with weakened immune systems. Hence, the wide-spread use of PZP among America's last wild horse/burro herds – nearly all below minimum viable population (MVP) level – will seriously undermine their long term survival.

But thankfully there exists an honorable alternative to PZP, and similar horse-disrespectful "quick fixes". As a wildlife ecologist, I have formulated a sound alternative to PZP and similar invasive proposals. This Reserve Design strategy would restore long-term viable, ecologically well-adapted, and naturally self-stabilizing populations of wild horses and burros throughout the West. (References concerning Reserve Design: Peck, S. 1998. Reserve Design. In: Planning for Biodiversity: Issues and Examples. Island Press, Washington, D.C. Pages 89-114; Soule, M.E. & Terborgh, J. 1999. Continental Conservation: Scientific Foundations of Regional Reserve Networks. Island Press, Washington, D.C.; Downer, C.C. 2010. Proposal for wild horse/burro reserve design as a solution to present crisis. Natural Horse Volume 12, Issue 5, pages 26 to 27; Downer, C.C. 2014. The Wild Horse Conspiracy, www.amazon.com/dp/1461068983, look up "Reserve Design" in Index.)

Reserve Design: the Intelligent and Caring Choice for America's Wild Horses and Burros

If followed correctly, the unanimously passed WFHBA would have set aside somewhere between 54 million and 90 million acres for the preservation of wild horses and burros in the wild. Lamentably, the rights of these animals—and their human supporters—have been undermined by wild horse and burro enemies, including officials charged with their protection. Current policies toward these "national heritage species" are thinly disguised plans for reducing the herds to crippling low, non-viable population numbers. These levels would be unable to sufficiently and adequately reproduce so as to survive into the long-term future. Too often the plan has been to simply eliminate them from their legal areas, i.e. "zero-out". Indeed, anywhere from 22 million to 40 or more million legal acres have been declared officially empty and "not for" the wild horses and burros or simply ignored at the onset of the WFHBA in the early years of this act (see Downer, C.C. 2014. The Wild Horse Conspiracy).

Some wild horse advocates and observers say there are only 33,000 wild horses and burros remaining on America's public lands as independently estimated for mid-2016 (Louise, Katia, wild horse documentary filmmaker, pers. comm.). Even if the official BLM

figure of 67,027 wild horse and burros remain on the public lands (55,311 horses & 11,716 burros [BLM report of March 1, 2016]), either level would be out of step with the amount of ecologically appropriate habitat where these animals have a legal right to live. The small number of horses and burros our government intends to leave on each of the ca. 179 remaining BLM-designated areas is a sure prescription for the over-fragmentation and isolation of wild horse/burro populations. This would only jeopardize their long-term survival, compromising their true vigor in the wild.

The nationwide population of wild horses and burros that our government plans to allow as the high end Appropriate Management Level is only 26,715. This would be composed of only 1,676 individual wild horses and/or burros in Arizona; 2,200 in California, 812 in Colorado, 617 in Idaho, 120 in Montana, 12,811 in Nevada, 83 in New Mexico, 2,715 in Oregon, 1,956 in Utah, and 3,725 in Wyoming. (Source: Herd Area and Herd Management Area Statistics as of March 1, 2016. BLM, Washington, D.C.) These assigned population levels are very unfair and cater to wild horse and burro detractors while largely disregarding the General Public that are strongly support this Quality of Life issue.

Our government's current goal of and plans for drastically reducing small and genetically vulnerable wild herds include the partial—and very possibly total—sterilization of mares through PZP injection. These plans also include the unnatural skewing of sex ratios to establish excess males, even in the naturally harem social structure of naturally living horses in which females are usually more numerous. And even more invasive measures have been planned in the past and are likely to crop up again, including painful—often lethal castration of stallions and the ovariectomies (removal of ovaries) of mares (thankfully recently cancelled in Oregon and Wyoming), as well as the individually deranging and socially disruptive injection of sterilization drugs or vaccines, such as PZP.

Clearly, our wild horses and burros are in a very critical situation today. I judge them to be more imperiled than they were in 1971 just before the passage of the WFHBA when they were “fast disappearing from the American scene”—and I used to work with Wild Horse Annie. We must quickly respond with a well-conceived plan for reforms that will restore the true rights of wild horses and burros upon our public lands. These lands belong to all Americans, not just to resource exploiters, whether officials of corporations or private individuals. As a wildlife ecologist and deeply rooted native Nevadan personally familiar with many of the West's wild horse and burro herds, I strongly urge the restoration of these deeply rooted North American native species. Their return to North America should be as genetically viable and naturally self-stabilizing herds that are allowed too adapt ecologically to each specific region where they have legal right. This can be accomplished by following the sound principles of Reserve Design. Such a plan would end cruel, disruptive roundups and reproductive manipulations – practices that

mock the true intent of the 1971 WFHBA by causing untold suffering and death to these beautiful and highly evolved, sensitive, wise, and freedom-loving creatures.

Reserve Design combines ecological, biological, social, and political considerations in order to achieve desired results. Basically, it involves setting aside areas of complete year-round habitat where human intervention is buffered against and where natural processes are allowed to reestablish natural checks and balances. Reserve Design will achieve internal harmony for the diverse, yet interrelated, species living within each wild horse/burro-containing ecosystem.

Critical steps for realizing Reserve Design in wild horse and wild burro habitats are as follows:

[1] Properly identify the long-term survival requirements for viable equid population levels to be accommodated in each reserve. Our chief focus would be to promote wild horse/burro-containing ecosystems of adequate size and condition to sustain viable equid populations and where plant and animal species are allowed to adapt naturally over the generations and in inter-balanced fashion. The level of 2,500 individual has been recommended for the viability of an equid population by the IUCN SSC Equid Survival Group (Equid Action Plan, IUCN SSC ESG, 1992).

[2] Conscientiously identify appropriate ecological areas suitable for the implementation of wild horse/burro-containing reserves. This would involve travel to, on-ground inspection of, flights over, and GIS analysis of a wide variety of places throughout the West. This would also entail setting up Cooperative Agreements under Sections 4 and 6 of the WFHBA in order to achieve complete habitats around the federally designated wild equid lands and involving both private and other government lands such as state and local.

[3] Wherever possible, wisely incorporate natural equid predators (such as puma, bear, and wolf) that would both limit and tone/strengthen, wild horse and burro populations.

[4] Wherever possible, wisely incorporate natural barriers that would limit the ingress and/or the egress of certain species, including the wild horses and burros. This would avoid conflicts and set up conditions for the natural self-regulation of populations.

[5] Identify where buffer zones, artificial barriers, or other means of impeding movements in and out of a reserve should be established in order to keep the species in question from coming into conflict with humans. Buffer zones possibly involving non-injurious means of "adverse conditioning" could be employed as well as "positive reinforcement" as a means of encouraging the wild equids to stay within the reserve, as for example, by providing all of their habitat needs. Also, "semi-permeable barriers" that do not restrict

most species but do prevent equids from passing out of the reserve may be used. These means would be described in practical detail and as tailored to fit each specific reserve area.

[6] Identify the presence and abundance of necessary food, water, shelter, mineral procurement sites, elevation gradients for seasonal migrations, etc., that will accommodate the long-term habitat needs of long-term viable wild equid populations. Such will also allow the natural rest-rotation of foraging between the natural subdivisions of the reserve. Fences within the reserve that impede the free-roaming lifestyle of the wild equids will be located and their removal accomplished. The intrinsic Carrying Capacity of the land in question will also be estimated as closely as possible. Such will be based upon the Productivity of forage adequate to at least a minimally viable population of wild horses/burros. Besides food, this determination will take into account other survival factors such as water, minerals, shelter, breeding and nurturing habitat, seasonal migrations, and needed protection from existing threats to the wild equids.

[7] Identify geographical regions whose human inhabitants are benignly disposed toward the creation and long-term implementation of extensive, ecologically balanced wild horse/burro-containing reserves. This would involve traveling to different areas and setting up meetings with pertinent individuals, town and government officials, etc. This also relates to the setting up of Cooperative Agreements under Sections 4 and 6 of the WFHBA, as mentioned above.

[8] Identify ways of and benefits from implementing Reserve Design that result in win-win relationships centered on the presence of wild horses and burros. Ecotourism is one major possibility here, and wild horse/burro viewing tours have already proven to be successful in several states, including Craig London's tours to the Montgomery Pass wild horses of eastern California. Restoring native ecosystems, including soils and native species, would be a major ecological benefit. The reduction of flammable vegetation through equid grazing and the restoration of hydrographic basins through the enrichment of soils, would be other major, positive contributions by wild horses and burros. Another major benefit concerns the prevention of catastrophic wildfires that over-burn vegetation, sterilize soils and denature their stored seed banks. Such fires can set the life community back to very primitive evolutionary stages. Indeed, it can be strongly argued that the restoration of wild equids in North America is crucial to combating life-disrupting Global Warming itself.

[9] Of key importance is informing the public concerning the many ways that horses and burros, as ecological "climax" species, self-limit their own populations once their respective ecological niches are filled in any given bounded area. This knowledge is key to realizing a humane relationship with these animals, a relationship that does justice to and demonstrates respect for them. And it is this respect and appreciation on the part of

us humans that is key to allowing the horses and burros to fulfill their important natural roles within the life community.

Whom to Contact to Help Wild Horses and Burros:

Please contact your Senators and Representatives, the President, the Secretary of Interior and its Bureau of Land Management; and the Secretary of Agriculture and its US Forest Service. Both of these agencies are mandated by the WFHBA to preserve and protect as well as to manage the wild horses and burros and their legal lands and resources for the benefit of the former.

Also contact your state governor and state, county, and municipal officials concerned with wildlife and natural resources. Get in touch with the media: newspapers, magazines, TV and radio stations. Make all of the above aware of what is needed to stop the over-reduction or zeroing-out of the herds and the cruel abuse of wild horses and burros, whether through drugging, vaccines, surgeries, or other unnatural and invasive methods. Rather, persist in the restoration of the wild horse and burro herds and their habitats to viable levels, healthy conditions and sizes. This will be to restore the pure intent of the law.

A key committee to contact right away is the U.S. House of Representatives' Appropriations Committee, particularly its Interior, Environment & Related Agencies Subcommittee. The telephone number of the latter is (202) 225-3081. Emails of staff to contact are betsy.bina@mail.house.gov and Kristin.richmond@mail.house.gov. This subcommittee is now deciding which direction to take in regards to the wild horses and burros. It has been hearing too exclusively from traditional wild horse and burro enemies.

Those of us who value and appreciate the wild horses and burros and their rightful place in the world of nature must set the record straight for these wonderful and ancient presences on Earth. We must not allow their enemies or those ignorant of their worthiness prevail!

The spirited and intelligent horses and burros are depending on you and !!

In addition to contacting the above, be sure to contact the President of the United States and the White House staff at (202) 456-1111 (TTY/TTD: (202) 456-6213). Switchboard (202) 456-1414. You can also do this by email at <http://www.whitehouse.gov/contact> or president@whitehouse.gov.

You may contact your Senators and Congressmen/State Representatives (federal and state) by linking on internet with "Elected Officials / USA Gov". This will provide you with

the contacts you require for federal, state, and local offices. The link is: <https://www.usa.gov/elected-officials>.

And in closing I urge you to contact the natural resource and public lands committee and subcommittee in the U.S. Senate.

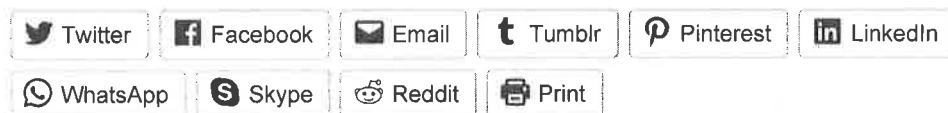
On behalf of our wonderful wild horses and burros, I sincerely thank all of you for your caring and for your effective action.

Craig Downer

Wildlife Ecologist. A.B. UCB; M.S. UNR; Ph.D. Cand. U. Durham UK. Link to his article The Horse and Burro as Positively Contributed Returned Natives in North America is <http://www.sciencepublishinggroup.com/journal/paperinfo.aspx?journalid=118&doi=10.11648/j.ajls.20140201.12> Website to check out is www.thewildhorseconspiracy.org in which the links to the article and how to order his book are present.

Also please consider signing this important petition to stop this massacre of the wild horses and burros from happening: The link to this petition is: <http://www.thepetitionsite.com/907/592/301/demand-nokill-45000-wild-horses-burros-in-holding/>

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This entry was posted in **Uncategorized** and tagged **AML, Appropriate Management Level, Burros, Change.org, Craig Downer, euthanize, House of Representatives, Mass Killing of 45000 Wild Horses, petition, public land, PZP, Senate, Sterilize, The Wild Horse Conspiracy, wild horses by Protect Mustangs**. Bookmark the **permalink** [<http://protectmustangs.org/?p=9923>].

5 THOUGHTS ON "WILL THERE BE A HEALTHY FUTURE FOR AMERICA'S WILD HORSES AND BURROS IN THE WILD?"

Darlene Abbott
on **October 1, 2016 at 11:40 am** said:

I am opposing PZP its the cause of extinction.The last run of the Wild Horses.The run of extinction is not what I want for them.The run to still born foals,run to deformities is not and surely not a pesticide for our Wild Horses.The wild horses not yours BLM, not yours Gov.Please Leave the Underpopulated Wild Horses in the wild let Nature have them back.Let our Earth have them back.Let them have The run of freedom and not molested.

Gloria Watson

on **October 1, 2016 at 12:51 pm** said:

Getting damn sick of humans destroying all walks of life we are the most deadliest creature on the planet IT NEEDS TO STOP AMEN

John Cox

on **October 1, 2016 at 12:55 pm** said:

We need a HOLD placed on everything the BoLM and DOI are doing, as their system corrupt in total — and way to costly to taxpayers! Wild Horses need to go back onto their homelands, their LEGAL homelands! And that is what American's Wanted! Apparently, within all the convoluted and conflict of interests around, many people have forgotten that — WHAT'S WORSE, those that make up the lies and misinformation, or the one's who accept it as truth and then repeat it???? Ignorance is not a nice situation, what it is remains clear, it is stupidity and bigotry and hate — all based on FEAR!

<https://prophoto7journal.wordpress.com/2016/10/01/wild-horse-controversy-built-around-welfare-ranchers-lies-bolm-and-doi-ignorance-and/>

Lisa Hebert

on **October 1, 2016 at 1:26 pm** said:

This is a very informative article by a man who's experience goes far beyond most of ours. Read listen learn so we can be educated and United in the task to save the wild horses and their land.

kallya georgiades

on **October 1, 2016 at 2:56 pm** said:

When the first pioneers came to America they had murder in their hearts. It is a terrible thing to say but the truth must be told and the Hollywood myth to be dispersed once and for all. The first European pioneers were the dregs of Europe at the time. They came to the New World with greed in their hearts. Their first thought was to get as much land as possible no matter what the odds. I cannot go into historical facts on this forum but history speaks for itself. The first people to suffer were the American Indians. The American pioneers stole the Indians' lands and put them in concentration camps. But, that wasn't all. In order to destroy the American Indian those murderous monsters from hell had to destroy their source of food. Without food the American Indian would perish. The American Indian's source of food and clothing was the Buffalo. The Indians did not kill the Buffalo indiscriminately. They only killed a small number needed to survive. The scenario changes when the so called pioneers enter the picture. First thing first, right? So, their FIRST job was to murder all the Buffalo without mercy. Thousands and thousands of Buffalo were murdered without compassion or pity. And now, a century or two later, we have to get rid of the wild horses and burros because the land is needed by the Ranchers to raise their cows. The more land for grazing their cows the better. The wild horses and burros therefore become obsolete. After all, these beautiful graceful creatures that adorn our lives do not bring in any money and that's what the world is all about. MONEY!!! Follow the money and we solve the jigsaw puzzle as to why The BLM Advisory Board voted unanimously but for one single vote, to kill 44,000 horses. This is the age of murder and killing all over again. Humanity is regressing back to the stone age when "humans" were surviving in caves on raw meat. If it hasn't come to that yet but it soon will if we do not mend our ways. Surely we need Divine intervention and daily prayers We need more than that. We need a Miracle. In the meantime, we will continue to fight for our horses and make the American people aware how the American Mustang, the pride of America is being destroyed by evil doers from hell. Once the truth is exposed BLM will owe a huge explanation to the people of this country and it might even cease to be relevant. The thing is we do not want to sacrifice 44,000 wild horses and burros to prove our point. Thank you, BLM!!!!

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