

EXHIBIT 17

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

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

8 Plaintiffs,)

9 vs.)

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

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

14 Defendants.)
15)
16)

17 DEPOSITION OF KENDELL L. HUGHES

18 October 5, 2006
19 10:30 a.m.
Phoenix, Arizona

20
21
22
23
24 REPORTED BY:
Jodie Guhr, RPR
Arizona Certified Reporter
25 No. 50191

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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

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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 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 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 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 --

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

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

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

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

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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 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-
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KENDELL L. HUGHES

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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
 24
 25

JODIE GUHR, RPR
 Arizona Certified Reporter
 No. 50191