



April 21, 2021

Mr. Anthony Madrid
Attn: Heber Wild Horse Territory Management Plan
P.O. Box 640
Springerville, AZ 85938

Submitted electronically to:

<https://cara.ecosystem-management.org/Public/CommentInput?project=18916>

RE: Heber Wild Horse Territory Management Plan Draft Environmental Assessment

Dear Mr. Madrid,

The Arizona Game and Fish Department (Department) has reviewed the Heber Wild Horse Territory Management Plan Draft Environmental Assessment (Draft EA) and the Heber Wild Horse Territory Draft Management Plan (TMP) dated March 2021. Under Title 17 of the Arizona Revised Statutes, the Department, by and through the Arizona Game and Fish Commission (Commission), has jurisdictional authority and public trust responsibilities for the management of state fish and wildlife resources. In addition, the Department manages threatened and endangered species through Section 6 authorities and the Department's 10(a)1(A) permit. It is the mission of the Department to conserve Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations.

The Department has participated as a Cooperating Agency and Interdisciplinary Team (ID Team) member for this planning process and provides the following comments based on the agency's statutory authorities, public trust responsibilities, and special expertise related to wildlife resources and recreation. It is the intent of these comments to aid the Forest Service to develop a Proposed Action (PA) that is consistent with the direction contained in the Wild Free-Roaming Horse and Burro Act of 1971 and Congressional intent of this legislation.

The Department has identified concerns with the Draft EA, including the PA and TMP. Most of these concerns, which are detailed in the attached comment matrix, had already been brought to the attention of the Apache-Sitgreaves National Forest (A-S) in our March 4, 2020 comment letter for the Heber Wild Horse Territory Management Plan Proposed Action, including the Pre-Scoping Draft Proposed Action Comments and Concerns document dated February 2019.

The Department evaluated the Draft EA and TMP under three main criteria: 1) Does the Proposed Action meet the Purpose and Need for the Proposal? 2) Did the Draft EA consider a reasonable range of alternatives as required by the National Environmental Policy Act (NEPA)? and 3) Does the Proposed Action meet Guiding Law, Regulation, and Policy?

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The Proposed Action does not fully meet the Purpose and Need for the Proposal

Implementing the TMP includes both setting the appropriate management level (AML) and managing the territory within that range. The thresholds for determining excess horses in the Draft EA and TMP lack sufficient clarity and direction which leaves key decision points, where timely action is needed, open to interpretation. The A-S should clarify their intent to make determinations of excess horses, and implement removal actions necessary to “ensure the herd is managed to maintain a self-sustaining population of healthy horses within the designated territory” in compliance with Forest Service Manual (FSM) 2260.3 and 36 Code of Federal Regulations (CFR) § 222.61 (a)(1).

Additionally, the process flowchart (as illustrated in Figure 2 on pg. 23 of the Draft EA and page 6 of the TMP) does not provide for implementation of removal actions once the upper limit of the AML is exceeded, independent of any other threshold. A revised process flowchart would provide clear and direct action between exceeding the upper limit of the AML and the removal of excess horses from the Sitgreaves National Forest.

The Draft EA did not consider a reasonable range of alternatives as required by NEPA

The Draft EA considers two alternatives in detail: the proposed action and the no action alternative. The Draft EA identifies several alternatives that were considered but dismissed from detailed analysis. These alternatives include the following: Sterilization of Horses, Fencing the Black Canyon Lake, Expanding the Territory, Setting AML to Zero, Increasing the AML, and Reducing Authorized Livestock Grazing within the Territory.

The above-listed alternatives do not discuss or adequately disclose to the public the discretionary authority possessed by A-S in managing horse populations on the Territory. As explained in the Department’s December 2019 and March 4, 2020, comments, the Department believes A-S has the ability to remove animals based on the established AML alone. The Final EA must discuss and disclose the environmental impacts of implementing this central recommendation from the Department’s scoping and pre-scoping comments.

The Proposed Action does not meet Guiding Law, Regulation, and Policy

- 1. The decision, as stated in the Draft EA to manage the horses currently inhabiting the HWHT or nearby areas as wild under the Wild Free-Roaming Horses and Burros Act of 1971, as amended is contrary to 36 CFR § 222.60(b)(13) and FSM 2260.5*

The Draft EA discusses the findings of an ethnographic study that was conducted by a Forest Service historian in 2016-17, to determine whether the current horse population in the area of the HWHT are progeny of the initial herd when the HWHT was designated. The study found that the weight of evidence supports a conclusion that the current population occupying the area are not progeny or biologically connected to the original herd. Nevertheless, the Draft EA dismisses these findings and states that “there is no conclusive information from which to determine that

the horses on the Sitgreaves National Forest are not the progeny of wild free-roaming horses that utilized what was established as the Heber Wild Horse Territory after the passage of the Act.” “Moreover, [the Draft EA continues] Forest Service regulations require the agency to administer wild free-roaming horses and their progeny within an established territory to maintain a thriving ecological balance and to consider them an integral component of multiple use resources.”

The Department contends that the comments summarized on page 99 and 100 of the Draft EA do not provide a basis for setting aside the findings of the ethnographic study. The commentators do not challenge the methodology of the ethnographic study or assert facts to challenge the specific findings of the study. Rather, the summarized comments merely advocate—as a policy matter—that the Forest Service should maintain horses on the territory.

The Department further notes that the Draft PA discusses the porous nature of the boundary fence between the A-S and the Fort Apache Indian Reservation (FAIR) following the 2002 Rodeo-Chediski Fire, and the influx of horses from the FAIR onto the A-S. Additionally, in 2005, the Forest Service reported, and argued in federal court, that the original herd died out in the early 1990s. The Department recommends the Draft EA and TMP address the porous nature of the boundary fence between the A-S and the FAIR such that existing fencing be maintained or improved to prevent unauthorized livestock from entering the HWHT.

Furthermore, based on the information provided in the Draft EA and supporting documents, including the conclusion that “there is no basis to establish the connection between the original protected band and the current horse population”, the population estimates of zero from the years 1994 and 1995 as reported to Congress, and the documented influx of horses into the area of the HWHT following the 2002 Rodeo-Chediski Fire, the Department does not agree that it is appropriate for the A-S to “nonetheless decide to manage horses inhabiting the territory or nearby areas as wild under the Act”, as stated in the Draft EA. In fact, the Department requests clarification of how the Draft EA is in conformance with Forest Service regulations (36 CFR § 222.60, et seq.) and how the Draft EA provides for the Forest Service policies contained in the Forest Service Manual (FSM 2260.5). By adhering to the Forest Service regulations and policies, the A-S can avoid setting a negative precedent in which livestock that wanders into the forest in the future is forever “assumed” to have protected status.

2. *The Draft EA and TMP, contrary to CFR 222.69(a) and Wild Free-Roaming Horses and Burros Act of 1971, as amended, do not provide for the immediate necessary action to remove excess animals when AML is exceeded.*

Instead of wanting the Forest Service and Bureau of Land Management (BLM) to restore a thriving ecological balance after it had been lost, Congress directed the agencies to develop AML’s for herd territories to prophylactically “preserve and maintain” a thriving ecological balance before its lost. Thus, the Department recommends the A-S amend the Draft EA and TMP to make removal of excess horses based on exceeding AML actionable on a stand-alone basis, and that removal actions be taken until all excess horses have been removed. In addition, the Department is concerned that the proposed frequency of surveys, as much as five years apart, are inadequate to ensure the timely implementation of management actions to avoid unacceptable

resource degradation. Given the 19-21% annual growth rate for the herd, conducting surveys every five years would reasonably result in exceeding the upper AML, and as a result would “lead to deterioration of the range”.

The Draft EA developed an AML and resulting forage allocation, however, the justification for the stated allocation does not seem to provide for an equitable split between horses, wildlife, and authorized livestock, instead allocating half of all the available forage to horses alone. The Draft EA should provide rationale for the justification in recognition of the mandate of multiple uses on the landscape.

As a Cooperating Agency and ID Team member, the Department looks forward to assisting the Forest Service in refining the Draft EA that includes due consideration of appropriate alternatives to ensure that any action taken is consistent with the Free-Roaming Wild Horse and Burro Act. It is important that due consideration is given to equitably balance the needs of horses, livestock and wildlife management. Thank you for the opportunity to provide input on this important issue for the Forest Service’s consideration. If you have any questions regarding this letter, please contact Aaron Hartzell, ahartzell@azgfd.gov or 928-532-2311.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clay Crowder', with a stylized, cursive script.

Clay Crowder
Assistant Director, Wildlife Management Division

AZGFD #M21-03230620

AZGFD Comment Matrix - Heber Wild Horse Territory Management Plan Draft EA (AZGFD #M21-03230620)				
Page	Document	Section	Comment/Observation	Action Requested
2	Draft EA	2nd Paragraph	“While the source of the current population of horses is uncertain, the Forest Service has nonetheless decided to manage horses inhabiting the territory or nearby areas as wild under the Act, unless particular horses are branded, claimed, or shown to be introduced onto the National Forest System by accident, negligence, or willful disregard of private ownership.”	Please clearly define “nearby areas”.
4	Draft EA	Guiding Law, Regulation and Policy	“The act requires management, protection, and control of these animals within designated herd areas (synonymous with territories).”	Please clarify how the proposed action conforms with the requirement for the “control of these animals within designated herd areas (synonymous with territories)”.
7	Draft EA (TMP) and various locations within the resource reports	Draft EA pg. 7, last paragraph; pg. 14, last paragraph; pg. 21, 3rd paragraph (TMP pg. 3, Appropriate Management Level, 3rd paragraph)	“[...] by making half of the total available forage (989,063 pounds) available for the wild horses, the current obligation of 506,000 pounds of forage for permitted livestock use is still met, and there would be an additional 483,063 pounds of the available forage for wildlife (beyond that currently utilizing the area) or for future adjustments in the livestock grazing level.”	Please explain how “there would be an additional 483,063 pounds of the available forage for wildlife (beyond that currently utilizing the area)”, as it appears that these numbers did not take into account current wildlife forage utilization.
18	Draft EA	Table 2; Potential Management Actions	“Apply appropriate management tool based on causal factor.”	Please define “causal factor”.
22	Draft EA	Criteria and Process for Determination of Excess Horses	General Comment: The thresholds for determining excess horses in the proposed action and TMP lack sufficient clarity and direction which leaves key decision points, where timely action is needed, open to interpretation. As a result the timely implementation of population management actions remains uncertain.	The Department recommends adding clarity and clear direction to the thresholds for determining excess horses, as well as providing clear direction for timely (immediate??) implementation to restore the population below AML in the proposed action. The Department included specific recommendations below.

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22	Draft EA (TMP)	3rd paragraph (TMP pg. 6, last paragraph)	“When a threshold is exceeded, the deciding official (district ranger or forest supervisor) may make a determination that there is an excess of horses. That determination will be documented in a letter to the file. Once an excess determination is made, the deciding official will then authorize removal of excess horses to achieve appropriate management levels (figure 2).”	The Department believes making such a determination optional when a threshold has been exceeded adds subjectivity to the decision process. The Department recommends a clear, objective decision process, utilizing clear thresholds and best available science for making determinations of excess horses, and conducting removals when AML is exceeded. Also, the Department requests a timeline by which the deciding official would make such a determination, as well as the length of time between the authorization for removal and the initiation of removal activities. Knowing this timeline will make it clear how the Purpose and Need are being met and how the A-S will be adhering to guiding law, regulation, and policy.

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22	Draft EA	Thresholds for Determining Excess Horses	"The horse population exceeds the upper level of appropriate management level, which reflects the maximum number of horses to ensure a thriving natural ecological balance within the territory and preventing deterioration of the range."	The Department recommends adding the wording "within the Sitgreaves National Forest" to this threshold and deleting "which reflects the maximum number of horses to ensure a thriving natural ecological balance within the territory and preventing deterioration of the range" to remove any ambiguity as to the geographical extent to which the appropriate management level (AML) applies, and would help ensure that the implementation of needed removals of excess horses distant from the Heber Wild Horse Territory (HWHT) could occur regardless of conditions within the HWHT itself.

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22	Draft EA (TMP)	Thresholds for Determining Excess Horses (TMP pg. 5, Thresholds, 2nd bullet and pg. 25, Table 4)	Draft EA pg. 22 and TMP pg. 5, "Horses are occupying areas not designated for their long-term use, such that a thriving natural ecological balance cannot be maintained with other resource use allocations." and TMP pg. 25, "Horses are occupying areas outside the Heber Wild Horse Territory in areas not designated for their long-term maintenance."	Please clarify within the EA if the A-S has designated areas outside of the HWHT for the long-term use or maintenance by horses. If the A-S has not identified such areas, please reword the text as follows: "Horses are occupying areas outside of the Heber Wild Horse Territory." The Department also recommends deleting "such that a thriving natural ecological balance cannot be maintained with other resource use allocations." This will clarify that the A-S intends to implement removal actions necessary to "ensure the herd is managed to maintain a self-sustaining population of healthy horses within the designated territory, in a thriving natural ecological balance with other uses and the productive capacity of the habitat" in compliance with Forest Service Manual (FSM) 2260.3 and 36 Code of Federal Regulations (CFR) § 222.61 (a)(1).
22	Draft EA	Thresholds for Determining Excess Horses	"Resource damage is occurring in sensitive areas for 3 measurement periods such as but not limited to springs, riparian areas, threatened and endangered species habitat, and horses are identified as a contributing factor."	The Department recommends removing the requirement that 3 measurement periods must elapse, which based on monitoring intervals reported in the Draft EA could be as long as 30 years before this threshold would be met. Allowing for the potential of 30 years of resource damage to occur does not provide for the goal of maintaining "a thriving natural ecological balance" as stated in the purpose and need for the proposal.

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23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	The process flowchart, as illustrated, does not provide for implementation of removal actions once the upper limit of the AML is exceeded, independent of any other threshold. Removal actions should take place upon exceeding the upper limit of the AML to ensure resource damage does not occur unchecked. As currently proposed, the process relies on reactive management triggers that allow for the possibility of removal actions to be taken to address resource damage only once problems are occurring, and under certain circumstances occurring for decades.	The Department recommends the process flowchart be revised to show clear and direct action between exceeding the upper limit of the AML and the removal of excess horses from the Sitgreaves National Forest.
23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	“Remove or Relocate”	Please define “remove” and “relocate”, and provide the rationale and justification for utilizing each of the two approaches.
23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	AML in excess	Please clarify in the flowchart that the AML is in excess when horse numbers throughout the Sitgreaves National Forest are in excess of 104 horses. Also, this should be a decision point that if answered in the affirmative would lead directly to the action of the removal of the excess horses.

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23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	Are horses utilizing the territory?	The Department is aware that portions of the HWHT are not currently fenced, and thus the HWHT boundary is permeable, with horse movement occurring across those unfenced portions. The permeable nature of the HWHT boundary provides the possibility for horses adjacent to the HWHT to utilize the HWHT. Although portions of the HWHT are currently unfenced, pasture fencing beyond the HWHT do exist and can function as barriers to horse movement. The Department recommends this decision point be clarified to include that the most proximate existing pasture fences, where no HWHT boundary fence currently exist, is the line of demarcation to differentiate those horses that are utilizing the HWHT from those that are not.
23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	Grazing Utilization over 35% in ½ years where horses are located; SPI <1.0 and forage < 50lb/ac; Resource Damage for 3 measuring periods; and Animal health BCS <3 As currently displayed in the flowchart, horse removal would only occur if one of these thresholds was met AND the AML is exceeded. Exceeding AML should stand alone as a criteria to trigger horse removal.	The Department recommends that the flowchart be changed to reflect removal of horses after the attainment of any one of these thresholds, to avoid resource damage and/or horse health impacts, independent of AML.

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23	Draft EA (TMP)	Figure 2 (TMP pg. 6, Figure 2)	Resource Damage for 3 measuring periods A number of ecosystem health indicators have monitoring frequencies of every 5 to 10 years. The indicators for the uplands include ground cover, soil condition, and herbaceous species presence or absence and composition. For riparian areas and wet meadows the indicators include soil condition, woody species height class, and streambank stability and cover (Draft EA, Tables 30 through 33). Allowing for resource damage to occur for three measuring periods before this threshold would be met could allow for ongoing resource damage to go unabated for nearly three decades before the A-S would take corrective action through the removal of horses.	The Department recommends that the maximum time between monitoring be reduced and/or the number of measuring periods necessary for the threshold to be met must be reduced. As currently proposed, resource damage could be occurring for 30 years before an action is taken to abate it.
25	Draft EA	Herd Health and Population	“The Forest Service would conduct aerial surveys every 2 to 5 years as funding allows.” The Department is concerned that the proposed frequency of the aerial surveys, as much as five years apart, are inadequate to assess population growth of the herd. Given the 19 percent to 21 percent annual growth rate for the herd, conducting aerial surveys every five years would reasonably result in exceeding the upper AML, and as a result would “lead to deterioration of the range.”	To avoid exceeding the upper limit of the AML and the potential deterioration of the range, the Department recommends the A-S conduct more aerial surveys. no less than every 2 years after the foaling period (June).

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30	Draft EA	Table 3. Range-3, Wild horse movement	“New fence construction, major fence reconstruction or cattleguard installations should be designed to facilitate wild horse movement within the territory and coordinated with district personnel”	As is the case for Range-2, the following verbiage should be added to Range-3: “Note: This does not include fences constructed to protect springs or other sensitive areas or fences adjacent to private lands.”
49	Draft EA (Proposed Appropriate Management Level Determination)	Forage Utilization Levels; 2nd Paragraph (Proposed AML Determination pg. 22, Forage Use, 4th paragraph)	“Since 2005, all measurements were taken post livestock removal from the pasture.” The Department is concerned that the calculated available forage, partially based on utilization measurements taken post livestock removal, and which might have occurred prior to the end of the growing season, might not fully reflect actual utilization resulting from the continued grazing by horses and wildlife between the time of the post livestock removal measurements and the end of the growing season.	Please clarify how the utilization measurements taken post livestock removal might compare to utilization measurements taken at the end of growing season. There is likely a discrepancy between the two measurement periods that should be factored into the available forage calculation. Also clarify whether the potential additional impacts on wildlife forage availability and hiding cover were considered in the effects analyses.
98	Draft EA	Beliefs about the Heber Horse Herd	“Two narratives summarized here are examples of beliefs regarding the status of wild horses on the Sitgreaves National Forest. One summary relies on information provided in an ethnographic study conducted by the Forest Service and the other summary is gleaned from news articles by wild horse advocates. Public comments received from the scoping period follow each summary as an illustration of these attitudes, values, and beliefs.”	The Department recommends A-S base its management decisions on the best available science and information. The summarized comments merely advocate—as a policy matter—that the Forest Service should maintain horses on the territory.

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102	Draft EA	Hunters, Anglers, and Conservationists; Social Capital	“the Arizona Department of Game and Fish”	Should be “the Arizona Game and Fish Department”.
5	TMP	Thresholds; 2nd bullet	“It may be necessary to use telemetry collars or other individual animal tracking devices to determine which horses and their associated bands utilize the territory and which horses have no association to the territory [...]”	If deemed necessary, the Department recommends animal tracking devices only be used on the subset of horses beyond the unfenced HWHT boundary within the Stermer, Bunger, and Gentry pastures.
7	TMP	Process for Preparing for a Gather	“In the event helicopter or other approved gather methods are necessary, appropriate National Environmental Policy Act analysis will be addressed.”	Please explain what is meant by “appropriate National Environmental Policy Act analysis will be addressed.” These actions should be analyzed in the current Draft EA. Therefore, the Department recommends these gather methods be fully analyzed in the Draft EA so further NEPA is not needed in the future.

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8	TMP	Annual Operational Plan; 2nd paragraph	<p>“Year 1- [...] A total of 50 to 70 horses would be anticipated removed.”</p> <p>The Department appreciates that the A-S is providing an example of what a preliminary annual operating plan would include. However, the Department is concerned that the A-S is not utilizing, and thus disclosing, more realistic removal numbers that would be necessary to bring horses within the Sitgreaves National Forest to AML. The 2017 aerial surveys estimated the horse population on the Sitgreaves National Forest at that time to be between 270 and 420. At a 20 percent growth rate, it is reasonable to assume that the current population could be between 560 and 871 horses. To just keep pace with the 20 percent annual growth rate, year 1 removals would need to be between 112 and 174 horses.</p>	<p>In the final TMP, the Department recommends A-S consider removal numbers that are more appropriate to achieving AML in a timely manner, as required by law, regulation, and policy.</p>

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9	TMP	Last paragraph	<p>“The overall goal of the territory management plan is to encourage horses to utilize the designated territory rather than remaining on other areas on the national forest [...]”</p> <p>The Department agrees with the stated overall goal. However, the TMP and proposed action lack what is necessary to allow for the realization of this goal.</p>	<p>The Department recommends a fully fenced HWHT is necessary to encourage horses to utilize the designated territory. In addition, the proposed action should include consideration of the most proximate existing pasture fences, where no HWHT boundary fence currently exist, as a line of demarcation to differentiate those horses that are utilizing the HWHT from those that are not.</p> <p>Moreover, the Department recommends the TMP address the porous nature of the boundary fence between the A-S and the Fort Apache Indian Reservation (FAIR), and the potential influx of horses from the FAIR onto the A-S. The TMP should include maintaining existing fencing to prevent FAIR horses (unauthorized livestock) from entering the national forest, drawing on the limited resources reserved for management of the HWHT.</p>
10	TMP	Appendix 1: Standard Operating Procedures for Removal of Excess Wild Horses; Coordination; Bullet 1	<p>“Inform and involve actions: Contacts should include local, regional, and national agency personnel along with and involvement of wild-horse-interest organizations and humane associations well in advance of any planned gather action. Local public meetings are required if helicopters are to be used in the removal program (FSM 2267.1).”</p>	<p>Please clarify to explicitly include coordination with the State wildlife agency as required by 36 CFR § 222.61(a)(7).</p>