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Attn: Administrative Review Staff

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Submitted online at [US Forest Service NEPA Project Public Reading Room](#)

Objection to the Final Environmental Assessment and Draft Decision Notice for the Heber Wild Horse Territory Management Plan

To Whom It May Concern:

Pursuant to 36 CFR 218, I hereby submit the following objection to the Final Environmental Assessment (EA) and Draft Decision Notice for the Heber Wild Horse Territory Management Plan. This objection is timely filed and includes information, evidence, and attachments for inclusion in the administrative record.

I had submitted a comment on April 3, 2021 during the open EA comment period pertaining to the HWHT boundaries being drawn in an arbitrary and capricious manner. I would like to begin my objection with my rebuttal to the Forest Service response in their final draft EA to numerous comments about the boundaries. The rest of my objection will follow my specific rebuttal to the two paragraph response by the Forest Service on page 165 of the Heber Wild Horse Territory Management Plan Final Environmental Assessment which states:

Forest Service Response:

“The Wild Horse and Burro act states that the territories were to be established by horses that were present at the time the act was passed and only animals whose ownership could not be determined were to be considered wild. There are no records demonstrating that those horses were present prior to 1974. Ownership was determined and documented in the record mentioned. The act instructs the agency to remove unauthorized livestock as soon as possible that could be a threat to the integrity of the herd.

The intent of this project is to establish a management plan for the existing territory, not to reexamine the original 1974 territory designation. The letter to the regional forester establishing the territory followed the procedures established at that time.”

Rebuttal to the Forest Service’s Inadequate Response Regarding Heber Wild Horse Territory Boundaries

The Forest Service's response regarding the boundaries of the Heber Wild Horse Territory (HWHT) is not only inadequate but inconsistent with both the intent and the procedural requirements of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), as well as the interagency guidance that was to be followed in determining the boundaries of wild horse territories. The claim that there are "no records demonstrating that those horses were present prior to 1974" is contradicted by multiple facts and by the Forest Service's own obligation to conduct surveys to establish such presence.

1. Failure to Follow Interagency Guidelines

As obtained through FOIA requests, the Bureau of Land Management (BLM) issued clear interagency guidelines in the early 1970s for identifying and documenting the presence of free-roaming horses on public lands. These guidelines required that surveys be conducted to establish the areas where wild horses were found at the time the Act was passed in December 1971. The intention was to use this data to delineate the boundaries of Herd Areas and Territories. The Forest Service has not demonstrated that these survey protocols were followed in the case of the Heber Wild Horse Territory. In fact, documents received through FOIA indicate that no comprehensive or contemporaneous survey was conducted. The absence of these records is not a justification for excluding areas known to be occupied by free-roaming horses at the time, but instead reveals a fundamental procedural failure.

As part of this objection, I submit attached Forest Service FOIA responses that are directly relevant to the historical context and procedural obligations surrounding the establishment and management of the Heber Wild Horse Territory.

One of the attached documents is a letter dated February 22, 1973, from Robert L. Schultz, then District Manager of the BLM Ely, Nevada Office. This letter indicates that W. R. Fallis, the Assistant Regional Forester for Region 3 of the Forest Service, had formally requested the BLM's Inventory Procedures for wild horses and burros. In response, the BLM provided a copy of the detailed inventory procedure developed in Nevada, which was intended to guide the identification, population estimation, and territorial delineation of wild horse and burro herds under the mandates of the Wild Free-Roaming Horses and Burros Act of 1971.

Additionally, I have attached the FOIA response to my inquiry seeking documentation from the Forest Service for the time period of 1968–1974. Specifically, I requested:

The estimated population of wild horses in the Sitgreaves National Forest during that time;

Maps showing wild horse territory boundaries, habitat limits, population surveys, and the locations of wild horses within the Sitgreaves National Forest;

All documents and correspondence—whether internal (e.g., between Forest Service rangers and supervisors) or external (e.g., with BLM or other agencies and individuals)—regarding the development and formal agreement establishing the Heber Wild Horse Territory.

The FOIA response produced no documentation indicating that the Forest Service had implemented or followed the inventory procedures provided by the BLM. There is also no evidence that the Forest Service conducted or retained records of a population estimate or territorial survey for the Heber wild horses during this critical time period, despite the clear

guidance and coordination offered by the BLM and the requirements set forth under the 1971 Act.

This absence of documentation raises serious concerns about the legitimacy and completeness of the historical record being used to inform current decisions under the Heber Wild Horse Territory Management Plan. It suggests that the original establishment of the territory may not have been based on adequate or lawful inventory procedures, and it casts doubt on any current planning assumptions that rely on such undocumented or incomplete data.

Given this context, I urge the Forest Service to re-evaluate the foundational data and procedural compliance regarding the designation and continued management of the Heber Wild Horse Territory, and to ensure full adherence to both the letter and spirit of the Wild Free-Roaming Horses and Burros Act.

2. Lack of Transparency and Documentation

The Forest Service states that "ownership was determined and documented in the record mentioned." Yet, it has not produced credible or verifiable documentation proving that all horses present at the time were privately owned. Nor has it provided evidence that any meaningful distinction was made between unauthorized livestock and truly wild, unclaimed horses under the criteria of the WFRHBA. Moreover, documentation shows that local residents and Forest Service personnel were aware of the existence of unbranded and unclaimed horses roaming freely in the area prior to and at the time of the Act's passage.

3. Misinterpretation of the WFRHBA's Intent

The WFRHBA was enacted with a strong conservation mandate: to protect and manage wild free-roaming horses and burros in areas where they were found to be living as of the date of the Act. Congress specifically used the phrase "where presently found," referring to the physical location of free-roaming horses in 1971, not arbitrary or convenient boundaries established in subsequent years without adequate survey data. The Forest Service cannot now excuse its inaction or omission by claiming that current territory boundaries are final and not subject to reevaluation. The very fact that boundaries may have been established without following the required procedures necessitates a good-faith reassessment.

4. Improper Dismissal of the Need to Reassess the 1974 Territory Designation

The agency's assertion that the "intent of this project is... not to reexamine the original 1974 territory designation" does not absolve it from its duty to ensure that the current management plan reflects the true historical and legal foundations of the HWHT. If the original designation was based on incomplete, flawed, or missing data—as the FOIA responses suggest—it is arbitrary and capricious for the Forest Service to continue to rely on it without correction. Agencies are obligated under the Administrative Procedure Act to correct past mistakes and act on the best available information, especially when the legal rights of protected wildlife are at stake.

5. Ignoring Historical and Local Knowledge

Numerous reports, oral histories, and accounts confirm the longstanding presence of wild, unclaimed horses in the area now designated as the HWHT and beyond its artificially limited boundaries. To ignore this evidence, or to assert that such horses did not exist due to a lack of documentation (which the agency itself failed to collect), undermines both the spirit and the letter of the WFRHBA.

Conclusion

The Forest Service's response does not resolve the substantive concern: that the original designation of the Heber Wild Horse Territory boundaries was procedurally and factually flawed. Until the agency commits to a transparent and evidence-based reassessment—one that includes proper historical analysis, interagency guidelines, and public input—it cannot legitimately claim to be fulfilling its legal mandate under the WFRHBA. The current management plan, if based on erroneous or incomplete boundary definitions, risks facilitating the further degradation or reduction of the wild horse population and their rightful range.

I urge the Forest Service to reconsider its position, initiate a formal review of the original 1974 designation process, and ensure that any future management plan reflects the reality of where wild horses were actually present in 1971—as the law requires.

I. Legal and Statutory Framework

The Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) clearly states:

“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.”

Further, the United States District Court for the District of Columbia, in a decision by Judge Rosemary M. Collyer, found:

“It would be anomalous to infer that by authorizing the custodian of the wild free roaming horses and burros to ‘manage’ them, Congress intended to permit the animals’ custodian to subvert the primary policy of the statute by harassing and killing and capturing and removing from the wild the very animals that Congress sought to protect...”

The Draft Decision and EA fail to uphold the intent and plain language of the WFRHBA. This final EA draft fails to adequately address and deal with my previous EA comment filed in 2021.

II. Procedural and Scientific Deficiencies in Establishing HWHT Boundaries

The EA states that in 1974, at the time the Heber Wild Horse Territory (HWHT) was designated, only six mares and one stallion were “purported” to be present. This claim is based on anecdotal observation, not a comprehensive survey or any documented scientific data. Similarly, in 1993, the population was “purported” to be two mares. No systematic monitoring, census, or scientific assessment of the wild horse population was conducted at that time or since.

These statements are insufficient to justify the existing boundaries of the HWHT. The decision to limit the HWHT to 19,700 acres—based on speculative or incomplete information—is arbitrary and capricious, and in direct conflict with the agency’s obligations under the WFRHBA.

III. Failure to Protect Wild Horses “Where Presently Found”

The Forest Service has failed to consider historical and current data that show wild horses have occupied much larger areas of the Sitgreaves National Forest than the limited area designated as the HWHT. Forest Service flight survey photos from 2014, 2015, 2017, and 2021 show wild horse presence far beyond the current boundaries.

Additionally, historical and court records demonstrate that wild horses have existed throughout the Sitgreaves prior to and at the time of the Act’s passage in 1971. The fact that the current herd primarily resides outside the HWHT is not evidence of non-compliance by the horses—it is evidence of inadequate boundary designation and ongoing management failures by the Forest Service.

The claim that only 7 horses existed in 1971 across the entirety of the 818,651-acre Sitgreaves National Forest is not credible and lacks scientific substantiation. The Forest Service must revisit and revise the boundaries of the HWHT in compliance with the WFRHBA’s requirement to protect wild horses “where presently found” and to manage them as “an integral part of the natural system of public lands.”

IV. Objection to the Current Management Plan and Request for Expansion

I object to the current designation and management strategy for the HWHT as outlined in the EA. The Territory, as currently drawn, is inadequate, inaccessible to many horses due to fencing and terrain, and fails to reflect the actual range and needs of the wild horse population.

I respectfully request that the Forest Service expand the HWHT to include the entire Sitgreaves National Forest or, at minimum, all areas where wild horses were present in 1971 and are presently found. This would align the management plan with the law, the congressional intent of the WFRHBA, and sound land stewardship practices.

V. Summary of Objection

Objection Point 1: The EA and Draft Decision rely on unverified and outdated population estimates to establish HWHT boundaries, in violation of the WFRHBA.

Objection Point 2: The Forest Service has not complied with its statutory obligation to manage wild horses where presently found and as part of the natural system.

Objection Point 3: The current HWHT boundaries are arbitrary, excluding critical areas historically and currently used by wild horses.

Objection Point 4: The Forest Service must expand the HWHT to reflect historical use, current distribution, and the intent of the Act.

Attachments submitted for the record include:
FOIA responses to my inquiries

Thank you for your consideration of this objection and for ensuring that the final decision complies with all applicable laws and regulations.