

Michiko Martin, Reviewing Officer

Attn: Administrative Review Staff

USDA Forest Service, Southwestern Region

333 Broadway Blvd. SE

Albuquerque, NM 87102

Apache-Sitgreaves National Forests

Black Mesa Ranger District

Joshua Miller, Acting Forest Supervisor, of the Apache-Sitgreaves National Forests

Matthew Bullmore, Black Mesa District Ranger

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

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.

Objection to the Heber Wild Horse Territory Management Plan and EA: Past Unlawful Removals and Legal Status Violations

To Whom It May Concern,

On April 9, 2021, during the public comment period, I submitted a written comment on the Draft Environmental Assessment for the Heber Wild Horse Territory Management Plan. Among other issues, I addressed the written agreements between the Forest Service and ranchers regarding the removal of horses found roaming within various cattle allotments in the Sitgreaves National Forest. My concerns were not addressed. Now I submit this formal objection to the Heber Wild Horse Territory Management Plan and Environmental Assessment (EA) on the grounds that the U.S. Forest Service has previously acted in violation of the Wild Free-Roaming Horses and Burros Act of 1971 (the Act) and continues to build current management proposals on an unlawful and unacknowledged foundation.

#### I. Unlawful Removal of Horses Without Legal Determination of Status

According to documentation obtained through a FOIA request from the 1980s and early 1990s, the Forest Service authorized or participated in the removal of free-roaming horses from within the designated boundaries of the Heber Wild Horse Territory, a federally recognized wild horse territory covering approximately 19,700 acres of the Apache–Sitgreaves National Forests and adjacent areas of the forest.

During these removals, the Forest Service reportedly labeled the horses as “feral” or “trespass” or simply “roaming at large” animals, thereby excluding them from protection under the Act. However, there is no evidence in the public record that the agency:

Conducted a formal legal determination to confirm whether the horses were indeed trespass animals or legally protected wild horses;

Used genetic, behavioral, geographic, or historical data to distinguish domestic horses from wild, federally protected animals;

Provided public opportunity to review, comment, or challenge these removals;

Demonstrated that the removed horses were not part of or descendants of the historical wild population present in the area since the passage of the Act in 1971.

According to the Act, “all unbranded and unclaimed horses and burros on public lands as of the date of the Act’s passage (1971)” and their descendants are to be protected and managed by federal agencies. Therefore, any horse found within the designated Heber Wild Horse Territory must be presumed to be protected under federal law, unless clear and specific evidence proves otherwise.

Further, BLM Manual 4720.2, which is applicable by extension to Forest Service management under the Act, clearly states:

“Prior to determining an animal is a trespass animal, every effort will be made to determine whether or not the animal is wild and free-roaming.”

This agency responsibility is also supported by legal precedent. In *Colorado Wild Horse and Burro Coalition v. Salazar*, 639 F. Supp. 2d 87 (D.D.C. 2009), the court emphasized the federal government’s obligation to provide clear, affirmative evidence before treating any horse on public land as unprotected. In the Heber case, no such evidence was ever produced or made publicly available.

By removing horses without meeting this legal threshold, the Forest Service acted outside the bounds of its statutory authority, violating both the letter and intent of the Wild Free-Roaming Horses and Burros Act.

## II. Removal Conducted in Absence of a Legally Required Management Plan

Equally concerning is the fact that no management plan was in place for the Heber Wild Horse Territory at the time of these removals—a violation of the Forest Service’s legal obligations under both the Wild Free-Roaming Horses and Burros Act and the National Environmental Policy Act (NEPA).

Removals of wild horses may only occur if animals have been declared “excess” based on population inventories and range condition assessments conducted under an approved management plan. Yet:

No Appropriate Management Level (AML) had been established for the Heber herd;

No population monitoring or habitat suitability assessments had been conducted;

No Environmental Assessment (EA) or Environmental Impact Statement (EIS) was completed to evaluate the impacts of removals or alternatives;

No opportunity for public participation was provided, as required by NEPA and the Forest Service's own regulations.

The Act clearly mandates that the Forest Service must develop and maintain a current management plan for each designated wild horse territory, including population targets, habitat considerations, and management actions. The complete absence of such a plan at the time of removals renders those actions both procedurally invalid and substantively unlawful.

### III. Conclusion and Demand for Legal Accountability

The Forest Service's actions in what the Forest Service had designated as the Heber Wild Horse Territory during the 1980s and 1990s—removing horses without a management plan, without population inventories, without adequate legal determination of status, and without transparent public process—constitute clear violations of the Wild Free-Roaming Horses and Burros Act and its implementing regulations.

These actions were not merely technical oversights or procedural failures; they were *mala in se*—wrong in themselves, both ethically and legally. Removing federally protected wild horses without due process, without proof of trespass status, and without lawful public oversight undermines the integrity of the law and the intent of Congress to preserve these animals as “living symbols of the historic and pioneer spirit of the West.”

These violations have had long-lasting impacts on the Heber herd, which remains without a completed Territory Management Plan more than five decades after the Act's passage. The Forest Service must not proceed with any further management actions, including removals or fertility control, unless and until it has fulfilled its legal obligations under the Wild Free-Roaming Horses and Burros Act and NEPA. It must complete a lawful and transparent management plan, ensure proper legal status determinations, and provide full public review and accountability moving forward.

Full compliance with the law—and acknowledgment of the past—are not optional. They are the minimum standard of integrity and public trust that this issue demands.

It is imperative that the Forest Service:

Acknowledge these past violations in the current EA and administrative record;

Ensure that all future determinations of horse status (i.e., wild vs. feral) follow strict legal and scientific standards, with public documentation and transparency;

Commit to upholding the full spirit and intent of the Wild Free-Roaming Horses and Burros Act by preserving and protecting the Heber wild horse herd as a self-sustaining, free-roaming population.

Attached are some examples obtained through a FOIA request of agreements between the Forest Service and public lands ranchers to capture, remove, and send wild horses to auction.