

Date: 10.1.25

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Comments and Objections to Draft Decision Notice and Finding of No Significant Impact ("FONSI") for the Heber Wild Horse Territory Management Plan and corresponding Environmental Assessment ("EA") and all supporting reports and documentation including the AML analysis prepared by USDA Forest Service ("FS"), Black Mesa Ranger District, Apache-Sitgreaves National Forests, Coconino and Navajo Counties Arizona:

I submit the following comments and objections, as a concerned citizen of the State of Arizona, frequent visitor to the Apache Sitgreaves National Forest, and individual who participated in the court initiative which paused the Forest Service's ("FS's") prior attempt in 2005 to round up the Heber herd without compliance with federal laws and without consideration of its duty to protect the horses' best interests. I hereby incorporate by this reference all of my prior comments to the scoping memorandum dated March 16, 2020, and those dated April 23, 2021, **copies attached** as Exhibit 1 and 2 respectively, which comments are already on file with the FS office. The majority of my prior comments and objections were either ignored or not addressed by the FS in its FONSI and latest draft reports including the Heber Wild Horse Territory Management Plan, draft Final Environmental Assessment and all other supporting documentation/reports prepared by the FS.

This proposed FS project to manage and supposedly "protect" the Heber wild horses is an insult to the general public's intelligence. It is clearly a wolf dressed in sheep clothing. The FS is acting as an arm of the cattle industry doing what the cattle ranchers cannot do directly themselves. The FS plan is to remove all wild horses outside the WHT and then severely limit the area within the WHT that would be available for the few horses (50-104) they would allow to remain. Based upon the FS aerial survey in 2021, there are 378 adult wild horses within and surrounding the WHT which means that approximately 300 wild horses would be rounded up via bait and trap and possibly helicopter use (without adequate consideration to the adverse effects on the horses, wildlife, and environment). This is being done to allow the WHT to be used "principally" for livestock grazing permittees and rid them of the horses by locking them up inside a 61-acre permanent holding facility (or transporting them to some unknown holding facility site). This project clearly runs afoul the Wild Horses and Burros Act of 1971, National Environmental Policy Act of 1968 (refusing to conduct an Environmental Impact Statement), Administrative Procedures Act, and other applicable laws, regulations, and manuals. While the FS claims it "must" use a multi-tiered approach and manage the WHT with other uses (primarily livestock grazing), this multi-tiered use approach

is not a mandate and while other options are readily available per their own Manuals, those options are ignored or quickly dismissed as they do not advance the goal.

Specifically, 43 CFR Section 4710.3-2 states that, “Herd management areas may also be designated as wild horse or burro ranges to be managed **principally**, but not necessarily exclusively, for wild horse or burro herds.” Section 4710.5 authorizes the FS to close the WHT to livestock grazing: “(a) **If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.**” Yet, the FS conveniently ignores the express language that the WHT should be managed “principally” for the wild horses (not for livestock grazing) and also ignores the option to close the WHT to livestock. Instead, the FS intends to drastically reduce the Heber herd to a level that will severely impact its sustainability and genetic diversity. BLM/FS Manual H 4700-1 Section 4.4.6.3 states that **“A minimum population size of 50 effective breeding animals (i.e., a total population size of about 150-200 animals) is currently recommended to maintain an acceptable level of genetic diversity within reproducing WH&B populations (Cothran, 2009).”** Contrast this with the FS plan to leave only 50-104 wild horses in the Heber WHT which by the FS own guidelines is woefully insufficient to maintain genetic diversity. FS Manual 4700-1 also unequivocally states that, **“Baseline genetic diversity will be determined for all WH&B herds.”** However, the FS has no idea of any of the genetics or ancestry of these horses and readily admits that “An analysis of genetics within this territory has not been conducted to date.” Wild Horse Report, at page 9.

In this result-oriented approach (and despite the FS acknowledgement of potential adverse effects upon wildlife such as Mexican wolves, Mexican spotted owls, yellow-billed cuckoos, bald eagles and bats), the FS in direct contradiction of information in its own reports, denies that an Environmental Impact Statement (“EIS”) is required. However, all major federal actions significantly affecting the quality of the human environment require an EIS; it is not discretionary and cannot be based upon conclusory statements of no adverse impact. It is most telling that prior to completing the EA, the FS had already decided that it would not conduct an EIS. If the FS had acted in good faith, it would have completed its EA and then made a determination whether based upon its investigation and research whether an EIS was required. Here, FS started with the foregone conclusion that no EIS would be required even before it finished the EA. **See Exhibit 3, Letter dated December 22, 2020 addressed to USDA Office of General Counsel from Snell & Wilmer law firm (copy attached).** Evidence in the FS own reports suggests that an EIS is warranted here and must be conducted pursuant to applicable laws.

The following are some of the critical flaws within the EA and supporting reports which are addressed herein:

1. Wild Horses Are Confined Within the WHT and Must Give up Key Grazing Areas to Cattle (livestock grazing, not wild horse habitat, is the principal use within the proposed WHT);
2. Genetic Diversity is Unknown and Ignored (absolutely no genetic testing done)
3. Failure to Establish a “Need” for the Plan (herd is self-sustaining and in great condition; this project is based upon nothing more than alleged fears of over population and pure conjecture/speculation)
4. AML and Selective Enforcement of Policies and Laws (result oriented)
5. Flawed Head Count Surveys and Lack of Inventory Data (stale and non-existent current inventory data)
6. First Come, First Served (total deference to livestock)
7. Potential for Extreme Abuse of Discretion (one person determines excess horses with a letter to the file)
8. Adverse impacts of Use of Helicopters/No EIS to be performed (likelihood of substantial injury)
9. After the Fact Monitoring of Diversity is Too Late (harm is irreparable)
10. Adverse Effects on Herd Dynamics (band disruption will actually increase reproduction rates)
11. Timing and Funding (non-sensical timeline and funding is non-existent)
12. The FONSI is Ridden with Defects and Fails to Require an EIS (the decision is mere conclusory language,

unsupported by some of its own reports, and amounts to nothing more than conjecture).

WILD HORSES ARE CONFINED WITHIN THE WHT AND GIVE UP KEY GRAZING AREAS TO CATTLE. The Heber Wild Horse Territory Management Plan and corresponding Final Environmental Assessment dated August 2025 (“EA”) proposes to remove ALL wild horses outside the Wild Horse Territory (“WHT”). The FS estimates that approximately 378-449 adult horses and 35 foals were in and around the WHT based upon its 2021 Aerial Survey. While it is unclear why wild horses must be removed from just outside the WHT, what is most telling is that even within the arbitrary boundaries of the WHT (the only area the FS will tolerate the existence of wild horses) the horses must relinquish key grassy lands to livestock/cattle under certain alleged permitted grazing rights. The FS is unwilling to even grant the horses the principal rights to the area within the WHT despite the fact that it is expressly allowed under 43 CFR Section 4710.5. According to the FS’s own manual, it is clear that there is no obligation for the FS to continue with livestock grazing within the WHT itself yet that is what it has chosen to do. The FS wants to further reduce the WHT by installing a 61-acre permanent holding facility right within the boundaries of the WHT thereby reducing its size even further. Then if you review the map on page 61 of the EA you will see that a substantial percentage of the WHT completely excludes the horses from the livestock grazing areas – thereby locking them out within the WHT boundaries from the best and most nutritious grassy areas. See EA at page 61 (map showing the grazing areas vs what is left of the territory). The horses are being limited within the WHT due to fencing by the livestock permittees. The horses should not be required to maneuver through fences (should the FS find in it their heart) to open the gates inside the WHT. Notably, sixty (60%) percent of the entire Black Canyon allotment (two pastures) are completely within the WHT. See EA page 68. The WHT should belong to the horses as its primary or principal use. The FS Manual permits such an option yet the FS refuses to even consider it citing back to a multi-tiered approach in the FS Manual yet ignoring the permissible concept of allowing wild horses to have the principal use within a WHT. Only 107 acres of the WHT are classified as grassland cover type. And of those 107 acres, how many are designated grazing lands for permittees? Answer, the majority if not all of it. See EA page 73.

EA at page 48 says the FS will work with the livestock permittees to ensure that “when cattle are NOT present, the gates will remain open for the horses to move freely.” This means the horses will be completely fenced out during the key seasons (spring and summer) when the grasses are available. The horses “may” (and it is not certain) only get access in the winter months when the northern portion is too cold to access and any forage is covered with snow. This does not sound like protecting the horses’ best interests. Make no mistake, it squarely places the livestock industry interests above the wild horses.

GENETIC DIVERSITY UNKNOWN AND IGNORED. The FS has no idea what genetic testing may reveal about these horses because they have done none. See EA at page 50 (“An analysis of the genetics within this territory has not been conducted to date...”) The FS gives lip-service to the “possibility” of some future testing, AFTER they have destroyed the integrity of the gene pool through round ups/bait and trap. No substantive analysis was performed as to the severe negative effects upon the herd bands disruption of social structure. Removing one member such as the stallion in a band will surely result in chaos and increased reproduction by the mares when other stallions trying to take over the now stallion-less bands. The FS has no idea who it is rounding up and who will be left to procreate. Their gather plan is hap-hazard at best. To call this a plan that is for the protection of the horses is quite frankly nonsense. This project is purely to allow the livestock to have greater grazing rights to the detriment of the annoying horses and nothing more. Funding sources are notably absent but there is a clue provided – that the cost for this project may be funded by “grants”. I wonder who the donors may be? Dare I suggest it is the livestock permittees with grazing rights in the area who will do the funding via grants? The public is not even entitled to know the identity of these livestock permittees, as my many FOIA requests for their identity to confirm that they qualified as proper permittees (who must own adjacent property to the FS/BLM) resulted in nothing but objections from the government and an absolute refusal to provide the names of the permittees. How is this transparency? How can the general public confirm that the permittees rights are valid when their identities are maintained in secrecy by the government? **See Exhibit 4, FOIA dated April 30, 2021 and the FS response**

dated July 18, 2022 refusing to reveal grazing permittees' identities and my appeal. This FOIA request took well over one year and two and a half months to even receive a substantive response from the FS and even then it was riddled with objections to production of documents and redactions of identities of the grazing permittees -no transparency.

FAILURE TO ESTABLISH A "NEED" FOR THE PLAN. The NEED for this plan is unclear and certainly not supported by the FS record. Going by FS horse population estimates in 2005, the herd size today should be unmanageable by now - some 20 years later yet it is not. There is absolutely no evidence presented by the FS that the horses are starving or in poor condition. In fact, just the opposite is true. Attached at Exhibit 5 are recent photographs of the Hebers taken in September 2025. These stallions are in excellent shape and as is the entire herd. The FS does not contend that the horses need anything but rather have a fear that "someday" in the future, they "may" face over population, yet this so-called fear has not proven to be true for the past 20 years. This herd is self-sustaining both in reproduction and natural attrition of the herd. The proof is obvious in the numbers reflected in the FS own surveys. Moreover, consider that back in 2005 when the FS first initiated removal of this herd, it estimated the herd size to be between 300-400 horses. Yet even today, some twenty (20) years later, the FS admits and still estimates the herd size to be approximately the same size (approximately 378 adult horses). This is clear evidence within the FS own files that this herd is unique and self-sustaining through natural attrition and that no population controls are needed nor will be. Currently, the FS speaks only of a "potential" or unsupported fear of disrupting the ecological balance which could lead to range deterioration yet that has not happened. See EA page 47 when considering the "no action" alternative. What studies have been done on the livestock effects on the ecological balance? Answer, NONE. Indeed, other commentators on this proposed project have likewise noticed this "oversight." Specifically, the Western Watersheds Project, Arizona Office, did so by letter dated March 4, 2020 ("The Forest Service fails to describe how livestock grazing impacted the [re-seeding after Rodeo-Chediski Fire] rehabilitation projects" and "How will the Forest Service determine that it is wild horses and not livestock and associated infrastructure that are responsible for changes in herbaceous species composition, water availability, ground cover, and forage availability.")(Copy attached at Exhibit 6); see also Eric Molvar (<https://www.speciesunite.com/podcast/erik-molvar>)("It is not hyperbole to say that livestock grazing on Western public lands is the single biggest and most important environmental impact that does the most damage. And, also causes the most widespread impact of any of the things that damage public lands, including oil and gas development, including strip mining and mountaintop removal, including damming the rivers. Livestock grazing is the most pervasive and the most ecologically harmful – and it's everywhere.")

AML and SELECTIVE ENFORCEMENT OF POLICIES AND LAWS. The Proposed Appropriate Management Level Determination document" first cited in the EA on page 7, does not appear in the list of publicly available documents on the FS website (as of this late date 9/21/2025). After repeated requests informally with no response other than "we are checking into it," I had to issue a FOIA request. This document of course is the basis for the FS management plan and from my research appears to be the very same document offered in the 2020-21 time frame. Assuming this report remains unchanged, the FS proposes to reduce the herd size to a mere 50 to 104 horses. The FS reaches this arbitrary, result-oriented approach, focusing primarily upon an alleged balancing under a "multi-tier analysis." The only substantial additional use within the WHT is livestock/cattle grazing permittees who will receive a substantial amount of all available forage inside the WHT to the exclusion of the horses. As noted above, the FS has the discretion to exclude all livestock grazing within in the WHT yet chose not to do so? The FS would rather disintegrate the herd completely. Even the FS own manuals indicate that to achieve diversity in a herd requires at least 150-200 horses. The FS is engaging in a process where it selectively chooses which policies it will follow and which ones it will disregard when those policies do not advance their goal – to destroy this herd. On page 8 of the EA, the FS makes a bald conclusory statement, "Without management, the horse population on the HWT would continue to grow unchecked with "potential" adverse impacts to the population and its surrounding habitat." Yet there is zero evidence to support this is true.

The facts show that the herd has been successfully “self-managed” from at least 2005 when the FS first attempted to round them up through present day. THIS particular herd is different than most, it is self-sustaining and that is a fact. The FS only raises possible “fears” and speculates about future herd size. However, looking back at historical data for THIS herd is the best evidence and that evidence establishes it is a self-sustaining herd and fails to support the FS position on a population growth rate at 20 percent. The motivation for this project appears throughout the EA, e.g. on page 63 of the EA: “In 2021 on the Heber Allotment [livestock grazing permittee area], pastures which contain portions of the territory were not grazed by cattle due to concerns about lack of adequate forage and water availability. *Reducing the number of horses to the AML will lead to more equitable forage availability* and use for livestock” This statement squarely sums up the reason behind and the alleged “need” for this project. In the EA at pages 67-68, the FS boldly announces its intent to increase the livestock utilization levels both inside and outside the WHT from 25 to 35% provided this management plan is adopted. Again, the clear motivation is to increase livestock grazing to the detriment and exclusion of the horses. This is boldly announced as the intention even before the allotment reassessments have occurred. Increase the livestock utilization as soon as the horses are removed. Somewhat contradictory, the FS states on page 71 of the EA, “Under the proposed action no changes to authorized livestock grazing or grazing strategies are expected.” Actually, an accurate statement would be that the FS intends to increase the utilization rate for livestock grazing as pointed out above. See *The Wild Horse Conspiracy* by Craig C. Downer (2014) for additional support for these statements and the cattle industry’s influence and control over the Bureau of Land Management and FS (which publication is incorporated here by reference and a court may take judicial notice).

FLAWED HEAD COUNT SURVEYS AND LACK OF INVENTORY DATA. BLM/FS Manual 4700-1, Section 5.2 entitled “Population Monitoring” states, “An accurate and current assessment of WH&B health and condition, as well as population size, growth rate, and distribution is needed for proper WH&B management. **At a minimum, population surveys should be conducted every 2 years whenever possible, and within 6-12 months prior to establishing the need to gather and remove excess WH&B.**” This was not done here and in fact all data provided to date is miserably stale and unreliable. Even BLM/FS Manual 4700-1, Section 7.1.2 expressly states that **“justifying a removal [of wild horses] based on nothing more than the established AML is not acceptable”** but that appears to be exactly what is being done to the Heber herd.

Because the FS aerial surveys are either out of date/stale (2014, 2015, 2017) and/or incomplete (2021) it relies upon the National Academy of Science estimate from the year 2013 (now 12 years old) for an estimated horse population growth of 20% yet the FS has no evidence of THIS particular herd’s growth rate. Again, as noted above, the FS was wrong on the growth rate in 2005 and it is wrong again in 2025, relying either on sources that support its position, are outdated and/or heavily criticized. See EA at page 47 where FS claims over the course of 10 years the horse population could grow between 1,900 and 2,700 head in ten years. These allegations are belied by their own surveys post-2005 where their claimed population explosion has not happened. By way of example, compare the FS current estimate of 378 adult horses with its estimate from 20 years ago (in 2005) that there were an estimated 300-400 head of wild horses. Not much has changed in the last 20 years. Further, if one reviews the summary of FS surveys in its EA on page 42, it reveals that the most recent “complete” survey by the FS was in 2017. If the FS estimated 20% population growth is accurate, the 2021 survey should have revealed numbers approaching 840 horses outside the WHT by 2021 and that is not the case – not even by FS estimates under its incomplete survey in 2021. See EA page 43. The FS claims the 2021 survey only encompassed 1/3 of the area thus implying that their 2021 survey is flawed. This survey should be thrown out and disregarded as incomplete. That means the next piece of only arguable head count data is from surveys in 2014, 2015 and 2017 which are now 8 to 11 years stale and should be disregarded – as the recommendation straight from their own FS Manual 4700-1 is, at a minimum, every two (2) years. **See also, Relabeling of Acreage Created the Overpopulation Myth of Wild Horses & Burros by TJ Harbour (2022), copy attached at Exhibit 7.**

FIRST COME, FIRST SERVED. The FS refuses to consider redrawing the WHT boundary lines despite numerous public requests concluding that the WHT is “adequate” to support the horses, p. 15 EA – at the numbers they

decide they want to allow, 50 horses? For some reason because livestock grazing was allegedly occurring within the WHT before its boundaries were drawn (which has not been established), the FS believes that they can never ever change it. **Legal precedent is clear on this point. Allotments are not property rights and can be revoked if the FS desired.** Regardless, there is plenty of evidence that suggests the Heber herd was present in this area long before the cattle. **See Determination of Whether Horses Inhabiting the USFS Heber Wild Horse Territory are "Wild Free Roaming Horses" by Mary Ann Simonds dated March 5, 2007, copy attached at Exhibit 8.** Bottom line, when developing a forward-facing management plan, it should not matter who was there first which amounts to "second grader" logic. For some reason the FS refuses to consider the obvious, if livestock are removed from the WHT, the genetic diversity numbers of 150-200 head horses could easily be achieved. Apparently, that is not an option the FS would ever consider and the current FS disregards genetic diversity issues and simply says they would consider adding stallions from other territories which would destroy the uniqueness of the genetics and ancestry of this particular herd (as would the use of PZP). **See Will there be a healthy future for America's wild horses and burros in the Wild? PZP or Reserve Design? You Decide! By Craig C. Downer, Wildlife Ecologist, copy attached at Exhibit 9.**

POTENTIAL FOR EXTREME ABUSE OF DISCRETION. The potential for an abuse of discretion is rampant in this plan. The EA at page 19 grants unfettered discretion to one individual (the forest supervisor) who can simply send "**a letter to the file**" as evidence of his/her sole determination of excess horses and to remove them. No public oversight nor public notice. One person gets to decide to what is "excess" and has the unilateral unchecked power to remove horses he/she deems as "excess" under the cover of night. At page 22 of the EA, this same official has exclusive power to determine which means of round up is preferred (helicopter or passive gathers). The potential for abuse is extreme and should require public oversight and/or other checks and balances. Keep in mind that in 2005, it was this same Forest Service office who tried to round up the entire Heber herd claiming they were "unauthorized" livestock! But, now, we should trust them?

Other areas for potential abuse involve actions for supposed gathered "excess horses." See EA at page 39. Under whose supervision or public over-sight would these animals be destroyed. Who makes the determination, the FS? And how "old" is old for a horse to be permitted to be destroyed? If the horses are older, why bother gathering them. Let them live the remainder of their days in the wild.

ADVERSE IMPACTS OF USE OF HELICOPTERS/LACK OF EIS. Repeated throughout the EA (at page 21 for example), the FS authorizes the use of helicopter round ups should they fail at bait and trap. No research was done into the topography of the lands in question, many of which the FS admits are mountainous and rough terrain areas filled with canyons and steep hills. See EA at page 41 (steep rocky terrain within WHT); see EA at page 73 (many of the forested stands within the WHT are overly dense). Running herds of scared panicked horses through rough terrain will surely result in substantial injuries and/or death to many horses who may be forced off cliffs (according to folklore, this is precisely how ranchers used to rid themselves of horses decades ago). With zero analysis of dangers associated with the use of helicopters and potential for death and injuries to the horses (let alone potential environmental impacts on other wildlife and endangered species), the EA and Management Plan is undeniably flawed. Additionally, as noted earlier, there is no EIS scheduled to address other impacts upon wildlife and endangered species not only in connection with helicopter use but also construction and existence of proposed infrastructure for holding facilities and bait and trap operations, *inter alia*.

Another curious potential for an abuse of discretion is the unfettered right (without public notice or participation and oversight) gives the unilateral right to conclude that some of the horses are "unauthorized livestock" without any genetic testing or other protocols in place to protect the horses as required under the Wild Horses and Burros Act of 1971. There are zero safeguards mentioned in any of the documents or plans except to "**consult**" with the AZ Dept. of Agriculture, brand inspectors (these horses do not have brands), tribal livestock inspectors (again these horses are unbranded and we have a great photograph log of the majority of them to prove it) "or" not "and"

conservation offers [sp]. What is a conservation offer or even officer? Where is the public participation and oversight for transparency in this process. As noted above, this is the same FS who attempted to round up this herd in 2005 as “unauthorized livestock” and use of this same approach has an extreme likelihood for such abuse once again.

AFTER THE FACT MONITORING OF DIVERSITY IS TOO LATE (EA page 22). Monitoring proposed after the round ups demonstrates that the FS knows how to take valid head counts and inventory of the types of horses and number/composition of bands yet chooses to “shoot first ask questions later.” This type of inventory should be done now, prior to finalizing any management plans and certainly prior to any removals, not after. Once this unique genetic diversity of THIS herd is destroyed and its bands disassembled, there is no turning back. If the ability and technology exist such as drones, horse tracking collars, and the like, are available for use to conduct a meaningful inventory, why isn't the FS using it? See also EA at page 38 (monitoring and tracking horse bands, after the fact).

ADVERSE EFFECTS ON HERD DYNAMICS, EA page 50. The FS admits that “using a passive gather technique to remove excess animals may result in more impacts to herd dynamics by the separation of members of individual bands.” Then the FS states without any support that: “But there is some question about how detrimental it is to separate a band member.” The FS admits it will have a detrimental effect yet fails to quantify or investigate how detrimental or what are the possible effects? The FS plan is to remove now, figure out adverse effects later? In reality, removing key members of bands such as the band lead stallion will disrupt the social dynamics of the herd and have the opposite effect trying to be achieved. Birth rates will increase under the FS approach. Wild horse roundups disassembly herd bands actually result in an increase in reproductions levels among the remaining population. This phenomenon is known as “compensatory reproduction.” See Research by the National Academy of Sciences (the very source heavily relied upon by the FS) which indicates that management practices relying on removals lead to higher population growth rates in the remaining horses!!

TIMING and FUNDING. On page 30 of the EA, the FS states that infrastructure is “funding dependent” and that construction of the permanent holding facility and Heber “Work Center” will be done in phases over the next 5-10 years. Compare this with the round ups that are scheduled to start within 30 days of issuance or immediately upon the issuance of the FONZI. While the FS states that its first phase will begin within a year of plan approval, it does not detail what phase one includes. On page 70 of the EA, the FS uses population modeling to suggest that the AML could take 2 to 4 years to achieve yet the infrastructure will take 5-10 years which makes no sense. How can the AML be reached without the infrastructure being built first? No rounds up should be allowed until the infrastructure is in place and funding in place not only for the reduction in herd activities but for the long-term care of the horses proposed to be removed. On another note, it makes little financial sense for taxpayers to shoulder the burden of caring for horses in permanent holding facilities when these very horses are currently self-sustaining with no credible evidence that it will change anytime soon. **See Exhibit 10, White Paper on the Bureau of Land Management's Wild Horse & Burro Program, with a Focus on Problems Related to Holding Facilities, July 2017 (WHFF Pinehurst Tx).**

FONSI IS RIDDEN WITH DEFECTS and FAILS TO REQUIRE AN EIS:

- (1) The FONSI fails to acknowledge a need for an EIS seemingly ignoring all of the data in its underlying reports which (while are suspect themselves) still acknowledge the potential for adverse effects to wildlife including endangered species, the surrounding environment, and to the public who follow this herd closely.
- (2) The entire premise of the FONSI is based upon flawed and stale data of mere aerial double blind head counts (not an actual inventory of the horses, their health, age or sex) and these aerial surveys were conducted back in 2014, 2015, and 2017 (which are all out of date and out of compliance with BLM/FS Manual H-4700-1 requiring inventory every two years at a minimum and certainly prior to any horse removals); The 2001 aerial survey is admittedly incomplete by the FS and still stale itself now 4 years old.

- (3) The AML flawed calculations and reasons therefore were addressed in my prior comments in 2021 and are included in the Supplement to this Comment.
- (4) The FONSI relies upon the use of helicopters which is extremely dangerous in this area due to its rugged terrain and potential for substantial injury to the horses; it also fails to consider the potential adverse effects on other wildlife, endangered species, and the environment.
- (5) There is no Annual Operating Plan of any substance. It only gives lip-service to some concept of monitoring the horses over time with the WHT management plan to be in existence into perpetuity.
- (6) The WHT management plan fails to address funding sources and proposes to build infrastructure over the next 5-10 years yet it wants to begin round ups immediately. This is not a sound plan as the timing does not make sense.
- (7) The FONSI references Design Criteria but does not reference the source other than a typo to "(see appendix AError! Bookmark not defined.)"
- (8) Why would traps be set inside the WHT when the alleged plan is to start outside the boundaries of the WHT and work towards it? Once again, more inconsistencies in this so-called plan.
- (9) Perhaps the most blatantly false statement is that, "No evidence has been presented which raises substantial questions as to the correctness of the environmental consequences that have been estimated. The differences in comments reflect a range of opinions, and do not of and by themselves constitute controversy." This is a polite way of saying the thousands of comments and submittals including evidence of the unique history of this herd, its self-sustaining nature despite FS involvement (or FS hinderances) are nothing more than opinions which they need not address or seriously consider.

*All of my comments herein apply equally to the WHT Management Plan and all other reports posted in the project file – I mostly quoted citations only the EA (so as not to be duplicative) and as that is what the Territory Management Plan is based.

Thank you- respectfully submitted – Debra Sirower 10/1/25

Debra Sirower

***Supplement.** The following are excerpts from my 2021 objections which were either ignored or not adequately addressed. The majority of comments relate back to the original AML analysis which has not changed. Other comments are slightly updated where the FS has provided additional information in 2025.

(1) There is no current evidence of suggest that the Heber horses have inadequate sources of food/water or that damage is occurring to the range that would require removal at this time or any time in the near future; No action is the proper alternative; More study would be needed as to the current herd number and composition before any removals should be contemplated as the information in these reports is lacking data, vague, contains arbitrary conclusions, and is insufficient to comply with federal laws;

(2) Even in the latest proposed revised plan, the Heber horses are still locked out or fenced out of their Territory due to livestock grazing with only a promise to "consult" for permission to open the gates (what is that worth?); the FS cannot lock out the horses and then use that "lock as" and non-use of the Territory as ground to remove the horses; It is odd that the FS plans to remove any horses outside the Wild Horse Territory (WHT) but yet livestock are entitled to graze both on FS property and also within the WHT itself at the same levels; why are the livestock permitted to have grazing rights within the WHT? There is no balance in such an allocation where livestock can go anywhere (inside and outside the WHT) yet the horses are limited to ONLY the WHT;

(3) There still is no understanding of the herd size or current population (what data is provided is very limited and stale data); the FS has no idea of the number of stallions versus mares, age of the horses, individual health condition or what genetic testing would reveal about the ancestry of the horses; this makes any type of population modeling purely speculative; The April 2025 aerial survey is the only survey even remotely close in time but even that is 4 years stale and as admitted by the FS is "incomplete";

(4) The AML calculation is based upon flawed assumptions of a double county methodology, stale and limited data, and no consideration to removal or reduction of livestock grazing in the Territory per CFR 4710.5; the American Academy of Science from 2013 which is the alleged BEST "science" relied upon is stale, out of date, and heavily criticized by other experts in the industry;

(5) The growth rate or reproduction rate is estimated at 20% which is obviously false of the horse population that the FS estimated back in 2005 as 300-400 head of horses would have multiplied by now to an extraordinary number and horses would be starving but they are not; this confirms the FS does not know the composition of the herd and whether they have self-sustaining attrition or not; indeed the current estimates of wild horses by the FS own admission is 300-400 total on and off the WHT; that is a great example of how the 2005 estimates of horse population were just plain wrong and so are these estimates otherwise the head count would be extremely higher some 20 years later;

(6) Heber horses are not being given the "principal" use of their Territory. While the horses removal is being planned, the livestock numbers are planned to increase from 25% to 35%. See Also, The Wild Horse Conspiracy, Craig C. Downer (2014) for more information on this point and as to the political control by cattle ranchers over the Bureau of Land Management ("BLM") and FS among other things; please consider the materials and information cited to by Mr. Downer in his book as incorporated herein;

(7) Funding is notably absent from these reports and while the apparent goal of removal for the continued management and survival of the herd; the necessary funds to implement the Territory Management Plan ("TMP") must be addressed before implementation or removal of any horses further, as noted throughout my comments, additional research hand study is required on herd composition and reproduction rates and there is likewise no mention of whether "funding" will be able to will be available to implement this proposed actions and implement the TMP.

(8) The discretion to remove "excess" horses lies solely in the hands of one individual' this allows for an abuse of discretion and authority with no checks or balances in place, once the horses are removed they cannot be returned and the harm is irreparable sacrificing genetic diversity and losing historic gene pools in this area such as the horses brought from Spain Father Kino (the unique buckskin horses);

(9) There is an incomplete "project record." The record is not available to the public and is referenced throughout the proposed actions yet a number of the underlying materials relied upon by the FS are not available on-line or if posted at all were very late into the comment period and on various links which one has to search endlessly to find.

GENERAL COMMENT 1: LACK OF DATA AND EXISTING DATA IS LIMITED AND STALE/OUT-DATED

No recent survey on horse population. The draft Environmental Assessment ("EA") and Territory Management Plan (TMP) both rely upon outdated information from 2014, 2015, and 2017. The most "recent" information from a 2021 incomplete survey itself is over 4 years old. There is no data on horse migration or mapping, no data on stallions, mares or foals, i.e. herd current composition, no data on herd ages, and stale data on forage production among other things. The Equus population modeling was not created based upon the information from the Heber

herd but rather The Garfield Herd Management Area in Nevada in 1997 (which is different from the Heber herd and not at all comparable). Underlying expert reports relied upon by the FS were selected to support the FS position and are not objective. Vast amounts of contrary reports and studies exist on key issues to this management plan that were ignored or overlooked completely.

GENERAL COMMENT 2: THE AML CALCULATIONS ARE FLAWED, BASED ON INCORRECT ASSUMPTIONS AND/OR STALE AND LACK OF DATA SPECIFICALLY RELATING TO THE HEBER HERD

Specific comments:

History of the Area - p.1 - AML - relies upon a single "letter" from 1974 to claim that there were only 7 horses in the area at that time and calls it the "first recorded census." The AML then takes the position from 1974 through 1993 there were only 5 to 8 horses total over this approximate twenty year period. This is evidence that the FS has not, is not, and never did comply with its obligations to manage the wild Heber horses or the Territory. Not a single scientific census, ever.

The so-called Ethnographic Study was nothing more than "oral histories given by people with various associations with the territory." AML p.2. Not sure who people with "various associations" with the territory know about the horses, if anything. Pure speculation and conjecture. Nothing scientific here.

AML p.3 BLM handbook says to use "animal unit equivalents". The proposed actions fail to follow BLM handbook that prescribed "utilization monitoring" and "use-pattern mapping" for determining forage availability. Only three years of forage, carefully cherry-picked, were used for making the forage calculations; the AML is tied to forage consumption annually not any per animal unit in contravention of the guidelines.

AML p.7 FS admits it never did any census or surveys for decades. It readily admits that from 1993 through 2000 wild horse numbers were reported as zero and "it is not known if this is because horses were not present or if inventories were not conducted." Obviously, it is the latter based upon FS present population estimates.

AML p. 9-10 Aerial Survey data for used for population estimates are OUT-DATED. Aerial surveys from 2006 (26 horses), 2014, 2015, and 2017. The most "recent" aerial survey is over eight (8) years old.

There is zero explanation or support for the so-called "double count" methodology used in the AML and thus it should be disregarded as lacking in any basis or scientific support. The on-line project record does not contain the report where this double count methodology was taken. Thus, there is no opportunity to comment on it.

AML, p. 12, Tables 4 and 5 show that two different methods of counting horses were used; to count horses within the Territory, a photo mark-recapture methodology was used whereas outside the Territory a "double count" survey was used; there is no explanation why but the issue is that one cannot compare apples to oranges and one must use the same process on both surveys to properly compare them.

Figure 8, p. 17 AML - The FS has "fenced out" the wild horses from their Territory in violation of The Wild Free-Roaming Horses and Burros Act of 1971 ("WHBA"). The fences appear to serve no other purpose than to hold livestock within the Territory borders and allow cattle grazing. There are also numerous gates throughout the Territory that lock the horses out from access to forage and water sources.

At some point, the horses don't bother to check to see if the gates are open or closed anymore and must move onto to other areas for water that they can access. Being fenced out of the Territory, the horses only choice is to go off the Territory for other sources of forage and water. The FS actions in fencing out the horses from their Territory is a blatant violation of the WHBA to act in protection of the horses. The Territory is supposed to be used for the "principal" purpose of management of the wild horses who were "designated" as of right to be in the Territory;

whereas the livestock are mere "permittees" who have no designated rights under federal law to be in the Territory. While other uses can and should be balanced with the horses' principal use, it should not be done in a way to the detriment of the horses nor in a way that locks the horses out from using the Territory. Ironically, the FS wants to use its own violation of the WHBA as a reason to round up the horses. Any claim that the horses are not using the Territory by choice is completely absurd and patently false.

AML p. 22, Forage Use. The FS analysis takes livestock grazing as a "given right" to the ranchers and views the situation as an "obligation" of the forest to the ranchers. There are termination rights in the grazing leases which can and should be exercised and the wild horses allowed to return to their Territory. See also CFR 4710.5 [exhibit 3, attached].

CFR 4710.5 Closure to livestock grazing

(a) 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, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

AML p. 22, Figure 11. The Heber Allotment has over 900 head of cattle in the horses Territory yet the AML for wild horses is a mere 100 head?

AML p. 22, Forage Use. Admission by FS that for the past ten years, forage levels have been adequate for all uses. If the FS was correct in its allegations in 2005 for removal of so called "unauthorized" 300-400 head of horses (which was enjoined by the Honorable Fredrick Martone) it means that for a period of approximately 16 years, the horses reproduction rate could not have been 20% as the FS now claims it to be. Otherwise, the current horse population would be well beyond any current estimates by the FS and forage would not be sustainable. But the horses are healthy and look great. Thus forage is not an issue and the estimated 20% reproduction rates by the FS are completely inaccurate. The proof is readily available in history - all one needs to do is look back in time to 2005 and compare to herd levels estimated by the FS then with those of the FS today. The Heber herd maintains natural attrition numbers and no aggressive management or round ups are required. At most, the livestock exclusive use of the Territory through permitted grazing needs to be analyzed and re- evaluated before a single wild horse is removed under the guise of "over population." Livestock over population is an issue that has been curiously ignored. Why are the wild horses not treated as the "principal" use of the Territory in violation of the WHBA? 1000 head of cattle to 100 head of horses, who has principal use?

AML p.23 confirms this point: "These low utilization levels indicate that the use of the territory by all grazing animals, over the past ten years has been within the forage-producing capability of the area."

AML p. 24, Table 12. Shows forage use of ALL animals (livestock, horses, and wildlife) for the time period from 2007 through 2017 and notes that 2018 data is still not available as of 2021. According to this chart, for ALL animals, forage use is only 36% or less in any given year. Therefore, according to the FS data, there is no shortage of forage now or in the foreseeable future for any of the animals. This raises the question as to when would, if ever, a removal be appropriate, especially since the FS readily admits it has no CURRENT data on the composition of the Heber herd, number of bands, migration patterns, and a study on the forage usage of ONLY the Heber horses. Figure 12 include cattle in the forage use which obviously takes up the majority of all usage since the cattle sole purpose in the Territory is to forage on cheap grazing leases and then be taken to auction for slaughter at the monetary benefit of exclusively the cattle ranchers. Figure 13 includes the elk use. Curiously absent is any data on wild horse use.

AML p.26 determination of forage sufficiency. The AML report concludes how much forage the AS forest is capable of production of approximately \$2 million pounds in an "average" year "BASED UPON THREE YEARS OF PRODUCTION DATA" collected across the territory. There were only THREE years of forage used to come up

with this average of forage production for the entire forest and the years chosen were not current years. Over 66 percent of the average forage production number was taken from survey data that is over 14 years old or stale. The years selected include 2007, 2008, and 2018. The Rodeo Chediski Fire was only 5 years prior to the first data year selected. Once has to question why these older years were selected to represent CURRENT forage levels or potential forage production levels. Thus, it is not an accurate calculation of the current forage availability.

AML, p. 27 states that "When the territory was established, the northern portion was identified as winter range; this is the lowest (6,700 to 7,000 feet) elevation and consequently the warmest part of the territory." It is a violation of the WHBA for the FS to allow extensive cattle grazing in the Territory and completely fence out and lock out the horses from the warmest part of the Territory.

AML, p. 30. Lack of Data - admission that FS does not know the migratory pattern of the horses in question. "The horses in the area may be behaving similarly, but there is a lack of data to support or dispute this assumption."

AML, p. 31, Figure 14 demonstrates the horses are FENCED out of their Territory and how they must migrate to the south. Not a single horse is found in the upper quadrant of the Territory due to fencing. The few horses found in the southern areas of the Territory must be attributable to gates left open or gates closed to allow cattle grazing, while horses were already inside their Territory.

***AML, p.32 - Lack of Data - Twisted Interpretation of Heber Horses non-use of Territory - Fenced out - This page contains some of the most incredulous statements by the FS. "[I]t appears that the fences [hellip] may be restricting the horses to the southern and eastern portions of the analysis area, with most horse use occurring outside the designated territory." The FS in the next paragraph states, "The above discussion indicates the horses have not been and are not consistently utilizing all the delineated territory. Based upon aerial surveys and on-the-ground observation, horses are primarily using the southern portion of the territory during the spring, summer, fall and mild winters. There is an assumption the horses may move to areas of lower elevation outside the territory or off the Mongolian Rim during severe winters following the behavioral patterns observed with the wildlife but monitoring data specific to horse use patterns is lacking. As noted in the Bureau of Land Management Wild Horse and Burro Handbook (USDI Bureau of Land Management 2010), a recurring pattern of movement out of a territory to access forage, water, or thermal or hiding cover is an indication the territory cannot sustain year-long horse use. However, there appears to be sufficient forage, water, and cover available within the territory. It appears the fences within the territory are likely limiting movement to the lower elevations in the north; while snow accumulation in parts of the territory effectively push large ungulates to lower elevations during severe weather. While these observations indicate the cover and space may be insufficient in the territory, we cannot ascertain with certainty why wild-free roaming horses are moving off the territory. Additional monitoring is needed to better understand how horses are using the territory."

The above quoted statements by the FS make absolutely no sense. On one hand. They say there appears to be sufficient forage and they scratch their heads as to why the horses are not using the area and need more studies. Yet on the other hand, they readily admit the horses are fenced out of the territory due to all the allotments and cattle grazing areas inside the Territory. These statements are contradictory and make no sense as written and should be struck as non-sensical. The FS must admit that they have fenced the Heber horses out of their Territory and the only reason the horses are not using the Territory is because they cannot.

AML, p. 33. The "average available forage production" model was chosen by the FS to set the AML for the Heber horses. This approach is flawed because the average forage production for the AS forest was chosen based upon an average of forage production for years 2007, 2008, and 2018. That means 2/3 of the basis of this number is based upon outdated data some 14 years old! Why select 2007 or 2007? If that is the only forage data available then the FS does not have sufficient information to make the analysis required to issue either the EA or TMP.

AML, p. 33. "It was determined that half the available forage should be used to establish the high end of the

appropriate management level[hellip]" How was 50% selected? There is no citation to authority and thus it appears this number was arbitrary and capriciously selected. If one refers to the use of the Territory designated for the wild horses under the WHBA, the wild horses should be the "principal" use for the area. Assuming the outdated information from 2007-2008 is found to be appropriate as a measure of average production for the As forest, fifty percent (50%) of the forage devoted to the wild horses still does not give them the status of a "principal use."

AML, p. 33. Why do the wild horses need to give up 25% of their Territory forage for the raising of livestock? The Territory is the only protected place for the wild horses. Granted multiple uses are encouraged across the public lands of our federal government, however, wild horse territories are very few and in those areas, wild horses should be the primary use. Allowing 35% livestock grazing in this Territory and requiring wild horse removals, is not consistent with the WHBA. Before wild horses are removed, livestock interested in the TERRITORY should be re-evaluated. See CFA Section 4710.5.

AML, p. 33 and elsewhere in the FS proposed actions. The allotments are not an "obligation" per se that cannot be changed or that are set in stone. There are termination rights held by the US government on those leases and/or rights that exist in equitable principals that would allow for the termination of those leases such that compliance with the WHBA could be achieved.

AML, p. 34. The FS overestimates the Heber herd forage needs - "[T]he 1.2 animal unit equivalent Forest Service personnel use for permitted horses is based on a horse weighing about 1,200 pounds, and the horses seen in the area are generally smaller (800 to 1,000 pounds)."

AML, p. 34. Using "pounds of forage" instead of customary and standard "animal unit months" is not an accurate way of calculating the AML in the Territory.

AML, p. 34. The federally listed endangered species of the Mexican spotted owl resides within the Territory. The propose plans (EA and TMP) fail to take into consideration the necessary protections for this owl species. Grazing and other disruptions should be kept to a minimum. Allowing a 35% livestock presence within the Territory runs contrary to the guidelines for protection and simply makes no sense within the Territory.

AML, p. 34. The 2013 National Academy of Science committee review stated that to maintain herd fitness, the minimum herd size is approximately 5,000 horses. The 2013 report by this committee was not available in the project record for viewing by the public so it is impossible to analyze this information.

AML, p. 34. The FS ignores the warnings of a reduction in herd size that could cause a decline in fitness of the herd due to genetic variations from mutations, inbreeding depression, deleterious mutations in smaller populations.

AML, p. 35. Genetic diversity concerns. The FS admits that : Genetic analysis of the free-roaming horses currently occupying the territory has not been conducted. The FS admits that it needs more data: "it is recommended that genetic analysis be conducted and that the proposed action for the territory include actions that will be taken to ensure genetic variability, if needed." Possible management actions include more removals (which would take the herd lower than 104 horses) purportedly to allow only horses ages between 6 to 10 years old for better reproduction rates. It is unclear what this means but if the FS is suggesting that further reductions are necessary to somehow increase genetic diversity, it is absurd, not supported by science, not is any cited.

AML, p. 35. FS is recommending introducing mares/horses from outside the territory every generation which blatantly violates the WHBA, Section 1339.

AML, p. 35. Once again, the FS - after admitting the horses are fenced out of the Territory (at p. 32), have the audacity to state that "Horse use monitoring is needed to determine the reasons for the lack of use."

AML, p. 35. The FS concludes that 104 horses is the maximum the Territory can sustain considering "other uses." Somehow it is a "given" that the livestock are "entitled" to thirty-five (35%) of the grazing areas within the Territory. The WHBA requires the horses be given the "principal" use of the Territory and additionally it should be noted that the horses are restricted to the Territory but are permitted to graze on surrounding public forest lands.

AML, p. 35. FUNDING? - How will the FS determine or anticipate if the Heber herd is not maintaining genetic diversity unless it has a plan in place to test or monitor such diversity. The proposed action is devoid of any discussion on this topic and lacking of any discussion on the availability of funds to do such work. The EA and TMP cannot be adopted unless sufficient funding exists to execute on the information in the EA and the TMP, not only execute certain parts such as removal of the horses and then nothing further.

GENERAL COMMENT 9: FSM 2200 is not being followed and a TMP is premature

First, Section 2262 provides a requirement for "Inventory and Studies" - the FS must maintain a current inventory including "herd composition, reproduction rates, seasonal feeding habits, herd unit area, seasonal distribution or movement, external influences, and the effects of other animal species on behavior of wild horses." Then AFTER Section 2262 comes Section 2263.1 which provides for preparation of a "Territory Management Plan." It follows that you cannot develop a management plan until you understand what you are managing. That is why the inventory section comes first. The FS has no inventory of the Heber horses (only flawed attempts at head count) and therefore, it is premature to prepare a management plan. The head count is based upon very limited and stale data, there is no information as to stallions/mares or ages. The reproduction rates were adopted from modeling of the Garfield Herd, wherever that is, from 1997.

In conclusion, the FS failure to study the Heber horses and conduct an inventory of what they are trying to manage i.e. the Heber horses, any territory management plan is premature. You cannot develop a plan to manage something that you know very little about. The population modeling which is critical in the calculation of the AML is based upon another herd area that has not been shown to be at all similar to the Heber territory (or have similar horse characteristics). The three limited aerial surveys that were conducted by the FS are over four years old and some much older. The Environmental Assessment acknowledges potential issues with separation of the bands and disturbances to sensitive of endangered species yet they are dismissed without explanation other than they do not think it will be an issue and refuse to do an EIS. The fall back to an "Adaptive Management" approach only means that the FS will round up first, ask questions later, anticipate nothing, and be reactive once it is too late. The FS has failed to manage or study these horses for decades and is now trying to check the boxes by going through the process required without really doing the necessary leg work and research needed to truly fulfill their duties to protect these wild horses. And as for funding, it is completely absent from any of these discussions. Add to all this, the tremendous influence exerted by the livestock industry on the BLM and FS, the preferences and deference given to cattle allottees, all make it crystal clear that the Heber horses are receiving much less than the "principal" use of the Heber Territory, as required under the WHBA.