

Exhibit 1

Data Submitted (UTC 11): 3/16/2020 7:00:00 AM

First name: Debra

Last name: Sirower

Organization:

Title:

Comments: Please see the attached.

Dear Mr. Madrid:

I submit the following comments, as a concerned citizen of the State of Arizona, frequent visitor to the Apaches Sitgreaves National Forest, and individual who participated in the court process initiated to stop the Forest Service's prior attempt in 2005 to round up the Heber herds without proper prior analysis and consideration of the horses' best interests.

Starting out with a positive comment, I fully support the PA's decision on page 11 to give protection under the Wild Free Roaming Horses and Burros Act of 1971 ("WHBA" or "Act") to all horses in the current unbranded unclaimed horse population on and surrounding the Heber Wild Horse Territory (the "Heber Territory" or "Territory"). The PA readily admits that as a practical matter it would be impossible to distinguish between horses of progeny originally in the Territory or surrounding areas and those horses that have been displaced from the fire years ago or otherwise abandoned by their owner over the years. And, more importantly, the WHBA does not require that the horses be of original progeny. Rather the Act protects "all unbranded and unclaimed horses and burros on public lands of the United States." Section 1332 (b). Photographs of the Heber horses in question as taken by a local resident are attached at Exhibit 1.

Unfortunately, that concludes my positive comments for the PA. Somewhat ironically or not, the Wild Free-Roaming Horses and Burros Act of 1971, declares "the policy of Congress that wild free roaming horses and burros shall be protected from capture, branding, harassment or death" and yet that is precisely what this PA would allow with a single stroke of a pen by a single government official known as a "forest supervisor." This PA should be rejected outright as inconsistent with the Wild Free-Roaming Horses and Burros Act of 1971 which protects wild horses from the very acts contemplated by this PA including capture by round ups, branding for birth control, and harassment by helicopter chases running the horses to their exhaustion and deaths.

Perhaps the most glaring flaw in the Proposed Action is its failure to identify a management plan at all. Even the Forest Service acknowledges this point in its March 4, 2020 comment letter. See P. 1 Arizona Game and Fish 3/4/20 letter at p. 1, paragraph 3, "[T]he PA does not appear to meet the settlement stipulations from the lawsuit as [Forest] Department staff have not been able to identify a clear Proposed Action. Rather, there is a very wide range of possible actions to the point where it is not clear what if any action is proposed." This is a proposal identifying a lot of possibilities yet committing to nothing "no clear path or concrete plan. There are very few details on what a plan may look like and even less conclusions about how they will manage of the current herds going forward. One theme is

clear however. The Forest Service still has an eye targeted on its ultimate goal - to remove all horses (or leave so few that they die out). Who does this benefit and why is the Forest Service so driven to eliminate the horses who compete for cattle grazing rights?

Curiously, there is another theme in the PA that the interests of livestock have some amount of priority or superiority over the horses. This is patently false. It is also incorrect and improper under the current laws to balance the livestock interests inside the Heber Wild Horse Territory as if they have some right or entitlement to be there. Absent from consideration is the concept that no livestock or cattle should be in the Territory at all. Also lacking is any discussion of the number of livestock head that are being allowed to graze in the Territory and surrounding areas competing for a food source. See Exhibit 2 which shows hundreds of head of cattle using the Territory and surrounding areas at a charge to cattle ranchers of only \$1.35/month per cow with calf. The PA at page 3 confirms that there are two existing livestock allotments in the Heber Territory. Why are there any at all within the horses' Territory and immediate surrounding public lands area? The PA purports to balance the livestock interests (exactly how many is not discussed in the PA) when cattle should not even be on the balancing scale at all within the Territory itself. The fact that the cattle grazing permits may or may not have been in place before the Territory was established in the 1970s is not relevant. Perhaps the cattle grazing should have been prohibited in the 1970s? That does not mean it cannot be addressed today. The horses use of the Territory is to be [ldquo]the principal use[rdquo] per the WHBA and that principal use should guide management of the Territory and surrounding public lands in the immediate area.

The mismanagement and lack of protection given by the Forest Service to date for these horses is appalling. For example, it is surprising to see all the fencing that is currently in place throughout the Territory itself. It basically divides up the Territory into three major sections and of those three sections, one section is fenced up even further. See PA at page 10, Figure 4, Pasture Fences. The excessive amount of Pasture Fences makes it impossible for the horses to [ldquo]freely roam[rdquo] their own Territory yet the horses are criticized for moving outside the Territory boundaries as if they had a choice. It is not natural for the horses to stay in a confined area anyway and runs contrary to the concept of being a [ldquo]wild[rdquo] horse in the first. There needs to be freedom to roam on Forest Service and other government public lands surrounding the Territory. If conditions were suitable for the horses within their Territory (ie not fenced and not trashed with barbed wire laying all over the forest floors, photos at Exhibit 3), the horses would likely use it more but there is no consideration given to anything affirmative that could be done to manage the horses better (or at all) within the Territory and surrounding areas.

This raises another concept that was not considered by the PA and that is redrawing or modifying the shape of the Territory such that it follows the horses' natural migratory patterns. Surely with all the ASU collaboration and input supposedly given, someone would have suggested redrawing or moving the boundaries (not reducing the size but perhaps making it larger). There is an abundance of Forest Service land around the Territory, why not lift up the Territory lines and lay it over

the horses natural migratory pattern and manage the horses in the area they historically use. Yet that concept is not discussed anywhere in the PA as an option that was given consideration.

Perhaps my strongest objection to this plan is the amount of unbridled power given to the [ldquo]Forest Supervisor[rdquo] on page 13 of the PA. A single person within the Forest Service, a [ldquo]supervisor[rdquo] will [ldquo]select a management strategy for the Heber wild free-roaming horse herd and its habitat.[rdquo] Page 14 of the PA lists the vast unchecked authority of this [ldquo]supervisor[rdquo] which includes the most significant factors

in their management [ndash] the [ldquo]appropriate management level[rdquo] or AML. The AML will then dictate how many horses the Forest Service can remove from the Territory and surrounding Forest Service lands. Notably lacking from any of the powers of the [ldquo]supervisor[rdquo] are any affirmative steps to actually protect and care the horses. This approach of having a single official with the discretion to essentially dictate the Heber Wild Horse Territory Management plan is completely unacceptable and dangerous. Instead, this PA should be rejected and officials should be required to submit a management plan that defines a clear path on what will and what will not be done to these horses. Public participation in this process is critical and should be required. This is especially true since there are no checks and balances in the system for enforcement or to confirm that the Forest Service and other government officials are following the laws and protections in place for these horses. In light of past conduct of these same government officials, a higher scrutiny is warranted going forward. Allowing one official to have the power to control the fate of the horses will surely result in the implementation of the Forest Service[rsquo]s original plan [ndash] complete removal of virtually all the horses or to an unsustainable herd level.

Due to the terrain in the area of the Heber Wild Horse Territory and surrounding areas, it would be suicidal to EVER use helicopters for any type of rounds ups whatsoever. There are numerous cliffs and ravines and mountainous areas. Having horses stampede due to fear of a noisy helicopter coming at them and breaking up their family and bands would result in the death of a significant number of the horses. For example, on page 33 of the PA, the [ldquo]Capture Technique[rdquo] says that wild horses [ldquo]must be captured by [hellip] a) helicopters.[rdquo] This approach to capture (if ever established needed) should be off limits and unthinkable in light of the potential danger and welfare of these horses. Obviously the governmental officials are considering doing a massive scale round up or this type of capture would not be in their PA. Helicopter use should be removed from any plan as not an option.

The sources of historical herd information relied upon in the PA is nonexistent. Relying on the opinions of ten (10) [ldquo]anonymous[rdquo] individuals for the history of herds is reckless at best and one could argue relied upon for only one purpose, a predetermined result. There are numerous other historical documents and articles from decades ago that are reliable and clearly document the existence of the wild horses in the Heber territory and surrounding public lands (See Exhibit 4, Holbrook newspaper article from early 1900s confirms wild horses present) yet the PA turns a blind eye to all of it. Such an approach makes the conclusions as to historical information in the PA fatally flawed and unreliable.

On page 17 of the PA, it discusses the criteria for determining [ldquo]excess[rdquo] horses. One of the first criteria is horses occupying areas outside the Heber Territory. Why would these horses be considered

excess if they are on public lands? Why wouldn't these horses be herded back towards the Territory. Why isn't the fencing removed from the Territory so that the horses can freely roam on it as they were intended to do. Another so called criteria for removal is the [ldquo]utilization of key grazing areas[rdquo], one would presume they are not referring to any [ldquo]key grazing areas[rdquo] within the Territory as surely those areas belong to the horses as of right to [ldquo]principally[rdquo] use the Territory. The answer is not clear and should be clarified to confirm key grazing areas are outside the Territory and even then the horses are entitled to graze on public lands as well, more so than a money making venture, called cattle. Another criteria for determining excess horses is [ldquo]resource damage[rdquo] and horses need only be [ldquo]a contributing factor[rdquo] not [ldquo]THE[rdquo] contributing factor in order for them to be deemed excess. No reference is made to the cattle that do far more damage to natural resources and water supply than horses do (by their very nature cows are destructive to the environment due to hygiene habits). These are overly broad and inappropriate criteria for determining whether a horse is excess and should be struck.

Another concept that is lacking from the PA, there is no affirmative positive management for the horses or their needs. No consideration to removing the miles of fencing within the Territory and surrounding public lands to allow the horses to freely roam. No consideration given to how to proactively take care of these horses by studying their migration patterns and readjusting territory boundaries if necessary or opening up nearby public lands so the horses may access them. The PA is clearly views the horses as a nuisance with a desire to remove them.

The beauty that lives on in the Heber area (Exhibit 1) must be maintained for future generations. Unfortunately, this PA does not provide a clear management plan for the horses at all. One with a pessimistic view might conclude it is a mere pathway for the Forest Service to complete execution of its original plan for horse removal and extinction of the Heber herds to the benefit of interested third parties with dirt cheap grazing privileges. This PA lacks sufficient detail sufficient to allow the public and other interested parties to comment. It is vague and leaves so many questions unanswered that it is impossible to know the precise action to be taken. I hope that is not intention here and that the PA will be sent back to the drawing board for resubmission of something with a detailed plan for affirmative positive management of these beautiful [ldquo]living symbols of the historic and pioneer spirit of the West.[rdquo] One forest supervisor should not and cannot decide their fate.

Attachments: Exhibits 1-4

Exhibit 2

Data Submitted (UTC 11): 4/23/2021 11:00:00 AM

First name: Debra

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Organization:

Title:

Comments: I submit the following comments, as a concerned citizen of the State of Arizona, frequent visitor to the Apache Sitgreaves National Forest, and individual who participated in the court process initiative to stop the Forest Service's ("FS's") prior attempt in 2005 to round up the Heber herds without proper prior analysis and consideration of the horses' best interests. I hereby incorporate by this reference my prior comments to the scoping memorandum dated March 16, 2020.

The following is a brief summary of some but not all of my comments in this letter. As you will see there are several themes running throughout my comments which are briefly described below.

(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) The Heber horses are locked out or fenced out of their Territory due to livestock grazing; 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;

(3) There 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, or what genetic testing would reveal about the ancestry of the horses; this makes any type of population modeling purely speculative;

(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;

(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;

(6) Heber horses are not being given the "principal" use of their Territory. While the horses removal is being planned, the livestock numbers are planning to grow from 25% to 35%. See *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 into my comments;

(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.

(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. I have tried to review the items the FS has posited on-line but, items continue to be posted as recently as April 16, 2021, despite the fact that these items were not available on day 1 of the comment period. For this reason, the comment period is flawed and must be restarted once all sources relied upon by the FS are made available. The 2019 Band Observation Data in particular will not load and is unavailable for review. I was unable to locate "Horse Territory Analysis - Available Forage Production 2018" cited in the AML on p 18, anywhere in the project record.

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 2018. The most "recent" information is over 4 years old. There is no data on horse migration or mapping, not 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. The forage production estimates were based upon outdated years of information (2007-2008).

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 four (4) 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 - [EXHIBIT 1, attached] - The Heber horses are located out of their Territory. Exhibit 1 hereto demonstrates that 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 ways to the detriment of the horses nor in a way that locks the horses out from using the Territory. Ironically, the SF 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. 18 Forage. A key component of the AML calculation is the amount of forage available. However, the FS has chosen erratic and stale years for selection of production levels. Rather than rely on the last three years forage production or an average of the last 5-10 years, the FS carefully selects the years 2007, 2008, and 2018. It is not clear why the FS reached back in time approximately 14 years ago to rely on this important number for forage. With extensive livestock grazing all over the Territory and surrounding areas, there is certainly more complete data on forage production that is more recent than 2007-08 era. This forage calculation cannot be relied upon and appears to have been reverse engineered for a desired result.

AML p. 21 Figure 9 [exhibit 2, attached]. Demonstrates that 5 grazing allotments cover ENTIRE Territory: King Phillip, Stermer, Sharp Hollow, Gentry, and Bunder.

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. As the FS has failed their duties once again.

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 2008? 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 3:

WINEQUUS POPULATION MODELING IS FLAWED AND SHOULD BE DISREGARDED FOR LACK OF SPECIFIC DATA RELATING TO THE HEBER HERD

Specific Comments:

The Win Equus population modeling for the Heber herd was created using data from the Garfield Herd Management area in 1997, over twenty years ago and from another state with different topography than Heber, Arizona. Significantly, the modeling does not rely upon information available. Below is an excerpt from the FS Win Equus report:

Parameters Utilized for Population Modeling All simulations used the standard survival probabilities, foaling rates, and sex ratio at birth that were supplied with the model for the population for the Garfield Herd Management Area, 1997. These are standard data used when we don't have site specific data for a territory.

There is no discussion or evidence that the Heber herd and its corresponding Territory are at all similar to Garfield Flats in terms of topography, geography, climatic patterns, vegetation, and wild horse characteristics. Whereas here, these characteristics do not align, the use of the Garfield Flat population data is inappropriate and provide results that are inaccurate.

This is significant in that critical population modeling is not based upon the Heber herd. Until such time as herd specific information is available, any modeling is pure speculation and conjecture and should be rejected outright. How can the FS properly make a determination as to which sex age of horses to remove to control population until such time as they understand and have data on the current herd composition? Any removals without such information as to the Heber herd compositions would be purely arbitrary and capricious.

GENERAL COMMENT 4:

HEBER WILD HORSE TERRITORY MANAGEMENT PLAN, Wild Horse Report (WHR) LACKS DATA AND IS ARBITRARY AND CAPRICIOUS

Specific Comments:

WHR, p.1 Once again the FS admits in one sentence that they have fenced out the Heber Herd from their Territory and in the next sentence, the FS acts like it does not know why the horses are not using the Territory??? To quote the FS on p.1 of WHR, "Existing livestock fencing within the territory may be limiting horse movement to the lower elevations in the northern portion of the territory. However, current monitoring is not sufficient to ascertain with any certainty why horses are utilizing the northern portion of the territory nor is it sufficient in determining why they are not moving off the territory. Additional monitoring is needed to better understand how the horses are using the territory." See my comments above to AML, p. 32

WHR, p.2 The "annual" growth rate lacks any scientific bases. A 19 to 21 percent growth rate is based upon three aerial surveys from years 2014, 2015, and 2017. Tables 1 and 2 have the term "Estimated Population" footnoted as "1" but there is no corresponding footnote section contained in the WHR. The number of horses actually observed in the Territory in 2014 was 18 and in 2015 it was only 16, two less horses than the year before. This does not support an increase in the herd size but rather a decrease. This aerial data is stale and out of date and not sufficiently reliable to use in calculating a growth rate which is a critical issue to determine proper management. More reliable data and detailed information about the Heber horses is required to calculate a growth rate.

WHR, p.2. Band Observation Data 2019 is not available for review in the project record on-line. It appears to be posted but when you click on it nothing happens. The FS claims there are 59 separate "bands" of horses and

uses a single horse in some instances to count as a "band". There is no scientific support for a band of "one" horse. It fails by definition and demonstrates that the FS knows very little about wild horses.

WHR, p.4. The No Action Alternative is dismissed out of hand and fails to consider reality. The FS claimed in 2005 that there were 300-400 head of horses in Heber [exhibit 4, attached] and today they are making the same claims but now it is 16 years later. This proves that the alleged population growth numbers arbitrarily selected by the FS are not accurate. See above, AML comment at pp. 7, 9, 10, 12.

WHR, p.5 Lack of Data - The FS states that "further monitoring is needed to better understand how the horses are using the territory" and on the very next page 6, the FS begins preparation for reduction of herd size. When would the FS get a better understanding of the horses, before or after removal??? There is no plan for studies to be done in any of these documents. The FS needs to complete the studies of the horses and their composition, head count, migratory patterns, bands and the like before it starts rounding up the horses.

WHR, p.6. There is no discussion about what happens to the bands of horses when one or more members are trapped by water baiting in corrals. Each time a horse is captured, the remaining members of the band (its family) are disrupted and chaos will ensue if several bands lose various members around the same time.

WHR, p.8. The FS admits that "The current herd age distribution is unknown." There are a number of bachelor bands in the territory and surrounding areas and they obviously do not reproduce. The FS has failed to study the specifics of these horses and cannot make management decisions until it understands the horses, fully inventoried, with ratios of male to female, ages of horses, number of bands, and the like.

WHR, p.9. The FS admits that "An analysis of the genetics within this territory has not been conducted to date[hellip]" Many of the buckskin horses exemplify traits of those horses (Cerbat) brought over from Spain by Father Kino yet no genetic testing is being recommended before these horses are removed.

WHR, p.10. One would think the FS would research carefully the possible changes to herd dynamics as a result of the removal of individual band members. Unfortunately, according to the FS, there will be no impact on the bands. The FS dismisses without much discussion of the effects of removal of some band members on the remaining members. The FS claims that bands are "dynamic" and "not a static condition" which runs contrary to the majority of research in this area and just plain common sense. And if the removed member is the stallion and lead of the band then what happens to the band? Zero discussion on this very significant topic.

WHR, p.10. Helicopter gathers are identified as a possible tool to roundup the horses but there is no discussion about the possible effects of helicopter use in this area full of rough terrain. Many horses would lose their lives being chased off cliffs and other difficult terrain in this area. None of that is considered and the use of helicopters is dismissed with very little discussion - two sentences, saying effects on herd dynamics would be the same as bait and trap technique which cannot possibly be accurate when there is chaos by helicopter chase. All bands would be forever disrupted.

WFR, p. 20. Cumulative Effects. Without any support, the FS comes to the startling conclusion that livestock grazing can actually "improve" the conditions of the range and forage. This is simply absurd and that is not the analysis undertaken by Holechek. And if you review the other plans for livestock grazing, the FS is actually increasing livestock grazing in the area of the territory from 25 to 35% meanwhile, the FS proposing that the horses must be removed. This is no analysis whatever but simply a result in driven conclusion. A single report that is misinterpreted and relied upon by the FS while ignoring other reports that come to opposite conclusions, see below e.g.:

Livestock Grazing Reports - negative impacts to environment and animals

https://www.biologicaldiversity.org/programs/public_lands/deserts/sonoran_desert/pdfs/SDCP-Report.pdf

https://www.biologicaldiversity.org/programs/public_lands/grazing

<https://www.britannica.com/explore/savingearth/public-lands-ranching-the-scourge-of-wildlife>

[See exhibit 5, attached] The FS concludes that livestock grazing "is not expected to have impacts on horses or their habitat." No citation. No support but the above articles demonstrate otherwise.

WHR, p. 21. The FS concludes that horse herd under the proposed action i.e. roundups would be "beneficial" or "slight"? The FS notes that no action would result in risk of death due to a lack of forage and water? Yet not a single documented case is provided in any report from the FS showing that the horses are starving. All of this is based upon the FS conclusion of a 20% growth rate which is completely unsubstantiated.

WHR, p.23. The FS proposed action of horse removal without sufficient information and reliable studies available to confirm with any precision an alleged 20% growth rate, lacking any information on the current composition of the horses (by age and sex) and recent head count leads to but one conclusion which is a violation of the federal laws designed to protect the horses and the process including NEPA (no Environmental Impact Statement is proposed and this step is skipped without justification), WHBA, Administrative Procedures Act, and other laws. The FS also suggests reintroducing other horses (strangers to the Heber territory) to assist with genetic diversity which is a blatant violation of the WHBA Section 1339.

GENERAL COMMENT 5:

THE DRAFT ENVIRONMENTAL ASSESSMENT (EA) LACKS DATA AND IS ARBITRARY AND CAPRICIOUS

FS ADMISSIONS demonstrating critical LACK OF DATA include:

EA, p.1 "Throughout the years, no actual scientific data or monitoring was documented on the [Heber horse] population."

EA, p. 1 In 1993, the FS violated the APA and closed the Territory and ceased monitoring of the horses.

EA, p. 2 The FS has decided to manage horses in the Territory and nearby areas as "wild" under the Act meaning that each and every horse is protected by the WHBA and all procedures must be followed. I applaud this decision to treat all the Heber horses as "wild" but suspect the FS must do so because they do not have information to data to prove the horses should be treated otherwise.

EA, p.13. "[T]here is no conclusive information from which to determine that 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."

EA, p. 37. "An analysis of the genetics within this territory has not been conducted to date,[hellip]"

EA, p. 38. The FS admits they do not know the detrimental effects of separating band members.

EA, p. 47. Per Figure 4, the FS admits that Territory is 100% used by livestock through grazing allotments: King Phillip, Sharp Hollow, and Stermer from the mid-section to the north and Gentry and Bunder to the south portion.

Additional Specific Comments to the EA:

EA, p. 7. Purpose and Need to establish AML. There is no evidence that the current level of horses is not sustainable. In fact, all photographs of the current horses demonstrate that they are well fed from the forage and in great condition. Yet, the FS concludes that the AML should be 100 cutting the head by three quarters or 75% of its alleged current size. All this is based upon the conclusion that a growth rate of 20% is valid. It is not. The proof is shown by the attrition level from 2005 to 2021. The herd size is the same as the FS claimed it to be back in 2005. [See exhibit 4] Therefore no action is required at this time. Nor is there any evidence of starvation or even a threat of starvation in the near future of the herd. The growth rate and claims of starvation are all "make believe" in an attempt to clear the path to maintain and increase livestock grazing from 25 to 35%. The horses compete for the cattle grazing when they are entitled to priority to those areas especially within their Territory. The FS has ignored the "principal" use concept of the Territory per the WHBA and allowed grazing rights for livestock to increase while planning removals of the herd. Multiple use concepts are not set in stone and when the need arises to protect the horses, removing the cattle is authorized under CFR 4710.5.

EA, p. 7. Why do the horses only get half the forage? The WHBA requires that the horses use shall be "principal" not equal or less than.

EA, p. 8. The FS has no idea how many horses are in the Territory and surrounding areas. Their most current estimates are based upon outdated aerial surveys that are 4-7 years old. Even the FS estimate of the herd is based upon an extremely large viable between 270 and 420. More current data is required including herd composition, male v. female, age, and condition. The WHBA requires that sick and lame or injured horses be removed before any healthy horses yet the proposed action of the FS is void of any discussion on this point.

EA, p. 8. The suggestion that by 2022 (next year) the horse population could increase 10 times is absurd, lacking in any support, and just plain false. The herd has remained the same size since 2005 but the FS refused to acknowledge this FACT [exhibit 4]

EA, p. 8. Stakeholder involvement was not welcomed. The single horse advocate selected for the "independent" working group was ostracized by others in the group. The working group was nothing more than a process that the FS had to do but it was clear that it was not an effort to listen to wild horse advocate concerns or more advocates would have been selected to participate and the one that was selected would not have been treated so rudely so much that she ultimately resigned.

EA, p. 9. Tribal consultation is not completed.

EA, p. 10. Scoping Comments were disregarded or ignored; and/or were not addressed in any meaningful way.

EA, p. 12. Impact to travel and tourism was not considered as an option for the herd. Viewing stations along State Rt 260 could prove to be a valuable tool to increase awareness of the wild horses and provide an enjoyable recreational opportunity for the public but this option was not considered. It could also be a revenue source to fund proper care and management of the herd. This option was not considered by the FS in any of the project record reports.

EA, p. 13. There were numerous comments during the Scoping Memo period that suggested redrawing the Territory or opening up the fencing in the Territory to allow the horses to roam freely through their Territory but this was not addressed because the "interdisciplinary team" i.e. the FS did not "identify any unusual circumstance or other rationale to justify expanding the territory[hellip]". Before a mass round up is proposed which is an unusual circumstance in and of itself, the other options should have been considered such as removing fencing to allow the horses to actually use their Territory, removing the livestock or limiting the allotments substantially (CFR 4710.5), terminating the grazing leases as the government is entitled to do, give the horses the principal use of the Territory as they have been designated. None of these actions were even considered.

EA, p. 14. The fact that livestock grazing was in place within the Territory prior to establishment of the Territory does not mean it must continue especially when the FS is considering round ups and capture of the wild horses. The horses need not be the "exclusive" use but the WHBA requires that the horses have the "principal" use. That is not happening now nor under any of these proposed actions by the FS, which is in violation of the WHBA. See also CFR 4710.5 specifically providing for the curtailment or cancellation of livestock grazing privileges on public lands in order to ensure thriving, healthy herds of wild horses and in their territories. See also, Craig Downer, *The Wild Horse Conspiracy* (2014) [exhibit 6, attached].

EA, p. 15. The "no action" proposal has worked well for the FS since the Territory's inception in 1970s and should continue. The horses are not starving but healthy and there is no evidence of any imminent or impending lack of forage availability. The horse population is obviously not growing at 20% as alleged by the FS or the herd from 2005 should be a massive size today and it is not. The proof is in reality of the current herd size which seems to be maintaining an attrition rate that keeps the herd population in balance naturally. No action is the best alternative but was dismissed out of hand all hinging on the alleged growth rate of 20% which is flawed as explained in my comments to the AML. The FS does not have the data to back up a 20% reproduction rate and uses outdated information from some other herd in 1997 - The Garfield Herd.

EA, p. 17. Suggests introducing young animals from outside the territory to maintain or increase genetic diversity and is prohibited by the WHBA Section 1339.

EA, p. 17. FUNDING? The FS obviously doesn't have the funding now to complete the aerial and other surveys necessary to determine the herd size, herd composition, and migratory patterns. Without an increase in funding, the FS will not have resources to continue to monitor closely the population and this obligation too will not be followed. There is no discussion of funding availability for all the activities and follow up required in this proposed action. Why would taxpayers have to take on the obligation of paying for the care and feed of wild horses in captivity? What is the source of the funding available to care for the horses once rounded up? If funds fall short, are these horses headed to slaughter (immediately after auction)? What protections have been put in place for the removed horses to ensure they do not end up in meat markets? Simply put, none. In 2014, a FOIA request revealed an internal memo from Joan Guilfoyle, national director of BLM's wild horses program urging suspending roundups until those horses already in captivity can be placed elsewhere but that has fallen on deaf ears.

EA, p. 17. Genetic sampling would be done after the round ups occur. At that point, it is too late. Once removed the horses cannot be replaced and new horses from outside the territory cannot be used to replace the wild ones that inhabited this territory and surrounding areas.

EA, p. 21. The AML is too low and not supported by current data or the majority of scientific research available on the topic. See my comments to the AML report.

EA, pp 21-22. Determination of Excess horses is vague and arbitrary. One government official can send "a letter to the file" unbeknownst to the general public and remove wild horses if a single threshold is deemed exceeded. There should be detailed process in place before such conclusion can be reached including consulting independent experts, data to back up the conclusion, and giving public notice. One of the thresholds is horses not using the territory for "long term" use (which is not defined and vague) yet the FS has fenced the horses out of the territory. Utilizing "key" grazing areas exceeding 35% yet the term "key" grazing areas is not defined and vague. Likewise, "sensitive areas" is not defined yet if these areas are impacted negatively by horse use, the horses can be removed. Animal health is another reason to remove yet there is no process for certification by a veterinarian. Then there is a "catch all" provision for "other circumstances" which is not defined and is vague and arbitrary power in one person's hands, the Forest Supervisor. Despite all these flaws, one comes back to the central question, how can the FS remove horses for not using the territory when they are the ones who locked them out? This is a disgrace and violation of the FS duties under federal law.

EA, p. 23 Figure 2. All roads lead to removal. It appears to be a pretty easy path with no back up or supporting documentation and vaguely defined or undefined terms which meanings are critical.

EA, p. 25. Herd health and population. There is no identification of available funding for any monitoring of the horses in fact outside volunteers would be relied upon which once again is the FS passing on its duties in hopes that others will do it. Surveys of the horses would only be done every 2 to 5 years "as funding allows." Where are the funds for this management? The FS is taking on a task and giving lip service to a management plan that it lacks and the funding to support.

EA, p. 26. Potential Management Actions. Alter the herd age distribution when the FS does not even know the current age distribution. The plan calls for removal first, ask questions later. No horse removals should be permitted until a study and understanding of the current herd is accomplished. If the FS lacks the funds to do that much, it certainly lacks the funds necessary to implement its proposed actions. Once again, the FS states that it will "introduce young horses from outside the area" for genetic diversity which is prohibited by the WHBA. Why not study the composition of the Heber herd first before any removals could be done and then the FS would not have to worry about introducing stranger horses for genetic diversity. Habitat management includes "increase fence permeability" but what is required is removal of the fences and movement of livestock to other grazing areas outside the Territory.

EA, p. 27, Figure 3 shows corrals set up inside the Territory. Why would FS capture horses within the Territory when they seem to be complaining that the horses are not staying in the Territory? Once would think bat and trap would focus on horses outside the Territory?

EA, p. 29. There are owls and wolves within the area and all the FS says is that they will not be disturbed but no details on any plans how that will be accomplished or where specifically the dens and nests are located. Have these species been studied to understand where exactly they are located?

EA, p. 30. Public notice. A plan for providing public notice of any removal of excess horses is critical yet no plan is developed or in place.

EA, p. 34. Band observation data collected by the FS and relied upon for its proposed action was not available to the public during this comment period, on-line or otherwise. Once horsed does not constitute a "band". And the FS admits that "This data is being presented as the beginning steps to obtain herd information[hellip]" Shouldn't the FS have this information before making a proposed action plan? Aren't the results of the herd information and composition relevant to any removal of so-called excess horses? The proposed actions are premature.

EA, p. 36. The FS has no credible data to support the notion that the horse herd could reach 16,000. From 2005 to 2021, the herd has remained the same size. The claim of a 20% growth rate is belied by the facts of recent history. See AML comments generally, above.

EA, p. 38. The FS admits they do not know the detrimental effects of separating band members. The effects upon reproduction by disturbing the bands has not been addressed or considered in any detail other than to acknowledge it is an issue.

EA, p. 47. Figure 4 shows that the Territory is completely over-layed 100% with grazing allotments: King Philip, Sharp Hollow, and Stermer from the mid-section to the north and Gentry and Bunder to the south portion.

EA, pp. 51-53. The FS plans to increase the livestock grazing allotments from 25% to 35% within the Territory arguing that when cattle eat the grasses it actually improves forage production but when horses do the same, it does not. So while the cattle numbers increase, the horses get removed. This is not what was envisioned in the

WHCA and is a blatant violation. No EAs for livestock grazing have been produced by the FS despite pending FOIA requests that remain outstanding. Why is this information being withheld from the public?

EA, p. 51 (and throughout the EA) and "ADAPTIVE MANAGEMENT PLAN" is not plan at all. It simply means the FS lacks the necessary documentation to support its current proposed actions and it will wing it as it goes. This lack of any certainty and lack of understanding of the current herd composition makes the proposed action plan vague and arbitrary.

EA, p. 54. There are no plans to reduce livestock grazing within the Territory to accommodate the principal use for the wild horses in direct contravention of the WHBA. Indeed, the FS states that livestock usage will actually increase from 25 to 35%.

EA, p. 63-64. Numerous species are identified in the Sigreaves Forest including the Mexican spotted owl, Mexican wolf, birds and falcons including the Goshawk and bald eagle, bats, mice and yet every single determination was "No action" with a short conclusion lacking in any study that the species is "not likely" to be effected by their proposed activities, including bait and trapping and helicopters. Insufficient study or no study was done.

EA, p. 71. The FS suggests that wild horse grazing "negatively affects" the Mexican spotted owl with no support cited. If there is a report posted online to support some of the FS bald conclusory statements throughout this EA, the FS should pinpoint the cite for their statement but it repeated fails to do so leaving the public commentaries required to scour the record in search of support for the FS statements.

EA, p. 81. The FS claims that horses affect all life stages of leopard frogs yet any harm from the horses to wildlife or other species would equally apply to livestock grazing yet livestock get a pass. Why would protected horses be removed before "permitted" livestock?

EA, p. 133. The FS claims to have relied upon the "best available science" for its proposed actions which is obviously inaccurate as the majority of research as to the destruction and damage caused by livestock to the territory was ignored as if it does not exist. As for the endangered and other sensitive species in the forest, lip service was given that they will not be disturbed. The history of the territory was based upon oral accounts by whom is not clear. The FS shut down the territory for decades and would just as soon do that same now by removal of all the horses or to such a low level that they horses are not viable. Then the FS will have succeeded in its mission in support of the livestock interests which is pretty clear from reviewing this report.

GENERAL COMMENT 6

Proposed Action

Heber Wild Horse Territory Management Plan (TMP) is premature and lacks credible data.

Specific comments:

TMP, p. 10 Figure 4 demonstrates that the FS has allowed the horses to be completely fenced out of their Territory.

TMP in general all above comments on AML and other items are incorporated here by reference.

TMP, p. 13 states that an "environmental assessment" will be prepared which will analyze the environmental effects associated with development and implementation of the proposed action." Where is that plan, the EA? See comments to EA generally, above.

TMP, p. 14. Too much authority in a single person. The forest supervisor has extraordinary unchecked power to remove the horses without consultation with experts or even notice to the public. Horse advocates should be intimately involved in any proposed removals and any removals should be well supported with study and data to back it up which has not been presented to date.

TMP, p. 15. An "Adaptive Management" style simply allows the FS to do whatever they want. The FS has ignored the horses for decades why would they start now to do the research and study necessary to understand the herd. Add to that, there are no funds identified as available for the work that would need done under an "Adaptive Management" plan. It requires proactive work and that is not the practice of the local FS.

TMP, p. 19 Figure 5 confirms the horses are fenced out of the Territory.

TMP, p. 25. "Horses determined (in consultation with Arizona Department of Agriculture brand inspectors) to be domestic animals will be treated in accordance with State law." What does this mean? The FS stated that all the horses would be treated as protected under the WHBA since they could not prove otherwise. This statement appears to be contradictory with other statements in the reports by the FS. There are no details on what this means or how a horse could be viewed as "domestic"? If this statement is intended for future horse management, it is still missing details sufficient to allow public comment.

GENERAL COMMENT 7: AN ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED

Numerous other protected/endangered species in the area yet no real plan or details on how close activities would be or if these protected species would be affected; plans speak in very general terms with very little to no detail. The FS statement that sensitive or protected species will not be affected without more is insufficient. Additionally, separating wild horses by bait and trap will certainly cause chaos in the forest and could result in destruction to areas of the forest by the remaining bands, to the corrals or pens, to the wild horses inside, and to nearby sensitive wildlife. Checking baits every 12 hours is too long a period of time for checking and there could be injury to the horses and the wildlife nearby.

GENERAL COMMENT 8: Heber horses are not given the "principal" use of the Territory

The WHBA provides in Section 1332 (c) that the term "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, [hellip] which is devoted principally [hellip] to their welfare [hellip]" The term "principally" is not defined in the WHBA but common synonyms include chiefly, mainly, predominantly, primarily, substantially. When the AUM allows cattle to be counted as 2 for 1 (cows and calves) and horses and fillies/colts are not, the numbers double quickly. Moreover, from the FS own data, it is clear that the grazing allotments which cover the entire Heber Territory are the predominant or primary use of the Territory, not the wild horses. This is a clear violation of the WHBA.

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 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 or 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.

Attachment: Exhibit 1- map of HWHT general overview of water sources

Attachment: Exhibit 2 - map of HWHT range allotments and pastures

Attachment: Exhibit 3 - 43 CFR 4710.5 Closure to livestock grazing

Attachment: Exhibit 4 - News Release - Unauthorized Horses to be Removed from the National Forest

Attachment: Exhibit 5 - Livestock Grazing and the Sonoran Desert Conservation Plan - A Conservation Perspective

Attachment Exhibit 6 - The Wild Horse Conspiracy

Exhibit 3

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December 22, 2020

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Re: The Forest Service's Commitment to the NEPA Process

Dear Ms. Sellari and Ms. Dickman:

I am writing to you on behalf of my client, the International Society for the Protection of Wild Horses and Mustangs to reiterate a concern that I raised in my last letter, which was sent on August 12, 2020. Specifically, my client is concerned that the Forest Service's description of the NEPA process on the "Next Steps of the Planning Process" section of the Apache-Sitgreaves National Forest, Heber Wild Horse Territory page states that the Forest Service will prepare an Environmental Assessment ("EA") followed by a decision, but does not raise even the possibility that the agency will conduct an Environmental Impact Statement ("EIS"). (The URL is <https://www.fs.usda.gov/detail/asnf/landmanagement/resourcemanagement/?cid=fseprd534229>. A pdf printout is attached for your convenience.)

The Stipulated Settlement agreement requires the Forest Service to complete "an analysis and appropriate environmental document pursuant to NEPA and develop[] a written Heber Wild Horse Territory Management Strategy. . ." (emphasis added) *see* Stipulated Settlement Agreement, stipulation 5. In my June letter I had raised concerns that the Forest Service had already made a decision concerning the outcome of the NEPA process and the territory management plan as evidenced by a job posting that included responsibilities like "Applies techniques involving placement and sales of wild horses and burros;" "Establishes and maintains an effective records system relative to the acquisition, sales, adoption, medicinal administration, integration, and disposition of animals in the program;" and "Advises leadership on the management of gathered animals."

Leigh Sellari
Dawn M. Dickman
December 22, 2020
Page 2

I also underscored that under Federal law, when an agency engages in the NEPA process, the outcome cannot be a foregone conclusion because it is essential that environmental considerations are a part of the initial decision-making process. *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000). I also raised that hiring an employee to conduct gathers, administer medicines, and sell wild horses evidenced that the agency had already made a decision regarding the Heber wild horse herd.

Mr. Kleven's response assured my client that the Apache-Sitgreaves National Forest is in the process of preparing and publishing a draft Environmental Assessment (EA), and that "[a]n EA is appropriate when the agency has not yet . . . determined that an Environmental Impact Statement (EIS) is needed." From the Forest Service's website, it appears that the agency has also already made a determination on how it will conduct the NEPA process – the agency has no intention of conducting an EIS.

To paraphrase, the website describes the planning process as follows:

- (1) Issue a draft proposed action and conduct a public scoping period.
- (2) Prepare an EA.
- (3) Conduct a public comment period.
- (4) Issue a draft decision notice and conduct an objection period.
- (5) Issue a final decision.
- (6) Develop a territory management plan.

The silence regarding the EIS process is deafening.

As stated in my August 12, 2020, letter, and the comments that my client submitted during the scoping period (to which there has been no response), an EIS is undeniably necessary. All "major Federal actions significantly affecting the quality of the human environment" require an EIS. *See* 42 U.S.C. § 4332(2)(C). The Heber Wild Horse Herd is a component of the human environment. *See* 16 U.S.C. §1331, *see also* Stipulated Settlement agreement, stipulation 4, "wild horses are by law an integral part and component of the natural system of the public lands." The territory management plan will be a major federal action that will significantly affect not only the wild Heber horse herd, but also the at least portion of the Apache-Sitgreaves Forest where these horses live.

My client believes that all interested parties are best served by the Forest Service creating a territory management plan. Congress has set forth that to reach the best decision for the environment, federal agencies must comply with NEPA. The Forest Service's recent job postings

Snell & Wilmer

Leigh Sellari
Dawn M. Dickman
December 22, 2020
Page 3

and the representations on the Forest Service's website evidence that the agency is not complying with NEPA. As a result, my client is concerned with the quality of the final decision.

My client requests that you provide reassurance that the Forest Service will comply with NEPA, and further requests that the Forest Service update its website to appropriately reflect that if the agency determines through the EA that the territory management plan will significantly impact the environment the agency must conduct an EIS and issue a Record of Decision.

Finally, my client has received reports that horses are being removed from the New Mexico meadow jumping mouse habitat, in relation to the issues raised in *Center for Biological Diversity et. al v. Bernhardt, et. al.*, No. 4:20-cv-00075-JGZ (D. Ariz. files Feb. 20, 2020). Please confirm whether any horses are being removed from the Apache-Sitgreaves National Forest, including but not limited to the Black Mesa and Lakeside Ranger Districts.

Sincerely,

Snell & Wilmer



Farris Jean Gillman

FJG/enc.

4827-8797-0004

Site MapApache-Sitgreaves
National Forests**Home****Special Places****Recreation****Alerts & Notices****Passes & Permits****Maps & Publications****Land & Resources
Management****Planning****Projects****Resource
Management****Geospatial Data****Fire Management****Learning Center****Working Together****About the Forest****News & Events**

Contact Information

Anthony Madrid
Forest Supervisor**Ericka Luna**
Deputy Forest Supervisor**Supervisor's Office**
P.O. Box 640
30 S. Chiricahua Dr.
Springerville, AZ 85938
928-333-6280
Fax: 928-333-5966

Districts

Alpine Ranger District
PO Box 469
42634 Hwy. 180/191
Alpine, AZ 85920
928-339-5000**Black Mesa Ranger
District**
PO Box 968
2748 E. AZ 260
Overgaard, AZ 85933
928-535-7300**Clifton Ranger District**
397240 AZ 75
Duncan, AZ 85534
928-687-8600**Lakeside Ranger District**
2022 W. White Mtn. Blvd.
Lakeside, AZ 85929
928-368-2100**Springerville Ranger
District**
PO Box 760
30 S. Chiricahua Dr.
Springerville, AZ 85938
928-333-6200**Contact Us****Heber Wild Horse Territory**

Photo courtesy of USDA Forest Service.

PrevNext
1234567**Related Links**[HWHT: Home](#)
[HWHT: Informational Videos](#)
[HWHT: FAQs](#)
[HWHT: Timeline](#)
[HWHT: Map](#)
[HWHT: Glossary](#)
[Horse Incidents & Investigations](#)**Next Steps of the Planning Process**

1. The draft proposed action for development of the Heber Wild Horse Territory Management Plan will be sent to people and organizations who have indicated an interest in the NEPA planning process. This public scoping process solicits comments on the proposal. Once the Forest Service receives public comments, we will incorporate them into the proposal and its analysis where possible. Substantive issues may also result in development of additional alternatives for analysis, as appropriate.
2. The Forest Service will prepare an environmental assessment (EA) in compliance with the National Environmental Policy Act and other relevant Federal and State laws and regulations.
3. Once the environmental assessment is prepared, The Forest Service will make the EA available for public review and allow another comment period.
4. The Forest Service will incorporate any needed changes identified during the comment period and prepare a draft decision notice based on the analysis. The draft decision notice and environmental assessment will be made available to those who commented during the comment period. This will initiate the objection period.

NOTE: This analysis is being completed under the Forest Service project-level predecisional administrative review process (36 CFR Part 218). Only individuals or entities (as defined in 218.2) who have submitted timely, specific, written comments during any designated opportunity for public comment may file an objection (218.5).
5. After the objection period has ended, a final decision notice will be issued.
6. Once the decision notice is completed, a territory management plan will be developed for the Heber Wild Horse Territory.

[Forest Service Home](#) | [USDA.gov](#) | [recreation.gov](#) | [Recreation Customer Service Standards](#) | [USA.gov](#) | [Whitehouse.gov](#)
[Plug-Ins](#) | [FOIA](#) | [Accessibility Statement](#) | [Privacy Policy](#) | [Important Notices](#) | [Information Quality](#)

Exhibit 4



File Code: 6270
Date: July 18, 2022

Debra A. Sirower
debrasiorwer@clearchannel.com

RE: Freedom of Information Act Tracking Number 2021-FS-R3-03605-F

Dear Ms. Sirower:

This is a final determination of your Freedom of Information Act (FOIA) request dated April 30, 2021, forwarded to the Apache-Sitgreaves National Forest for search on May 3, 2021. Your request was re-routed by email to Southwestern Region FOIA Service Center for final determination and processing on June 11, 2022. However, the record set was incomplete. The balance of the record set was provided by the Forest on July 11, 2022. Your request was assigned FOIA Tracking Number 2021-FS-R3-03605-F. Please include this tracking number in all communications regarding this request.

You requested:

1. *In the Heber Wild Horse Territory "Proposed Appropriate Management Level Determination" prepared by the Black Mesa Ranger District, Apache-Sitgreaves National Forests, U.S. Forest Service with dated January 2021 on page 30, the Forest Service states that, 'To further understand how horses are using the area, historic and current district files (USDA Forest Service 2210 files) were examined, ... District files include range inspection forms, correspondence, allotment management plans, stocking records, production and utilization studies, and general file notes.' Please provide all 'District files' referenced above relied upon in the AML quoted above.*
2. *Current grazing allotments or 'Term Grazing Permits' (Reference FSM 2230) for Heber and Black Canyon allotments.*
3. *In the Heber Wild Horse Territory 'Proposed Appropriate Management Level Determination' prepared by the Black Mesa Ranger District, Apache-Sitgreaves National Forests, U.S. Forest Service with dated January 2021 on page 18, there is a reference to 'Horse Territory Analysis - Available Forage Production 2018' that was not provided on line in the project record for public comment. Please provide this report.*
4. *In the Heber Wild Horse Territory 'Proposed Appropriate Management Level Determination' prepared by the Black Mesa Ranger District, Apache-Sitgreaves National Forests, U.S. Forest Service with dated January 2021 on page 32 references the 'site-specific environmental analysis completed for livestock management (USDA Forest Service 2016).' Please provide this report or analysis referenced above as relied upon in the AML report.*



5. *In the Heber Wild Horse Territory Management Plan, Wild Horse Report, Apache-Sitgreaves National Forests, January 2021, on page 2, 'Band Observation Data Collected in 2019' was not made available in the project record. Please provide this report and the underlying data used to collect the information upon which the Forest Service is relying."*

In response to your request, employees of the Apache-Sitgreaves National Forest conducted a search for responsive electronic and hard copy records. Staff members searched in every place where a reasonably knowledgeable professional could expect to find records pertaining to your request.

Enclosed with this response is a PDF containing 1,250 pages considered responsive to the items of your request. 1,245 pages are provided in full, and 5 pages are withheld in part under (b)(6) of the FOIA. There are no fees being charged for processing your request.

Pursuant to Exemption 6 of the FOIA, 5 U.S.C. §552(b)(6), we are withholding names, addresses, contact information, signatures, and base property information of private individuals in the responsive documents provided. Exemption 6 protects information about individuals in "personnel and medical files and similar files," where disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." The determination as to whether the disclosure of private information is required under Exemption 6 does not rest on the identity of the requester or on the particular purpose for which the records is sought, but on the nature of the information requested and its relationship to the core purpose for which Congress enacted the FOIA: to shed light on an agency's performance of its statutory duties.

We have determined that the information withheld implicates the respective personal privacy interests of those individuals and would not shed light on government activities or operations. Therefore, the privacy interest outweighs the public interest in release of this information, and it is withheld per Exemption 6 of the FOIA. There are no fees being charged for processing your request.

The FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 90 days from the date of this letter to the Chief, USDA Forest Service. Additionally, due to the concerns surrounding the COVID-19 virus we are only accepting appeals electronically at this time. Please email your appeal to SM.FS.WOFOIA@usda.gov. The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email along with the FOIA case number assigned to your request. To facilitate the processing of your appeal, please attach a copy of this letter to your request as well.

If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the FOIA Public Liaison at (202) 205-1542. Additionally, you may contact the Office of Government Information Services, National Archives and Records Administration, to inquire about the FOIA mediation services they offer. The

contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you have any questions regarding this final response, please contact Alisha Daniel via telephone at (505) 321-2559 or via email at alisha.daniel@usda.gov.

We feel this fully satisfies your request with the Southwestern Region FOIA Service Center.

Sincerely,

ELAINE
KOHORMAN

Digitally signed by
ELAINE KOHRMAN
Date: 2022.07.18
15:24:28 -06'00'

MICHIKO J. MARTIN
Regional Forester

Enclosure

cc: Palmer, Judith



File Code: 6270
Date: June 11, 2021

Debra A. Sirower
debrasrower@clearchannel.com

RE: Freedom of Information Act Request, Case Number 2021-FS-R3-03605-F

Dear Ms. Sirower:

This is acknowledgement of your Freedom of Information Act (FOIA) request dated April 30, 2021, and forwarded to the Apache-Sitgreaves National Forests FOIA Service Center on May 3, 2021. Your request has been assigned Case Number 2021-FS-R3-03605-F.

You requested:

- “1. In the Heber Wild Horse Territory “Proposed Appropriate Management Level Determination” prepared by the Black Mesa Ranger District, Apache-Sitgreaves National Forests, U.S. Forest Service with dated January 2021 on page 30, the Forest Service states that, ‘To further understand how horses are using the area, historic and current district files (USDA Forest Service 2210 files) were examined, ... District files include range inspection forms, correspondence, allotment management plans, stocking records, production and utilization studies, and general file notes.’ Please provide all ‘District files’ referenced above relied upon in the AML quoted above.
2. Current grazing allotments or ‘Term Grazing Permits’ (Reference FSM 2230) for Heber and Black Canyon allotments.
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By copy of this letter, we are rerouting your FOIA request to the Southwestern Region FOIA/PA Service Center for review. They will respond directly to you. To check on the status of your request, please contact Alisha Daniel, Southwestern Region FOIA Liaison. She may be reached at 505-842-3172. You may also write to her at Southwestern Region FOIA/PA Service Center, USDA Forest Service, 333 Broadway Blvd. SE, Albuquerque, NM 87102, facsimile at 505-842-3111 or alisha.daniel@usda.gov.

Sincerely,



ANTHONY MADRID
Forest Supervisor

cc: A-S FOIA, RO FOIA

Debra A. Sirower
debrasirower@clearchannel.com

October 12, 2022

Via Email to SM.FS.WOFOIA@usda.gov

Chief, USDA Forest Service

**Re: FOIA APPEAL
FOIA Tracking No. 2021-FS-R3-03605-F**

To whom it may concern:

This is an appeal of the withholding of information relating to identity of certain permittees under federal grazing leases. In particular, the government relies upon Section 552(b)(6) to withhold the names of individuals who have been issued grazing permits which makes it impossible to confirm their eligibility to hold such permits such as whether they own the required base property. Without this information, the agency's performance of its statutory duties remain in the dark and the public has no way of knowing whether their duties are being fulfilled or violated.

The burden of proof is on the agency to establish an exemption applies. "An agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption." *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109, 1113 (9th Cir. 1994) *see also* *Lewis v. IRS*, 823 F.2d 375, 378 (9th Cir. 1987).

The information sought here is neither "medical" nor information from a "personnel" file. Indeed, generally speaking property ownership records are freely available at every courthouse in the United States. The fact that a private individual owns a parcel of property or holds a grazing permit associated with government lands is not something that is sensitive and/or needs to be protected.

In a case directly on point, *Western Watersheds Project v. Bureau of Land Management*, 2010 WL 3735710 (decided September 13, 2010), the U.S. District Court for the District of Idaho ruled upon this precise issue and concluded that the information identifying these individuals should be released as the balance on interests weighed in favor of disclosure and transparency.

For the very same reasons in this case, the identities of the individuals holding grazing leases should be disclosed as there is no reasonable basis to justify keeping the secrecy. The burden is on the government to establish the applicability of the exemption which they have failed to do here.

October 12, 2022

Page 2

Respectfully submitted,

A handwritten signature in blue ink that reads "Debra Sirower". The signature is written in a cursive style with a long, sweeping tail on the letter "r".

Debra A. Sirower

Enclosures (July 18, 2022 letter and Western Watersheds v. BLM case law)

cc: Elaine Kohrman, Southwestern Region FOIA Service Center
Michiko J. Martin, Regional Forester



File Code: 6270
Date: July 18, 2022

Debra A. Sirower
debrasiorwer@clearchannel.com

RE: Freedom of Information Act Tracking Number 2021-FS-R3-03605-F

Dear Ms. Sirower:

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contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you have any questions regarding this final response, please contact Alisha Daniel via telephone at (505) 321-2559 or via email at alisha.daniel@usda.gov.

We feel this fully satisfies your request with the Southwestern Region FOIA Service Center.

Sincerely,

ELAINE
KOHRMAN

Digitally signed by
ELAINE KOHRMAN
Date: 2022.07.18
15:24:28 -06'00'

MICHIKO J. MARTIN
Regional Forester

Enclosure

cc: Palmer, Judith

* Case

Law

2010 WL 3735710

Only the Westlaw citation is currently available.
United States District Court, D. Idaho.

WESTERN WATERSHEDS PROJECT &
WildEarth Guardians, Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, and U.S.
Department of the Interior, Defendants.

No. CV 09-482-CWD.

|
Sept. 13, 2010.

Attorneys and Law Firms

Todd C. Tucci, Advocates for the West, Boise, ID, for
Plaintiffs.

Nicholas J. Woychick, US Attorney's Office, Boise, ID,
for Defendants.

MEMORANDUM DECISION AND ORDER

CANDY W. DALE, United States Chief Magistrate
Judge.

*1 Pending before the Court are cross motions for
summary judgment. (Docket Nos. 7, 14.) Having
thoroughly reviewed the record and the briefing submitted
by the parties as well as hearing oral argument on the
motions, the Court issues the following Order.

FACTS

On August 16, 2007, Plaintiffs Western Watersheds
Project and WildEarth Guardians filed a Freedom of
Information Act ("FOIA") request with the Bureau of
Land Management ("BLM") seeking basic information
regarding BLM's ongoing management of livestock

grazing on public lands. (Docket No. 11-3.) In their
requests, Plaintiffs sought information concerning:

Any and all records maintained by the BLM through its
Rangeland Administration System (RAS) or otherwise
within the agency's control—that tends to show the
identify of all individuals and/or entities currently
holding BLM grazing permits for each and every
livestock grazing allotment within the BLM system of
lands. These records should include, but are not limited
to:

- a. Each permittee's name;
- b. Each permittee's postal and electronic mailing
address;
- c. Each permittee's telephone number;
- d. Each permittee's associated allotment name and
number; and
- e. The length of time each permittee has held such
grazing privilege on BLM Lands.¹

On September 20, 2007, the BLM sent Plaintiffs a letter
indicating that their FOIA request was placed on a
complex track and would require more time to respond to
the requests because clarification was needed. (Docket
No. 11-3.) Further, the letter provided that the responses
could be provided once BLM made appropriate
modifications to its existing database—the Rangeland
Administration System ("RAS"). On October 2, 2008, the
Plaintiffs sent a letter clarifying their requests. (Docket
No. 11-3.) In a letter dated May 13, 2008, the BLM
refused to disclose certain unspecified portions of the
information requested, claiming that it was protected from
disclosure under Exemption 6 of the FOIA. (Docket No.
11-3.) This letter also directed Plaintiffs to the RAS
website which allows public access to a menu of available
reports for all BLM allotments/permits.² (Cooley Decl.,
Docket No. 11-4 .) On September 9, 2008, the Plaintiffs
appealed BLM's use of 5 U.S.C. § 552(b)(6) or
Exemption 6, to withhold information. The Department of
Interior denied the Plaintiff's appeal on September 30,
2008, in a letter which included as an attachment a letter
that denied an almost identical FOIA request by Forest
Guardians (know as "WildEarth Guardians") in 2005.

The 2005 letter explained that the information withheld
was withheld in accordance with BLM's internal policies.
BLM's division of the grazing permittees into the three
categories identified below determines what information
the BLM releases in response to an FOIA request.

Category 1 includes all permittees whose names, designations and/or identifiers indicate clearly that they are formally organized and operating as a business. For this category of permittees, the BLM has determined that permittees have no privacy interest in their contact information and that all contact information can be released.

*2 Category 2a permittees includes entities listed under a personal name along with the words “Ranch” or “Farm” plus some additional legal designation such as Inc., Corp., Co., or LLP. The BLM has determined that these entities are usually closely held or family owned businesses and retain a reduced privacy interest in their contact information. Therefore, the BLM releases the permittee’s name, operator number or authorization number, city, state and five digit zip code. The permittee’s street/ mailing address and telephone number are withheld.

Finally, Category 2b includes permittees holding a permit under a personal name or in the individual’s name plus the word “Ranch” or “Farm” without a public designator. The BLM has determined that these permittees have the highest interest in their privacy and, as a result, only the operator or authorization number, city, state and five digit zip code are released by the BLM. The permittee’s name as well as street/ mailing addresses and telephone number are withheld. (Cooley Declaration ¶ 11, Docket No. 11–4.)

Plaintiffs Western Watersheds Project and WildEarth Guardians (“Plaintiffs”) filed this action against the BLM and the Department of the Interior (“Defendants”) on September 24, 2009. (Complaint, Docket No. 1.) The Complaint alleges that Defendants violated the Freedom of Information Act (“FOIA”) by not fully responding to their requests for information regarding grazing permits and permittees authorized to graze livestock on federal public lands. Defendants filed an Answer to the Complaint on October 30, 2009. (Docket No. 4.) On October 27, 2009, the BLM through the U.S. Attorney’s Office, provided Plaintiffs’ counsel with a disk containing all of the information requested except for the information described above related to the Category 2a and 2b permittees. Soon after, Plaintiffs filed their Motion for Summary Judgment (Docket No. 7) on their FOIA claim. Defendants responded to Plaintiffs’ motion and filed a Motion for Summary Judgment of their own. (Docket No. 11.)³ After several extensions of time requested for briefing by both parties, the motions are fully briefed and pending before the Court.

DISCUSSION

1. Summary Judgment Standard

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure, which provides, in pertinent part, that judgment “should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c) (2). Under Rule 56, summary judgment is mandated if the non-moving party fails to make a showing sufficient to establish the existence of an element which is essential to the non-moving party’s case and upon which the nonmoving party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the non-moving party fails to make such a showing on any essential element, “there can be no ‘genuine issue of material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323.⁴

*3 Moreover, under Rule 56, it is clear that an issue, in order to preclude entry of summary judgment, must be both “material” and “genuine.” An issue is “material” if it affects the outcome of the litigation. An issue, before it may be considered “genuine,” must be established by “sufficient evidence supporting the claimed factual dispute ... to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Hahn v. Sargent* 523 F.2d 461, 464 (1st Cir.1975) quoting *First Nat’l Bank v. Cities Serv. Co. Inc.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968). The Ninth Circuit cases are in accord. *See, e.g., British Motor Car Distrib. v. San Francisco Automotive Indus. Welfare Fund*, 882 F.2d 371 (9th Cir.1989). When applying this standard, the court must view all of the evidence in a light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir.1992). Freedom of Information Act (“FOIA”) claims, such as this one, are typically decided on summary judgment. *Lane v. Dep’t of Interior*, 523 F.3d 128, 1134 (9th Cir.2008).⁵

2. Freedom of Information Act

The Freedom of Information Act (“FOIA”) was enacted to facilitate public access to government records.

Forest Service Employees for Environmental Ethics v. United States Forest Service, 524 F.3d 1021 (9th Cir.2008) citing *John Doe Agency v. John Doe Corp.* 493 U.S. 146, 151, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989). The statute’s purpose is “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Id.* Citing *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976). Therefore, the FOIA requires every federal entity to make requested records “promptly available to any person.” *Id.* Citing 5 U.S.C. § 552(a)(3)(A). This requirement does not apply if the information requested falls into one of nine exemptions included in the FOIA.

5 U.S.C. § 552(b). The burden is upon the government agency to establish that a given document is exempt from disclosure.⁶ *Van Bourg, Allen, Weiberg, & Roger v. National Labor Relations Board*, 728 F.2d 1270, 1272 (9th Cir.1984).

In this case, Defendants contend that 5 U.S.C. § 552(b)(6) or Exemption 6, applies to some of the information requested by Plaintiffs. However, prior to addressing Defendants’ assertion that Exemption 6 supported their withholding of certain information, the Court will first address Plaintiffs’ argument that the Court should not consider all of Defendants’ arguments in their Response to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Motion for Summary Judgment. (Docket No. 11–1.)

A. BLM’s new arguments

First, the Court will discuss Plaintiffs’ argument that the Court should consider only the reasons relied upon by the BLM in their denial letter⁷ when addressing the applicability of Exemption 6 to the case at hand. Plaintiffs argue that the Court’s review is limited to the record before the agency,⁸ contending that only the reasons listed in the BLM’s denial letter may be used to oppose the Plaintiffs’ motion for summary judgment and to support the Defendants’ cross motion. Specifically, Plaintiffs contend that the Court should not consider BLM’s argument that, because the withheld information relates to “individuals, family-owned business and closely held entities,” Exemption 6 applies. Instead, Plaintiffs argue that the Court should consider only the sole basis Plaintiffs claim was asserted by Defendants for invoking

Exemption 6, that the permittees were not commercial operators and “they could easily be grazing for personal and subsistence use.” (Plaintiff’s Reply/Response, p. 4–5, Docket No. 17 citing *Oregon Natural Desert Association v. United States Dept of Interior (“ONDA”)*, 24 F.Supp.2d 1088, 1091) (D.Or.1988).

*4 Defendants respond that they consistently have maintained that the names, addresses, and other contact information for the individual permittees are exempt from disclosure under Exemption 6. Second, Defendants contend that Ninth Circuit case law does not limit judicial review to the justification for withholding documents that was originally relied upon by the agency. (Defendant’s Reply p. 5, Docket No. 25.) In support of their argument, Defendants cite *Young v. CIA* which held that “an agency does not waive FOIA exemptions by not raising them during the administrative process....” 972 F.2d 536, 538–9 (4th Cir.1992) citing *Dublin v. Dep’t of the Treasury*, 555 F.Supp. 408, 412 (N.D.Ga.1981) aff’d 697 F.2d 1093 (11th Cir.1983). In light of this holding allowing an agency to belatedly claim a new FOIA exemption, Defendants argue that Plaintiffs “cannot logically maintain that an agency should be barred from clarifying, enlarging or expanding upon the rationale that was previously offered in support of its decision to withhold documents.” (Defendants Reply p. 5, Docket No. 25.)

Despite Plaintiffs’ arguments, the Court finds that the Defendants’ letter denying the appeal (Answer Exh. D, Docket No. 4–4) sufficiently contains the arguments relied upon by Defendants in their cross motion for summary judgment. The 2005 letter attached to the 2008 letter from Darrel R. Strayhorn to Plaintiffs identifies issues virtually identical to those Plaintiffs are raising in this lawsuit, including the BLM’s “decision to withhold pursuant to FOIA exemption (6), the names and contact information (i .e. street or P.O. Box addresses, telephone numbers, and four–digit zip codes) of federal grazing permit holders (“permittees”) who are identified in the Rangeland Administration System (“RAS”) only by the name of an individual” and the BLM’s decision to withhold “the contact information of permittees who are identified in the RAS as closely held corporations and family owned business operators, i.e. permittees who are identified by an individual’s name with a public designation (such as “Inc.,” “LLC,” or “Co.”) or whose names include the term “Ranch” or “Farm” and are self-identified on their grazing applications as “corporations” or “groups.” (Answer Exh. D at p. 3, Docket No. 4–4.)

The 2005 letter explains how the Defendants believe that Exemption 6 covers the information listed above for both

individuals and closely held corporations or family owned businesses. Therefore, the Court finds that, even if the Court should review only what was included in the denial letter by the Defendants, here the denial letter includes the argument that family owned and closely held businesses have a privacy interest in their addresses that protects that information from disclosure under Exemption 6.

B. Application of Exemption 6

Defendants argue that Exemption 6 applies to the information withheld from Plaintiffs' FOIA request, including the names and addresses of individuals who possess grazing permits (category 2b) as well as the addresses of closely held entities or family owned businesses who possess grazing permits (category 2a).

*5 Exemption 6 provides that government entities may withhold information from "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* The term "similar files" has been interpreted broadly, *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600, 102 S.Ct. 1957, 72 L.Ed.2d 358 (1982), to include "government records containing information that applies to particular individuals." *Van Bourg, Allen, Weinberg & Roger v. NLRB*, 728 F.2d 1270, 1273 (9th Cir.1984). If the requested information meets the similar files requirement, the court must next consider whether disclosure of the requested information constitutes a "clearly unwarranted" invasion of the individual's personal privacy. 5 U.S.C. § 552(b) (6). To do so, the court must "balance the public interest in disclosure against the interest Congress intended the exemption to protect." *United States Dep't of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 489, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994). The requirement of a "clearly unwarranted" invasion of privacy "instructs [courts] to tilt the balance of disclosure interests against privacy interests in favor of disclosure." *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus., Local 598 v. Dep't of the Army, Corps of Eng'rs*, 841 F.2d 1459, 1464 (9th Cir.1988).

1. Similar files requirement

To determine whether Exemption 6 applies, the Court first must decide whether the information requested falls

under the broadly construed "similar files" requirement in 5 U.S.C. § 552(b)(6). Although this requirement is broadly construed, it does not protect privacy interests of business or commercial enterprises. *Multi Ag Media LLC v. Dep't of Agriculture*, 515 F.3d 1224, 1228 (D.C.Cir.2008) ("It is clear businesses themselves do not have protected privacy interests under Exemption 6.") However, "government records containing information that applies to particular individuals satisfy the threshold test of Exemption 6." *Bourg, Allen, Weinberg & Roger v. NLRB*, 728 F.2d 1270, 1273 (9th Cir.1984) (emphasis added). Lists of names and addresses meet this definition. *Id.* at 1272.

Plaintiffs contend that Defendants have not demonstrated that the name and address information withheld for individual permittees meets the "similar files" requirement, because Plaintiffs are seeking only the names and business mailing addresses for grazing permittees whose defining characteristic is that they are licensed to maintain a livestock operation on public lands, which Plaintiffs claim is not personal information." (Plaintiffs' Opening Brief p. 7, Docket No. 7-2.)¹⁰ Further, Plaintiffs argue that Defendants failed to meet their burden of proving that the "requested records fall squarely within one of the nine statutory exemptions" because they did not offer any evidence that any of the addresses withheld are private home addresses.

Washington Post Co., 943 F.Supp. at 33.¹¹ In support of their argument, Plaintiffs refer to withheld information relating to five (5) authorization numbers for individual permittees that Plaintiffs contend are too large to be farms operating for personal or subsistence use. (Plaintiffs' Opening Brief p. 9-10, Docket No. 7-2.) Defendants respond that the records at issue do contain home addresses or could lead to the discovery of personal information for individual permittees.

a. Category 2b permittees

*6 First, with respect to those permittees whose names and addresses were withheld because they fell into category 2b, Defendants clarified at oral argument that each of these permittees selected the box on the grazing permit application identifying themselves as a United States citizen as opposed to a group, association, or corporation authorized to conduct business. (Cooley Decl. Exh. 5, Docket No. 11-4.) Defendants argue that this self identification as a United States citizen is a clear indication that the address provided on the grazing permit application is a home address and subject to Exemption 6.

Further, Defendants contend that this self identification must be given “substantial weight.” (Defendants Reply p. 8, Docket No. 25 citing *Hunt v. CIA*, 981 F.2d 1116, 1119 (9th Cir.1992)). Based on the foregoing, the Court agrees that Defendants’ assumption that the address information provided by permittees in category 2b contains “information that applies to particular individuals” is a reasonable assumption. Therefore, Defendants have satisfied the threshold test for application of Exemption 6 to the name and address information in records regarding the individual permittees in category 2b.

b. Category 2a permittees

Defendants also argue that entities listed in the RAS system under a personal name along with the words “Ranch” or “Farm” plus some other legal designation such as Inc., Corp, Co. or LLP (category 2a), typically are family owned or closely-held and generally operate out of the named individual’s home. Defendants contend these permittees also are entitled to protection of their home addresses from disclosure under Exemption 6.¹² (Defendants Response p. 10, Docket No. 11–1.) Defendants argue that courts have recognized a privacy interest in family owned or closely held business information where the information can be readily associated with a particular individual. See  *Campaign for Family Farms v. Glickman*, 200 F.3d 1180 (8th Cir.2000). Although the facts of the *Glickman* case are distinguishable, the Eighth Circuit held that “an overly technical distinction between individuals acting in a purely private capacity and those acting in an entrepreneurial capacity fails to serve the exemption’s purpose of protecting the privacy of individuals.” *Id.*; see also BURT A. BRAVERMAN & FRANCES J. CHETWYND, *Information Law* § 10–4.13 (1985) (“[I]nformation about closely held corporations or sole proprietorships may be protected if the information can be identified as applying to a particular individual.”).

In support of their argument that Exemption 6 should not apply to the addresses of family owned or closely held entities, Plaintiffs rely heavily on decisions rendered in

 *Oregon Natural Desert Association v. United States Dep’t of Interior*, 24 F.Supp.2d 1088 (D.Or.1988) and

 *Washington Post Co. v. U.S. Dep’t of Agriculture*, 943 F.Supp. 31 (D.C.1991). However, in both of these cases, the courts balanced any minimal privacy interest against the public interest under Exemption 6. Therefore, as explained below, the Court does not find persuasive Plaintiffs’ argument that these cases preclude the

application of the balancing test in this situation.

*7 In *ONDA*, the plaintiff sought names of individuals who trespassed with cattle onto a land allotment. The District of Oregon concluded, after applying the balancing test, that the balance weighed in favor of disclosure of the names because the individuals had admitted to violating the law, the plaintiffs had no other way to access the requested information, and the public needed the information to determine how the government was enforcing and punishing the violation of land management laws.  *ONDA*, 24 F.Supp.2d 1088.

In *Washington Post*, the plaintiff requested the names, addresses and amounts paid to individuals and business entities that received cotton subsidies. The court found that the cotton farmers had a minimal privacy interest in the requested information because it was generic and revealed no damaging or sensitive information about the individuals receiving subsidies. The court weighed this minimal privacy interest against the substantial public interest in shedding light on allegations of fraud and conflicts of interest that were supported by government reports and investigation, concluding that the information should be disclosed. *Washington Post*, 943 F.Supp. At 37.

Further, the court in *Multi Ag Media* held:

... where business records reveal financial information easily traceable to an individual, disclosing those records jeopardizes a personal privacy interest that Exemption 6 protects. We thus hold that Exemption 6 applies to financial information in business records when the business is individually owned or closely held, and ‘the records would necessarily reveal at least a portion of the owner’s personal finances.’  515 F.3d at 1228–1229 quoting  *Kleppe*, 547 F.2d at 685.

Defendants contend that the address information requested here by Plaintiffs regarding closely held entities, combined with other publicly available information including herd size and Animal Unit Months (“AUM”), could directly or inferentially¹³ reveal at least a portion of the owner’s of the closely held or family owned businesses personal finances. (Defendants Response p. 13–14, Docket No. 11–1.) The Court agrees that disclosure of the requested address information relating to the family owned or closely held businesses could result in disclosure of individual home addresses, and also might result in inferences being made regarding the named individual’s financial position. Therefore, the Court concludes that the requested information does meet the similar files requirement of Exemption 6, particularly

in light of the United States Supreme Court's broad application of the "similar files" requirement to "those kinds of files the disclosure of which *might* harm the individual." ¹⁴ *United State Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599, 102 S.Ct. 1957, 72 L.Ed.2d 358 (1982) (emphasis added).

As a result, the Court will determine whether disclosure of the requested name and address information withheld by Defendants with respect to those permittees in category 2a and 2b would constitute a "clearly unwarranted" invasion of those grazing permittees' privacy interests. To do so, as discussed above, the Court must balance the public interest in disclosure of the information with the privacy interests at stake.

2. Balancing test

*8 Having determined that the names and addresses of the individuals and the addresses of the closely held entities and family owned businesses satisfy the threshold test, the Court will next consider whether the disclosure of this information would constitute a "clearly unwarranted" invasion of these permittees personal privacy. In conducting this inquiry, the Court will "balance the public interest in disclosure against the interest Congress intended the exemption to protect." ¹⁵ *Dept of Def.* 510 U.S. at 493 quoting ¹⁶ *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 776, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989). "Congress' primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." ¹⁷ *Dep't of State*, 456 U.S. at 599.

There are two guideposts applicable to this determination. First, the only relevant public interest is how disclosure would "contribute significantly to public understanding of the operations or activities of the government." ¹⁸ *Dept of Def.* 510 U.S. at 495. Public interest is substantial when the information in the records "sheds light on an agency's performance of its statutory duties." ¹⁹ *Id.* at 495-6. In other words, information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct is not the type of information to which FOIA permits access. Second, in balancing the public and private interests, the Court must not consider the motives of the party requesting the information. ²⁰ *Id.* at 494 ("[w]hether an invasion of privacy is warranted cannot turn on the

purposes for which the request for information is made.") The Court will address the privacy interest first.

a. Privacy interest

The Supreme Court of the United States and the Court of Appeals for the Ninth Circuit have held that "some nontrivial privacy interest" is sufficient to justify the withholding of information under Exemption 6 unless the public interest in disclosure is sufficient to outweigh it. ²¹ *Forest Service Employees for Envtl. Ethics v. United States Forest Service*, 524 F.3d 1021, 1027 (9th Cir.2008) quoting ²² *Dep't of Defense*, 510 U.S. at 501. Courts have recognized that individuals have a privacy interest in avoiding the unlimited disclosure of their names and addresses. ²³ *National Ass'n of Home Builders v. Norton*, 309 F.3d 26, 35 (D.C.Cir.2003). Further, the Supreme Court of the United States has evinced a reluctance in the FOIA context "to disparage the privacy of the home which is accorded special consideration in our Constitution, laws, and traditions." ²⁴ *Dept. of Defense*, 510 U.S. at 501.

However, the Supreme Court also has recognized that the disclosure of names and addresses is not always a significant threat to the privacy of the individual on the list. ²⁵ *U.S. Dept. of State v. Ray*, 502 U.S. 164, 177 n. 12, 112 S.Ct. 541, 116 L.Ed.2d 526 (1991). "Instead ... whether disclosure of a list of names is a 'significant or *de minimis* threat depends upon the characteristics revealed by virtue of being on the particular list and the consequences likely to ensue.'" ²⁶ *Id.* quoting ²⁷ *National Ass'n of Retired Federal Employees v. Horner*, 879 F.2d 873, 877 (U.S.App.D.C.1989) cert. denied 494 U.S. 1079 (1991). The party seeking to invoke the exception may not rely on "the speculative potential of a privacy invasion without any degree of likelihood." *Home Builders*, 309 F.3d at 385.

*9 Based on the foregoing, the Court finds that the category 2b individual permittees generally have a non-trivial privacy interest in their names and home addresses.¹⁴ However, the severity of the threat to the privacy interest as it relates to the balancing test depends upon the characteristics revealed by virtue of being on the particular list and the consequences likely to ensue. Here, Plaintiffs argue that the only characteristic revealed by being on the list is that each permittee is engaged in raising and grazing livestock on BLM managed land and that this information would not reveal any damaging,

embarrassing, or specific financial information about the permittees. In support of this contention, Plaintiffs cite several cases where disclosure of names and addresses was not permitted based on the nature of the consequences associated with disclosure or the nature of the personal information at stake.¹⁵

Defendants admit that, if considered alone, the names and addresses of individual permittees reveal little more than the residence or location of each permittee. However, Defendants contend that this information, combined with other publicly available information including herd size and Animal Unit Months (“AUM”), directly or inferentially could result in unsolicited contacts or reveal at least a portion of the owner’s or individual’s personal finances. (Defendants Response p. 13–14, Docket No. 11–1.)¹⁶ However, even if disclosure of this information could lead to discovery of general personal financial information regarding individuals, the Court finds the decision in *Multi Ag Media* regarding the strength of the privacy interest particularly instructive. In *Multi Ag Media*, the court ordered disclosure of information relating to irrigation practices, farm acreage, number and width of rows as well as photographs and maps of farms despite finding that this information could lead to discovery of personal financial information regarding the individuals owning the farms. When determining the strength of the privacy interest, the court held:

... telling the public how many crops are on how much land or letting the public look at photographs of farmland with accompanying data will in some cases allow for an inference to be drawn about the financial situation of an individual farmer. Because USDA has not made a showing of how often this may be the case, we are not persuaded that the privacy interest that may exist is particularly strong. Nevertheless our standard at this stage is not very demanding, so we are willing to engage in the balancing inquiry by concluding that disclosure of the information would constitute a ‘more than minimal invasion [] of personal privacy.’  515 F.3d at 1230.

The situation here is similar. Defendants have not demonstrated how or how often inferences might occur with respect to an individual’s personal wealth, and how specific these inferences could be due to unknown variables and other factors regarding the correlation between size of herd and personal financial wealth. Further, the Court notes that similar “generic” information, including names and addresses, has been ordered to be released in other cases. For example, the court in *Washington Post* held:

*10 ... the nature of the list sought by plaintiff in this case does not create the same sort of personal privacy concerns or invite the kind of unwanted intrusions that would justify nondisclosure. The only individualized information that would be ascertainable from the release of the list is that a particular individual grows cotton, the addresses of the farm where the cotton is grown and where the subsidy is received, and how much of a subsidy that cotton farmer received in 1993.

 943 F.Supp. at 34.

Further, the court in *Washington Post* found, “precisely because the list is so large and the information is so generic that the individual privacy interests are so small.”

Id. citing   *Kurzon v. Dep’t of Health and Human Services*, 649 F.2d 65, 69 (1st Cir.1981). The instant case is comparable. As noted by Plaintiffs, the “BLM is authorized to issue permits and leases allowing grazing on nearly 160 million acres of public lands, which it accomplishes by issuing nearly 18,000 permits.” (Plaintiff’s Opening Brief, p. 18, Docket No. 7–2.)

Based on the foregoing, the Court finds that any privacy interest the category 2b individual permittees have in their names and addresses is minimal. Further, the Court finds that the closely held entities and family owned business permittees in category 2a have an even smaller privacy interest in disclosure of their addresses due to the speculative nature of the extent of the disclosures and the consequences of such a disclosure. However, the Court finds that, because both the category 2a and 2b permittees have more than a non-trivial privacy interest in the requested information, the Court should proceed to balance this minimal interest against the public interest in disclosure.¹⁷

b. Public interest

When applying the balancing test, the only relevant public interest the Court is directed to consider is how disclosure would contribute significantly to “public understanding of the operations or activities of the government.”  *Dep’t*

of Defense, 510 U.S. at 495 quoting *Reporters Comm.* 489 U.S. at 775. Public interest is substantial if it “sheds light on an agency’s performance of its statutory duties.”

Id. at 496.

Plaintiffs contend that disclosure of the withheld information is necessary to more fully understand the scope of the BLM’s grazing program. Specifically, Plaintiffs contend that, without the names and addresses of the category 2b permittees and the addresses of the category 2a permittees, it is not possible to know the identities of the persons who hold BLM issued grazing permits, how many grazing authorizations are held by each permittee, how many permittees are grazing on a particular allotment, and whether the BLM is complying with its regulatory requirements to manage public lands grazing and only issuing permits to “qualified applicants.” (Salvo Decl. ¶ 5–8, 11, and 13, Docket No. 17–1.) Specifically, Plaintiffs contend that the “authorization number is an insufficient surrogate for the name and address of any permittee who has more than one authorization to graze public land” because, without the name and addresses of the permittees, “there is no way to determine how many grazing authorizations are associated with a particular permittee within or among multiple BLM field offices, districts or states.” (Salvo Decl ¶ 8, Docket No. 17–1.)

*11 Defendants disagree, arguing that the additional information would not shed light on the BLM’s management of its grazing program any more than the information that is currently available to the public. Specifically, Defendants argue that an understanding of the true scope of the program could be accomplished by release of only the names of the permittees and that release of addresses would be of no additional value. In support of this contention, Defendants cite Chief District Judge Winmill’s decision in *State of Idaho v. United States Forest Service*, CV98–230–S–BLW, Docket No. 20 (D.Idaho, Dec. 9.1997). In *State of Idaho*, the court ordered release of the name and city of residence of each individual holding a permit, license, or lease on Forest Service lands in Idaho. The court found that “knowledge of the names will aid in determining whether improper influence was used to obtain permits or whether permits are being granted to those with a past history of environmental abuses.” *Id.* at 6. Further, the court held that disclosure of names and cities of residence would be specific enough to prevent mistaken identifications without the intrusiveness that would result from the release of the addresses. *Id.* Although persuasive authority,¹⁸ the Court finds *State of Idaho* distinguishable from the situation currently before the Court, because the Plaintiffs have demonstrated by specific example why

addresses are necessary to differentiate between permittees who have similar or almost identical names.¹⁹ (Salvo Decl. ¶ 20, Docket No. 17–1.)

Defendants also contend that the public can determine the relationship between a permittee and multiple grazing authorizations from each permittees grazing application. However, this application form does not request the permittee to disclose the authorization numbers associated with the permittee. (Salvo Decl. ¶ 19, Docket No. 17–1; Cooley Decl. Exh. 5, Docket No. 11–4.) Therefore, the Court finds that the only way to determine the number of authorization numbers associated with each permittee is through release of the names and addresses of the permittees in categories 2a and 2b.

Further, Defendants argue the information requested by Plaintiffs and the conclusions the Plaintiffs seek to draw from the information would shed light on the operations of the permittee rather than on the operations of the BLM, because there are no restrictions on the number of grazing permits that any one applicant may hold, no limits on the number or the size of grazing applications, and no limits on the number of allotments that may be used by a given permittee at any point in time. (See Second Cooley Decl. ¶ 7, Docket No. 25–1.) Although the Court acknowledges that there are no restrictions on the number or size of grazing permits that each permittee may hold, the Court finds that there is a substantial public interest in understanding the scope of the grazing and rangeland program, particularly in light of the environmental impacts associated with grazing and the amount of tax dollars spent on the grazing program itself. Understanding the scope includes knowing how many individuals or entities actually graze cattle on public lands, as well as the size and scope of their operations. Because the only way to determine this information is from release and cross referencing of the requested information, the Court finds that a substantial public interest exists.²⁰

*12 With respect to the “qualified applicants” issue, Plaintiffs contend that determining which authorization numbers are associated with each permittee is necessary for the public to be able to monitor and determine whether the BLM is complying with the requirement that an applicant have a “satisfactory record of performance” or has “substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.” 43 C.F.R. § 4110.1(b). Plaintiffs contend, that without knowing the extent of a permittee’s grazing authorizations, the public cannot cross reference the permittee with other public information concerning compliance with permit terms and

conditions, including trespass notices, notices of unauthorized use, and other prohibited acts under 43 C.F.R. § 4140 and § 4150. Plaintiffs also argue that public interest in this information is very high due to the documented environmental impacts of grazing and the amount of tax dollars spent to manage private livestock grazing each year. (Salvo Decl., Docket No. 17–1.) Further, Plaintiffs contend that this interest is evidenced by the numerous reports and news articles produced on the subject several of which are attached as exhibits to Mr. Salvo’s declaration. (Salvo Decl., Docket No. 17–1.)

Defendants respond that Plaintiffs’ allegations that the BLM may not be complying with its duty to give permits to only “qualified applicants” do not rise to the level of a cognizable public interest because Plaintiffs have offered no evidence of impropriety. See *Favish*, 541 U.S. at 174. However, Plaintiffs have identified evidence that, with a permittee’s name and address the Plaintiffs and the public can determine if the permittee has grazing permits on other allotments that have been classified as being ecologically damaged. (Salvo Decl. ¶ 11–12, Docket No. 17–1.) The Court finds this situation similar to that in *State of Idaho* where the court found a legitimate public interest in “knowing whether permits are being granted to those with a past history of environmental abuses.” *State of Idaho*, CV 97–230–BLW at 6.

Based on the foregoing, the Court finds that providing the requested information would allow the public to better understand the scope of the BLM’s grazing program. Therefore, the Court finds that the public interest in disclosing the requested names and addresses of individuals as well as the addresses of the closely held entities and family owned businesses is substantial.

c. Balancing privacy interest with substantial public interest

Given the Defendants’ insufficient showing that release of

the addresses of category 2a permittees and the names and addresses of category 2b permittees would allow the public to draw inferences about some of the grazing permittees’ financial circumstances, and considering the presumption in favor of disclosure, the Court finds the public interest in monitoring the BLM’s rangeland program outweighs the minimal privacy interests held by both the category 2a and 2b permittees. Therefore, the Court concludes that disclosure of the names and addresses of the individual permittees (category 2b) as well as addresses of the closely held entities or family owned businesses (category 2a) would not constitute a clearly unwarranted invasion of personal privacy, and that the Defendants reliance on Exemption 6 for withholding the information is not justified. Plaintiff’s Motion for Summary Judgment on their Freedom of Information Act Claim will be granted.

ORDER

*13 Based on the foregoing, the Court being otherwise fully advised in the premises, **IT IS HEREBY ORDERED that:**

- 1) Plaintiffs’ Motion for Summary Judgment on the Freedom of Information Act Claim (Docket No. 7) is GRANTED.
- 2) Defendants’ Motion for Summary Judgment (Docket No. 11) is DENIED.

All Citations

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Footnotes

- ¹ Plaintiffs also sought two other types of information under the FOIA but those requests are not at issue in this case.
- ² A detailed discussion of the types of reports available is included in the Declaration of Philip Cooley. (Docket No. 11–4.)

3 The Complaint also alleges a violation of the Administrative Procedure Act (“APA”) that is based on the same facts as the FOIA claim. Plaintiffs did not move for summary judgment on the APA claim. Defendants moved for summary judgment on both claims.

4 See also Fed.R.Civ.P. 56(e)(2), which provides, in part:

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must—by affidavits or as otherwise provided in this rule—set out specific facts showing a genuine issue for trial.

5 “The standards upon which the court evaluates the cross motions for summary judgment do not change simply because the parties present cross-motions.” *J & J Sports Productions, Inc. v. Phelan*, 2009 WL 3748107 (E.D.Cal.2009) quoting *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir.1991.)

6 This standard remains the same where, as here, the question comes before the court on cross motions for summary judgment. See *Fort Hall Landowners Alliance v. Bureau of Indian Affairs, et al.* Case No. CIV 99–52–E–BLW, Memorandum Decision and Order (Docket No. 135) (D.Idaho, March 17, 2000) citing *Maricopa Audubon Society v. U.S. Forest Service*, 108 F.3d 1082, 1085 (9th Cir.1997).

7 Plaintiffs identified a letter sent by Darrell R. Strayhorn, FOIA & Privacy Act Appeals Officer at the Department of the Interior, to Mark Salvo of WildEarth Guardians dated September 30, 2008, as the “denial letter” that Plaintiffs contend Defendants must base their position on. This letter denied the Plaintiffs’ request pursuant to Exemption 6 and attached a July 12, 2005 letter response that the Department issued on a prior appeal by the WildEarth Guardians (formerly known as the Forest Guardians) after denying a previous FOIA request that sought the same information. (Answer Ex. D, Docket No. 4–4.)

8 However, the statute cited by Plaintiffs, 5 U.S.C. § 552(a) (4)(A)(vii), as well as both *ONDA* and District Judge Winmill’s 1997 decision specifically restrict review of the record only in the context of fee waivers.

9 Despite this contention, Plaintiffs’ FOIA requests “[a]ny and all records maintained by the BLM through its Rangeland Administration System (RAS) or otherwise within the agency’s control—that tends to show the identify of all *individuals and/or entities* currently holding BLM grazing permits for each and every livestock grazing allotment within the BLM system of lands.” (emphasis added)

10 During oral argument, Plaintiffs also argued that they are not seeking any of the information related to permits issued and authorized under 43 C.F.R. § 4130.5 which authorizes free or subsistence grazing use for individuals.

11 Plaintiffs argued in their original brief that Defendants have not demonstrated that the withheld information relates to those permittees who are grazing livestock only for “personal or subsistence” purposes. (Plaintiffs’ Opening Brief p. 9, Docket No. 7–2.) However, during oral argument, Defendants dropped this argument as a basis for application of Exemption 6. Therefore, the Court will not address it further.

12 Defendants do not contest the conclusion that corporations or business entities have no privacy interests in their addresses and other contact information.

13 If there is a substantial probability that disclosure will cause an interference with personal privacy, “it matters not that there may be two or three links in the causal chain.” *Home Builders*, 309 F.3d at 36, quoting *Horner*, 879 F.2d at 879,

14 Because the privacy interest held by the individuals in category 2b in their names and home addresses is more significant than the privacy interest held by the closely held entities or category 2a permittees, the Court will balance this greater interest against the public interest.

15  *Ray*, 502 U.S. at 164 (protecting disclosure of names that may lead to retaliation by government);  *Reporters Comm’n for Freedom of the Press*, 489 U.S. at 749 (protecting disclosure of third party rap sheet);  *Lahr v. National Transportation Safety Board*, 569 F.3d 964 (9th Cir.2009) (protecting disclosure of eyewitness names associated with criminal investigation);  *Forest Serv. Employees for Environmental Ethics v. U.S. Forest Service*, 524 F.3d 1021 (9th Cir.2008) (protecting disclosure of employee names associate with investigative report to avoid harassment, embarrassment and stigma);  *Painting Indus. Of Haw. Mkt. Recovery Fund v. Dep’t of Air Force*, 26 F.3d 1479, 1483 (9th Cir.1994) (protecting disclosure of names and precise payroll figures).

16 The amount or size of the individual’s assets is irrelevant to a determination of privacy interest. As noted in *Multi Media Ag*, “the disclosure of an individual’s financial information is not less protected under Exemption 6 simply because his assets are significant.”  515 F.3d at 1229.

17 Plaintiffs contend that the privacy interest is trivial due to the BLM’s previous disclosure of some of the same information to other groups. (Plaintiffs Opening Brief, Docket No. 7–2.) Specifically, Plaintiffs argue that information released in response to one FOIA request must be released to the public at large and therefore BLM cannot withhold the information from Plaintiffs.  *Forest Service Employees for Envntl. Ethics*, 524 F.3d 1021. Defendants contend that this argument essentially constitutes a waiver argument and has no merit. The Court agrees. Other courts generally have upheld the invocation of Exemption 6 even after the same information has been released to others. See  *Sherman v. U.S. Dep’t of the Army* 244 F.3d 357, 363–4 (5th Cir.2001) (“... only the individual whose informational interests are protected by exemption 6 can effect a waiver of those privacy interests when they are threatened by a FOIA request. For that reason, we do not accept [the plaintiffs] argument that [the government] has waived its authority to implement exemption 6.”) See also *The*  *Lakin Law Firm v. Federal Trade Comm’n*, 352 F.3d 1122, 1124 (7th Cir.2003) (“the FTC cannot waive individuals consumers’ privacy interests—whatever it does or

fails to do.”)

¹⁸ Chief District Judge Winmill’s decision is not binding on the Court, however, in the absence of contrary law from a higher court, it establishes persuasive authority. See *Wilson v. Union Sec. Life Ins. Co.*, 250 F.Supp.2d 1260, 1262 (D.Idaho 2003) (explaining the binding authority principal and citing *Hart v. Massanari*, 266 F.3d 1155, 1174 (9th Cir.2001)); *In re Estes*, 254 B.R. 261 (Bankr.D.Idaho 2000) (“In order to promote consistency and predictability, and faith in the rule of law, this Court should depart from its prior decisions, whether rendered by the same or another bankruptcy judge, only upon compelling circumstances.”).

¹⁹ Mr. Salvo provides the following example:

The RAS database lists three Category 1 permittees with similar names—“Brackett Ranches LTD,” “Brackett Livestock,” and “Brackett, CE Cattle Co” with authorizations to graze multiple allotments managed by the Jarbridge Field Office in the Twin Falls District, Idaho. See Exh. 11. The three permittees have only two addresses between them. If not for disclosure of their street addresses it would be virtually impossible to determine if these names represented one, two or three separate permittees.... (Salvo Decl. ¶ 20, Docket No. 17–1.)

²⁰ Defendants argued that the permitting process for one region may not consider whether the applicant is in compliance with regulations in a different region. However, without the requested information, the public has incomplete information regarding the agency’s action in approving the applications and therefore cannot reasonably determine whether to challenge or accept that process.

Memorandum of Understanding

BETWEEN

The District Ranger of the Black Mesa Ranger District of the Apache Sitgreaves National Forests

AND

Black Canyon Cattle Co. LLC, holders of the Term Grazing Permit (Permit) number 02051 issued on March 14, 2018, for 905 c/c for a 5/1 to 10/31 season of use on the Heber Allotment.

Due to the very dry conditions on the Heber Allotment, which occurred last winter and through this spring, it was recognized and agreed upon by both parties that validation of the Permit during this year would not be in the best interest of the resources. This non-use agreement shall remain in place until it is determined that livestock grazing could occur at a level in which the validation of the Permit could occur (at least 90%, or 815 head, of permitted numbers). This MOU applies only to the validation of the Permit, as grazing of livestock could still be authorized on the Allotment, if agreed upon during the annual validation and Annual Operating Instructions.

Once it is agreed upon during the annual validation meeting, the bill for collection paid, and livestock placed on the allotment, which validates this Permit, this MOU will be properly executed, and will be discontinued at that time.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of Permit Number 02051 issued to Black Canyon Cattle Co., LLC on March 14, 2018, and is binding on any successors to the Permittee's interest.

District Ranger:

Richard D. Mall

Permittee:

(b) (6)

Date:

7/23/18

Date:

7/30/2018 (b) (6)

TERM GRAZING PERMIT - PARTS 1 AND 2
(Reference FSM 2230)

Page 1 of 30
Permittee Number
803731010602
Permit Number
02051

PART 1

Black Canyon Cattle Co., LLC of (b) (6) Springerville, AZ 85938 hereinafter
(Name of Permittee) (Post Office Address, Including Zip)

called the permittee, is hereby authorized to graze livestock owned by the permittee upon designated lands administered by the Forest Service within the Apache-Sitgreaves (X appropriate box)
 National Forest National Grassland under the following terms and conditions:

1. Description of range. The livestock shall be grazed only upon the area described as follows: described on attached page and/or delineated on the attached map dated December 15, 2011, which is part of this permit.

2. The number, kind, and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

NUMBER	LIVESTOCK		PERIOD OF USE		GRAZING ALLOTMENT
	KIND	CLASS	FROM	TO	
905	Cattle	Cow/Calf	05/01	10/31	Heber (5,430 AUMs)

3. It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder, or for knowingly and willingly making a false statement or representation in the permittee's grazing application, and amendments thereto; or for conviction for failure to comply with Federal laws or regulations or State and local laws relating to livestock control and to protection of air, water, soils and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit. This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing. Any suspension or cancellation action may be appealed pursuant to 36 CFR 214.

4. This permit supersedes permit 05019 to (b) (6) issued on 12/27/2011.

I HAVE REVIEWED AND ACCEPT THE TERMS OF THIS PERMIT

SIGN	<u>(b) (6)</u>	AUTHORIZED AGENT	DATE
SIGN	<u>(b) (6)</u>	NAME (PRINT) <u>CARUS JAMES</u>	DATE <u>3-14-2018</u>
		TITLE <u>District Ranger</u>	DATE <u>3-14-2018</u>

Memorandum of Understanding

BETWEEN

The District Ranger of the Black Mesa Ranger District of the Apache Sitgreaves National Forests

AND

Black Canyon Cattle Co. LLC, holders of the Term Grazing Permit (Permit) number 02051 issued on March 14, 2018, for 905 c/c for a 5/1 to 10/31 season of use on the Heber Allotment.

Due to the very dry conditions on the Heber Allotment, which occurred last winter and through this spring, it was recognized and agreed upon by both parties that validation of the Permit during this year would not be in the best interest of the resources. This non-use agreement shall remain in place until it is determined that livestock grazing could occur at a level in which the validation of the Permit could occur (at least 90%, or 815 head, of permitted numbers). This MOU applies only to the validation of the Permit, as grazing of livestock could still be authorized on the Allotment, if agreed upon during the annual validation and Annual Operating Instructions.

Once it is agreed upon during the annual validation meeting, the bill for collection paid, and livestock placed on the allotment, which validates this Permit, this MOU will be properly executed, and will be discontinued at that time.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of Permit Number 02051 issued to Black Canyon Cattle Co., LLC on March 14, 2018, and is binding on any successors to the Permittee's interest.

District Ranger: *Richard D. Mall*

Date: 7/23/18

Permittee: (b) (6)

Date: 7/30/2018 (b) (6)

USDA - FOREST SERVICE

GRAZING PERMIT - PART 3
 (Reference FSM 2230)

Page 5 of 30

Permittee Number

603731010602

Permit Number

02051

Special Terms and Conditions

Base Property. The base property is the land and improvements owned and used by the permittee for the ranch operation and specifically designated by him to qualify for the Term Grazing Permit. Designated base property must meet Forest Service requirements, in that, the base property must be at least 10 acres in size, contain working facilities for livestock, a means to water livestock, and be used as the ranch headquarters.

The following commensurate property is designated as the base property for the term portion of this permit:

(b) (6)

An area containing 160 acres more or less.

Exhibit 5



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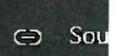
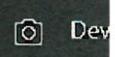
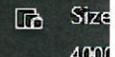
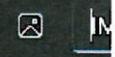
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Exhibit 6



**Western
Watersheds
Project**

Arizona Office

738 N. 5th Ave, Suite 206
Tucson, AZ 85705
fax: (208) 475-4702
email: arizona@westernwatersheds.org
web site: www.westernwatersheds.org

Working to protect and restore Western Watersheds and Wildlife

March 4, 2020

Sent via U.S. Postal mail this date and submitted via the CARA database system:
Heber Wild Horse Territory Comments
P.O. Box 640
Springerville, AZ 85938

Re: Heber Wild Horse Territory Management Plan Project

Dear Mr. Best,

The following comments are submitted on behalf of Western Watersheds Project with regard to the Heber Wild Horse Territory Management Plan Project. As you are certainly aware, Western Watersheds Project is keenly interested in the ecological health of the public lands in the Apache-Sitgreaves National Forests and has a long history of advocating for protection from livestock damage to these public lands. Western Watersheds Project is the nation's foremost conservation organization working to sustain and recovery healthy public lands from a grazing perspective. Although we do not take a position on wild horses, pro or con, we do seek to reduce the much more ecologically significant impacts of domestic cattle and sheep, and to ensure that federal agencies uphold the rule of law. We noticed with particular interest that the Wild Horse Territory overlaps with two livestock grazing allotments – the Black Canyon (60% overlap) and Heber (6% overlap) allotments, and includes the King Phillip, Sharp Hollow, Stermer, Gentry, and Bunger pastures. A large portion of the Wild Horse Territory also overlaps with the perimeter of the 2002 Rodeo-Chediski Fire.

This project covers approximately 19,700 acres across two counties in the Black Canyon area of the Black Mesa Ranger District. The Forest Service has identified relevant direction and guidance specific to this project and this area and includes reference to the Forest Service Manual (FSM) 2200 (Range Management) and 2260 (Wild Free-Roaming Horses and Burros, as well as the 2015 Land and Resource Management Plan (LRMP) for the forests.

The Forest Service proposed action for this project describes burned area rehabilitation projects (seeding) that took place in 2002 that “became desirable forage for horses and some wildlife.” PA at 6. The Forest Service fails to describe how livestock grazing impacted the rehabilitation projects.

However, the Forest Service does explain that livestock pasture fences are apparently restricting wild horse movement to the southern and eastern portions of the project area and causing most of the horse use to occur outside the designated Wild Horse Territory. PA at 9.

As the Forest Service prepares the Environmental Assessment (EA) for this project, WWP recommends the following:

- Disclose and compare the number of wild horses versus livestock authorized in the project area and include a ratio of the number of livestock:wild horses
- Identify how livestock grazing is displacing wild horses
- Identify how livestock grazing is contributing to the cumulative impacts associated with wild horse use of overlapping areas
- Consider an alternative that reduces the Animal Unit Months (AUMs) allocated to livestock in areas where there are conflicts between horses, wildlife, and livestock
- Analyze how reducing the number of AUMs for livestock impacts the “appropriate management level” for wild horse populations
- Analyze an alternative that removes all livestock grazing from the project area, including the removal of livestock fencing and describe how that will impact the “appropriate management level” for wild horses
- Analyze how predators contribute to healthy wild horse populations
- Analyze how livestock management negatively impacts predator populations and how that impacts wild horse populations
- Analyze and disclose the costs associated with reducing wild horse populations through pasturing in holding pens as part of the Federal Wild Horse Program

The impact of wild horse herbivory and herbivory by livestock (both cattle and sheep) are cumulative on the health of rangelands within the project area. The Forest Service has a duty under NEPA to analyze these cumulative impacts.

WWP is concerned about the proposal to use vegetation treatments to remove juniper or other native vegetation via mechanical thinning or prescribed fire. In our experience, vegetation treatments are often used to artificially prop up the livestock grazing industry on federal public lands by removing native vegetation livestock (cows) don't eat, but that provide important habitat for wildlife. Please explain and provide scientific support that vegetation thinning or burning would support wild horse management and would not harm wildlife for any proposed alternatives that include vegetation thinning or burning.

While determining thresholds for wild horse removal, the Forest Service is apparently going to consider utilization exceeding 35% on over 30% of the key monitoring areas for two consecutive years or any 2 years out of 5 as a rationale for removing wild horses. Please explain how the Forest Service will know whether wild horses or livestock are the cause of the utilization over 35%. Will the Forest Service first consider removing livestock from the areas where utilization exceeds 35%? If not, please explain why not.

We have similar requests for other indicators of overutilization – 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.

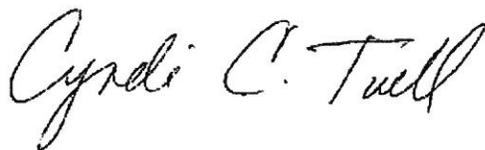
The proposed action includes the installation of seven roadside dirt tanks, two “working facilities,” and a fence to be used as a trap or holding fence. It appears that much of this new infrastructure will be installed in the areas where wild horses are currently fenced out of due to pasture fencing. Please detail exactly how this new infrastructure will benefit wild horses or impact their movements if the pasture fences remain in place. Would any of this infrastructure be used by livestock permittees or their livestock?

For the management tools identified in Appendix A, WWP asks the Forest Service to add the following:

- Tools to change patterns of horse use and to maintain horse health and habitat: *remove livestock from the landscape and remove livestock fencing*
- Tools to maintain horse health and habitat: *in times of severe drought, remove livestock from the landscape*

Thank you for your full consideration of our comments and concerns. We look forward to reviewing future NEPA documents for this project. Please ensure that we are advised of the availability of any forthcoming NEPA documents and that WWP remains on the contact list/interested party list for this project.

Sincerely,



Cyndi C. Tuell
Arizona and New Mexico Director
Western Watersheds Project
520-272-2454
cyndi@westernwatersheds.org