

October 3, 2025

Michiko Martin, Reviewing Officer

Attn: Administrative Review Staff

USDA Forest Service, Southwestern Region

333 Broadway Blvd. SE

Albuquerque, NM 87102

Cc: Joshua Miller

Acting Forest Supervisor, of the Apache-Sitgreaves National Forests

Submitted online at [US Forest Service NEPA Project Public Reading Room](https://cara.fs2c.usda.gov/Public/CommentInput?Project=18916)

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=18916>

Re: Heber Wild Horse Territory Draft Management Plan

Background:

I commented on the Public Scoping March 10, 2020

Department of Agriculture

United States Forest Service

Apache-Sitgreaves National Forest

PO Box 640

Springerville, Arizona 85938

Attn: Heber wild Horse Territory

Attn: Anthony Madrid, Forest Supervisor

Attn: Kacy Ellsworth, Public Affairs Officer

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

Due 3/16/2020

Re: Heber Wild Horse Territory Plan #18916 Scoping Public Comment Letter

I commented on the Public Environmental Assessment April 15, 2021

Department of Agriculture
United States Forest Service
Apache-Sitgreaves National Forest
P.O. Box 640
Springerville, Arizona 85938
Attn: Anthony Madrid, Forest Supervisor
Submitted online electronically to:
<https://cara.ecosystem-management.org/Public/CommentInput?project=18916>
Re: Public Comment Letter
Heber Wild Horse Territory Plan #18916 Environmental Assessment (EA)

In reviewing the current proposed Heber Wild Horse Territory Plan, it became obvious that the Forest Service responses to my previous Scoping and Environmental Assessment public comments do not sufficiently respond to my original concerns, questions and comments. This is a violation by the Department of Agriculture, Forest Service, of the Administrative Procedure Act (APA). This is shown by the lack of transparency and comprehensibility of the Forest Service's responses to the public's concerns as provided in their written scoping and environmental assessment objectives.

By law, the goal of the Heber Wild Horse Territory Management Plan (HWHTMP) must be to preserve the herd for future generations. These wild horses come under the jurisdiction of the Wild Free-Roaming Horse and Burro ACT (WFHBA) which was unanimously passed by congress. The law states: "It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found [in 1971 when the law went into effect], as an integral part of the natural system of the public lands." To ignore the laws of the United States is treasonous.

The Heber Wild Horse Territory Management Plan (HWHTMP), as currently written, has failed to follow the United States law, failed to follow the laws of nature and failed to

follow the overwhelming public consensus that these wild horses must be left alone on their legal land. Therefore, I hereby appeal the HWHTMP as I explain in detail below.

The impact of ignoring or bypassing the edict of the law destroys the trust and the integrity of the United States Government to abide by a law that was passed by Congress and can only be abolished by an act of Congress. The Wild and Free-Roaming Horses and Burros Act of 1971 (WFRHBA) is an Act of Congress signed into law. Consider the following un-amended language of the 1971 law and what it means: "It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death." This is the law of the people of the United States and the Heber Wild Horse Territory Management Plan must follow this law – it cannot include capture and it cannot include branding and must not include any kind of harassment and especially not death – all are illegal per the Congress of the United States of America and punishable as a federal offense against the citizens of the United States.

United States Forest Service (USFS) policies are plans and statements that have been made by the agencies and associates and are only self-monitoring regulations and erroneously often do not follow the congressional law. All USFS policies and plans established must be within the outline of the umbrella of the law that it is required to follow. A policy plan is nothing more than a strategy and is illegal if it does not follow the law of the United States of America.

Before continuing I wish to bring to the attention of the USFS management that any employee of the Department of Agriculture that has made false statements or conceals information is subject to the following Title 18 violations which include fines and prison terms.

Title 18 (18 U.S.C. § 1001). *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully*

making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States, even by mere denial 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations Current through Pub. L. 114-38. (See Public Laws for the current Congress.) US Code Per the US Department of Justice, the purpose of Section 1001 is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from" concealment of material facts and from false material representations.

The clarity requirements under the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA) primarily aim to ensure that federal agencies provide clear, understandable, and well-reasoned explanations for their actions. The APA establishes the foundational rules for agency conduct, which are then applied to NEPA's specific environmental review process. The Heber Wild Horse Territory Plan, as currently written, fails to follow the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA) laws.

The APA sets the baseline standard for clarity that all federal agencies must follow during rulemaking and other formal actions. A model of clarity requirements includes:

- **Plain language:** Agency rules must be written and displayed so that they are easily understood by the people directly affected by them.
- **Consistent meaning:** A regulation or plan or an EA is presumed to lack clarity if it can be reasonably interpreted to have more than one meaning on its face, or if it conflicts with the agency's own description of its effects.
- **Clear definitions:** Any specialized terms used must be defined either within the regulation itself or in the governing statute, so they are not vague to those impacted.

- **Justification of purpose:** Agencies must provide a "concise general statement" of the rule's basis and purpose to show it is based on evidence and fulfills a statutory objective.

Federal regulations and policy state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple uses and the productive capacity of their habitat (CFR 4700.0-6). By definition, this requires the USFS to manage and to allow established populations to successfully produce viable offspring which shall, in turn, produce viable offspring, and so on over the long term.

At its most basic level, NEPA requires that the decision-makers, as well as the public, be fully informed, i.e. "that environmental information is available to public officials and citizens before decisions are made and before action is taken." 40 C.F.R. § 1500.1(b). NEPA ensures that the agency "will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience." *Robertson v. Methow Valley Citizens Council*. NEPA requires that all relative detailed environmental information will be available and carefully considered.

In its process of development of a plan to consider the management of wild horses in the Apache-Sitgreaves National Forest, the HWHTMP failed NEPA analysis regarding this management plan and disclosure of all environmental impacts, and consideration of reasonable alternatives. Nature is the true manager for these wild lands, flora and fauna. These Heber wild horses have been under the control and effects of nature for hundreds of years and therefore the HWHTMP and the ultimate decisions must first take into serious consideration the natural environment that has evolved over the years. Nature is not static and therefore a one-size-fits-all decision arbitrarily decided now cannot possibly be acceptable into a plan to provide a natural occurring thriving ecological balance for the future generations as is required by the Wild Free-Roaming Horse and Burro ACT (WFHBA).

The USFS has made two major errors in its discussion and plans for the Heber wild horses so-called “territory”. Per the rules of Federal Title 18, [Making false statements (18 U.S.C. § 1001)] the actual documented and verified boundary of a Heber Wild Horse Territory is a priority and an actual wild horse population and/or AML cannot be considered accurate or even worthy of significance until the USFS provides original legal documentation such as documented surveys with longitude and latitude of the lands occupied by wild horses at the time of the passing of the ACT of 1971.

The HWHTMP has failed to establish accurate and legally defensible territory boundaries. The Heber Wild Horse Territory Management Plan (HWHTMP) is fundamentally flawed in that it is built upon an **arbitrary and unsubstantiated boundary** of 19,700 acres—allegedly defined in 1974—without any verifiable evidence that this boundary accurately reflects the range occupied by wild horses as of 1971, as legally required by the Wild Free-Roaming Horses and Burros Act (WFRHBA).

Under the WFRHBA (16 U.S.C. § 1333), wild free-roaming horses are to be protected and managed “where presently found” at the time of the Act’s passage in 1971. The statute does not allow for arbitrary shrinking, redrawing, or retroactive reinterpretation of herd territory boundaries without evidence:

“All wild free-roaming horses and burros are under the jurisdiction of the Secretaries of the Interior and Agriculture for the purpose of management and protection... and shall be considered to be an integral part of the natural system of the public lands.”
(16 U.S.C. § 1333(a))

The NEPA mandate for “high quality” information (40 C.F.R. § 1500.1(b)) requires agencies to base decisions on accurate scientific analysis. The EA and the HWHTMP fail to assess or disclose whether the 1974 boundary reflects 1971 use. Therefore, the actual area occupied by wild horses in 1971 must be substantiated by official records, surveys, or mapping data from that time period, not anecdotal recollection or internal memos.

The HWHTMP's reliance on a boundary drawn in 1974—three years after the passage of the WFRHBA—is legally indefensible without public documentation demonstrating that the 1974 boundary reflects the actual, observed use area from 1971.

The Forest Service has failed to produce the following essential records required to support the legal designation of the current 19,700-acre boundary:

- Contemporaneous 1971 population inventories or surveys
- 1971-era geospatial data or mapping products showing actual horse distribution
- Official land survey documents or legal metes and bounds descriptions
- NEPA-compliant analysis or Environmental Assessments validating the boundary
- Publicly available administrative record establishing the 1974 boundary as accurate

This absence of evidence makes the current proposed territory boundary legally vulnerable, scientifically ungrounded, and administratively arbitrary.

The use of Oral Histories and Conflicted Testimony Is Inadequate and Improper

The Forest Service references oral recollections—such as interviews with Mr. Doy Reidhead, a former livestock permittee—to justify the current boundary. However, this raises serious concerns regarding both credibility and conflict of interest.

- Mr. Reidhead's history as a grazing permit holder and ranching operator on the land introduces bias: his interests may have directly conflicted with those of wild horse protection and territorial designation.
- Oral recollections from over 50 years ago - particularly from individuals with potential economic or political interests - do not meet federal evidentiary standards for administrative decision-making.

The Administrative Procedure Act (APA) prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (5 U.S.C. §

706(2)(A)). Building the HWHTMP on unverified oral histories and lacking contemporaneous documentation constitutes precisely the kind of arbitrary action the APA prohibits.

The National Environmental Policy Act (NEPA) mandates that agencies utilize “high quality” information and accurate scientific analysis to inform decision-making (40 C.F.R. § 1500.1(b)). In this context:

- The Environmental Assessment for the HWHTMP fails to assess or disclose whether the 1974 boundary comports with actual horse use areas in 1971.
- There is no scientific rationale or geospatial justification for limiting wild horse use to 19,700 acres out of more than 800,000 in the Black Mesa Ranger District.
- By failing to evaluate alternative boundary scenarios or to justify the selected boundary with reliable data, the Forest Service fails its NEPA obligation to take a “hard look” at the environmental consequences and alternatives.

In numerous other Herd Management Area (HMA) and Herd Area (HA) reviews across BLM jurisdictions, boundary revisions or adjustments have been challenged or invalidated when agencies failed to provide:

- Reliable 1971 survey or mapping data
- Justifications for eliminating previously used ranges
- Consistency in applying WFRHBA mandates to maintain areas “where presently found”

For example, in *Colorado Wild Horse v. Jewell*, courts emphasized the importance of data-driven decision-making in wild horse management. Likewise, in *Friends of Animals v. Silvey* (2016), the court ruled that the BLM’s decision to remove horses from lands historically occupied by them, absent clear justification, was arbitrary and capricious.

These precedents underscore the legal vulnerability of the HWHTMP’s reliance on an undocumented 1974 boundary.

The HWHTMP assigns wild horses to just 2.4% of the Black Mesa Ranger District (19,700 acres out of 818,651 acres), and a vanishingly small percentage of the entire Apache-Sitgreaves National Forest (~2 million acres). This raises several additional concerns:

- The plan offers no ecological or habitat-based justification for this restriction.
- There is no evidence that wild horses were confined to this narrow area in 1971, nor that their historical use was limited by such a boundary.
- The intent of the WFRHBA is to preserve viable, self-sustaining wild horse populations, not to constrain them to artificially small parcels that may limit genetic diversity, movement, or access to key habitat types (forage, water, shelter).

The HWHTMP assigns wild horses to just 2.4% of the Black Mesa Ranger District (19,700 acres out of 818,651 acres).

- No ecological or habitat-based justification is provided.
- No evidence horses were confined to this area in 1971.
- Such restriction undermines genetic diversity, herd movement, and access to habitat.

Summary of Legal Violations

The current HWHTMP violates multiple legal and administrative requirements:

Statute / Regulation	Violation
WFRHBA (16 U.S.C. § 1333)	Failure to manage horses “where presently found” in 1971; use of undocumented post hoc boundary
APA (5 U.S.C. § 706)	Arbitrary and capricious reliance on oral history and conflicted testimony
NEPA (42 U.S.C. § 4331, 40 C.F.R. §§ 1500–1508)	Failure to disclose boundary data, assess alternatives, or base decisions on high-quality information

Request for Action / Relief

In light of the above, I formally request that:

1. The Forest Service halt implementation of the HWHTMP until such time as it produces a legally and scientifically supported map, survey and description of the territory boundaries based on actual wild horse use as of 1971.
2. The agency disclose all internal memoranda, interviews, and land management records related to the establishment of the 1974 boundary.
3. The Forest Service commission and publicly release a retrospective geospatial analysis of wild horse use in the Heber area as of 1971, based on aerial imagery, field reports, grazing records, and other historical datasets.
4. The agency revise or supplement the EA and HWHTMP to include a full analysis of alternative territory boundaries, including those that reflect the full extent of 1971 use.
5. Independent review of all oral or anecdotal accounts used to justify boundaries be conducted to identify and mitigate bias or conflicts of interest.

The Heber Wild Horse Territory Management Plan (HWHTMP) is grounded on a boundary designation of approximately 19,700 acres, allegedly established in 1974. This figure represents a mere 2.4% of the 818,651 acres in the Black Mesa Ranger District, and an even smaller fraction of the ~2 million-acre Apache–Sitgreaves National Forest. The Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), however, mandates that wild horses are to be managed “where presently found” as of 1971 — not based on post hoc approximations. The 1974 boundary lacks any verifiable connection to the actual geographic distribution of wild horses in 1971 and, therefore, fails to meet legal, scientific, or procedural standards under WFRHBA, NEPA, and the Administrative Procedure Act (APA).

Citation: 16 U.S.C. § 1333(a); 5 U.S.C. § 706(2)(A); 40 C.F.R. § 1500.1(b)

To date, the Forest Service has not disclosed any of the following, either in the HWHTMP or in the corresponding Environmental Assessment (EA), to validate the 1974 boundary:

- Contemporaneous 1971 wild horse survey data or population inventories
- Geospatial data (maps, aerial imagery, or GIS files) showing horse distribution in 1971
- Land survey records or metes and bounds legal descriptions
- Official administrative decisions or Federal Register notices designating the current boundary as consistent with 1971 use
- Any NEPA-compliant evaluation of alternatives based on differing potential historic use areas

Without this data, the 19,700-acre boundary is unsupported and legally indefensible. Agencies cannot assert the validity of a management plan when the entire geographic scope is based on undocumented or anecdotal information.

The Forest Service's reference to interviews with individuals such as Mr. Doy Reidhead — a person with documented livestock grazing interests in the area — does not constitute reliable or unbiased evidence of 1971 horse distribution. Reliance on oral recollections from ranchers who may have held opposing interests in wild horse protection undermines the impartiality and credibility of such testimonies.

Under NEPA, APA, and the principles of sound administrative governance, management decisions affecting protected wildlife species must be based on verifiable data, not uncorroborated personal interviews.

Citation: See *Friends of Animals v. Silvey*, 353 F. Supp. 3d 991 (D. Nev. 2018) (agency reliance on undocumented assumptions deemed arbitrary and capricious); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (agency action must be based on reasoned analysis, not anecdote or convenience)

The WFRHBA explicitly states that wild free-roaming horses are to be protected “where presently found” as of the passage of the Act in 1971. Courts have interpreted this to mean that management units must reflect actual horse occupancy, not arbitrary or politically convenient boundaries.

- The Forest Service has never produced legally binding evidence showing that wild horses in 1971 were confined to just the current 19,700 acres.
- Horses may have occupied broader areas of the Apache–Sitgreaves National Forest or beyond the Black Mesa Ranger District.
- Restricting the territory to this small fraction may have the practical effect of driving horses into "unauthorized" areas, setting them up for removal or lethal control in violation of WFRHBA protections.

Citation: 16 U.S.C. § 1333(a); *Colorado Wild Horse & Burro Coalition, Inc. v. Salazar*, 639 F. Supp. 2d 87 (D.D.C. 2009) (WFRHBA requires management in historic areas of use)

NEPA Violations: Lack of Alternatives and Hard Look Requirement

NEPA regulations require federal agencies to:

- Base decisions on “high-quality information” and “accurate scientific analysis” (40 C.F.R. § 1500.1(b))
- Take a “hard look” at environmental consequences, including reasonable alternatives (40 C.F.R. § 1502.14)

The HWHTMP violates these mandates by:

- Failing to evaluate alternative territory boundaries based on potential 1971 range
- Not disclosing data, maps, or historic records upon which the current boundary is based
- Ignoring the implications of artificially restricting horses to such a small area

Citation: *Western Watersheds Project v. Abbey*, 719 F.3d 1035 (9th Cir. 2013) (NEPA requires agencies to address alternatives and disclose baseline data)

Shrinking the Territory Undermines Genetic Viability and Herd Health

By limiting the Heber herd to 19,700 acres — without data supporting such a limitation — the HWHTMP risks the long-term genetic viability, health, and behavioral integrity of the herd:

- Horses require sufficient acreage to ensure access to forage, water, space for band dynamics, and gene flow between family groups
- The National Research Council (2013) notes that habitat fragmentation and restricted territories contribute to loss of genetic diversity and social instability in wild horse populations

Citation: National Research Council. (2013). *Using Science to Improve the BLM Wild Horse and Burro Program*. Washington, DC: National Academies Press.

Summary of Legal and Scientific Failures

Legal or Scientific Standard	HWHTMP Violation
WFRHBA (16 U.S.C. § 1333)	Fails to base territory on “where presently found” standard (1971 distribution)
NEPA (40 C.F.R. § 1500.1–1508)	No high-quality data or hard look at territory alternatives
APA (5 U.S.C. § 706)	Arbitrary and capricious reliance on anecdotal, undocumented boundary history
NRC (2013) Recommendations	Ignores habitat, social structure, and genetic health in territory sizing

Requested Actions

In light of these deficiencies, I respectfully request that the Forest Service:

1. Suspend or revise the HWHTMP until legally valid documentation is produced verifying the current boundary reflects wild horse use as of 1971.
2. Release all administrative records, internal memos, aerial photos, field notes, and GIS data relevant to the 1971 and 1974 horse ranges.
3. Commission an independent, retrospective geospatial study using aerial imagery, grazing permit maps, and historical land use data to reconstruct the likely 1971 horse use area.
4. Supplement or revise the HWHTMP to evaluate reasonable alternatives, including an expanded territory that more accurately reflects the 1971 distribution.
5. Ensure that no removals, fertility control applications, or population targets are finalized until the territory boundary is grounded in law and science.

Improper Reliance on “No Records” / Appeal to Ignorance

1. The Forest Service’s response in the draft plan states:

“There are no records demonstrating that those horses were present prior to 1974.”

Such a statement amounts to an appeal to ignorance, which is a logical fallacy—asserting that something must be false because there is no evidence proving it true. The absence of documentation does not justify concluding that wild horses were not present in 1971, the date required under the Wild Free-Roaming Horses and Burros Act (WFRHBA). The Forest Service must bear the burden of proof when making determinations required by law concerning the presence of wild horses at that time.

2. The plan further states:

“When the territory was established in 1974, a letter from the forest supervisor to the regional forester indicated the territorial use of the area.”

Yet, no copy or summary of this letter—or any equivalent documentation—is included in the EA, scoping documents, or the final plan. Without such primary evidence, the claim remains unsubstantiated. Relying on unprovided correspondence or undocumented assertions is arbitrary and capricious under APA, and potentially unlawful under Title 18 if material facts are concealed.

Lack of Clarity, Definitions, and Responsiveness to Public Comments

The agency's use of vague terms—such as “those horses,” “ownership was determined,” or “record mentioned”—without specifying what records, horses, or owning parties are referred to, undermines clarity. Under APA, rules and plans must use clear definitions, and ambiguity that allows multiple reasonable interpretations violates the requirement for reasoned decision-making.

The HWHTMP's statement that

“The intent of this project is to establish a management plan for the existing territory, not to reexamine the original 1974 territory designation” implies that the Forest Service does *not* plan to revisit whether that 1974 designation was legal or accurate. Because WFRHBA requires the territory to be based on where wild horses were “presently found” in 1971, avoidance of reexamination cannot excuse reliance on possibly flawed or undocumented historical designations. Failing to examine or update the legal bases when evidence is missing or contradictory violates APA's requirement for final agency actions to be supported by the administrative record and substantial evidence.

Legal Obligations under Forest Service Regulations

Under 36 CFR § 222.60 and related definitions:

- Wild free-roaming horses and burros include all unbranded and unclaimed horses and burros and their progeny that “used lands of the National Forest System on or after December 15, 1971.”

- “Wild horse and burro territory” means lands “which were territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act.”

The plan’s delineation of territory must account for migratory and wandering use, not just permanent presence, and must be based on habitat in 1971. Without clear legal documentation or verifiable surveys that show where horses were using various habitat types (seasonally or otherwise) in 1971, the current small acreage boundary is likely inconsistent with both the Act and implementing regulations.

Failure to Evaluate Alternative Measures and Relative Impacts

The HWHTMP continues to propose removing wild horses and applying fertility control (e.g., PZP, GonaCon) without fully evaluating less disruptive or more sustainable alternatives, or considering the cumulative and long-term ecological risks, including demographic collapses, loss of genetic viability, or population crashes in disaster scenarios. There is inadequate examination of how other resource uses (livestock, water diversion, predation, fire, climate change, etc.) contribute to any alleged ecological imbalance, and whether grazing reductions or other accommodation might allow greater wild horse carrying capacity.

The plan fails to meaningfully compare the impacts of:

- Removing or reducing wild horse populations, vs
- Reducing domestic livestock grazing, vs

Such comparisons are required under NEPA to permit informed choice among reasonable alternatives.

Additional Relief Requested

I respectfully request the following additional remedies:

Require the Forest Service to disclose and make part of the administrative record all documents referred to in the plan (e.g., the 1974 forest supervisor's letter; any "record mentioned" in responses) with the requirements of APA and federal law.

Define with precision all terms used in the plan, including but not limited to "those horses", "unauthorized livestock", "territory", "presently found", to eliminate ambiguity and ensure enforceability.

Reexamine and, where necessary, correct the historical basis for the boundary designation, including commissioning a study or survey to identify likely habitat used by wild horses as of 1971, including wandering or migratory use.

Develop and analyze a full range of alternatives, including ones that:

- Emphasize reducing livestock grazing or other stressors rather than removing or sterilizing wild horses;
- Include a robust "no-action alternative" (allowing horse populations to function under existing conditions);
- Include adaptive management strategies responsive to environmental variability, disasters, and long-term sustainability.

Ensure compliance with Title 18 U.S.C. § 1001 by declaring in the final record whether any assertions in the plan (especially the absence of records or documentation) are based on complete information or whether certain records are missing, unknown, or destroyed.

The Forest Service's statements that "no records" exist, its refusal or inability to review or examine the original 1974 territory designation, and its failure to provide documentation and define terms clearly are not just technical oversights—they are fundamental legal deficiencies that render the HWHTMP non-compliant with the WFRHBA, APA, and NEPA. Without remedying these issues, the plan cannot stand as a lawful management document.

The USFS agency has failed to provide documented evidence that the proposed territory boundaries verify the historic range of the wild horses of the Apache-Sitgreaves National Forest at the time the law was passed in 1971 where America's wild horses and burros existed in 1971 when the congressionally designated WFHBA was enacted.

The Wild Free Roaming Horse and Burro Act (WFRHBA) clearly states the wild free roaming wild horses and burros were to be protected and managed "where presently found," referring to the physical location of free-roaming horses in 1971. It is obvious this would include all of the Apache-Sitgreaves National Forest land and not just the little sliver of acreage within the A-S National Forest as the Heber Wild Horse plan is proposing. Lack of evidence is not evidence of absence emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking.

In addition, although specifically researched and written regarding the BLM, the USFS plans and actions also come under the same WHFBA law. I quote here from the National Academy of Science "Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward". "Since 1971, the Bureau of Land Management (BLM) of the U.S. Department of the Interior has been responsible for managing the majority of free-ranging horses and burros on arid federal public lands in the western United States." [Note: "federal public lands"]

- Below are quotes from the [2260 FS Manual WHB.doc](#) 2260.2 – Objective
"To maintain wild free-roaming horse and burro populations in a thriving ecological balance in the **areas they inhabit on National Forests.**"
"Recognize wild free-roaming horses and burros as part of the natural system of National Forests."
"Wild Free-Roaming Horses and Burros. All unbranded and unclaimed horses and burros **and their progeny using National Forest System lands on or after**

December 15, 1971."

Therefore, the agency has failed to provide documented evidence that the proposed territory boundaries verify the historic range of the wild horses of the Apache-Sitgreaves National Forest at the time the law was passed in 1971 including where America's wild horses and burros existed in 1971 when the congressionally designated WFHBA was enacted.

Without verifiable evidence that the wild horses lived only on the few acres called the Heber Wild Horse Territory and not throughout the National Forest public land known as the Apache-Sitgreaves NF, the Heber Wild Horse Plan is not a legal document, as written, and must be re-written using only verifiable data – not hearsay or opinions. The phrase "lack of evidence is not evidence of absence" emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking.

The HWHTMP failed to provide information which explained to the public as well as becoming part of the administrative record, the following:

Because the Heber Wild Horse Territory has never previously had an official plan as is required by law, but is now in the process of putting together this plan, I required in my scoping public comment letter and my EA public comment, but the HWHTMP failed to provide, all past and current documentation, including but not limited to official government surveys, notes, maps, photos, and scientifically supportable and unbiased reasoning, for the proposed boundary of the Heber Wild Horse Territory as shown in the USFS proposal map.

The USFS has no excuse for not doing a land survey of wild horses at the time that the law went into effect in 1971. This was not oversight, it was absolute negligence on the part of the USFS and to prove that land surveys were available for many decades, I

personally have a copy of my own Great Great Great Grandfather's land survey dating in the late 1700s. With this in mind, there is no excuse what so ever for the current bias description of the so-called HWHT. Providing the public the fallacy of the current so-called HWH Territory area of approximately 19,700 acres given to the public is fictional and illegal because the USFS has no verifiable documentation that they did any legal land or horse survey at the time the WHB Act was passed in addition, the law states, "Wild Free-Roaming Horses and Burros: All unbranded and unclaimed horses and burros **and their progeny using National Forest System lands on or after December 15, 1971.**" [2260 FS Manual WHB.doc](#)

The appeal to ignorance is the logical fallacy of claiming that a statement must be true because there's no evidence against it.

The USFS did give this description and statement that the "Project Location The Heber Wild Horse Territory (territory) is located in the Black Canyon area of the Black Mesa Ranger District and consists of approximately 19,700 acres. The territory boundary was established and delineated in 1974 following an inventory conducted by the former Heber Ranger District (USDA Forest Service 1974) to address the mandates of the Act." Evidence of this statement was not provided. That statement is not a legal boundary description or evidence of the legal boundary of the so-called HWT and per FOIA, there is no documentation for this so-called territory boundary.

The FS document did state "When the territory was established in 1974, a letter from the forest supervisor to the regional forester indicated the territorial use of the area" however a copy of that letter nor any other form of documentation is provided to the public. The EA and the HWHTMP failed to include a copy of that letter nor any other scientifically substantiated proof of the legal description land survey for the potential Wild Horse "Territory". The USFS just stating their mapped area is the official territory without complete scientific substantial proof and land survey is arbitrary and capricious and illegal and in violation of federal Title 18 (concealing or falsifying information).

The USFS documents did state, "Of the ten interviews completed, all interviewees who had good to extensive knowledge of the territory and area corroborated similar stories, despite numbers and dates occasionally remembered differently... etc" I found this to be interesting, but the interviewees **opinions** are by no means scientifically supportable and very possibly had a financial interest in these lands. It is very likely these interviewees provided bias statements against the wild horses and in support of livestock grazing on our public lands. Who were these interviewees? What knowledge did these interviewees have of the Heber wild horse and the Apache-Sitgreaves lands? What animal husbandry and wildlife experience and knowledge did these interviewees have? What was their interest in the Heber wild horses and their habitat lands? Having ten persons interviewed is not scientifically reliable evidence. Federal Title 18 (see above) states the purpose of Section 1001 is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from" concealment of material facts and from false material representations.

From the interviewee Doy Reidhead's "Oral History" statement, recorded on April 3, 2006, we know that at that time Doy Reidhead held the Gibson Ranch livestock grazing permit (1983-1988). **The Forest Ranger and Doy Reidhead worked together to trap and remove 187 unbranded, wild horses that, per Doy Reidhead, had been on the National Forest lands since (at least) 1967. The Forest Ranger did not want the area turned into a "wild horse refuge". The Forest Ranger would have known that horses on the National Forest lands at the time of passage of the Wild Free-Roaming Horses and Burros Act in 1971 fell under the protection of the Act,** which states *"It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands."* The final HWHTP does not provide this information to the public, thereby concealing this evidence which is a violation of Title 18 (see above).

This Doy Reidhead's Oral History provides proof that there were wild horses within the Apache-Sitgreaves National Forest prior to the passage of the Act and that Forest Service knowingly unlawfully authorized the removal of 187 wild horses in the 1980's. In addition, this substantiates that a significant number of wild horses were on the Apache-Sitgreaves National Forest in 1974 when Forest Service deceptively reported only 7 horses and deceptively delineated the Heber Wild Horse Territory. This was deceptive and fraudulent against the American people who own the Heber wild horses. These actions clearly appear to have been done with full knowledge and intent. The USFS actions were not only illegal at that time but also prove that the USFS has violated federal Title 18 by concealing this information by not including this in the EA or the HWHMP. *Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States".*

Link to Doy Reidhead's Oral History Audio/Video Recording:

[Oral history interview with Doy Reidhead \[with transcript\], April 3, 2006. - Colorado Plateau Digital Archives - Colorado Plateau Digital Collections \(oclc.org\)](#)

The Forest Service EA and HWHTMP fail to provide the raw data and actual official territory survey data done at the time of the ACT (1971) or at least at the time of the notation of the territory (1974) which are the only legal and reliable data that can be acceptable. In the absence of solid data regarding the extent of the wild horses' presence in Apache-Sitgreaves National Forest when the Wild Free-Roaming Horses and Burros Act of 1971 became law, it is undocumented that they were present on only about just 3 percent (19,700 acres) of the District's 818,651 acres. A lack of evidence is not evidence of absence. Because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking. Restricting the Heber Wild Horses so severely was, and still is, without a doubt political accommodation to local ranchers and or other resource consumers with a monetary

interest. In actuality, the Apache-Sitgreaves National Forest were administratively combined in 1974 and include about two million acres which are now managed as one unit from the Forest Supervisor's Office in Springerville - per the USFS website.

Due to the apparent lack of understanding in administrative procedures, the Black Mesa Ranger District and Apache Sitgreaves National Forest determined without documentation that the Heber Wild Horse Territory should be only a sliver of land of about 19,700 acres within the National Forest and ignored the 1971 WH&B ACT that clearly states: "It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found [in 1971 when the law went into effect], as an integral part of the natural system of the public lands." To ignore the laws of the United States is treasonous.

No documented information about the initial survey was available from the USFS FOIA office, except the following inadequate USFS notes that I provide for you here:



United States
Department of
Agriculture

Forest
Service

Apache-Sitgreaves National Forests

30 South Chiricahua Drive
Springerville, AZ 85938

File Code: 6270
Date: August 23, 2024

Kathy Gregg
therealgrandmakathy@yahoo.com

RE: Freedom of Information Act Request, Case Number 2024-FS-R3-06211-F

Dear Ms. Gregg:

This is our final response to your Freedom of Information Act request dated July 30, 2024, and received by the Southwestern Region FOIA Service Center and forwarded to the Apache-Sitgreaves National Forests FOIA Service Center on July 31, 2024. Your request has been assigned Case Number 2024-FS-R3-06211-F. Please include this tracking number in all communications regarding your request.

You requested:

"Historical maps, surveys and relevant notes used in the decision-making process for the agreement and development and result of the Heber Wild Horse Territory boundary of the Apache Sitgreaves National Forest and titles and agencies of persons making these decisions."

Enclosed is 1 document containing the requested responsive documents (2 pages). Pursuant to *Title 7 Code of Federal Regulations (CFR), Subtitle A, Part 1, Subpart A, Appendix A*, there is no charge for these records since the charges fall below the minimum amount required for the Forest Service to collect fees.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Sitgreaves National Forest

REPLY TO: 2260 Wild Free-Roaming Horses and Burros

JAN 15 1974

SUBJECT: 1971 Horse and Burro Territory

to: Regional Forester, R-3



The information on wild horses grazing on the Sitgreaves is shown below:

1. Territorial habitat limits - see attached map
2. Estimated number of horses, December 1971 - Seven (7)
3. Estimated number of horses currently occupying the territory - Seven (7)
4. Extent animals depend on other lands. There is a small amount of private land within their territory, however, it does not affect the dependency of the animals.
5. Influences causing numbers to fluctuate. There are no outside influences or problems causing the numbers to fluctuate. It does appear the stud may be sterile as no colts have been seen for several years, and there is no indication of unauthorized removal.

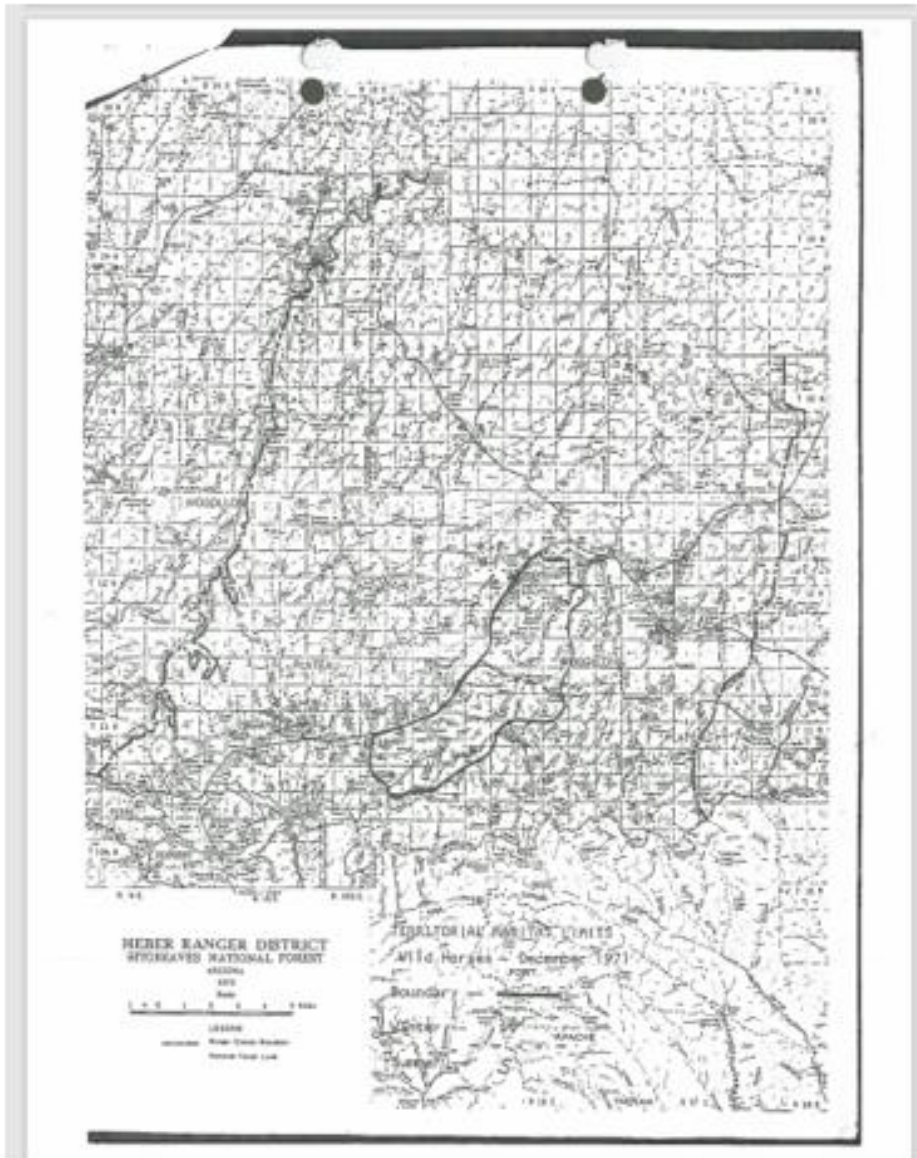
There is no indication of unauthorized removal.

J. S. Tixier
J. S. TIXIER
Forest Supervisor

Enclosure

APACHE-SITGREAVES NF & HEBER RANGER DISTRICT	
JUN 23 1993	
ROUTE TO:	
FROM:	
DATE:	
TIME:	
BY:	
FOR:	
REMARKS:	
BY: [Signature]	

SITGREAVES NATIONAL FOREST	
JUN 16 1974	
HEBER RANGER DISTRICT	
ROUTE TO:	HEB: AGO
FROM:	HEB: AGO
DATE:	6/16/74
TIME:	
BY:	[Signature]
FOR:	
REMARKS:	
BY: [Signature]	



(END of FOIA response)

Quote from the HWHTMP response to the public:

"There are no records demonstrating that those horses were present prior to 1974."

Webster's Dictionary definition of fallacy "The appeal to ignorance is the logical fallacy of claiming that a statement must be true because there's no evidence against it." and

obviously what the USFS has drawn upon many times in their preparation of the Heber Wild Horse Management Plan.

The USFS HWHTMP document did state "When the territory was established in 1974, a letter from the forest supervisor to the regional forester indicated the territorial use of the area" however a copy of that letter nor any other form of documentation is provided to the public during the scoping or EA nor in the HHTMP. The USFS just stating their mapped area is the official territory without complete scientific verifiable proof and the survey is arbitrary and capricious and entirely illegal and in violation of federal Title 18 (concealing or falsifying information).

USFS Management Plan States "The Wild Horse and Burro Act states that the territories were to be established by horses that were present at the time the Act was passed and only animals whose ownership could not be determined were to be considered wild. As with a lot of this Heber Management Plan, the FS is in violation of the Administrative Procedure Act, which requires that the USFS Plan is not clear and not understandable, as shown below in these examples:

"There are no records demonstrating that *those horses* were present prior to 1974."

The USFS has not clearly designate which horses are "*those horses*".

Are "*those horses*" the wild horses or horses running wild but owned by private parties?

USFS Management Plan: "Ownership was determined and documented in *the record mentioned*. The act instructs the agency to remove unauthorized livestock as soon as possible that could be a threat to the integrity of the herd.

Again unclear and in violation of the Administrative Procedure Act and Title 18, concealing evidence. (What record mentioned?)

USFS Plan, "The intent of this project is to establish a management plan for the existing territory, not to reexamine the original 1974 territory designation. The letter to the

regional forester establishing the territory followed the procedures established at that time.”

My responses: The Act does state that territories were to be established by horses that were present at the time the Act was passed but the USFS which was in charge obviously did not do as the law required, thus is trying to do it now with obvious difficulty, 54 years later. The FS says, “reexamining” the original 1974 territory designation is the intent of their current project but within the USFS documents including the FOIA data provided to me (see above), there was no evidence of any legal 1974 designation of the now-proposed “territory”. The agency’s assertion that the “intent of this project is... not to reexamine the original 1974 territory designation” does not absolve it from its duty to ensure that the current management plan reflects the true historical and legal foundations of the HWHT. If the original designation was based on incomplete, flawed, or missing data—as the FOIA responses suggest—it is arbitrary and capricious for the Forest Service to continue to rely on it without correction.

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

As I explained previously, the Forest Service’s response regarding the boundaries of the Heber Wild Horse Territory (HWHT) is not only inadequate but inconsistent with both the intent and the procedural requirements of the Wild Free-Roaming Horses and

Burros Act of 1971 (WFRHBA), as well as the interagency guidance that was to be followed in determining the boundaries of wild horse territories. The claim that there are "no records demonstrating that those horses were present prior to 1974" is contradicted by multiple facts and by the Forest Service's own obligation to conduct surveys to establish such presence. The phrase "lack of evidence is not evidence of absence" emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry, unbiased and critical thinking.

Although the WH&BA is the unanimously passed law of the United States of America and must be utilized to direct the plans and actions of the USFS and BLM, those plans and actions and regulations are null and void if they do not come under the authority and specific direction of the law. Disobeying an act of Congress can lead to serious legal consequences, including contempt of Congress, which is defined as disobeying or disrespecting the authority of the legislative branch. Penalties for contempt of Congress can include criminal prosecution jail time and fines, as Congress has the power to enforce compliance.

Page 19 Heber Wild Horse Territory Management Plan Terrestrial and Aquatic Wildlife Biological Assessment states: "6. Removal of Unauthorized Livestock - On the Sitgreaves National Forest, horses not meeting the definition of wild horse as defined in 36 CFR 222.60(b)(13) would be considered unauthorized livestock and removed per 36 CFR 222.63 and state law, as applicable."

The following law definitions clearly state that all [wild] horses on the entire national Forest System (i.e. Sitgreaves National Forest) are legally required to be protected, including those that wander or migrate.

§ 222.60 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System.

(10) *National Forest System* includes the National Forests, National Grasslands, and other Federal lands for which the Forest Service has administrative jurisdiction.

(13) *Wild free-roaming horses and burros* mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, *or do hereafter use these lands as all or part of their habitat*

(15) *Wild horse and burro territory* means lands of the National Forest System which are identified by the Chief, Forest Service, as *lands which were territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act.*

For your further information as referred to on Page 19 Heber Wild Horse Territory Management Plan Terrestrial and Aquatic Wildlife Biological Assessment, here are the legal definitions of 16 U.S. Code § 1332 - Definitions

[16 U.S. Code § 1332 - Definitions | U.S. Code | US Law | LII / Legal Information Institute](#)

“[wild free-roaming horses and burros](#)” means all unbranded and unclaimed horses and burros on [public lands](#) of the United States;”

“[public lands](#)” means any lands administered by the [Secretary](#) of the Interior through the Bureau of Land Management or by the [Secretary](#) of Agriculture through the Forest Service.”

The Heber wild horse proposed segment of the Apache-Sitgreaves National Forest, referred to as the HWH territory is said to be on 19,700 acres in the Black Canyon area southwest of Heber, Arizona and to have been established in 1974, three years after the 1971 passage of the Wild Free-Roaming Horses & Burros Act (WFHBA). The criterion for establishing the territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA. In addition, any interpretation of this law must take this to mean the wild horses' and burros' year-round habitat, not just where they were at the moment of the act's passage in Congress. I previously requested the 1974 documentation that would provide evidence that the 19,700 acres within the A-S NF were the only acres within the A-S NF where wild horses lived including the lands where they wandered or migrated as is defined in § 222.60 Authority and definitions.

I required legal documentation that this proposed small subdivision of the Apache-Sitgreaves National Forest be justifiably acknowledged as only 19,700 acres and the EA and Scoping as well as the HWHTMP failed to provide any documentation that there was not a greater wild-horse-occupied habitat such as the entire Apache-Sitgreaves National Forest. Legal land surveys have been done and are available for over two-hundred years in the United States and there is no reason or excuse for the USFS to not provide this data to the public. Failure to do so is a violation of Title 18, concealing data from the public.

ARBITRARY AND CAPRICIOUS

Absence of a rational connection between the facts found and the choice made. A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law. 5 USC. 706(2)(A) (1988).

When an agency makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and can be invalidated by an appellate court on that ground.

To determine whether the Forest Service action is arbitrary and capricious, the court will determine whether the Forest Service "consider[ed] [all] of the relevant factors".

The HWHTMP did not include the impacts on the ecosystem of removing wild horses from these public grazing lands, including a comparison of the impacts of removing and/or reducing grazing by domestic livestock, which I required in my previous public comments.

The USFS HWHTMP failed to provide a full scientific assessment that provided clear evidence that the Heber wild horses are compromising the "thriving natural ecological balance" and not livestock grazing, hunting, OHV use, water diversions, predator removal, fire, tree removal, climate change, and inadequate management policies as the true reason for these lands if they are not reaching a thriving ecological balance. The USFS office has failed to provide evidence that any action to remove or disturb the wild horses population (ie. fertility controls) will not cause irreparable harm to the populations and that the plan is not based on biased and illegal planning documents in favor of domestic livestock interests.

The HWHMP does not incorporate or explain its reasoning for ignoring the law which provides the alternative of legal reduction of private/corporate domestic livestock grazing in the Apache-Sitgreaves National forest wild horse lands, pursuant to 3 C.F.R. 4710.3-2 and 43 C.F.R. 4710.5(a), in order to accommodate the current wild horse

population level. The USFS has authority to reduce domestic livestock grazing pursuant to 43 C.F.R. 4710.5 in order "to provide habitat for wild horses or burros."

The HWHTMP proposes to use the pesticides known as PZP or GonaCon as fertility control. Making decisions to apply a fertility drug to wild horse herd mares will put wild horse herds in danger of a die-off if any natural or human-caused disaster struck the herd management area – be it wildfire or an extreme winter or mass predation or other.

If a majority of the mares are non-reproducing and thus zero or even just a few births, then it is easy to see that the entire herd would be in jeopardy – both genetically and physically – and would diminish their ability to survive into the future. We then have a herd that is not safe on its own range. The horses must be protected as the law states they shall be.

Management to create zero population growth in the wild is insensitive to natural forces and will then create a negative population growth where foals will not be born to replace those horses that die of natural and environmental causes. They have no need for this interference and this dangerously low reproductive rate could be and likely will be catastrophic. Pesticide application to wild horses cannot lead to a scientifically accepted population size for healthy reproducing herds and thus there can be no healthy wild horse and burro herds for future generations. This is completely unacceptable – per the law and per the wishes of the American people as well as the laws of nature.

What is a "pesticide" versus a "vaccine"?

By definition, a pesticide is a product designed to DESTROY organisms deemed to be undesirable or noxious.

*Both PZP and GonaCon are registered by the EPA as **PESTICIDES** (SEE BELOW).*

DEFINITION OF PESTICIDE:

Chemical or biological substance designed to KILL or retard the growth of pests that damage or interfere with the growth of crops, shrubs, trees, timber, and other vegetation

DESIRED BY HUMANS. Practically all chemical pesticides, however, are poisons and pose long-term danger to the environment and humans through their persistence in nature and body tissue. Most of the pesticides are non-specific and may kill life forms that are harmless or useful.

DEFINITION OF VACCINE:

Any preparation used as a preventive inoculation to confer immunity against a specific DISEASE usually employing an innocuous form of the disease agent, as killed, or weakened bacteria or viruses, to stimulate antibody production.

PZP and GonaCon are NOT vaccines ... they are PESTICIDES.

http://www.epa.gov/pesticides/chem_search/reg_actions/pending/fs_PC-176603_01-Jan-12.pdf

United States Environmental Protection Agency Office of Prevention, Pesticides and Toxic Substances (7505P)	
	Pesticide Fact Sheet
Name of Chemical:	Mammalian Gonadotropin Releasing Hormone (GnRH)
Reason for Issuance:	New Chemical Nonfood Use
Date Issued:	September 2009
1. Description of Chemical	
Peptide Chain:	pyroGlu1 -His2-Trip3- Ser4 -Tyr5- Gly6 -Leu7-Arg8- Pro9- G ly10NH2 [GnRH]
Common Name:	Mammalian Gonadotropin Releasing Hormone (GnRH)
EPA PC Code:	116800
Chemical Abstracts Service (CAS) Number:	9034-40-6
Chemical Class:	Sterilant/Hormone
Registration Status:	New Chemical, nonfood use
Pesticide Type:	Mammalian Contraceptive
U.S. Producer:	U.S. Department of Agriculture, APHIS, Pocatello Supply Depot 238 East Dillon Street Pocatello, ID 83201

United States
Environmental Protection Agency
Office of Chemical Safety and Pollution Prevention
(7505P)



Pesticide Fact Sheet

Name of Chemical:	Porcine Zona Pellucida (PZP)
Reason for Issuance:	New Chemical Nonfood Use
Date Issued:	January 2012

1. Description of Chemical

Glycoprotein Complex:	ZP1 (80,000-90,000 KD), ZP2 (60,000-65,000 KD), ZP3 (55,000 KD), and ZP4 (20,000 – 25,000 KD)
Common Name:	Porcine Zona Pellucida (PZP)
EPA PC Code:	176603
Chemical Class:	Sterilant/Hormone
Registration Status:	New Chemical, nonfood use
Pesticide Type:	Mammalian Contraceptive
U.S. Technical Registrant:	Humane Society of the United States 2100 L St. NW Washington, DC 20037

2. Use Patterns and Formulations

Mode of Action:	PZP antigen is the glycoprotein layer that surrounds the oocyte and is weakly antigenic by itself. Therefore, PZP is emulsified with an adjuvant (mFCA for the primary vaccination and mFIA for booster
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1

The HWHTMP proposes the use of immunocontraceptives such as PZP (porcine zona pellucida) and GonaCon. The Forest Service incorrectly categorizes these substances as “vaccines,” when in fact they are **EPA-registered pesticides**.

Federal regulations and policy state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple uses and the productive capacity of their habitat (CFR 4700.0-6). By definition, this requires the USFS to manage and to allow established populations to successfully produce viable offspring which shall, in turn, produce viable offspring, and so on over the long term.

The Heber Territory Management Environmental Assessment (EA) and the HWHTMP failed to explain in exact detail how the USFS proposes to preserve the herd for future generations as is required by the Wild Free-Roaming Horse and Burro ACT (WFHBA). Past use of PZP on small, isolated herds has resulted in demographic collapse when mares were treated. The Heber herd — already at risk due to small numbers and confined territory — cannot withstand additional stressors.

The EA and HWHTMP fail to:

- Disclose the long-term risks of herd collapse due to fertility control.
- Evaluate the cumulative impacts of multi-year, multi-dose contraception.
- Consider alternatives that do not rely on pesticides.
- Provide transparency regarding EPA classification of these chemicals.

Legal Misrepresentation

- PZP and GonaCon are classified by the Environmental Protection Agency as **pesticides**, not vaccines.
- Describing them as “contraceptive vaccines” is **misleading** and violates APA requirements for clarity and accuracy.
- Federal agencies may not make false or deceptive statements in official documents (18 U.S.C. § 1001).

Biological Risks

PZP and GonaCon:

- Disrupt natural herd dynamics by interfering with reproduction.
- Cause repeated treatments to be necessary, increasing stress and harassment.
- Can lead to permanent sterility in mares after multiple doses.
- Create a demographic time bomb: when too many mares are sterilized, the herd collapses below viability thresholds.

Ecological Concerns

By suppressing reproduction unnaturally:

- Predator-prey relationships are disrupted.
- Genetic diversity is compromised.
- Social structures in wild horse bands are fractured.
- Natural selection processes are bypassed, weakening long-term resilience.

Ethical and Legal Concerns

The WFRHBA prohibits harassment, capture, and interference with the natural lives of wild horses. Fertility control violates this mandate because it:

- Constitutes repeated harassment through darting or capture.
- Alters natural reproduction cycles.
- Results in long-term harm to the herd.

The EA and HWHYMP do not contain adequate analysis of:

- Livestock vs. wild horse impacts: The EA and HWHTMP ignores or downplays the extensive impacts of permitted livestock grazing while exaggerating the impacts of a small wild horse herd.
- Predator control programs: No assessment is made of how predator reduction affects ecological balance and wild horse regulation.
- Water resources: The EA and HWHTMP do not evaluate whether natural water sources are sufficient to sustain the herd, nor does it disclose the impacts of livestock water developments.

- Fire ecology: The EA and HHTMP do not address how wild horses may contribute to fire risk reduction through grazing patterns, nor does it analyze fire suppression and its ecological consequences.
- Recreation and OHV use: The EA and HWHTMP fail to account for increasing off-highway vehicle (OHV) use, trail expansion, and human disturbance in the Heber Territory.
- Climate change: The EA and HWHTMP contain no meaningful analysis of how changing precipitation, drought, or temperature regimes may affect forage, water, or herd viability.

The EA and HWHTMP rely on incomplete and outdated data. The Forest Service has failed to disclose or provide:

- Horse population surveys from 1971.
- Genetic monitoring results.
- Detailed range condition and trend data.
- Livestock grazing records, stocking rates, and utilization levels.
- All FOIA-requested documents that should be part of the administrative record.

Concealing or withholding this information violates NEPA's requirement for transparency and public disclosure.

Example of Political pressure and corruption within the United States Forest Service (USFS).

"I became aware that political pressure has become a factor in the carrying out of some of the policies and aims of the Forest Service. This tendency is, in my opinion, one of the most regrettable things that could happen to a Service that has been so clean and clear of anything like political pollution in the past, and I earnestly hope that this tendency will be abolished before it strangles the real life out of a truly great and good Government"

EARLY DAYS IN THE FOREST SERVICE

by Albert E. Cole

Senior Ranger Deerlodge (Retired 1935)

P.O. Box 67 Deer Lodge, Montana

May 26, 1944

Volume 1 Compiled and Edited by Jessie Thompson circa 1944 U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE

Northern Region Missoula, Montana

<https://foresthstory.org/wp-content/uploads/2017/02/EARLY-DAYS-IN-THE-FOREST-SERVICE-vol1.pdf>

At its most basic level, NEPA requires that the decision-makers, as well as the public, be fully informed, i.e. "that environmental information is available to public officials and citizens before decisions are made and before action is taken." 40 C.F.R. § 1500.1(b). NEPA ensures that the agency "will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience." *Robertson v. Methow Valley Citizens Council*. NEPA requires that all relative detailed environmental information will be available and carefully considered.

In its process of development of a plan to consider the management of wild horses in the Apache-Sitgreaves National Forest, the HWHTMP failed any NEPA analysis regarding this management plan and disclosure of all environmental impacts, and consideration of

reasonable alternatives. Nature is the true manager for these wild lands, flora and fauna. These wild horses have been under the control and effects of nature for hundreds of years and therefore the Heber Wild Horse plan and the ultimate decisions must first take into serious consideration the natural environment that has evolved over the years. Nature is not static and therefore a one-size-fits-all decision now can not possibly fit into a plan to provide a natural occurring thriving ecological balance for the next ten and future years.

The USFS is required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et seq., to prepare Environmental Assessments (EAs) or, if indicated, Environmental Impact Statements (EIS) for any proposed changes to public lands that may have a significant environmental impact. The law directs the agency to identify environmental concerns, consider alternatives including no action at all and take a "*hard look*" at the issues and minimize significant environmental impact. A significant environmental impact includes actions that are likely to be highly controversial or have uncertain effects on the quality of our lives and that affect cultural and historical resources. 40 C.F.R. §1508.27(b). These evaluations as well as land use plans are full of words but have little substance when it comes to stating why wild horses must be removed from their legally designated lands. It is often what is NOT in these documents that is most telling. The USFS failed to include the following information in the current, as written, environmental assessment.

The National Environmental Policy Act (NEPA) requires that the USFS adequately evaluate all potential environmental impacts of proposed actions. To meet this obligation, the USFS must identify and disclose to the public all foreseeable impacts of the proposed action, including direct, indirect, and cumulative impacts. Therefore, I required in my EA public comment, but the current HWHTMP failed to provide analysis and include a thorough consideration of the following significant impacts of this action:

(1) impacts on the genetic viability of the Heber wild Horse Herd population,

- (2) the social, behavioral, and physiological impacts of the stress of capture and captivity on wild horses,
- (3) the social, behavioral, and physiological impacts of population growth control measures on wild horses,
- (4) the impacts on the ecosystem of removing wild horses from these public grazing lands, including a comparison of the impacts of removing and/or reducing grazing by domestic livestock,
- (5) the impacts of helicopter drive trapping on the wild horses and other wildlife,
- (6) the impacts of water/feed trapping on the wild horses and other wildlife,
- (7) the economic impacts of requiring taxpayers to absorb the astronomical cost of these captures and maintaining or disposal of any additional wild horses at USFS holding facilities, and
- (8) the ethical impacts of a wild horse management program that takes wild horses from the open range and dooms them to a lifetime on USFS feedlots and/or being sold with no restrictions or oversight thereby exposing them to the very likely “sold to slaughter” pipeline.

The USFS is required by law to focus on protecting natural, free, wild horse populations on the range as the United States law requires and not rounding up wild horses and confining them on public or private feedlots or selling them to buyers who will sell them to eventual slaughter.

The USFS failed to provide in the EA or the HWHTMP, the actions, results, and impacts including all previous removals and those horses’ “distribution” (where sent or where

sold or other location) of the horses that have previously been captured over the past fifty plus years [since 1971]. This includes horses known to have been killed either by unknown sources or by the USFS. In addition, I required any and all genetic testing done and the concurrent past and/or current genetic viability of the wild horse population discovered by the testing including any done during necropsy.

Significant controversy by wild horse and burro citizen preservation groups centers around the genetic viability of wild horse and burro populations. Small isolated or subdivided populations are subject to reduced genetic diversity (Goodloe, Warren, Cothran, Bratton, Trembicki, 1991). Reduced genetic diversity can “impair vigor, fertility, and disease resistance and could limit ability to respond to environmental variation” (Beardmore 1983, as cited in Goodloe et al. 1991). Other research has shown that significantly reducing populations can result in genetic bottlenecks and within the populations there are hidden population structures that result in behavioral isolation, which further restricts gene flow (Ashley, 2004).

The HWHTMP failed to acknowledge and provide a scientifically approved alternative to the fact that the proposal to limit the wild horse population far below the scientifically accepted threshold would jeopardize the future health and viability of the entire Heber herd.

The HWHTMP proposes an AML (Appropriate Management Level) that is well below scientifically established thresholds for viability. This is not only scientifically indefensible but is also a direct violation of the statutory duty to preserve wild horse herds “in a thriving natural ecological balance” (16 U.S.C. § 1333(a)).

The National Research Council (NRC) of the National Academy of Sciences (2013) found that:

- Minimum herd size for genetic viability is approximately **150–200 animals**.

- Populations below this threshold are at serious risk of inbreeding depression and eventual genetic collapse.
- Gene flow between subpopulations is necessary for long-term survival.

Dr. Gus Cothran, an internationally recognized equine geneticist, has repeatedly stated that herds with fewer than 150 effective breeding animals cannot maintain genetic health.

The International Union for the Conservation of Nature (IUCN) similarly emphasizes that populations below 200 individuals lack the resiliency to adapt to environmental change, disease, or stochastic events.

The HWHTMP failed to provide:

- A credible genetic monitoring plan.
- Periodic sampling and analysis of herd genetic diversity.
- A framework for corrective management if genetic indicators show decline.

This absence is a violation of NEPA's "hard look" requirement (40 C.F.R. § 1502.22) because foreseeable, significant impacts (genetic collapse) are ignored.

According to the Federal Land Policy Management Act, "wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat" (FLPMA, 1976).

The USFS EA and the HWHTMP failed to provide a full environmental assessment that provided clear evidence that wild horses and burros are compromising the "thriving natural ecological balance" and not livestock grazing, hunting, OHV use, water diversions, predator removal, fire, tree removal, climate change, and inadequate management policies as the true reason for these lands if they are not reaching a thriving ecological balance. The USFS office must be equipped to show that any action to remove or disturb the wild horses population (ie. fertility controls) will not cause irreparable harm to the populations and that the plan is not based on biased and illegal planning documents in favor of livestock interests.

The Heber Wild Horse Management Plan fails to provide to the public scientifically supported evidence that the appropriate population size is dependent on the number of breeding adults and other management considerations specific to the population (Goodloe, Warren, Cothran, Bratton, Trembicki, 1991). The International Union for Conservation of Nature or IUCN Species Survival Commission recommends a minimum of 2,500 individuals are needed to maintain a viable wild population (IUCN, 1992). Other research indicates that an "absolute minimum" of 139-185 breeding wild horses are needed to maintain a population that undergoes several removal disturbances during a generation (Singer, Aegnefuss, 2000). This number represents an "absolute minimum" and is not an ideal population size.

The current HWHMP, as written, fails to include equine genetics data, reports or scientific research information from the known equine genetics expert, Dr. Gus Cothran, who over the years has expressed concern regarding the genetic viability of both wild horse and wild burro herd populations. Although in my scoping letter, I provided and required the USFS Heber EA to include the following Dr. Cothran wild horse scientifically supportable genetic facts be included in the EA, the USFS concealed this important information in the HWHTMP.

"Elimination of our Wild Horses and Burros"

<http://www.saveourwildhorse.com/extinction.htm>

Genetic Variation in Horse Populations (excerpts)

5. **BLM Resource Notes No. 27*

NO. 27 DATE 07/20/00

By: E. Gus Cothran, PhD., Department of Veterinary Science, University of Kentucky

One of the major focuses of conservation biology and genetic management of small populations is the preservation of genetic variability. This topic is of relevance to the Wild Horse and Burro Program because the majority of wild equid populations are kept at population sizes that are small enough for the loss of genetic variation to be a real

concern. Because a loss of genetic variability can lead to a reduction in fertility or viability of individuals in a population, it is critical that genetic considerations be included in management plans for wild equid populations. An important aspect of utilizing genetic information in management planning is an understanding of what is meant by the term genetic variation and how genetic variability can be measured in horse and burro populations.

Genetic variation is the amount of inheritable diversity in a population or an individual. It can be observed as morphological variation in size, conformation, or color, but we are actually concerned with variability of genes, whether we can observe an effect of this variation or not. There are several different measures of genetic variation but two of the basic ways it is expressed are heterozygosity, the proportion of genes variable within an individual, and some type of estimate of allelic diversity, such as the total number of genetic types observed within the population.

The USFS EA and the proposed HWHTMP have failed to carefully consider its mandate (The Wild Free-Roaming Horse and Burro Act) with respect to long-term genetic viability of populations of wild horses. The federal regulations and policy state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance this is required with other multiple uses and the productive capacity of their habitat (CFR 4700.0-6).

Self-sustaining refers to the process whereby established populations are able to persist and successfully produce viable offspring which shall, in turn, produce viable offspring, and so on over the long term. The absolute size which a population must attain to achieve a self-sustaining condition varies based on the demographic and sociological features of the herd and these aspects should be evaluated on a case-by-case basis. In many cases it is not necessary that populations be isolated genetic units, but both naturally occurring and management-induced ingress and egress activity can be considered, in order to maintain sufficient genetic diversity within these populations.

Reproductive capacity is, to a large degree, dictated by the genetic fitness of a population. Generally speaking, the higher the level of genetic diversity, within the herd, the greater its long-term reproductive capacity. Inbreeding, random mating (genetic drift), and/or environmental catastrophes can all lead to the loss of genetic diversity within the population. Potential negative consequences of reduced diversity, however, may include reduced foal production and survival, as well as reduced adult fitness and noted physical deformities. Smaller, isolated populations (<200 total census size) are particularly vulnerable when the number of animals participating in breeding drops below a minimum needed level.

Federal regulations and policy state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple uses and the productive capacity of their habitat (CFR 4700.0-6). By definition this requires the USFS to manage to allow established populations to successfully produce viable offspring which shall, in turn, produce viable offspring, and so on over the long term.

The Wild and Free-Roaming Act stipulates that rangeland conditions shall be carefully monitored to allow optimal viable herds of wild horses and burros in a non-prejudicial fashion. This clearly makes it illegal for the USFS to set the arbitrary, population-crippling Appropriate Management Levels (AML's) it is implying in the current Heber EA and HWHTMP documents. The proposed HWHTMP also failed to address the issues of eliminating the blockage or piping of public water sources and the fencing and cross-fencing of the public lands.

Across the West, wild horse herds have been decimated and continued capture and removal and any chemical or surgical procedures of the USFS authorizes and induces cause a high risk of the genetic viability of yet another wild horse herd. Given the repeated and relentless reduction of the wild horse population, the USFS failed to sufficiently analyze the direct, indirect, and cumulative impacts of and proposed

reduction of the Heber wild horse herd, which are by law, in their care and under their congressionally required protection.

As required by NEPA to bring federal action in line with Congress' goals and to foster environmentally informed decision-making by federal agencies, NEPA "establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences." *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir.2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989)). The Heber EA and subsequent proposed HWHTMP failed to include this highly relevant and scientifically supported information in the USFS "hard look". Additionally, these scientific research and reports that I require must become a part of the administrative record for this scoping and the upcoming Heber wild horse plan and also must be provided to the public and the decision makers.

The 2013 National Academy of Science (NAS) report states, "Management of free-ranging horses and burros is not based on rigorous population-monitoring procedures." The USFS has not established the true population numbers of wild horses on their congressionally designated range lands because the agency has failed to provide documented proof that the proposed territory boundaries verify the historic range of the wild horses of the Apache-Sitgreaves National Forest at the time the law was passed in 1971 where America's wild horses and burros existed in 1971 when the congressionally designated WFHBA was enacted. Therefore, there is no justification for any capture/removal or temporary or permanent sterilization of wild horses. None.

The NAS findings clearly state that the agencies who are charged with protecting wild horses and burros have failed to provide accurate estimates of the nation's population of wild horses and burros. Therefore, the NAS cannot conclude that a state of over-population exists and or provide a recommendation for artificial management considerations such as fertility controls to control populations for which the complex population dynamics are currently unknown.

This National Academy of Science [NAS] report reviews the science, and the report goes on to say, "The Wild Horse and Burro Program has not used scientifically rigorous methods to estimate the population sizes of horses and burros, to model the effects of management actions on the animals, or to assess the availability and use of forage on rangelands."

The NAS report continues:

- Management of free-ranging horses and burros is not based on rigorous population-monitoring procedures. Survey methods used to count animals were often inconsistent and poorly documented and did not quantify the uncertainty attached to counts.
- On the basis of information provided to the committee, the statistics on the national population size cannot be considered scientifically rigorous. The links between estimates of the national population size and its actual population surveys – the data that underlie these estimates – are obscure and procedures used to develop population estimates from counts of animals are not standardized and frequently not documented.

The NAS institute said the report lent credence to accusations that the agency has been ignoring science and grossly mismanaging the wild equines, and that it pursued policies that favored corporate livestock grazing interests over the interests of the wild horses and burros. That, it said, was in direct contradiction to the Wild Free Roaming Horse and Burro Act of 1971. National Academy of Science (NAS) report and recommendations.

<http://dels.nas.edu/Report/Using-Science-Improve/13511>

The USFS, per NEPA law, is required to examine a full range of alternatives in the analysis documented in an EA and any subsequent connected document. Reasonable

alternatives are defined as those that are economically and technically feasible, and that show evidence of common sense. The USFS failed to consider reasonable alternatives, including but not limited to:

- (1) A very careful consideration and proof of reasoning when evaluating an AML to meet the needs of the Heber wild horses. The Interior Board of Land Appeals (IBLA) ruled that the term "appropriate management level" is "synonymous with restoring the range to a thriving natural ecological balance and protecting the range from deterioration." The IBLA concluded that "section 3(b) of the Act does not authorize the removal of wild horses in order to achieve an AML which has been established for administrative reasons, rather than in terms of the optimum number which results in a thriving natural ecological balance and avoids a deterioration of the range."
- (2) Proof and examples of the usage and methods to determine usage of wild horses versus livestock usage. Per the unanimously passed United States 1971 Congressional Wild Horse and Burro Act, the land is to be "devoted principally although not exclusively to the wild horses and wild burros' welfare in keeping with the multiple-use management concept of public lands." The Heber wild horse proposal (HWHMP) failed to be consistent with the USFS's responsibilities under the Wild Horse and Burro Act, ensuring that the Heber wild horses are considered as "an integral part of the natural system of public lands" and prioritizing wild horses, not private/corporate non-native sheep and cattle, on this herd management/territory area. In addition, grazing of livestock on public lands is not a right – it is a privilege whereas grazing of wild horses and burros on public land herd areas is legally designated by Congress. The examples and proof that is required must include all livestock fencing and cross-fencing.
- (3) Removal of livestock and livestock fencing which jeopardize the health and wellness of the congressionally designated wild horses on their legal lands. It is

the law whether the USFS or livestock stakeholders like it or not – America was built and has survived almost two hundred and fifty years because we made laws and learned to follow these laws and our ancestors fought and died for American citizens to be able to have the laws of the United States. To ignore the laws of the United States of America is treasonous.

THE LAW

The United States of America Code of Federal Regulations states: § 4710.5 Closure to livestock grazing. 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.

The EA and current HWHTNP failed to include an Apache Sitgreaves USFS interpretation and actions of the above federal law and failed to include actual examples of their treatment of this law and failed to justify why this law is ignored within the Apache Sitgreaves Forest including but not limited to the Heber wild horse lands.

The EA and HWHTMP failed to include an analysis of rangeland expansion/improvements to ensure adequate forage and water resources available for a viable wild horse herd. “Proper management plans “require a strong information base,” including data on the:

- (a) biological potential for the area;
 - (b) numbers and combinations of herbivorous animals that can be safely carried on the area;
 - (c) kinds and amounts of forage and habitat required by the animals;
 - (d) effects of each herbivore species (both wild and domestic) on vegetation and each other;
 - (e) effects on soil and hydrology; and
 - (f) an understanding of the economic and social values associated with the area.”
- (NAS 1982)

In addition, the EA and HWHTMP failed to provide:

- All historical, current and future range monitoring and plans and scientific methods used for this monitoring.
- Any and all PZP or Gona Condarting records for the past ten years including darted mares that subsequently had a live birth foal and all darted mares that have died including basic statistics on those (age at death and reason for death) and all proposed PZP or GonaCon (or any other method of herd population control – including sterilization and castration) plans for the next ten-year plan. Nature is not static and therefore a one-size-fits-all decision done now can not possibly fit into a plan to provide a natural occurring thriving ecological balance for future years.
- An updated and scientifically supported and defensible census of all on the range wild equine that includes all horses born and died in the past ten years and estimated age at death and cause of death. This must include the recent (last ten years) killed horses found in and around the Apache-Sitgreaves National Forest.

- An updated and scientifically supported and defensible census of all off the range (previously removed) Heber wild equine that includes but not limited to all horses born and died in captivity since the 1971 ACT of capture/removals and age at death and cause of death.
- Any and all possible alternatives to any removals or contraceptives or any form of population control (including temporary or permanent sterilization and castration).
- A no action alternative – with detailed scientific review of this alternative – both pro and con.
- A discussion and a detailed map regarding all fencing, gates and cattle guards within and bordering the Heber wild horse lands (Apache-Sitgreaves National Forest) and reason for fencing.
- A scientific discussion regarding how fencing, gates and cattle guards and gates influence the wild horses from accessing any water sources and/or forage resources and how it effects wild equine genetic variability on the Apache-Sitgreaves National Forest.
- The EA and HWHTMP failed to include a section discussing those alternatives that were considered but rejected with a detailed explanation of the reasons for their elimination and not just respond “outside the scope”. Nothing is “outside the scope” if it affects the wild equine and their resources that are congressionally designated on these lands and the NEPA law requires that all relevant scientific information be provided to the American public and that that information be taken a “hard look” at by the decision makers and not swept under the rug.

The EA and HWHTMP failed to provide information which explained to the public as well as to become part of the administrative record, the following:

Because the Heber Wild Horse Territory has never previously had an official plan as is required by law, but is now in the process of putting together this plan, I required in my scoping public comment letter, but the EA and HWHTTMP failed to provide, all past and current documentation, including but not limited to official surveys, notes, maps, photos, and scientifically supportable and unbiased reasoning, for the proposed boundary of the Heber Wild Horse Territory as shown in the USFS HWHTMP proposal map.

The EA and HWHTMP failed to include the required boundary survey data including at least:

- (a) who (name and/or title),
- (c) where (location documentation such as the original survey data and GPS),
- (d) why these particular acres are proposed as the official territory, and
- (e) what explanation does the USFS have for disregarding the WH&B ACT that states ""It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found [in 1971 when the law went into effect], as an integral part of the natural system of the public lands."

The FS document did state "When the territory was established in 1974, a letter from the forest supervisor to the regional forester indicated the territorial use of the area" however a copy of that letter nor any other form of documentation nor the reasoning the regional forester indicated his/her views, is provided to the public. The EA and HWHTMP failed to include a copy of that letter nor any other scientifically substantiated proof of the legal description land survey for the potential Wild Horse "Territory". The USFS just stating their mapped area is the official territory without complete scientific

substantial proof and the survey is arbitrary and capricious and entirely illegal and in violation of federal Title 18 (concealing or falsifying information).

The scoping document did state, "Of the ten interviews completed, all interviewees who had good to extensive knowledge of the territory and area corroborated similar stories, despite numbers and dates occasionally remembered differently... etc" I found this to be interesting, but the interviewees opinions are by no means scientifically supportable and very possibly had a financial interest in these lands. These interviewees likely provided bias statements against the wild horses and in support of livestock grazing on our public lands.

The reliance on anecdotal accounts from livestock permittees such as Doy Reidhead — while refusing to provide documentary evidence — demonstrates concealment of the absence of records. Oral history is not a lawful substitute for legally mandated surveys and maps.

From the interviewee Doy Reidhead's "Oral History" statement, recorded on April 3, 2006, we know that at that time Doy Reidhead held the Gibson Ranch livestock grazing permit (1983-1988). The Forest Ranger and Doy Reidhead worked together to trap and remove 187 unbranded, wild horses that, per Doy Reidhead, had been on the National Forest lands since (at least) 1967. The Forest Ranger did not want the area turned into a "wild horse refuge". The Forest Ranger would have known that horses on the National Forest lands at the time of passage of the Wild Free-Roaming Horses and Burros Act in 1971 fell under the protection of the Act, which states *"It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands."*

This provides evidence that there were wild horses within the Apache-Sitgreaves National Forest prior to and at the time of the ACT (1971). At the time (and

subsequently) the passage of the Act and that Forest Service knowingly unlawfully authorized the removal of 187 wild horses in the 1980's. In addition, this substantiates that a significant number of wild horses were here in 1974 when Forest Service deceptively reported only 7 horses and deceptively delineated the Heber Wild Horse Territory. This was fraud upon the American people who own the Heber wild horses.

These actions clearly appear to have been done with full knowledge and intent. The phrase "lack of evidence is not evidence of absence" emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking. The USFS actions were not only illegal but also demonstrate that the USFS violated federal Title 18 by concealing this information.

Link to Doy Reidhead's Oral History Audio/Video Recording:

[Oral history interview with Doy Reidhead \[with transcript\], April 3, 2006. - Colorado Plateau Digital Archives - Colorado Plateau Digital Collections \(oclc.org\)](#)

The Forest Service EA and HEHTMP failed to provide the raw data and actual official territory survey data done at the time of the ACT (1971) or at least at the time of the notation of the territory (1974) which are the only legal and reliable data that can be acceptable. In the absence of solid data regarding the extent of the wild horses' presence in Apache-Sitgreaves National Forest when the Wild Free-Roaming Horses and Burros Act of 1971 became law, it is highly suspicious and undocumented that they were present on only about just 3 percent (19,700 acres) of the district's 818,651 acres. Restricting them so severely was without a doubt a political accommodation to local ranchers and or other resource consumers with monetary interest. In actuality, the Apache-Sitgreaves National Forest were administratively combined in 1974 and are two million acres which are now managed as one unit from the Forest Supervisor's Office in Springerville - per the USFS website.

Due to the apparent lack of understanding in administrative procedures, the Black Mesa Ranger District and Apache Sitgreaves National Forest determined without documentation that the Heber Wild Horse Territory should be only a sliver of land of about 19,700 acres within the National Forest and ignored the 1971 WH&B ACT that clearly states: "It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found [in 1971 when the law went into effect], as an integral part of the natural system of the public lands." To ignore the laws of the United States is treasonous.

The 1974 boundary, unsupported by evidence, appears to have been established under the influence of livestock operators who sought to minimize wild horse use of the range. This constitutes a clear conflict of interest and undermines the integrity of the process.

- The EA and HWHTMP do not meaningfully consider reducing or eliminating livestock grazing within the Heber Territory.
- By excluding this option, the Forest Service implicitly prioritizes private economic interests over the statutory mandate to protect wild horses.
- This omission is arbitrary and capricious under the APA.

The USFS' HWHTMP is a prime example of "Regulatory Capture" in favor of the domestic livestock industry. Regulatory capture is a process by which regulatory agencies illegally come to be dominated by the industries or interests they are charged with regulating. The result is that an agency, charged with acting in the public interest, instead acts in ways that benefit incumbent firms in the industry it is supposed to be scrutinizing.

Although I appreciate the two charts on page 8 of the scooping document, the populations reported as within the territory are irrelevant since the supposed territory of only about 19 thousand acres is not substantiated by any surveyed areas, as explained above. The Heber wild horses are by law all of the wild horses that wander or migrate from the National Forest including their progeny that have used lands of the National

Forest on or after December of 1971 or do hereafter use these lands as all or part of their habitat. Therefore, the correct estimate of the Heber wild horses within their legal Apache-Sitgreaves National Forest range as of 2017 was at the least within the span of 270 to 420. That range, then is the only scientific data that can be used to determine the required appropriate management level (AML).

§ 222.60 Authority and definitions.

(a) *Authority*. "The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System." (13) "Wild free-roaming horses and burros mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat."

Tables below are from the USFS:

- The USFS HWHMP has failed to give any information of evidence as to their Table 2, "Outside the Territory" in the tables. This is a violation of the APA. The clarity requirements under the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA) primarily aim to ensure that federal agencies provide clear, understandable, and well-reasoned explanations for their actions. The APA establishes the foundational rules for agency conduct, which are then applied to NEPA's specific environmental review process. The Heber Wild Horse Territory Plan, as currently written, fails to follow the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA) laws. The APA law requires, among other things, Clear definitions: Any specialized terms used must be defined either within the regulation itself or in the governing statute, so they are not vague to those impacted.

Table 1. Horse-specific survey within the Heber Wild Horse Territory, May 2014, February 2015, and April 2017

Date of survey	Horses observed	Estimated Population ¹
5/12 to 14/2014	18	16 to 21
2/17 to 19/2015	16	9 to 32
4/18 to 19/2017	27	22 to 51

¹ Based on photo mark-recapture methodology (Lubow and Ransom 2009)

Table 2. Horse-specific survey outside the Heber Wild Horse Territory, May 2014, February 2015, and April 2017

Date of survey	Horses observed	Estimated Population ¹
5/12 to 14/2014	184	177 to 258
2/17 to 19/2015	201	204 to 294
4/18 to 19/2017	272	270 to 420

¹ Based on simultaneous double-count methodology

The Heber wild horse territory is said to count on 19,700 acres in the Black Canyon area southwest of Heber, Arizona and to have been established in 1974, three years after the 1971 passage of the Wild Free-Roaming Horses & Burros Act (WFHBA). The criterion for establishing the territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA. Any interpretation of this law must take this to mean the wild horses' and burros' year-round habitat, not just where they were at the moment of the act's passage in Congress. I legitimately question that this territory can justifiably be acknowledged as only 19,700 acres and the EA and HWHTMP failed to provide any documentation that there was not a greater wild-horse-occupied habitat such as the entire Apache-Sitgreaves National Forest. Legal land surveys have been done and are available for over two-hundred years in the United States and there is no reason or excuse for the USFS to not provide this data to the public. To ignore or conceal this vital documentation is a violation of Federal Title 18. Title 18 (18 U.S.C. § 1001). *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States, even by mere denial 18*

U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations Current through Pub. L. 114-38. (See Public Laws for the current Congress.) US Code Per the US Department of Justice, the purpose of Section 1001 is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from" concealment of material facts and from false material representations.

The EA and HWHTMP have failed to supply documentation of the total lands where wild horses occupied within the Apache Sitgreaves National Forest at the time of the passage of the Wild Horse and Burro Act. The agency therefore must review the proposed territory boundaries to verify the historic range of the wild horses of the Apache-Sitgreaves National Forest at the time the law was passed in 1971, America's wild horses and burros as they existed in 1971 when the congressionally designated WFHBA was enacted.

ARBITRARY AND CAPRICIOUS

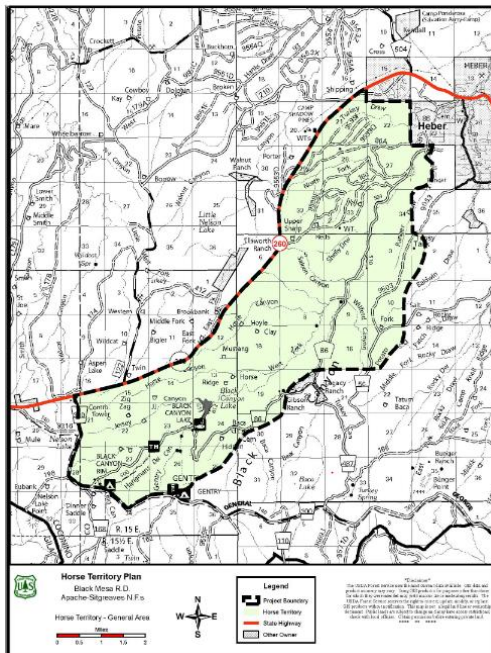
Absence of a rational connection between the facts found and the choice made.

A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law. 5 USC. 706(2)(A) (1988).

When an agency makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and can be invalidated by an appellate court on that ground.

To determine whether the Forest Service action is arbitrary and capricious, the court will determine whether the Forest Service "consider[ed] [all] of the relevant factors".

Below is the map of the proposed Heber Wild Horse Territory which was not based upon consideration of relevant factors and so is arbitrary, capricious, and an abuse of discretion by the Apache-Sitgreaves National Forest.



Above map suggests the Heber Wild Horse Territory is only a small portion of the actual lands designated to the wild horses by the 1971 Wild Horse and Burro ACT which states “the criteria for establishing a wild horse territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA”. Therefore, the actual Heber wild horse territory includes all of the Apache-Sitgreaves National Forest. The HWHTMP must be revoked, as currently written, and revised to include the legal “where found” evidence.

The proposed area of the Heber Wild Horse Territory is located near the town of Heber in northeast Arizona, and is suggested but unverified as including but limited to approximately 19,700 acres within the Apache–Sitgreaves National Forest which is approximately 2,760,000 acres which run along the Mogollon Rim and the White Mountains in east-central Arizona and into the U.S. state of New Mexico. The EA and HWHTMP have failed to acknowledge the entire legal Heber wild horse area of at least 818,651 acres of the Apache-Sitgreaves National Forest as is required by the WH&B Act

which states, “the criteria for establishing a wild horse territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA”.

Per the rules of Federal Title 18, [Making false statements (18 U.S.C. § 1001)] the actual documented and verified boundary of a Heber Wild Horse Territory is a priority and an actual wild horse population and/or AML cannot be considered accurate or even worthy of significance until the USFS provides original legal documentation such as surveys with longitude and latitude of the lands occupied by wild horses at the time of the passing of the ACT of 1971. If and when actual true legal survey documentation of wild horse occupation at the passing of the Wild Horse and Burro ACT is provided to the public then at that time wild horse populations and AML can be taken into account.

The Interior Board of Land Appeals (IBLA) has defined the appropriate management level as the “optimum” number of wild horses or burros which results in a thriving natural ecological balance and avoids a deterioration of the range. (109 IBLA 119; also reference Dahl vs. Clark, supra at 592). It is usually expressed as a range of numbers. Management Area Direction Apache-Sitgreaves National Forests Land Management Plan (Admin. Change #2, August 15, 2016) 119 level. As directed in the regulations at 36 CFR 222. 61(a)(1), the goal is to maintain a thriving ecological balance within the Apache-Sitgreaves National Forests Land.

Once a legal documented boundary is set, the establishment of an appropriate management level (AML) can be proposed by formulating the range of numbers of animals that will result in a thriving natural ecological balance and avoid deterioration of the range. The higher and lower limit of the appropriate management level for horses within the Heber Wild Horse lands must be based on an in-depth analysis of population inventory, resource monitoring, and other available data.

From the EA:

“In 1974, when the Heber Wild Horse Territory was designated, it was purported there

was a population of six mares and one stallion occupying the territory. Throughout the years, no actual scientific data or monitoring was documented on the population. In 1993, the population was purported to be two mares." The phrase "lack of evidence is not evidence of absence" emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking.

[Purport definition: to have the often-specious appearance of being, intending, or claiming (something implied or inferred)]

[Specious definition: having a false look of truth or genuineness, having deceptive attraction or allure.]

Obviously, since the USFS admits "Throughout the years, no actual scientific data or monitoring was documented on the population." then the correct estimate of the Heber wild horses within their legal Apache-Sitgreaves National Forest range as of 2017 was within the legitimate span of at least 270 to 420 wild Heber horses. That range span, then is the only scientific data that can be used to determine the required appropriate management level (AML).

A thriving natural ecological balance avoiding deterioration of the Apache-Sitgreaves National Forest lands must also include the usage and needs of wildlife as well as domestic livestock on these lands. Although domestic livestock are permitted to graze the public lands portions of the Heber wild horse herd area they are only permitted and not designated as are the wild horses. Wild horses and burros are legally **DESIGNATED** on a wild horse Territory (USFS) or Herd Management Area (BLM) and livestock are only **PERMITTED**.

Definition of the word "designated" is to "set aside for" or "assign" or "authorize".

Definition of "permit" is to "allow" or "let" or "tolerate".

The wild horse (and wild burro) lands and resources are set aside for, and assigned and authorized for, the use of wild horses (and burros) whereas the livestock is only allowed

and tolerated and let to use the public range resources. While commercial livestock grazing is permitted on public lands, it is not a requirement under the agency's multiple use mandate as outlined in the Federal Land Policy and Management Act of 1976 (FLPMA). Public land grazing clearly is a privilege not a right, while the USFS are mandated by law to protect wild horses (and burros). "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States.

The EA and HWHMP failed to complete a valid and scientific assessment including the explanation of the methods used for the assessment, of the past and current animal unit months (AUMs) for the Heber wild horse area lands including AUMs for livestock, wild horses and other wildlife. This information must be evaluated and presented to the public for review and to conceal this data is a violation of the federal Title 18.

In addition, the law provides the alternative of legal reduction of private/corporate domestic livestock grazing in the Apache-Sitgreaves National forest wild horse lands, pursuant to 3 C.F.R. 4710.3-2 and 43 C.F.R. 4710.5(a), in order to accommodate the current wild horse population level. The USFS has authority to reduce livestock grazing pursuant to 43 C.F.R. 4710.5 in order **"to provide habitat for wild horses or burros."**

As the district court explained in *Dahl v. Clark*, the test as to appropriate wild horse population levels is whether such levels will achieve and maintain a thriving, ecological balance on the public lands. Nowhere in the law or regulations is the USFS required to maintain any specific numbers of animals or to maintain populations in the numbers of animals existing at any particular time with the exception of the number of wild horses on these lands at the passage of the WFHBA.

The only law that requires the USFS to maintain wild horse populations is the 1971 Congressional law. The law must be followed and the law states, "that wild free-

roaming wild horses [and burros] are to be considered in the area where presently found, as an integral part of the natural ecosystem of the public lands". Thus, an AML established purely for any USFS administrative reasons because it was the level of the wild horse and/or burro use at a particular point in time or imagined to be an advantageous population for the USFS cannot be justified under statute.

The NEPA law requires that all relevant scientific information be provided to the American public and that the information be taken a "hard look" at by the decision makers. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet.

The wild horse AML being proposed for the plan must be unbiasedly evaluated to accommodate the current and future populations that are congressionally designated to live on the Apache-Sitgreaves National Forest lands. The law states, and it is within the USFS ability to study the wild horse AML for the Heber wild horses by assessing the entire legal Apache Sitgreaves National Forest land and resources within the habitat of the Heber wild horses.

By law the USFS can and should "close appropriate areas of public lands to grazing use by all domestic livestock, if necessary, to provide habitat for wild horses; to implement herd management actions; or to protect wild horses or burros from disease, harassment, or injury". 43 C.F.R. § 4710.5. It is the United States federal law. To ignore the laws of the United States of America is treasonous.

Designated wild horse (and burro) herd area ranges are to be devoted principally to the protection and preservation of wild horses (or burros). This means that other uses may be constrained to the extent necessary to provide fully for the wild horses' (and wild burros') welfare. This obviously will require reductions or closure to livestock grazing

regardless of the political influence or threats or bullying by the grazing permit holders or others with a financial interest in the legal wild horse and burro land. The definition "range" means the amount of land necessary to sustain an existing herd or herds [as of the passing of the ACT of 1971] of wild free-roaming horses and burros [in 1971].

The EA and HWHTMP failed to consider alternatives that would mitigate any need to remove any of the wild horses either temporarily or permanently and the EA failed to provide the following specific data and a complete analysis of accommodation of the present wild horse without removals; pursuant to CFR 43 C.F.R. 4710.5(a).

The EA and HWHTMP failed to include a complete and detailed breakdown of range monitoring data for at least the past ten years, including data distinguishing wild horses from wildlife and livestock impacts and the methods the USFS used to deduce their findings; all of which must be provided to the American public in the EA. Without this the EA and any subsequent action will be in violation of the NEPA requirements and thus illegal. Keep in mind that to ignore or falsify this data is a violation of Title 18. Title 18 (18 U.S.C. § 1001). *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States, even by mere denial 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations Current through Pub. L. 114-38. (See Public Laws for the current Congress.) US Code Per the US Department of Justice, the purpose of Section 1001 is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from" concealment of material facts and from false material representations.*

The EA and HWHTMP failed to include the research and monitoring data and the scientific methods used to differentiate between habitat usage of wild horses versus

wildlife versus livestock. This monitoring research and its subsequent report data and summary must include all information on all *methods* used by the USFS to determine and differentiate between wild horse usage and wildlife usage and livestock usage of forage and water usage in at least the past ten years. Details:

- 1) Water usage designation
 - a) Foraging wildlife
 - b) Wild horses
 - c) Domestic livestock
- 2) Forage usage designation (AUMs)
 - a) Foraging wildlife
 - b) Wild horses
 - c) Domestic livestock
- 3) Water and land usage designation for all other current or likely “multiple uses” including but not limited to:
 - a) Mining
 - b) Geothermal
 - c) Solar
 - d) Wind turbine
 - e) Oil and Gas and Coal
 - f) Timber
 - g) Off-highway vehicles
 - (h) Sold/leased to outside communities or individuals or companies

The EA and HWHTMP failed to provide the impartially analyzed following specific information and alternatives and data and scientific methods of deduction:

The reduction or termination of livestock grazing for the next ten years instead of reduction of wild horse numbers in the Heber herd area lands of the Apache-Sitgreaves National Forest.

The EA failed to include the alternative of legal reduction of private/corporate domestic livestock grazing in the HMA, pursuant to 3 C.F.R. 4710.3-2 and 43 C.F.R. 4710.5(a), in order to accommodate the current wild horse population level. The USFS authority to reduce livestock grazing pursuant to 43 C.F.R. 4710.5 in order "to provide habitat for wild horses or burros." There are no restrictions on usage of this authority as it is fully available to the USFS as an option versus the policy of commencing and then continuing a cycle of perpetual roundups and removals and sterilization procedures.

The EA and HWHYMP failed to provide a complete, valid, and scientific assessment including the explanation of the methods used for the assessment, of the past and current animal unit months (AUMs) for the Apache-Sitgreaves National Forest Heber wild horse area lands including for livestock, wild horses and other wildlife. This assessment must be evaluated and presented to the public for review and the scientifically substantiated methods used to assemble and analyze this data. The wild horse lands and resources are set aside for, and assigned and authorized for, the use of wild horses (and burros) whereas the livestock is only allowed and tolerated and let to use the public range resources. While commercial livestock grazing is permitted on public lands, it is not a requirement under the agency's multiple use mandate as outlined in the Federal Land Policy and Management Act of 1976 (FLPMA). Public land grazing clearly is a privilege not a right, while the USFS are mandated by law to protect wild horses (and burros).

The EA and HWHTMP failed to include any genetic sampling data and analysis, if any, of the Heber wild horses done since the passing of the WH&B act and if no research was done then the reasoning behind that decision including USFS's presumption that there was not a need for such research.

The EA and HWHTMP failed to provide all environmental impacts and analysis of any proposal to make or re-affirm private/corporate domestic non-native livestock grazing

as the predominant use in the Heber wild horse area including all details of research studies and methods of research and results of these studies.

The EA and HWHTMP failed to include an analysis of the recreational use impacts due to lost opportunities for wild horse viewing, independent research and photography, and human need for solitude and meditation; all of which are popular public activities in this Heber wild horse area, including all details of research studies and methods of research of these studies.

The EA and HWHTMP failed to provide the economic impacts of the proposed action, including lost revenues, costs for capture and short term and long term or lifetime holding of horses or capture and disposal and any sterilization procedures vs. the economic benefits to American taxpayers of reducing or eliminating taxpayer subsidized livestock grazing in this area including all details of research studies and methods of research of these studies.

The EA and HWHTMP failed to provide to the public, information of any and all livestock grazing allotments including but not limited to the allotment name, number of acres, number of AUMs, number of livestock and type (cattle/sheep/other) and grazing dates as well as a map of all the grazing allotments in the Apache-Sitgreaves National Forest and in particular the mapped portion of the proposed Heber wild horse lands.

The EA and HWHTMP failed to provide the following (text box) study (previously provided to you) be included along with the USFS' rationalization to continue to trumpet the leasing of public lands as an economical feasible and profitable-to-the-American-public plan when, as shown in the below study, the livestock grazing "Cost Taxpayers \$1 Billion Over Past Decade".

January 28, 2015

Contacts: Randi Spivak, (310) 779-4894, rspivak@biologicaldiversity.org
Christine Glaser, (312) 613-2164 or cglaser1812@gmail.com
Chuck Romaniello, chuckromaniello1945@gmail.com

Study: Livestock Grazing on Public Lands Cost Taxpayers \$1 Billion Over Past Decade

WASHINGTON— A new [analysis](#) finds **U.S. taxpayers have lost more than \$1 billion over the past decade on a program that allows cows and sheep to graze on public land**. Last year alone taxpayers lost \$125 million in grazing subsidies on federal land. Had the federal government charged fees similar to grazing rates on non-irrigated private land, the program would have made \$261 million a year on average rather than operate at a staggering loss, the analysis finds.

The study, *Costs and Consequences: The Real Price of Livestock Grazing on America's Public Lands*, comes as the Obama administration prepares Friday to announce grazing fees for the upcoming year on 229 million acres of publicly owned land, most of it in the West. The report was prepared by economists on behalf of the Center for Biological Diversity.

"Public lands grazing has been a billion-dollar boondoggle over the past decade and hasn't come close to paying for itself," said Randi Spivak with the Center for Biological Diversity. "Livestock owners pay less to graze their animals on publicly owned land in 2014 than they did in 1981. Today the monthly cost of allowing a cow and calf to graze on federal lands is about the equivalent of a can of dog food. This damaging and expensive grazing program has been broken for years and needs to be fixed. Taxpayers, and the land we all own, deserve better."

The federal subsidy of the grazing program goes beyond the direct costs and fees. There are vast indirect costs to grazing on federal lands, including the government killing of native carnivores perceived as threats to livestock, wildfire suppression caused by invasive cheat grass facilitated by cattle grazing, and expenditure of U.S. Fish and Wildlife Service funds from protecting other species threatened by livestock grazing. "The full cost of the federal grazing program is long overdue for a complete analysis," the study said.

https://www.biologicaldiversity.org/news/press_releases/2015/grazing-01-28-2015.html

The EA and HWHTMP failed to provide to the public scientifically supportable and defensible research, reports, and methods the USFS used to obtain the data for the past fifty years (since the passing of the Wild Horse and Burro Act) for the Apache-Sitgreaves National Forest including the following:

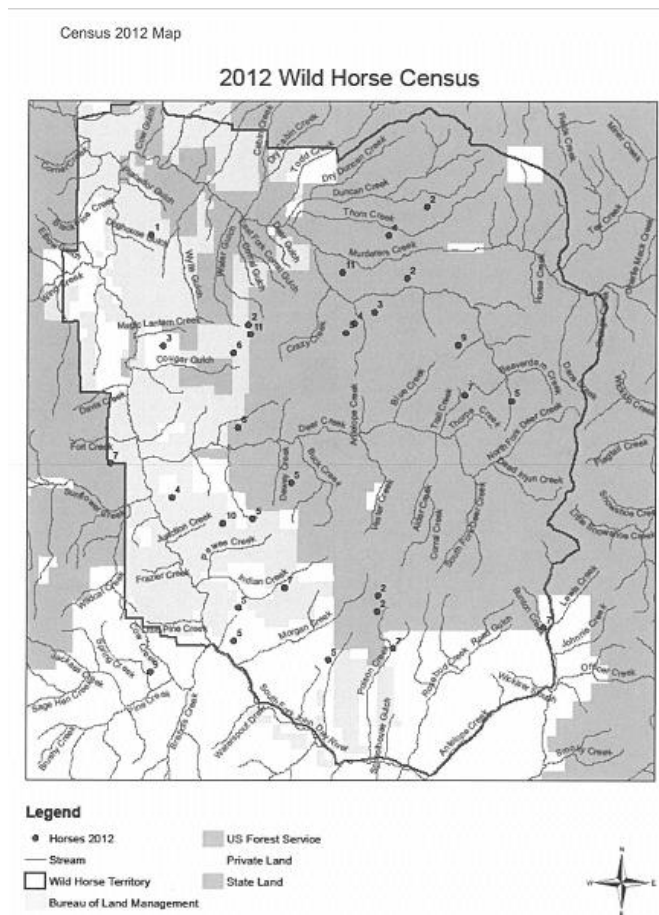
- *Forage production
- *Carrying capacity
- *Acres allocated per Animal Unit Month
- *Current and historical grazing allocations for livestock
- *Temporary or extended grazing permits issued in the last 10 years
- *Total available water sources in the area
- *How many water sources have been fenced and why
- *Miles of fencing in the area and purpose of this fencing, including detailed map
- *Estimated total big game species populations in the area; list of each major species and estimated current population of each species the USFS has taken into consideration for habitat in conjunction with the Fish and Wildlife Service.
- *How the USFS distinguishes wild horse use from other rangeland users and methods and results of these studies.

The NEPA law requires that all relevant scientific information be provided to the American public and that that information be taken a “hard look” at by the decision makers. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet.

The EA and HWHTMP failed to include scientifically supportable, credible, and defensible annual populations of the wild horses for the past 50 years (since the passing of the Wild Free-Roaming Horse and Burro Act). This scientific data must include but not be limited to both aerial and on the ground investigation including raw

data and reports and photos and video and the names and affiliation (member of the public or USFS employee or other) of those involved with the investigations.

Below is an example of the kind of census maps (showing location of wild horses during census taking) that the EA failed to provide to the public.



The EA and HWHYMP failed to provide the proposed designation of the Heber wild horse area AML and scientifically supported research to determine the optimum number of wild horses that would maintain the range in a thriving natural ecological balance. The EA and HWHYMP failed to provide evidence that the USFS have engaged in current range assessments adequate to allow the USFS to conclude that ONLY by lowering the current wild horse AML and/or removing any proposed number of wild Horses from the Heber wild horse herd would achieve that optimum number and return and maintain the range to its natural ecological balance.

While documentation is not the end of the NEPA process, it is important that a reasonably good job of communicating the purpose and need of the project; the values used to develop and compare alternatives; the results of [accurate] analysis for direct, indirect impacts, and cumulative impacts; and mitigation as required by relevant regulation. It provides [accurate] evidence to the public and participating agencies [showing] a commitment to, and satisfaction of the NEPA requirements. Environmental documentation must communicate clearly [and accurately] the results of project analysis and the subsequent decisions.

<http://www.environment.fhwa.dot.gov/projdev/qaimpact.asp>

The EA and HWHTMP failed to give a detailed explanation to the public of any inequitable allocation of resources in the Apache Sitgreaves Heber wild horse area to livestock grazing and the agency's response to the fact that wild horse removals can cost-effectively be avoided by accommodating the current wild horse population levels through or complete downward adjustments to livestock grazing pursuant to 43 CFR 4710.5, which states, "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....Closure may be temporary or permanent."

The cost to tax-paying Americans of grazing domestic livestock on public lands is heavily researched with the following results:

"The Government Accountability Office (GAO) has reported the federal government spends at least \$144 million each year managing private livestock grazing on federal public lands, but collects only \$21 million in grazing fees—**for a net loss of at least \$123 million per year**".

[http://www.taxpayer.net/user_uploads/file/factsheet_Grazing_Fiscal_Costs\(3\).pdf](http://www.taxpayer.net/user_uploads/file/factsheet_Grazing_Fiscal_Costs(3).pdf)

In addition to the concerns expressed above, the EA and HWHTMP failed to address and analyze the following impacts and concerns:

- A full disclosure of whether any member of the USFS management team for this project has any personal or financial interest (including but not limited to any interest in any grazing allotment within the Apache Sitgreaves National Forest) in the proposed plan. It is imperative that the USFS ensure that there are no conflicts of interest and that it has established high scientific standards before spending hundreds of thousands of taxpayer dollars on this proposal. (see regulatory captured agency)

“Regulatory Capture” is a form of political corruption that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating. Regulatory capture is a form of government failure; it creates an opening for firms to behave in ways injurious to the public. The agencies are called "captured agencies".

Government agencies tend to elevate social, cultural, and political concerns over the natural environment. Congress designed NEPA to achieve environmentally positive results through a compulsory procedural mechanism, NEPA simply prohibits uninformed, not unwise, agency decisions (Nowlin & Henry, 2008). The process is required to weigh the benefits versus the wild horse financial costs of the project versus the “no action” alternative.

The EA and HWHTMP failed to explain in detail the census numbers and methods of gathering the census documentation (titles of persons gathering data and dates and where horses were located and other data such as photos) over the past 50 years (since 1971).

In addition, the EA and HWHTMP failed to provide an explanation and documentation of the scoping document that states that a census was completed in 1974 and only found seven wild horses on the forest lands. The phrase "lack of evidence is not evidence of absence" emphasizes that just because something has not been proven to exist does not mean it does not exist; this principle is crucial in scientific inquiry and critical thinking.

The EA and HWHTMP failed to provide a copy and detailed explanation of the following FS document (see below) where it clearly states that ("White Mt Apache Horses") wild horses were captured and sold at public auction. This explanation must include the proof that the horses captured and sold to auction were from the nearby reservation as is stated in this document and not part of the Heber Wild Horses who were protected by the WH&B ACT. Who made that decision and was that person punished for this illegal activity and what proof does the USFS have that the captured and sold horses were actually from the reservation? If these horses truly were "reservation horses" that were found to have wandered onto public lands then why were they not returned to the reservation authorities? Who had the authority to sell them to auction? These horses were very probably part of the legally designated wild and legally protected Heber horses that by law were to be protected. It also appears that the capture and selling to auction of these horses was the reason that the official census of 1974 showed only seven horses.

The EA and HWHTMP failed to provide to the public the legitimacy of this capture and removal and therefore the truthfulness that the actual population of the Heber wild horses in 1974 was only seven. Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet. Title 18 (18 U.S.C. § 1001). *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly*

and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction".

Buckskin Allotment
Gentry
Must Tank
Helen

RANGE INSPECTION REPORT

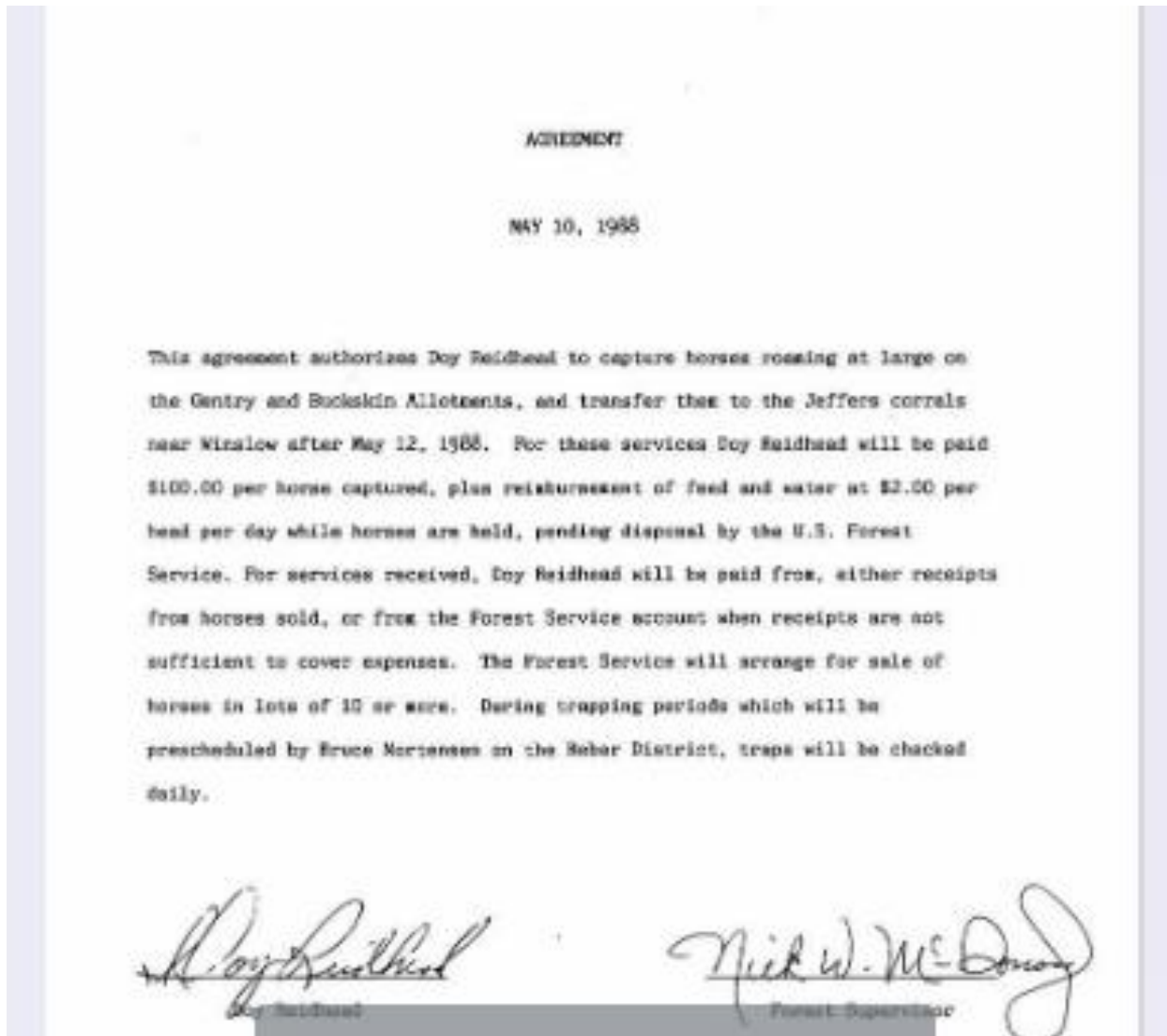
Dates of inspection 7-23 1974
7-24 1974 Approx. % of range seen 50 %

1. Were weather conditions favorable or unfavorable for plant growth? Unfavorable
Dry Spring and very light Summer Rain
2. Was forage production average, above or below average? Below Average
3. Percent of current utilization of key species on primary range 40%
4. Utilization obtained by ocular estimate, plant count or clipping Ocular
5. General distribution of livestock over allotment Very Good - Permittee
did excessive water hauling this year to scatter the cattle
6. Action taken to correct poor distribution —
7. Salting practice on feed or on water? On feed
8. Problem areas None observed
9. Permittee plan; status, use, changes needed w/dates (including improvements).
Permittee has good management plan and it is functioning quite well.
10. Calf Crop (% tallied on allotment during inspection) 90%
11. Excess (permittees) or trespass (not permittees) suspected? If yes, why; and what action is needed to correct? White Mountain Apache Horse Trespass
Case written - Horse rounded up and sold at public Auction.
12. Allotment analysis - give current status of preparation Needs Re-Analysis
13. Were conditions taken up with permittee? Yes; allotment ridden with permittee? Yes; his reaction: Favorable
14. Is season satisfactory? Yes
15. Wildlife conditions Only medium growth on barrens - very little wildlife observed.

Complete reverse side
Supplement w/memorandum if necessary
Form R3-2200-9
April 1959

Bruce J. Mortenson
Forest Officer
(Copy to SO; copy for Allot. File;
copy to permittee when advisable)

I provide below further documentation of USFS illegal activities and violation of the Wild Horse and Burro Act on the Apache-Sitgreaves National Forest Heber wild horse lands but this was concealed from the public in the EA and the HWHTMP which is a violation of Title 18.



231

AGREEMENT

MAY 10, 1939

This agreement authorizes Steven Bragg to capture horses roaming at large on the Gentry and Buckskin Allotments, and transfer them to the Sun Valley Auction after May 12, 1939. For these services Steven Bragg will be paid \$100.00 per horse captured, plus reimbursement of feed and water at \$2.00 per head per day while horses are held, pending disposal by the U. S. Forest Service. For services received, Steven Bragg will be paid from, either receipts from horses sold, or from the Forest Service account when receipts are not sufficient to cover expenses. The Forest Service will arrange for sale of horses in lots of 10 or more. During trapping periods which will be pre-scheduled by Bruce Mortensen on the Haber District, traps will be checked daily.


Steven Bragg


Forest Supervisor

To understand the consequences of violating the Wild Horse and Burro Act, consider the following points:

- Violators may face fines up to \$2,000.
- Criminal penalties can include imprisonment for up to one year.
- Civil penalties may be imposed for unauthorized capture or removal.

The EA and HWHTMP failed to examine and include analysis of the rangeland to ensure adequate forage and water resources available for all wildlife in the proposal area.

“Proper management plans “require a strong information base,” including data on the:

- (a) biological potential for the area;
 - (b) numbers and combinations of herbivorous animals that can be safely carried on the area;
 - (c) kinds and amounts of forage and habitat required by all the animals; examine
 - (d) effects of herbivores on vegetation and each other;
 - (e) effects on soil and hydrology; and
 - (f) an understanding of the economic and social values associated with the area.”
- (NAS 1982)

In addition, the EA and HWHTMP failed to include:

- a) All historical, current and future range monitoring and plans.
- b) An updated and scientifically supported and defensible census of all on the range wildlife, including wild horses, born and died in the past ten years and age at death and cause of death. Approximation numbers are acceptable if scientifically supportable.
- c) A no action alternative – with detailed scientific review of this alternative – both pro and con.
- d) A discussion and a detailed map regarding and including all current and proposed fencing, gates and cattle guards within the proposal area and reason for the fencing.
- e) A scientific discussion regarding how fencing and cattle guards and gates influence the wildlife, including wild horses and burros, from accessing any water sources and forage sources and how these fences effect wildlife, including wild horses, genetic health and variability.
- f) The EA and HWHTMP failed to include a section discussing those alternatives that were considered but rejected with a detailed explanation of the reasons for their

elimination and not just respond "outside the scope". Nothing is "outside the scope" if it affects the public lands and the NEPA law requires that all relevant scientific information be provided to the American public.

The NEPA law requires that all relevant scientific information be provided to the American public and that that information be taken a "hard look" at by the decision makers. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet.

The EA and HWHTMP failed to include a complete and detailed breakdown of range monitoring data for at least the past ten years, including data distinguishing wildlife and livestock impacts; all of which must be provided to the American public. Without this the EA and any subsequent action will be in violation of the NEPA requirements and thus illegal. Keep in mind that to ignore or falsify this data is a violation of Title 18. Title 18 (18 U.S.C. § 1001). *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States, even by mere denial 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations Current through Pub. L. 114-38. (See Public Laws for the current Congress.) US Code Per the US Department of Justice, the purpose of Section 1001 is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from" concealment of material facts and from false material representations.*

The EA and HWHTMP failed to include the research and monitoring data and the scientific methods used to differentiate between (1) wild horses versus (2) all other

wildlife versus (3) livestock. This monitoring research and its subsequent report data and summary must include all information on all methods used by the USFS to determine and differentiate between wild horse usage and wildlife usage and livestock usage of forage and water usage for the last 50 years (date of the Wild Horse and Burro ACT).

Although there are numerous listed reasons that a valid grazing permit or preference can be reduced, cancelled or suspended by the federal agencies, those reasons can be placed in the category of either (1) the permittee's violation of the terms or conditions contained in his grazing permit, federal regulation or State or federal law or (2) damage or destruction to the forage resources or (3) legal reduction of private/corporate domestic livestock grazing in the legal wild horse lands, pursuant to 3 C.F.R. 4710.3-2 and 43 C.F.R. 4710.5(a), in order to accommodate the current wild horse population level.

The EA and HWHTMP failed to provide the following alternatives be impartially analyzed:

- Failed to include substantiated data on any proposed reduction or termination of livestock grazing for the next ten to twenty years. Wild horses and burros are legally *DESIGNATED* on the Herd Management Areas and Herd Areas (HMA & HA) and livestock are only *PERMITTED*. Definition of the word "designated" is to "set aside for" or "assign" or "authorize". Definition of "permit" is to "allow" or "let" or "tolerate". The wild horse and wild burro legally designated lands and resources are set aside for, and assigned and authorized for, the use of wild horses and burros whereas the livestock is only allowed and tolerated and let to use the public range resources.
- While commercial livestock grazing is permitted on public lands, it is not a requirement under the agency's multiple use mandate as outlined in the Federal

Land Policy and Management Act of 1976 (FLPMA). Public land grazing clearly is a privilege not a right, while the USFS is mandated by law to protect wild horses and burros. The EA and HWHTMP failed to provide a complete, valid and scientifically supportable assessment including the explanation of the methods used for the assessment, of the past and current and future planned animal unit months (AUMs) for the lands designated in the EA and HWHTMP including allotments for livestock, wild horses and other wildlife be evaluated and presented to the public for review.

Unfortunately, current policies virtually give away access to valuable grazing grounds for pennies on the dollar. As the gap between market rates and the federal rate has gotten worse over time, taxpayers have been losing out on increasingly more revenue. The Federal grazing fee for 2021 was, and continues to be in 2025 \$1.35 per animal unit month (AUM) for public lands administered by the Bureau of Land Management and \$1.35 per head month (HM) for lands managed by the USDA Forest Service. Here we are again with the giant spidering tentacles of the cattle mafia trying to strongarm, coerce, and purge public lands from all of us for their own greed.

Costs to administer the grazing fee program exceed the money collected, resulting in taxpayer subsidies of about \$100 million per year. More than 200 million acres of federal public lands in the western United States are used for grazing cattle and sheep. Most grazing programs — on grasslands, deserts, sagebrush steppe and national forests — are administered by the Bureau of Land Management and the U.S. Forest Service.

Federal grazing policy caters to only a fraction of the livestock industry. The vast indirect costs of grazing on federal lands include the killing of important native predators such as wolves and bears in addition to the livestock's damage to soil and rivers. It's a bad deal for wildlife, public lands and American taxpayers. The full cost of the federal grazing program is well overdue for a complete analysis. At the end of the

day, the use of federal lands by any interest—rancher, miner, driller, should not come at the expense of federal taxpayers. No one wins when we give away the store.

The USFS failed to give a detailed explanation of any inequitable allocation of resources in these lands being reviewed in the EA and HWHTMP including but not limited to timber and livestock grazing. The cost to tax-paying Americans of grazing domestic livestock on public lands is heavily researched with the following results:

“The Government Accountability Office (GAO) has reported the federal government spends at least \$144 million each year managing private livestock grazing on federal public lands but collects only \$21 million in grazing fees—**for a net loss of at least \$123 million per year**”.

Considering that almost all rangelands under USFS and BLM management fail to meet minimum ecological health standards primarily due to livestock grazing, the assumption that livestock grazing can “restore” these lands is more than highly problematic. Most ecologists would tell you that eliminating livestock production on these federal lands would do far more for their ecological health than any benefit from livestock grazing designation. Another unquestioned assumption is the premise that livestock is a “tool” to improve the ecological health of the land. A hammer is a tool as well, but if it is used to swat mosquitoes on your face, your face will suffer.

I am repulsed by the USFS proposal to conduct any surgical or chemical sterilization (including temporary and permanent) experiments on any captured wild mares or stallions or foals. These procedures are both unjustified and contrary to the core intent of the Wild Free-Roaming Horses and Burros Act (WFHBA) which clearly states, “*It is the policy of Congress that [they] shall be protected from capture, branding, harassment, or death.*” The key words of this law are “protected from” and THAT is the job the USFS employees are required to do. Therefore, I require the USFS stop and bring to a halt any current or future plans or attempts to proceed with these unnecessary and politically driven and dangerous and possibly deadly procedures. —

The United States District Court, D. Columbia ROSEMARY M. COLLYER, District Judge. stated: "It would be anomalous to infer that by authorizing the custodian of the wild free roaming horses and burros to "manage" them, Congress intended to permit the animals' custodian to subvert the primary policy of the statute by harassing and killing and capturing and removing from the wild the very animals that Congress sought to protect from being killed and harassed and captured and removed from the wild."

The EA and HWGTMP failed to include the following research, reports and facts to the public as is required by NEPA to take a hard look. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet.

The EA and HWHTMP failed to include the "risk of substantial and irreversible environmental consequences which may result" and "the extent to which the project might impose uncertain or unknown risks" and include all "possible potential for permanent and irreparable harm, to the individual horses as well as the entire herd and the habitat itself". The scientific evidence makes clear that the USFS is engaged in a concerted effort to manage wild horses to extinction. To reverse this, the USFS must again embrace the intent of the WFHBA, stop favoring the interests of livestock producers over the interests of wild horses and burros. The USFS is failing to fulfill its legal mandate to protect America's wild horses, as well as the public lands on which these animals reside. Instead, the agency is engaging in scientifically, ecologically, economically, and ethically questionable practices.

The NEPA law states that the public has a right to know. Since environmental conditions change over time, the National Environmental Policy Act requires environmental analysis of and public comment on plans for current and future wild horse captures or any and all actions that may occur under the auspices of this proposal. I am one of thousands of concerned American citizens who want and expect

an opportunity to comment on the environmental impacts of all roundups and trapping and removals and contraception applications and sterilization procedures plans that will occur on our public lands over the future years and the EA and HWHTMP proposal must be factually inclusive of the plans for future years including future generations of wild horses. This data is required for the informed American public and the USFS decision makers to make their judgment based on all available science and thus must be available as part of the administrative record for this decision showing that all relevant scientific facts have been completely considered. I offer you this statement: The Honorable U.S. District Judge Beryl A. Howell stated in her [23-page opinion](#) that the agency “may not simply remain studiously ignorant of material scientific evidence ...”

To ignore or conceal relevant facts about the wild horse lands is a violation of the NEPA law. As required by NEPA to bring federal action in line with Congress' goals and to foster environmentally informed decision-making by federal agencies, NEPA “establishes ‘action-forcing’ procedures that require agencies to take a ‘**hard look**’ at environmental consequences.” *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir.2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989)). The NEPA law states that the public has a right to know.

The EA and HWHTMP failed in many respects to provide the public with an adequate explanation of the future of these wild horses. The USFS cannot just use the Heber wild horse management plan as a “blank check” to use as it wishes regarding these wild animals in future years. This “blank check” syndrome provides the USFS with unrestricted authority – just the way the USFS likes it – but this is illegal. The federal government has a legal responsibility to protect our natural heritage and the federal government has a legal responsibility to follow the Congressional law [1971 Wild Horse and Burro Act] that clearly states, “All management activities shall be at the minimal feasible level”. Our great country is based on and requires our government to follow the law and to set an example for all American citizens and without this ... our great country is condemned to destruction.

Please know that that the American citizens realize that the USFS EA and HWHMP proposed capture/removal/sterilization of wild horses is nothing more than a strategic and deadly action in the ongoing management of the American people's wild horse for EXTINCTION. The evidence makes it clear that the USFS is engaged in a concerted effort to manage the Heber wild horses to extinction.

A program such as the proposed EA and HWHTMP is biased against the very animals it is designed to protect and threatens the Heber wild horses both individually and as a wild horse herd. Our National Wild Horse and Burro Program and related federal land management policies are so flawed that the long-term survival of these animals is in serious jeopardy, as is the health of the public lands on which they reside. The US Forest Service (USFS) in the US Department of Agriculture, have lost sight of their legal mandate to "protect" wild horses.

It became obvious to me when reviewing the current wild horse management document, that clearly the agency officials have focused almost exclusively on accommodating livestock grazing and other commercial uses at the expense of the welfare of wild horses. The USFS must comply with laws and regulations governing the management of public lands and the protection of America's wild horses and burros. The document obviously strongly favors private livestock to the detriment of wild horses as well as the health of the land. This is a clear and obvious sign of "regulatory capture". Regulatory capture is a form of political corruption that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating. Regulatory capture occurs when special interests co-opt policymakers or political bodies — regulatory agencies, in particular — to further their own ends. Regulatory capture is a form of government failure; it creates an opening for firms to behave in ways injurious to the public. The agencies are called "captured agencies".

The proposed "Appropriate Management Levels" ("AML" - the number of wild horses deemed suitable by the USFS to live on the range) are prejudiced in favor of usage for privately owned livestock usage. The proposed strategy for the future management of the Heber wild horse herd is scientifically reckless, economically unsound and ethically unjustifiable.

"...[W]ild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West ... It is the policy of Congress that [they] shall be protected from capture, branding, harassment, or death' and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands."

These are the words the US Congress used to describe America's wild horses and burros in the preamble of the Wild Free-Roaming Horses and Burros Act of 1971 (WFHBA). Although the WFHBA was supported overwhelmingly by the public and passed unanimously by Congress, these majestic animals have not always been regarded so highly. Earlier in the 20th century, hundreds of thousands of wild horses and burros were slaughtered to make room for livestock on the Western frontier. This "livestock vs. wild horse and burro" battle continues into the present. While the current rate of removal of these wild animals is a far cry from the wholesale and grisly slaughter that occurred during the early 20th century, the welfare and continued survival of America's wild horses and burros are threatened by a government program that systematically favors the interests of private ranching and livestock over those of wild horses and burros. The National Wild Horse and Burro Program and broader public land management policies are fundamentally flawed and not in the best interest of the American people, the public lands, or the very animals the agency is charged with protecting. The preferential treatment of livestock grazing, and other commercial uses has resulted in the degradation of public lands, as well as massive and unjustifiable removals of wild horses and burros from their legal home ranges.

The USFS is required to manage wild horses and burros “in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands ... [and] all management activities shall be at the minimal feasible level.” The WFHBA recognizes the importance of maintaining and protecting ranges where wild horses and burros may roam. It defines a range as, “the amount of land necessary to sustain an existing herd or herds of wild free roaming horses and burros ... and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands.”

In 2006, the BLM managed wild horses and burros in only 199 HMAs, encompassing 34,407,035 acres. Since passage of the WFHBA, wild horses and burros have been totally removed from nearly 20 million acres, more than half of which were under the federal jurisdiction. This acreage does not even include the thousands of acres of USFS lands, where wild horses and burros have lost additional habitat. The BLM and USFS routinely rounds-up and permanently removes wild horses and burros who have wandered outside of HMA and USFS boundaries, despite the fact that the animals may actually be within their historic and legally protected range.

In 1976, Congress passed the Federal Land Policy and Management Act (FLPMA), which amended the WFHBA and affected how the BLM and USFS administers public lands under its jurisdiction. The FLPMA requires the development of comprehensive land use plans, which reflect the principles of sustained yield and “multiple-use.” Multiple use mandates that public lands be managed “so that they are utilized in the combination that will best meet the present and future needs of the American people.” The federal government is not required to allow all uses on all lands, nor is it mandated to preserve an existing use or level of a particular use based upon economic considerations. The USFS should not permit livestock use or the level of use in areas where its ecological and economic costs outweigh its benefits. In doing so, the agency fails to account for “the long-term needs of future generations for renewable and nonrenewable resources,

including, but not limited to, recreation, watershed, wildlife and fish, and natural scenic, scientific and historical values” as is mandated by law.

Nothing could be a better illustration of the agency’s abdication of its responsibility than how it has managed wild horse and burros over the years. Today, livestock grazing is allowed in virtually all wild horse and burro herd and territory lands, regardless of adverse impacts on the well-being of the animals. Moreover, the USFS has totally removed numerous herds of wild horses and burros and has set population targets so low in other herds that the survival of these animals is seriously threatened—all to accommodate private livestock and other commercial interests. As a result, unfortunately, the USFS’s “multiple-use” mandate has come to mean multiple livestock use. The Public Rangelands Improvement Act (PRIA), a 1978 amendment to the WFHBA, requires the USFS to maintain a current inventory of wild horses and burros and to “determine appropriate management levels (AMLs),” i.e., the number of wild horses and burros which the range can sustain. In direct contravention of PRIA, the USFS has failed to maintain current inventories of wild horses and burros.

Furthermore, though AMLs were not meant to be static, but rather to fluctuate based upon various factors (e.g., range condition or range use), the USFS rarely adjusts AMLs. Moreover, the USFS relies on population targets set in outdated land use plans—the development of which was dominated by local livestock interests in the first place. In addition to its flawed “population targets,” the USFS’s wild horse and burro population “guesstimates” have proven incorrect repeatedly. A cursory review of yearly gather schedules indicates that the numbers of animals the USFS often plans to remove is significantly greater than the numbers the agency actually removes. While there may be many reasons for such discrepancies, the most troubling is the fact that the agency has for years managed wild horses and burros without reliable census data. A significant amount of information provided to the public by the USFS is replete with ambiguities and contradictions. The lack of consistent and reliable data is just one example of the host of problems inherent in the program.

Although the WFHBA states that wild horse and burro ranges are to be managed “**principally** but not exclusively” for wild horses and burros, these amendments and the USFS’s close ties to the ranching and livestock industries have resulted in the unwarranted removal of wild horses and burros from areas where they are legally protected and where they must be given legal preference over domestic livestock.

Further, wild horses and burros’ free-roaming status has been seriously compromised by the construction of fences and gates crisscrossing public lands often at taxpayer expense. These fences create pastures for rancher convenience, but also effectively impede the movement of wild horses and burros, thereby preventing them from accessing habitat to which they are entitled, and which contain resources required for their very survival. However, rather than resolving the problem by removing fences that fragment wild horse and burro legal lands, the agency officials go against the “free-roaming” part of the WFRH&B law and simply elect to manage wild horses and burros within the boundaries of fenced livestock grazing allotments. The Heber wild horse area of the Apache-Sitgreaves National Forest are separated into livestock grazing allotments by fencing barriers in order to control domestic livestock movements. However, these fences also restrict wild horse movements as well as other wildlife; and this is contrary to the “free roaming” lifestyle mandate for wild horses and burros under the Wild Free Roaming Horses and Burros Act (WFRHBA, 1971).

The scientific evidence makes clear that the USFS is engaged in a concerted effort to manage wild horses and burros to extinction. To reverse this, the USFS must again embrace the intent of the WFHBA, stop favoring the interests of timber and livestock producers over the interests of wild horses and burros, and allow the precautionary principle to govern its management actions. Former New Jersey Governor and then-Environmental Protection Agency Administrator Christine Todd Whitman eloquently described the need for such an approach in a speech to the National Academy of Sciences in 2001 when she stated, “policymakers need to take a precautionary approach to environmental protection We must acknowledge that uncertainty is

inherent in managing natural resources, recognize it is usually easier to prevent environmental damage than to repair it later, and shift the burden of proof away from those advocating protection toward those proposing an action that may be harmful.”

The USFS has demonstrated repeatedly and once again demonstrates in the current Heber scoping, EA and HWHTMP documents, that it has neither the interest nor the expertise to responsibly protect and manage the wild animals in its charge. Particularly alarming is the fact that the USFS continues to rely on outdated and deficient documents to support management actions. It also routinely fails to rigorously explore a range of reasonable alternatives to various agency actions, including, but not limited to:

- Assignment of AMLs based on current and past scientifically supported (written survey and photos and documentation) inventorying and monitoring of rangeland health in a non-livestock based “principally” and multi-use (not livestock use) management plan with a scientifically substantiated genetic viability consideration as a primary concern.
- Adjustment of livestock permits as provided for in existing regulations.
- Protection of predators in wild horse area lands to allow natural controls to operate as provided for in the WFHBA.

All too often, the USFS ignores these alternatives, claiming that specific actions, such as round-ups, are necessary to conform with existing land use plans—many of which were developed without sufficient public involvement or scientific evidence of any wild horse over-population..

The EA and HHTMP failed to adequately assess the proposed sterilization plans and objective scientific evaluation and a full consideration of the impacts of capture and sterilization and “processing” will have on the wild horses – both individually and as total herds. The EA and HWHTP failed to assess and provide this assessment and details of the plan. NEPA requires that a “hard look” must be done on all available and relevant scientific information. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration

of the available science. Thus, the public and the decision makers must resist the urgings of agencies that low-probability risks of very serious harms be dismissed from consideration or that the risk is evaluated only under the agency's favored theoretical model without considering the possibility that other credible models might be correct.

As required by NEPA to bring federal action in line with Congress' goals and to foster environmentally informed decision-making by federal agencies, NEPA "establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences." *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir.2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989)). To ignore or conceal this from interested parties is a violation of the NEPA law and Title 18.

The EA and HWHMP failed to include the EPA information about the two pesticide immunocontraception chemicals proposed in the USFS documents as follows:

United States Environmental Protection Agency Office of Chemical Safety and Pollution Prevention (7505P)	
	Pesticide Fact Sheet
Name of Chemical:	Porcine Zona Pellucida (PZP)
Reason for Issuance:	New Chemical Nonfood Use
Date Issued:	January 2012
1. <u>Description of Chemical</u>	
Glycoprotein Complex:	ZP1 (80,000-90,000 KD), ZP2 (50,000-65,000 KD), ZP3 (55,000 KD), and ZP4 (20,000 - 25,000 KD)
Common Name:	Porcine Zona Pellucida (PZP)
EPA PC Code:	176603
Chemical Class:	Sterilant/Hormone
Registration Status:	New Chemical, nonfood use
Pesticide Type:	Mammalian Contraceptive
U.S. Technical Registrant:	Humane Society of the United States 2100 L St. NW Washington, DC 20037
 2. <u>Use Patterns and Formulations</u>	
Mode of Action:	PZP antigen is the glycoprotein layer that surrounds the oocyte and is weakly antigenic by itself. Therefore, PZP is emulsified with an adjuvant (adCA for the primary vaccination and adFA for booster

United States
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
(7505P)



Pesticide Fact Sheet

Name of Chemical:	Mammalian Gonadotropin Releasing Hormone (GnRH)
Reason for Issuance:	New Chemical Nonfood Use
Date Issued:	September 2009

1. Description of Chemical

Peptide Chain:	pyroGlu1 -His2-Trp3- Ser4 -Tyr5- Gly6 -Leu7-Arg8- Pro9- Gly10NH2 [GnRH]
Common Name:	Mammalian Gonadotropin Releasing Hormone (GnRH)
EPA PC Code:	116800
Chemical Abstracts Service (CAS) Number:	9034-40-6
Chemical Class:	Sterilant/Hormone
Registration Status:	New Chemical, nonfood use
Pesticide Type:	Mammalian Contraceptive
U.S. Producer:	U.S. Department of Agriculture, APHIS, Pocatello Supply Depot 238 East Dillon Street Pocatello, ID 83201

The EA concealed from the public the fact that both PZP and GonaCon are listed by the EPA as "**pesticides**".

In addition, the USFS concealed from the public the definition of a vaccine vs a pesticide as provided here:

What is a “pesticide” versus a “vaccine”?

By definition, a pesticide is a product designed to destroy organisms deemed to be undesirable or noxious.

DEFINITION OF PESTICIDE:

Chemical or biological substance designed to kill or retard the growth of pests that damage or interfere with the growth of crops, shrubs, trees, timber and other vegetation desired by humans. Practically all chemical pesticides, however, are poisons and pose long-term danger to the environment and humans through their persistence in nature and body tissue. Most of the pesticides are non-specific and may kill life forms that are harmless or useful.

DEFINITION OF VACCINE:

Any preparation used as a preventive inoculation to confer immunity against a specific disease usually employing an innocuous form of the disease agent, as killed or weakened bacteria or viruses, to stimulate antibody production.

PZP and Gona-Con are NOT vaccines ... they are PESTICIDES.

PZP Manufacturer’s Own Research Found Markedly Depressed Estrogen Secretion

In a telling study published back in 1992, the manufacturer of Native PZP, along with colleagues, reported that “ ... three consecutive years of PZP treatment may interfere with normal ovarian function as shown by markedly depressed oestrogen secretion.” [6] Thus, despite all the hype about PZP being non-hormonal, the manufacturer knew that ZonaStat-H has an adverse hormonal effect, causing significantly-lowered estrogen. Thus, PZP is an endocrine disruptor. [21] The plummeting estrogen-levels may also reflect the ovarian dystrophy and oophoritis now known to be caused by PZP. Despite personally discovering negative hormonal impacts 23 years ago, PZP’s manufacturer continued to cite misinformation regarding the product’s mode-of-action and endocrine-disruptor side-effects.

PZP Causes Ovarian Cysts

In their 2010 meta-analysis, Gray & Cameron cited a number of studies that found " ... alterations to ovarian function, oophoritis, and cyst formation with PZP treatment (Mahi-Brown et al. 1988, Sehgal et al. 1989, Rhim et al. 1992, Stoops et al. 2006, Curtis et al. 2007)." [4] These findings support those of Kaur & Prabha while introducing yet another adverse effect: ovarian cysts. Gray & Cameron's review also noted that increased irritability, aggression, and masculine behavior had been observed in females following PZP-treatment.

PZP -- Endocrine Disruptor -- Elevated Testosterone -- Masculinizing Effects

Recall that PZP has endocrine-disrupting effects that result in lowered estrogen. Per the observed masculine behavior of treated mares, PZP seems to have a testosterone-elevating effect too. A deficit of estrogen alone would not necessarily manifest in the masculinization of treated females, but an excess of testosterone would. So, it appears that PZP disrupts at least two hormones: estrogen — by substantially lowering it — and testosterone — by substantially elevating it. Adverse effect: Unnatural behavior.

PZP -- Ovarian Cysts -- Elevated Testosterone -- Masculinizing Effects

As discussed above, PZP correlates with abnormal masculine behavior on the part of treated females, a side-effect likely due to elevated testosterone. But in addition to the endocrine-disruption caused by PZP, there could be a second way for testosterone levels to become elevated. Recall that PZP causes ovarian cysts.

An Internet search on "ovarian cysts and testosterone" yielded results for polycystic ovary syndrome (PCOS) in women. Interestingly, one of the symptoms of PCOS is high testosterone levels. The connection between ovarian cysts and elevated testosterone suggests that the ovarian cysts caused by PZP could — either alone or in combination with PZP's endocrine-disruptor effects — lead to high testosterone levels in treated females, as evidenced by their masculinized behavior.

Sterilizing a wild horse or burro herd is the opposite of the intent of the 1971 Wild Free-roaming Horse and Burro Act (WFRHBA) and the federal agency's long repeated mantra, "Healthy herds on healthy rangelands". How can a sterilized wildlife population be considered healthy? The proposed plan violates the National Environmental Protection Act and the WFRHBA because it fails to analyze an alternative that follows the Congressional Act that states, the wild horses and burros shall be protected from capture, branding, harassment, or death'.

The EA failed to provide to the public and obviously concealed the § 4710.5 Closure to livestock grazing alternative.

The United States of America Cod of Federal Regulations states: § 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.

America's public lands belong to all Americans and must be managed for the broader interests of the American people and not for the narrow interests of a handful of local or corporate users who personally profit from grazing non-native livestock on those lands. I am appalled that my land is being managed as if it were a private livestock feedlot rather than the common heritage of all Americans. The federal government does not own lands in the West. These are not "state lands" and not "federal lands" and not even "government lands". They are public lands. The American people own the public lands in the West and they are to be administered on behalf of all Americans by the national government under laws and regulations.

What can be done to address the problems associated with public lands livestock grazing? There is a simple answer: end it. Get the cows and sheep off, let the wild creatures reclaim their native habitat, and send the ranchers a bill for the cost of restoration. <http://www.publiclandsranching.org/book.htm>

The USFS failed to include this option which should have been considered in detail and included in the EA and HWHTMP. The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged rather than being swept under the carpet.

The USFS failed to consider and admit and include in the EA and HWHTMP, the fact that domestic livestock ranchers want wild horses eradicated from public lands in favor of sheep and cattle grazing for their personal benefit. This grazing is for the sole purpose of fattening up the unfortunate cows and sheep that are then brutally slaughtered and finally consumed. The direct link between cattle and sheep ranching with wild horse roundups is real and will continue until we intelligent humans take responsibility for our palates and refuse to financially support the industry. Wild horse captures and removals and pesticide applications and dangerous invasive surgeries would not be deemed "necessary" if not for sheep and cattle ranchers whose meat businesses bring in the money that allows them to influence policies and politicians that are corrupt.

"For private profit" private/corporate domestic sheep and cattle ranchers and the USFS's reluctance to remove this welfare status from managing for an ecological balance on our public lands is one obvious form of USFS's "Regulatory Capture" status. Regulatory capture is a form of political corruption that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating. Regulatory capture occurs when special interests co-opt policymakers or

political bodies — regulatory agencies, in particular — to further their own ends. Regulatory capture is a form of government failure; it creates an opening for firms to behave in ways injurious to the public. The agencies are called “captured agencies”.

It is more than clear that this Arizona capture/remove/sterilization EA and HWHTMP are written with the influential private-profit interests as the priority and not the wild horses and not the public lands and not the American people and not the ecological balance of the area. This EA and HWHTMP documents clearly show the work of a regulatorily captured agency. Under the Taylor Grazing Act (“TGA”), 43 U.S.C. §§ 315-315r, the federal government “authorized” to issue permits for the grazing of livestock on public lands “upon the payment of reasonable fees.” 43 U.S.C. § 315b. The statute further provides, however, that “the creation of a grazing district or the issuance of a [grazing] permit . . . *shall not* create any right, title, interest, or estate in or to the lands.” The TGA further provides that the Secretary “is authorized, in his discretion, to . . . classify any lands within a grazing district, which are . . . more valuable or suitable for any other use” than grazing, including use by wild horses.

Wild horses and burros are legally *DESIGNATED* on the Herd Management Area (HMA) and livestock are only *PERMITTED*. Definition of the word “designated” is to “set aside for” or “assign” or “authorize”. Definition of “permit” is to “allow” or “let” or “tolerate”. The Wild Horse and Burro lands and resources are set aside for, and assigned and authorized for, the use of wild horses and burros whereas the livestock is only allowed and tolerated and let to use the public range resources. While commercial livestock grazing is permitted on public lands, it is not a requirement under the agency’s multiple use mandate as outlined in the Federal Land Policy and Management Act of 1976 (FLPMA). Public land grazing clearly is a privilege not a right, while the USFS and BLM are mandated by law to protect wild horses and burros.

The “private domestic livestock for private/corporate profit” mentality is illegal when used in conjunction with legally designated wild horse and burro publicly owned land and resources and it must be stopped. Short or long-term sustainability and reducing “*the likelihood of adjustments to current active livestock permits attributable to overuse of resources*” of privately-owned livestock for private profit domestic livestock management is an inappropriate part of the USFS’s mission to protect the American public’s land and resources. The USFS is not in the cattle and sheep business and is not authorized to be promoting private for-profit ranchers.

Part of the challenge in decision making is in fielding the best technology. However, human nature — specifically, judgment bias — also can undermine decision-making. Biases, whether intentional or not, are part of the human condition that skews our decision-making by our own personal experiences, influences, and limitations. Each of us comes with a litany of biases that create cognitive limitations. Biased decision-making is often caused by the desire for power, status and/or financial incentives.

Citizens have the right to expect that governmental decisions will be based on consideration of what is in the best public interest, not what will most benefit the personal finances or concerns of an individual. This right is based on constitutional guarantees of common law principles and on codes of conduct mandating ethics in government. Public confidence in government depends on the integrity of its decisions, and the avoidance of bias and conflicts of interest in these various forms is no doubt a factor in establishing that confidence.

The Foundation For Ethical Behavior

Executive Order 12674

Thomas Jefferson enunciated the basic principle of public service. "When a man assumes a public trust, he should consider himself as public property." This sentiment has been expressed by numerous others, over time becoming the familiar principle

"Public service is a public trust."

To ensure public confidence in the integrity of the Federal Government, Executive Order 12674 (as amended) forms the framework for the ethical behavior required and expected of all Federal employees. As a condition of public service, you are expected to adhere to these fundamental principles of ethical behavior.

"AT THE CROSSROADS--EXTINCTION OR SURVIVAL ..." (excerpts below)

By United States. Forest Service, Huron-Manistee National Forests (Mich.)

"Population Viability can be thought of as the probability that, given a certain set of conditions, a population will be secure for a period of time from factors that threaten its persistence. In other words, viability is a measure of the risk of extinction, and the goal of managing for a viable population is to prevent the decline and eventual extinction of that population. A typical description of the viability of a population might say that "Populations X, given current conditions and thus-and-such management, has a 95/» probability of persistence for 100 years."

"There are many forces in nature that affect the risk of a population's extinction, and contributors to the field have come up with subtly different ways of organizing them. Shaffer (1987) has combined these factors into four groups: genetic uncertainty, demographic uncertainty, environmental uncertainty, and natural catastrophe."

"Genetic Uncertainty affects the amount of genetic variation found in a population's gene pool (Table 1). This genetic variation is important for several reasons. For one,

the offspring of a population with greater genetic variation may be better able to survive and reproduce than the offspring of a population that has reduced genetic variation. Additionally, the ability of a population to adapt to changes in its environment depends in large part on the amount of genetic variation it has in its gene pool. These abilities to produce offspring (known as "fitness") and to adapt to change are important to a population's viability. Two phenomena are the principal causes of loss of genetic variation. These are inbreeding, where the mating of close relatives results in the loss of genetic variation, and genetic drift, where random changes in the gene pool through time result in the loss of variation. A viable population must have a large enough effective population size to avoid the effects of inbreeding and drift."

Table 1.

<u>Genetic Uncertainty</u>	
Examples:	* inbreeding * genetic drift
Affects viability by:	* reducing genetic variation
Resulting in:	* lower reproduction * reduced survival of young * reduced ability to adapt to environmental change

"Notice that I said effective population size rather than census population size. We normally talk in terms of census population size, which is the actual number of individuals one would count. A census, however, doesn't reflect how the population responds to inbreeding and drift. By calculating an effective population size (N), we can adjust for these factors. Basically, it takes into account the fact that not all individuals in a population contribute the same number of genes to the next generation's gene pool. In addition to inbreeding and drift, reasons for this include uneven sex ratio, unequal survival of young, and changes in population size. Imagine a simplistic example where some individuals in a population don't mate, others produce offspring that die, and those that do produce surviving offspring don't produce the same number. As a result, several individuals are not contributing to the next generation's gene pool, and some

are contributing much more than the others. These factors will often translate a census population size into an effective population size half as large."

"Population genetics gives us models for estimating the rate at which genetic variation is lost in a population. An effective population size of 500, according to theory, would lose only 1% of its genetic variation after ten years, 10% after one hundred years, and 40% after five hundred years. By comparison, an effective population size of 100 would lose 5% after ten years, and 40% after one hundred years. The loss of 40% of a population's genetic variation might seriously jeopardize its ability to adapt to change beyond 100 years. However, genetic uncertainty is most critical either in the short term for very small populations or in the very long term for large populations."

"Demographic Uncertainty is the second set of factors that can threaten viability (Table 2). For any individual in a population, there is always a chance that in any year, it will die or have no surviving offspring. In a large population, this doesn't present a problem, but in a small population, the cumulative effect of this possibility can have devastating consequences. As an extreme example, there is always a chance that in a population of 20 individuals, there will be no reproduction in a certain year, or all offspring will be of one sex. Clearly, in a population that reproduced only once, this would result in extinction. However, this example demonstrates that demographic uncertainty is actually only important to the viability of very small, closed populations, since the chance of such random events decreases quickly as a population grows."

Table 2.

Demographic Uncertainty

Examples:

- * low number of offspring
- * skewed sex ratio in offspring

Affects viability by:

- * reducing reproductive potential of next generation

Resulting in:

- * vulnerability to genetic uncertainty
- * vulnerability to further demographic uncertainty

"Environmental Uncertainty is a group of influences on viability that affects the birth and death rates of entire population (Table 3). It includes such things as climatic change, reduced habitat quantity or quality, and increased predation, competition, and parasitism. Unlike demographic uncertainty, these factors influence viability independently of population size."

"Natural Catastrophe, like environmental uncertainty, affects the birth and death rates of an entire population regardless of size. Natural catastrophes include climatic change, disease, fire, flood, drought, and windstorm. There is a general consensus that environmental uncertainty and natural catastrophe are the most critical to viability of all but very small populations, since only a very large population size or a very widely distributed population can protect against such unpredictable events."

Table 3.

<u>Environmental Uncertainty</u>	
Examples:	* reduced habitat quality * reduced habitat quantity * increased predation, competition, parasitism
Affects viability by:	* reducing resource availability * reducing birth rate * reducing survivorship
Resulting in:	* reduced population size * vulnerability to demographic uncertainty

Table 4.

<u>Natural Catastrophe</u>	
Examples:	* drought

Affects viability by:

Resulting in:

Natural Catastrophe

- * drought
- * flood
- * fire
- * climatic change
- * reducing habitat quality and/or quantity
- * reducing population size
- * vulnerability to environmental uncertainty
- * vulnerability to demographic uncertainty

"All of these factors are interconnected so that they not only contribute to each other, but some may lead to others. For example, a natural catastrophe such as a drought may stimulate an event of environmental uncertainty, such as a decrease in habitat quality or resource availability. This in turn could knock a resident population down to a small size, at which point it may become susceptible to the effects of genetic or demographic uncertainty. A recent article (Gilpin and Soule, 1986) refers to this as an extinction vortex, where the influence of different factors culminates in extinction."

Figure 2.

Drought

Diminished Resources

Smaller Population Inbreeding

Reduced Reproduction/Survival

= Extinction

"Following are Definitions of the Probability Levels Used in the Viability Rule Set (Table B-14) (From USDA-FS, 1988)

VERY HIGH: Continued existence of a well-distributed population on the planning area at the future date is virtually assured. This is likely even if major catastrophic events occur within the population, research finds that the species is less flexible in its habitat

relationships, or if demographic or genetic factors are more significant than assumed in the analysis.

HIGH: There is a high likelihood of continued existence of a well-distributed population in the planning area. There is limited latitude for catastrophic events affecting the population or for biological findings that the population is more susceptible to demographic or genetic factors than was assumed in the analysis.

MODERATE: There is a moderate likelihood of continued existence of a well-distributed population in the planning area at the future date. There is no latitude for catastrophic events affecting the population or for biological findings that the population is more susceptible to demographic, genetic, or habitat distribution factors than was assumed in the analysis.

LOW: There is a low likelihood of continued existence of a well-distributed population in the planning area at the future date. Catastrophic, demographic, genetic, or habitat distribution factors are likely to cause elimination of the species from parts or all of its geographic range during the period assessed.

VERY LOW: There is a very low likelihood of continued existence of a well-distributed population in the planning area. Catastrophic, demographic, or genetic factors are highly likely to cause elimination of the species from parts or all of its geographic range during the period assessed.”

“I'd like to leave you with a note of idealism. Notice that I have not referred to Minimum Viable Populations, which is a term you may have heard. As you can now see, a general rule is that the larger and more widely distributed the population, the greater is its viability. We used to talk about minimum viable populations, probably in part because the acronym MVP is so catchy. However, the word minimum has been dropped more recently, and not for simple semantic reasons. As Soule (1987) has pointed out, in the same way that physicians prescribe the optimal conditions for health, not the minimal ones, the resource manager should plan for a robust and bountiful population, not a minimum. The point is that population viability analysis does not provide a magic

number above which a population is safe from extinction. I would encourage you to manage for robust and bountiful populations.”

~ ~ ~

The USFS states that sterilization and/or immunocontraception procedures will provide long-term beneficial effects such as maintaining or improving overall body condition, since the physical burden of pregnancy and raising a foal would not occur,” but the EA and HWHTMP failed to adequately consider the vigor, vitality, and long-term well-being of the wild horses’ population in the wild, natural world. Sterilization and immunocontraception procedures are completely contrary to the pure core intent of the WFHBA that plainly states: “... wild horses and burros ... contribute to the diversity of life forms within the nation ... and shall be protected from capture, branding, harassment or death, and are to be considered in the area where presently found [signifying year-round habitat by any reasonable interpretation] as an integral part of the natural system of public lands.” The USFS document proposing sterilization projects also ignore the true meaning of the WFHBA’s “... to achieve and maintain a thriving natural ecological balance on the public lands.” Any permanent or temporary sterilization of wild mares and stallions is very unnatural and will upset the balance between and among species of plants and animals. Sterilization also ignores this same instruction to manage wild horses and burros “at the minimum feasible level.” The USFS EA and HWHTMP failed to acknowledge that the proposal clearly violates the intent of the WFHBA and because of this and many reasons I am providing to you in this letter that changes to the EA and HWHTMP are absolutely warranted.

The assignment of the “overpopulation” qualifier upon the wild horse populations of the Apache-Sitgreaves National Forest is not objective but based upon an arbitrary judgment that is convenient to the wild horse adversaries’ view of them. The view that the wild horses are of little value and their well-being on the public lands is insignificant and erroneousness ... but there is little doubt that in the mind of the domestic livestock ranchers and the local USFS, they are to be dispensed with wherever necessary, either

totally eliminated or reduced to a non-genetically viable population on the territories (USFS), i.e. “zeroed out,” or reduced to low crippled-population numbers with compromised reproductive systems.

The latter herds basically become mere token zoo-like herds lacking in that true wild vigor and exuberance that is so essential for their long-term survival and ecological adaptation. Ecological adaptation, known as “survival of the fittest”, would permit them to “fill their niche” and “play their role” in nature. But mentalities that are controlled by vested interests seem to have become totally blind to the greatness of the wild horses living freely and naturally in the ancient land of their ancestors, presences dating back many millions of years.

If there’s one message I’d like you to understand, it is that the wild horses living in their natural habitat (in this case the Arizona mountains) should not be overly restricted by fences and/or deprived of adequate resources for their survival as viable populations. They should be free to resume their age-old lifestyle and relation to the other species as nature intended. This would be a restorative, quality-of-life phenomenon, supremely important for the horses and many other species, including humankind. Honoring, rather than subverting, the noble commitment of the WFHBA, humanity would pull itself out of a rut that has grown so deep today that it threatens to engulf the whole of life on Earth. Horses thrive in natural freedom and become inspirations to all of us in so doing. This freedom is not the freedom to crassly control and manipulate, alter, and destroy our fellow co-dependent creatures. It is a freedom that recognizes the true worth of each and every kind, of each and every conscious one, and uplifts our relationships to the highest plane. This is True Freedom and a gateway to a more fulfilled and glorious life for all.

The USFS has taken an overly constricted view of the alternatives, or possibilities, that are open to the agency, as servants to the American citizens, in both protecting and managing the wild horses. The definition of Thriving Natural Ecological Balance, for example, seems to automatically exclude the possibility that the wild horse could ever achieve their own part, or role, in this. As an environmental researcher who has studied the horses in nature, I consider this to be extremely unmerited and prejudiced and extremely biased.

"January 13, 2021 Incident Update on Black Mesa Ranger District Horse Deaths

SPRINGERVILLE, AZ, January 13, 2021 – On Saturday, January 9th, 2021, the Forest Service provided results from the initial investigation of horse deaths, including confirmation of four deceased horses due to bullet wounds." The EA failed to supply the public with the highly relevant Heber wild horse killings of dozens of horses within the National Forest in recent years. Concealment of this vitally important information is a violation of federal Title 18 which states: *Making false statements (18 U.S.C. § 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States*

Although the Apache-Sitgreaves National Forest is required by federal law to protect these wild horses as well as to provide safety to all visitors to the forest, it appears that these shootings little attention has been given to this highly volatile and deadly problem.

The website states "Preparation and safety are of utmost importance while recreating in the national forest" but it is obvious that this is not what is really happening and that safety on the forest lands is not a priority of the National Forest employees.

The EA and HWHTMP failed to pay close attention to the 2013 National Research Council's (NRC) admission that surgery on the wild horses carries serious risks and that all fertility control measures including the pesticide immunocontraception chemicals proposed in the USFS documents affect wild horse/burro physiology and behavior. This disproves the USFS false assertion that wild horse sterilization will "improve the health of the wild horse and burro herds." Regarding the side effects of procedures and the social and behavioral effects on the wild horses returned to the range, your dismissal of these as "outside the scope of this E.A." is erroneous. Why should the USFS be allowed to subject the individual mares to such ordeals involving pain, suffering and even death especially if there is compelling evidence that their alteration will adversely affect them in the wild?

This would be a sure prescription for decline and die out, as the horses are artificially imposed upon in order to accommodate the USFS-favored public lands users including ranchers, mineral and energy extractors, off-road vehicles, and hunters. We must let nature show us what is the proper population level for the wild horses in any given area, not rashly impose our selfish and thoughtless will for the sake of financial greed that is displayed by privately owned livestock ranches and their subsequent political lobbyists.

As an experienced environmental researcher who has spent many days over the course of many years observing wild horses in the wild, I strongly urge and implore you not to proceed with the proposed, cruel and unnecessary capture and removal and any temporary or permanent sterilization procedures on the Heber captured wild horses described in the Heber EA and HWHTMP. Rather, work to restore more resources for larger wild horse populations on their legal lands which would honor the true intent of the WFHBA & the will of the American people who own these wild horses and their legal lands and resources.

The National Environmental Policy Act (NEPA) requires that to ensure that environmental assessment statements and any subsequent documents reflect a careful consideration of the available science, and that areas of disagreement or uncertainty are flagged. Thus, the public and the decision makers must resist the urgings of agencies that low-probability risks of very serious harms be dismissed from consideration or that the risk is evaluated only under the agency's favored theoretical model without considering the possibility that other credible models might be correct.

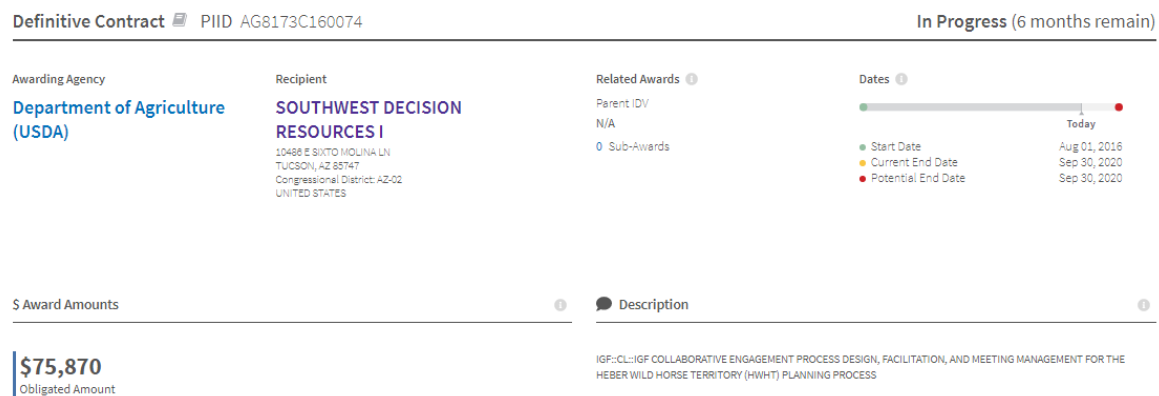
Our society relies heavily on the ability to produce and exchange legitimate and trustworthy documents. As shown and explained within my public comment letter, it clearly appears that the USFS has concealed and refused to include highly relevant data which by law must be provided to the public in the environmental assessment and all subsequent related documents. May I suggest you read and understand this important legal explanation of Title 18 of the United States Code regarding falsification of legal documents.

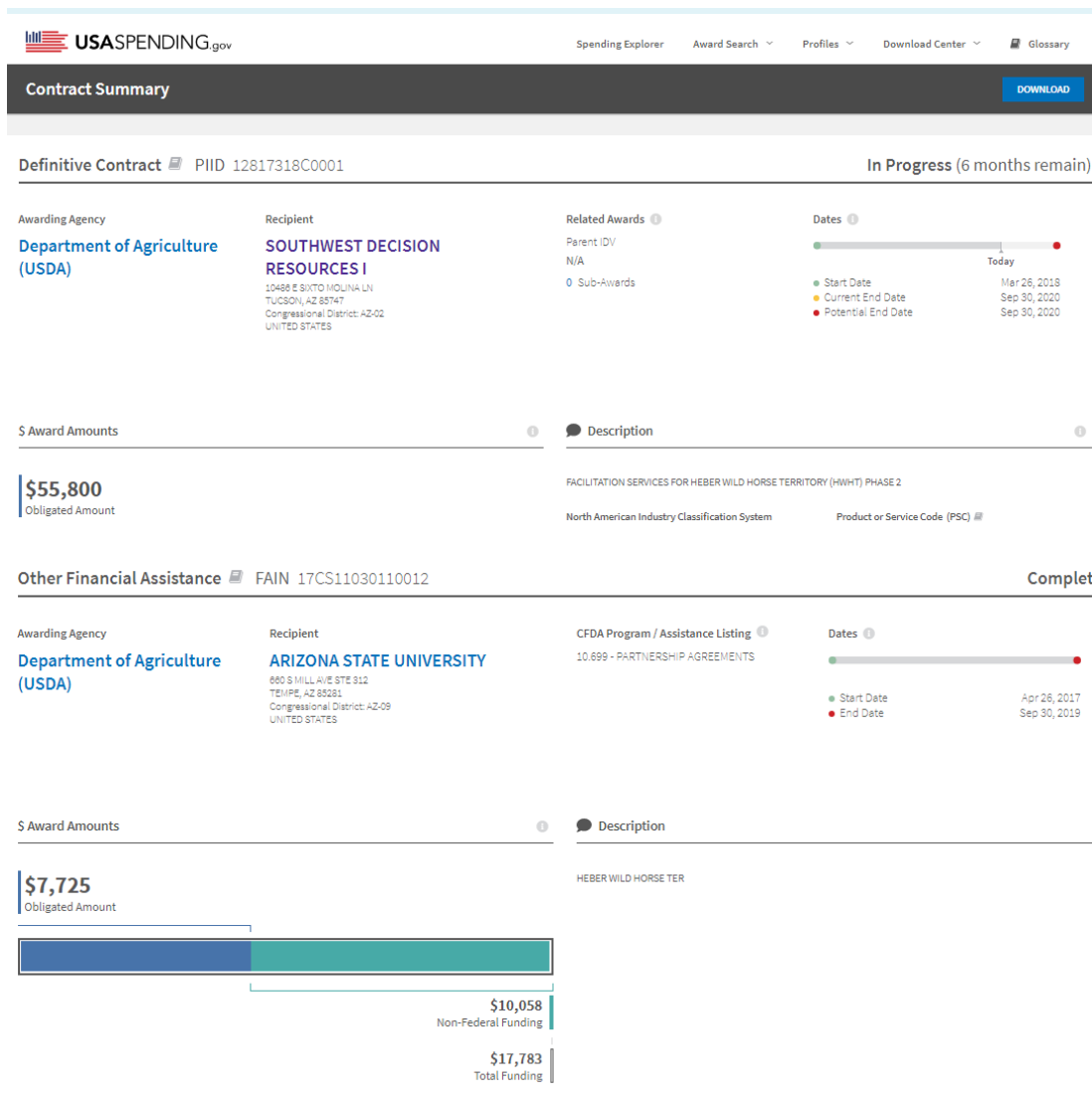
The USFS' "overpopulation" determination is arbitrary and not true overpopulation. Objectively, these wild horses are very under populated as explained above regarding Heber wild horse genetic diversity loss. Again, who defines overpopulation and by what standards? So often this is done arbitrarily in order to accommodate the continuing monopolization of the public land natural resources by livestock, mining, energy fuel extractors and other exploitive interests in our society, and in spite of the great aesthetic value of the wild horses, their true North American native status, their great contribution to restoring and healing ecosystems, e.g. soil building, moisture retention, plant seeding, and to preventing catastrophic wildfires by eating dry flammable vegetation over broad areas. These are tremendous ecological services that can be evaluated in the billions of dollars.

Let me bring to your attention that the recent National Academy of Science (NAS) report on the Wild Horse and Burro Program determined that the BLM and USFS have

no evidence of excess wild horses and burros; because these agencies have failed to use scientifically sound methods to estimate the populations (NAS, 2013). The NAS cited two chief criticisms of the Wild Horse and Burro Program: unsubstantiated population estimates in herd management areas (HMA), and management decisions that are not based in science (NAS, 2013).

In addition, the EA and HWHTMP failed to provide to the American public the costs associated with the proposed capture and removal and sterilization procedures of the Heber wild horses. This information is required to include but is not limited to the already paid contracts with the "Southwest Decision Resources" company which per USA Spending already totals at least \$131,670.00 (see below) and the \$17,783. To the Arizona State University (see below). The EA and HWHTMP also failed to estimate and list the costs the public will pay to USFS employees for this project in addition to the estimated costs both per horse and for the entire proposal to be captured and transported and fed and processed (either by a contractor and/or the USFS) for the duration of the Heber wild horse project.





The USFS EA and HWHMP, as currently written and published, must **be redacted immediately** because *changes to the EA and HWHMP are warranted* for the many reasons I have detailed in my letter. The USFS has published tactics based on numerous unscientific and unsubstantiated statements. The USFS's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations.

At its most basic level, NEPA requires that the decision-makers, as well as the public, be fully informed, i.e., "that environmental information is available to public officials

and citizens before decisions are made and before action is taken." 40 C.F.R. § 1500.1(b). NEPA ensures that the agency "will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience." *Robertson v. Methow Valley Citizens Council*. This must be available and analyzed in the EA and HWHMP before a Record of Decision or Finding of No Significant Impact can be completed or published or signed.

Our public lands must be managed for all American citizens and for future generations of Americans, not just local ranchers and hunters and miners and other multiple-use users. It is time for the USFS agency to stop "business as usual" steam-rolling the American public and begin to manage our public lands and public resources for all Americans. In order for the USFS to abide by the law of our United States, it must adopt management strategies which will lead to the minimum feasible management as mandated by the 1971 Wild Horse and Burro Act. It is the law.

It is the responsibility of the USFS to supply the public with adequate and accurate information, scientific research, and realistic options. This is the main purpose of my public comment letter and without the USFS's willingness to supply complete, accurate and non-politically driven information or falsify any statements or cover up data or reports, any proposed EA or HWHTMP decision will be unlawful.

I require that the office study and consider the comments provided and supply to the public an amended environmental assessment and HWHTMP that provides clear evidence that **only** wild horses are compromising the "thriving natural ecological balance" and not livestock grazing, hunting, OHV use, water diversions, predator removal, fire, tree removal, climate change, and inadequate management policies as the true reason for these lands if they are not reaching a thriving ecological balance.

The EA and HWHTP are inadequate and failed to provide a full assessment of the wild horse populations on their entire legal Apache-Sitgreaves National Forest lands (see above detailed explanation).

The EA and HWHTMP are also inadequate and failed to provide a full assessment by not considering an adjustment to the domestic private/corporate livestock usage.

The EA and HWHTMP obviously appear to have pre-determined a solution to remove wild horses without full and adequate analysis of the livestock grazing impacts or serious consideration of cancelation or reduction in livestock AUMs or permits.

The HWHTMP USFS office failed to show that any action to remove or disturb the wild horse population (ie. fertility controls) will not cause irreparable harm to individual wild horses and the Heber wild horse population in general and that the plan is not based on biased and illegal planning documents in favor of livestock interests. It is obvious to anyone reviewing the EA and HWHTMP and therefore the current documents as currently written shows that changes to the EA and HWHTMP are absolutely warranted.

Summary of Violations

- WFRHBA: Duty to preserve viable, self-sustaining populations is unmet.
- 43 CFR 4700.0-6: Requires management for viability and health — violated.
- NEPA: Failure to analyze foreseeable genetic impacts.
- APA: Arbitrary AMLs unsupported by scientific data.

I require that the Forest Service:

1. Establish an AML no lower than **150–200 animals**, consistent with peer-reviewed science.
2. Incorporate a genetic monitoring program conducted by independent scientists.

3. Expand territory boundaries to ensure access to adequate forage, water, and habitat.
4. Provide transparent public disclosure of all genetic testing results.
5. Revise the HWHTMP to comply with WFRHBA, APA, and NEPA standards.

The Heber Wild Horse Territory Management Plan, as currently written, is **unlawful, arbitrary, and scientifically indefensible**. It fails to comply with the Wild Free-Roaming Horses and Burros Act of 1971, the Administrative Procedure Act, and the National Environmental Policy Act.

Unless corrected, the plan will:

- Irreparably harm the Heber herd,
- Destroy the genetic viability of the population,
- Violate the statutory rights of the American people, and
- Undermine public trust in the integrity of the Forest Service.

I therefore **appeal the HWHTMP** and request that the Forest Service address these deficiencies fully, transparently, and in strict compliance with federal law.

Thank you for your consideration of these comments and for placing them in the official administrative record.

As an American citizen, environmental researcher and wild horse and burro observer and a life-long visitor to the state of Arizona, I appreciate the opportunity to provide input on the proposed Environmental Assessment (NEPA) and HWHTMP process but first let's be clear on this major issue: the federal government does not own land in the West and the federal government does not own these wild horses. These are not "state lands" and not "federal lands" and not even "government lands". They are public lands. The American people own the public lands in the West and they are to be administered on our behalf by the national government under laws and regulations. This land and its resources, including the wild horses and burros belong to all citizens of the United States, not the federal government and certainly not to the Forest Service.

The United States District Court, D. Columbia ROSEMARY M. COLLYER, District Judge. stated: *"It would be anomalous to infer that by authorizing the custodian of the wild free roaming horses and burros to "manage" them, Congress intended to permit the animals' custodian to subvert the primary policy of the statute by harassing and killing and capturing and removing from the wild the very animals that Congress sought to protect from being killed and harassed and captured and removed from the wild."*

"Though men now possess the power to dominate and exploit every corner of the natural world, nothing in that fact implies that they have the right or the need to do so."

- Edward Abbey "A Voice in the Wilderness"

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Cc: Other Interested Parties

Receipt and Response is Requested