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

Pursuant to 36 CFR 218.8, I hereby submit the following objection to the Final Environmental Assessment (EA) and Draft Decision Notice for the Heber Wild Horse Territory Management Plan. This objection is timely filed and includes information, evidence, and attachments for inclusion in the administrative record.

Statement of Issue:

Pursuant to my formal comments submitted on March 5, 2020, March 6, 2020, March 7, 2020, March 9, 2020, April 3, 2021, April 5, 2021, and April 6, 2021, I hereby submit this objection to the Final Environmental Assessment (EA) and proposed Heber Wild Horse Territory (HWHT) Management Plan. The Forest Service has failed to meaningfully address or resolve the substantive concerns raised in those comments. Most notably, the foundation of the proposed Management Plan rests upon a fatally flawed and arbitrary delineation of the Territory's boundaries. In direct contravention of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), the agency failed to conduct a scientifically valid survey to determine the historic and present habitat of wild horses within the Sitgreaves National Forest. Instead, the boundaries were drawn without empirical support, thereby undermining the legitimacy and legal sufficiency of the entire management framework.

Moreover, the proposed plan blatantly disregards the statutory mandate that "all management activities shall be at the minimal feasible level." It instead advances a regime of intrusive and aggressive interventions—including removals, fertility control, and genetic manipulation—that are neither minimally feasible nor scientifically justified. These actions appear designed to prioritize administrative convenience and livestock grazing allocations over the preservation, protection, and principle of wild horse freedom explicitly guaranteed under the WFRHBA.

Additionally, the population estimates and ecological justifications presented in the EA lack the scientific rigor required by both WFRHBA and the National Environmental Policy Act (NEPA).

The failure to use reliable data or peer-reviewed methodology renders the proposed management actions arbitrary, capricious, and contrary to law. Below are several key concerns:

Introduction

This objection to the Heber Wild Horse Territory Management Plan and Final Environmental Assessment begins with a recognition of memory — not merely human memory, but the ecological and cultural memory that binds past, present, and future. In the language of the quantum memory matrix, each action leaves a trace that shapes what comes after. The past is not gone; it reverberates, influencing the present and determining the future.

The history of the Heber herd illustrates this truth with striking clarity. Prior to passage of the Wild Free-Roaming Horses and Burros Act of 1971, the Forest Service authorized and facilitated captures and removals of horses from the Sitgreaves National Forest, motivated by a desire to prevent the designation of a wild horse “refuge.” These removals, as documented in the recorded oral history of rancher Doy Reidhead, erased horses from the landscape and from the record, thereby distorting the statutory baseline of “where presently found” at the time the Act became law.

That manipulated memory was then carried forward into the designation of the Heber Wild Horse Territory boundaries, which were confined to only 19,700 acres despite the long-standing presence of wild horses across the broader Sitgreaves. The narrow territorial designation was not the product of comprehensive survey or statutory compliance, but of a compromised historical record.

Today, the Forest Service proposes a management plan built upon that same flawed memory. The plan’s AML, its fertility control proposals, and its removal strategies all rest on a boundary designation and a population history that were never lawfully or scientifically established. In effect, the present plan extends the original act of erasure: narrowing the herd’s range, suppressing its numbers, and reducing its existence to the point of disappearance.

What is at stake, therefore, is not only the management of a herd but the preservation of memory itself. To erase the Heber horses is to erase a living strand of history — one that ties the Sitgreaves landscape to centuries of cultural and ecological heritage, from Spanish colonial horses to present-day free-roaming herds protected under federal law.

For these reasons, this objection will demonstrate that the Heber Wild Horse Territory Management Plan and Environmental Assessment cannot withstand scrutiny under the WFRHBA or NEPA. The foundational errors of pre-1971 removals and unlawful boundary designation must be confronted and corrected before any lawful management plan can proceed.

I. Questionable Growth Rate Calculations

The plan states that the calculated annual growth rate is 19 to 21 percent, citing a WinEquus Population Modeling Analysis. However, no details are provided on the inputs, assumptions, or

scenarios used in this model. WinEquus is a simulation tool that produces highly variable outcomes depending on user-defined parameters. Without full transparency of the modeling inputs or peer-reviewed validation, this figure should not be used as the foundation for management decisions.

Lack of Peer Review or Independent Scientific Oversight

No indication is given that the data or modeling outputs used in this plan have undergone independent scientific review. In the absence of such review, the conclusions drawn from these data cannot be considered reliable or objective.

Objection to the Use of WinEquus Population Modeling Analysis in the Heber Wild Horse Territory Management Plan and EA

The Forest Service's reliance on WinEquus Population Modeling Analysis as a basis for management decisions in the Heber Wild Horse Territory Management Plan and EA is legally deficient and scientifically unjustified. WinEquus is not a proven or independently verified model and its use fails to meet the legal standards required under federal environmental law.

1. Violation of the National Environmental Policy Act (NEPA) – Use of Best Available Science

Under NEPA (42 U.S.C. § 4332), agencies are required to use high-quality, accurate scientific information when making environmental decisions. The Council on Environmental Quality (CEQ) regulations implementing NEPA further state:

“Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents.”

– 40 C.F.R. § 1502.23

WinEquus does not meet this standard, as it has not been peer-reviewed, lacks transparency in its assumptions, and has not been empirically validated. Courts have found that agency decisions relying on uncertain or flawed models may be deemed arbitrary and capricious under the Administrative Procedure Act (APA):

“The agency must support its conclusions with studies that the agency deems reliable. An agency cannot rely on data that it has not shown to be scientifically valid.”

– *Sierra Club v. Marita*, 46 F.3d 606, 619 (7th Cir. 1995)

Furthermore, NEPA documents must disclose when models or data contain uncertainty or lack validation:

“Where an agency uses models or projections in its analysis, it must disclose the assumptions and limitations inherent in the model.”

– *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1194 (D. Colo. 2014)

Because WinEquus has not undergone public scrutiny, and its internal assumptions are not clearly disclosed in the EA, its use violates these legal requirements.

2. Violation of the Information Quality Act (IQA)

The Information Quality Act (Pub. L. 106-554, § 515) requires that federal agencies ensure the quality, objectivity, utility, and integrity of information used and disseminated in decision-making processes. The Office of Management and Budget (OMB) guidelines implementing the IQA (67 Fed. Reg. 8452) mandate that:

“Influential scientific, financial, or statistical information shall be transparent about models used and shall include a high degree of transparency about data and methods to facilitate reproducibility.”

WinEquus fails to meet these standards, as it:

Has never been subject to independent peer review.

Does not publicly disclose its source code or complete methodological assumptions.

Cannot be independently validated or reproduced.

Thus, reliance on this tool violates the IQA and associated OMB guidelines that govern scientific transparency in federal decision-making.

3. Conflict with the Wild Free-Roaming Horses and Burros Act of 1971

The Wild Free-Roaming Horses and Burros Act (WFRHBA), 16 U.S.C. §§ 1331–1340, mandates that wild horses and burros be managed as “integral components of the natural system of the public lands” and that management shall be at “the minimal feasible level” to ensure healthy herds and healthy rangelands.

The use of a model like WinEquus — designed and frequently used to justify population suppression strategies — is inconsistent with the Act’s requirement to protect and preserve these animals, not just reduce their numbers. Courts have emphasized that the agency must manage wild horses and burros in accordance with their statutory mandate, not based on administrative convenience:

“The Act was intended to protect wild horses and burros from being indiscriminately removed from the range.”

– *In Defense of Animals v. U.S. Dept. of Interior*, 751 F.3d 1054, 1063 (9th Cir. 2014)

“Population management must be based on current, site-specific information that reflects the particular conditions of the herd and the land.”

– *Friends of Animals v. Silvey*, 353 F. Supp. 3d 991 (D. Nev. 2018)

Using WinEquus to justify removals or fertility control strategies without sufficient site-specific empirical data and without transparent scientific justification constitutes a violation of this legal mandate.

4. Procedural Deficiency under the Administrative Procedure Act (APA)

Under the APA, 5 U.S.C. § 706(2)(A), agency actions may be set aside if they are:

“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

Federal courts have repeatedly invalidated agency decisions based on flawed or unreviewed scientific models:

“Agencies must use methods that are sound and data that are reliable. Failing to do so renders the agency action arbitrary and capricious.”

– Natural Resources Defense Council v. U.S. EPA, 595 F. Supp. 2d 34, 55 (D.D.C. 2009)

If the Forest Service relies on WinEquus — a model without demonstrated reliability or scientific scrutiny — the action is vulnerable to legal challenge under the APA.

Conclusion:

The Forest Service’s use of the WinEquus population model in its management planning for the Heber Wild Horse Territory fails to comply with the National Environmental Policy Act, the Information Quality Act, and the Wild Free-Roaming Horses and Burros Act, and violates the procedural safeguards of the Administrative Procedure Act. WinEquus is an unvalidated, non-peer-reviewed, and non-transparent tool that should not form the basis of any critical management decisions that affect wild horse populations.

The agency must instead base its decisions on empirical, site-specific data and scientifically accepted modeling tools that are transparent, peer-reviewed, and consistent with federal legal obligations to use the best available science and ensure environmental and wildlife protection.

The Heber Wild Horse Territory Management Plan, as currently drafted, fails to base its population and growth rate determinations on verifiable, peer-reviewed, and scientifically sound data. I respectfully request that the Forest Service revise the plan to include transparent methodologies, ecological context, and externally validated data before moving forward with any herd management decisions. The integrity of wild horse management depends on adherence to rigorous scientific standards, and this plan does not currently meet them.

II. Foundational Error: Improper Boundary Designation

The designation of the Heber Wild Horse Territory (HWHT) boundary is not a minor technical matter; it is the legal foundation upon which the entire management plan rests. The Wild Free-Roaming Horses and Burros Act requires that wild horses be managed “where presently found”

in 1971. By restricting the HWHT to only 19,700 acres within the Sitgreaves National Forest—despite overwhelming historical evidence that horses ranged far more broadly—the Forest Service has constructed the plan on an erroneous foundation.

Every subsequent decision in the draft Environmental Assessment, including the calculation of Appropriate Management Level (AML), the assessment of forage and water resources, the consideration of rangeland health, and the analysis of potential fertility control or removals, is derivative of this initial territorial designation. If the boundary is incorrectly drawn, all subsequent analyses and determinations are inherently defective.

Put plainly, a management plan built on a faulty territorial designation is legally meaningless. Unless and until the Forest Service corrects the boundary to encompass the full historic and statutory range of the Heber herd within the Sitgreaves, the remainder of the management plan cannot withstand scrutiny under either the WFRHBA or NEPA.

Unverified and Anecdotal Baseline Data

Lack of a Scientifically Valid Baseline Undermines All Population Modeling and Management Conclusions

The Heber Wild Horse Territory Management Plan (Plan) relies on a critically flawed foundation: a "purported census" from 1973 that claimed to document a population of six mares and one stallion. The Plan itself uses the term "purported," which inherently casts doubt on the validity of this data. The use of such terminology suggests that the agency itself lacks confidence in the accuracy, methodology, or source of the census, and implies the count may have been anecdotal, observational, or otherwise unsupported by standard survey protocols.

Despite the significance of this 1973 census in establishing historical herd numbers—and by extension, in shaping current and future management actions—there is no documentation provided in the EA or supporting materials explaining:

How the 1973 count was conducted;

Who conducted it;

What methodology was used;

Whether it adhered to any recognized population survey protocols, such as distance sampling, mark-resight techniques, aerial transect surveys, or ground-based statistical models;

Whether it was part of a formal monitoring program or merely a single, informal observation.

This omission is not a minor oversight. Establishing an accurate and scientifically defensible baseline population is essential to any long-term wildlife management strategy. Without it, all projections of population growth, carrying capacity, and Appropriate Management Levels (AMLs) become speculative at best and legally indefensible at worst.

FOIA Records Confirm Lack of Scientific Survey Data

Further undermining the reliability of the Plan is the fact that Freedom of Information Act (FOIA) responses obtained from the U.S. Forest Service show no evidence that a formal wild horse population survey was ever conducted in the Heber Wild Horse Territory, either in 1973 or in the years following. Despite the Forest Service requesting and receiving guidance from the Bureau of Land Management (BLM) on how to conduct scientifically credible wild horse surveys, there is no indication that such protocols were implemented.

The Bureau of Land Management's "Inventory Procedures for Wild Horses and Burros" (1973) explicitly emphasizes the importance of methodological rigor in conducting population inventories. In Section .14(B) titled "Importance of Data", the BLM warns that:

"Collection of insufficient data or failure to keep adequate records will result in a meaningless inventory... Intensive inventories containing high quality information are especially important for wild horses and burros."

FOIA-obtained records confirm that in 1973, the U.S. Forest Service requested wild horse inventory procedures from the Bureau of Land Management (BLM). In response, the BLM provided scientifically recognized methodologies for estimating wild horse populations, including specific techniques and observational protocols (see Exhibit A). However, the FOIA records reveal that these procedures were never implemented by the Forest Service (see Exhibit B). The cover letter accompanying the FOIA response identifies the scope of my request and indicates that six documents totaling 54 pages were released. Critically, only two of those pages (see Exhibit B) are responsive to the Forest Service's designation of the Heber Wild Horse Territory. Nowhere within those documents is there any indication that the BLM-provided protocols were followed or incorporated into the boundary designation process (see Exhibit C.)

Despite receiving these procedures from BLM in 1973, FOIA responses confirm that the Forest Service conducted no formal wild horse surveys using these methods in the Heber Wild Horse Territory. There is no documentation of intensive data collection, no systematic aerial surveys, and no recordkeeping consistent with the protocol. As the BLM guidance itself makes clear, this failure renders the Forest Service's early inventory — and any population modeling or management based on it — "meaningless" from a scientific and data integrity standpoint.

This discrepancy raises serious concerns regarding the agency's adherence to the best available science standard, as required under the National Environmental Policy Act (NEPA) and the Information Quality Act (IQA).

NEPA (42 U.S.C. § 4332) and 40 C.F.R. § 1502.23 mandate that agencies use high-quality scientific information and disclose methodologies in their environmental assessments.

The IQA (Pub. L. 106-554, § 515) requires that federal agencies ensure the objectivity, utility, and integrity of information used in policy decisions, especially when influencing major management actions.

By failing to conduct a scientifically valid population survey—or to even verify the methodology of the 1973 count—the Forest Service is in violation of these statutory requirements.

Implications for Modeling and Management Decisions

This lack of baseline integrity has direct and serious implications for the Plan’s reliance on WinEquus modeling and other population projection tools. Modeling tools require reliable inputs to produce credible outputs. If the initial population size, growth rate, or demographic structure is uncertain or fabricated, the model’s predictions are inherently unreliable and cannot support legitimate management conclusions or removals.

This is compounded by the fact that:

Population estimates in later years are also sparse, unverified, or inconsistently recorded;

The Forest Service has not disclosed any current, scientifically rigorous survey results for the Heber herd;

The WinEquus model itself is not peer-reviewed or publicly validated (as discussed in the earlier section), making its use doubly problematic in the absence of a reliable dataset.

This cascading lack of scientific rigor renders all subsequent claims about overpopulation, ecological degradation, or herd growth rates highly speculative, and legally indefensible as the basis for significant herd reduction, fertility control, or other intrusive management actions.

“The Forest Service’s pre-1971 removal of horses from the Sitgreaves to prevent refuge designation unlawfully distorted the population baseline and boundaries of the Heber Wild Horse Territory, rendering the current plan arbitrary and capricious under the WFRHBA and APA.”

Pre-1971 Capture and Removal of Horses from the Sitgreaves National Forest

Prior to the passage of the WFRHBA, the Forest Service anticipated that portions of the Sitgreaves National Forest would qualify for designation as a “refuge” for wild horses. Rather than prepare for compliance with forthcoming federal law, the Forest Ranger overseeing the Sitgreaves authorized and coordinated the roundup and removal of unbranded, free-roaming horses from the Forest. As confirmed by an oral history interview with rancher Doy Reidhead, conducted by Northern Arizona University, Reidhead himself participated in those pre-1971 captures and explained that they were undertaken precisely because the Ranger “did not want the Forest to become a refuge for wild horses.”¹

The justification advanced at the time was that these horses originated from the White Mountain Apache Reservation, having allegedly entered the Sitgreaves only after a storm knocked down boundary fencing. However, no evidence was ever provided to substantiate this claim. Moreover, the assertion is contradicted by the physical reality of the boundary: when fencing is down, horses may move freely in both directions—from Reservation to Forest and from Forest to Reservation. Thus, no factual basis existed to presume that the captured horses originated exclusively from the Reservation rather than the Forest itself.

Even more significantly, the claim that Reservation horses were categorically distinct from Forest horses is inconsistent with the historical record and with modern scholarship. The Apache people, like other Indigenous groups of the Southwest, acquired horses beginning in the 16th century through introductions from Spanish colonial expeditions and European settlers.²

Over time, these equine populations intermingled throughout the region. Modern genetic research confirms that many wild and tribal horse populations in the Southwest retain Iberian/Colonial Spanish ancestry.³ Scholarly reviews of equine history affirm that free-roaming herds in the Apache-Sitgreaves National Forest plausibly descend from the same colonial stock as horses maintained by the White Mountain Apache.⁴ Accordingly, any sharp distinction between “Reservation horses” and “Forest horses” is biologically and historically unsupportable.

By authorizing the pre-1971 removals without origin verification, without genetic testing, and without any effort to determine whether those horses were native to the Sitgreaves, the Forest Service acted arbitrarily. The fact that the removals were carried out precisely to avoid designation of a wild horse refuge underscores the lack of good faith and the absence of any legitimate resource-management rationale. These actions directly undermined the statutory purposes later enshrined in the WFRHBA and artificially reduced the horse population that should have been recognized at the time of the Act’s passage.

Accordingly, the pre-1971 removals cannot be treated as a valid precedent for current management. To the contrary, they represent an inappropriate and unlawful manipulation of the record. These actions must be expressly acknowledged in evaluating the present Environmental Assessment, in any calculation of Appropriate Management Level, and in the determination of the lawful boundaries of the Heber Wild Horse Territory itself. By reducing the horse population and distorting the historical baseline immediately prior to enactment of the WFRHBA, the Forest Service undermined both the numerical and territorial foundations upon which lawful management must now be based. Any plan that fails to account for this manipulation is arbitrary, capricious, and contrary to law under the Administrative Procedure Act (“APA”).⁵

Closing Request

For these reasons, I respectfully request that the reviewing officer acknowledge the illegitimacy of the pre-1971 removals and correct the historical record in the Final Environmental Assessment and Management Plan. Specifically, the Forest Service must (1) recognize that the statutory baseline horse population was unlawfully reduced prior to enactment of the WFRHBA, (2) reevaluate both the Appropriate Management Level and the lawful boundaries of the Heber Wild Horse Territory in light of this distortion, and (3) refrain from relying on the manipulated record

as justification for removals, fertility control, or boundary restrictions. Without these corrections, the plan cannot withstand review under the WFRHBA or the Administrative Procedure Act.

Footnotes:

Oral History Interview with Doy Reidhead, Ecological Oral Histories Collection, Northern Arizona University, Collection No. NAU.OH.2005.111.16, available at <https://archive.library.nau.edu/digital/collection/cpa/id/21163/>

See, e.g., Dan Flores, *Horizontal Yellow: Nature and History in the Near Southwest* (1999); see also Courthouse News, *What Makes a Horse Wild? Advocates Push Back Against Feral Classification of Historic Equids* (July 2023). ^e

Ludovic Orlando et al., “Ancient DNA reveals the timing and drivers of horse domestication,” *Science* (2023)

Kelsey Dayle John, “Wild Equine Histories,” *Cheiron: The International Journal of Equine and Equestrian History* (2022)

5 U.S.C. § 706(2)(A) (under the APA, agency action must be set aside if arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law).

Conclusion

Without a verifiable, scientifically valid population baseline for the Heber Wild Horse Territory—either in 1973 or at any time since—the Forest Service’s population modeling, management justifications, and environmental conclusions lack credibility and legal standing. The admission that the 1973 census is merely “purported,” coupled with FOIA-confirmed absence of formal surveys, should preclude the agency from proceeding with any herd reduction or fertility control actions until:

A scientific, site-specific, and peer-reviewed population survey is conducted;

Accurate, up-to-date demographic and ecological data is collected and disclosed;

Transparent modeling assumptions and outputs are provided for public review.

To proceed otherwise would constitute arbitrary and capricious agency action, in violation of the Administrative Procedure Act (5 U.S.C. § 706(2)(A)), and a failure to meet the statutory obligations under NEPA, the IQA, and the Wild Free-Roaming Horses and Burros Act of 1971.

Remedy Requested

For these reasons, I respectfully request that the Reviewing Officer reject the Heber Wild Horse Territory Management Plan and its supporting Environmental Assessment in their entirety. The Forest Service must first correct the statutory baseline by:

Acknowledging and incorporating the historic record of pre-1971 horse presence throughout the Sitgreaves National Forest.

Reassessing and lawfully designating the full and accurate boundaries of the Heber Wild Horse Territory in accordance with the WFRHBA mandate.

Incorporating current field evidence of the herd's distribution today, which demonstrates that Heber wild horses continue to occupy areas far beyond the artificially limited 19,700 acres. Their present use of multiple regions across the Sitgreaves confirms that the original designation was unlawfully narrow and must be corrected to reflect both historic and present range.

Unless and until the Territory is properly designated, any other management determinations are failed. The proper Territory designation is the foundation of management. Without an accurate and strong foundation the entire plan is critically flawed and will crumble into a pile of meaningless words.

III. Noncompliance with the Wild Free-Roaming Horses and Burros Act (WFRHBA) – “Minimal Feasible Level” Standard

The Heber Wild Horse Territory management plan, as currently proposed, is inconsistent with the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), including the Act's mandate that management of wild horses and burros be conducted at the “minimal feasible level” of interference. This standard, which has been repeatedly affirmed in both legislative history and case law, reflects Congress's clear intent to preserve the wild and free-roaming nature of these animals on public lands.

Under 16 U.S.C. § 1333(a), the Secretary is directed to manage wild free-roaming horses and burros in a manner that is “designed to achieve and maintain a thriving natural ecological balance on the public lands” while being “at the minimal feasible level” of management. The intent of this provision is to ensure that wild horses are allowed to live as naturally and independently as possible, with minimal human intervention unless absolutely necessary to preserve ecological balance.

However, the repeated and planned use of captures, removals, and fertility control in the proposed plan directly contradicts this standard. The plan's framework relies heavily on proactive, routine interference with the Heber wild horse population — including population growth levels based on non scientific data, preemptive removals and population manipulation — even in the absence of site-specific data demonstrating that such actions are urgently required to restore or protect ecological balance.

This approach oversteps the “minimal feasible level” threshold, for several reasons:

Captures and removals are among the most invasive forms of management and should only be used as a last resort. The plan appears to incorporate them as standard population management tools rather than emergency measures, which contradicts the Act’s intent.

Fertility control is a form of active population manipulation that alters natural herd dynamics and behavior which undermines the principle of minimal interference.

A growing body of evidence and field observations show that the implementation PZP (Porcine Zona Pellucida) and other fertility control measures pose significant biological, ecological, ethical, and legal concerns that undermine the intent of the Wild Free-Roaming Horses and Burros Act of 1971.

1. Disruption of Natural Herd Dynamics

The use of PZP and other fertility control applications disrupt natural social structures within wild horse herds. In a healthy ecosystem, mares reproduce according to seasonal and social cues, contributing to a balanced and cohesive herd. Fertility control interferes with this natural process by:

Inducing year-round breeding behavior, as stallions continuously pursue mares who fail to conceive.

Increasing aggression among stallions competing for mares that remain in prolonged estrus.

Undermining the leadership and stabilizing role of older, experienced mares within the herd.

Such disruptions can lead to long-term destabilization of herd cohesion and natural behavior.

2. Alteration of Mare Behavior and Physiology

Scientific studies and field reports have shown that repeated administration of PZP can result in both behavioral and physiological consequences for mares:

Mares may enter estrus multiple times a year, resulting in chronic stress, fatigue, and reduced overall wellbeing.

Some mares become socially isolated or are rejected by the herd due to irregular reproductive cycles or failure to conceive.

Extended use can delay the onset of reproduction, reduce long-term fertility, and result in permanent sterility—raising concerns over irreversible impacts on individual animals.

Documented Physiological and Reproductive Consequences

Extended Estrous / Reproductive Cycling Beyond Normal Seasons

Mares treated with PZP have been shown to cycle outside of the normal breeding season. In particular, on Shackleford Banks (NC, USA), previously treated mares exhibited ovulatory cycling in what is normally the non-breeding season, and foaling (births) occurred over a much broader period of months than in untreated animals.

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0013635>

Alteration of Foaling Season Timing, which May Reduce Fitness

Fertility control treatment tends to delay foaling into later in the season and to spread births over longer periods. This shift can misalign births with optimal environmental conditions for foal survival, maternal nutrition, etc.

3. Loss of Genetic Diversity

Fertility control methods often lack selectivity and reduce the number of breeding individuals within a population. Over time, this can lead to a narrowed gene pool, decreasing the herd's resilience to disease, climate variability, and other environmental pressures. Small and isolated herds, such as those in the Heber wild horse range, are particularly susceptible to genetic bottlenecks and long-term viability concerns.

4. Artificial Management of a Wild Species

Implementing fertility control turns wild horses into a biologically managed population, akin to livestock, rather than preserving them as self-regulating wildlife. This approach contradicts the intent of the Wild Free-Roaming Horses and Burros Act, which recognizes wild horses as “living symbols of the historic and pioneer spirit of the West,” deserving of protection from harassment and human interference.

Wild horse populations should be allowed to exist and evolve naturally, not subjected to micromanagement through chemical fertility control.

5. Ethical and Welfare Concerns

From an ethical standpoint, fertility control raises serious questions:

It infringes upon the reproductive autonomy of wild animals and treats natural biological processes as nuisances.

The process of darting mares with PZP is invasive, stressful, and often repeated unnecessarily.

Misapplied darts have been linked to physical injuries, infections, and abscesses—conditions that are difficult to monitor or treat in free-roaming herds.

These concerns highlight the inhumane aspects of such interventions, especially when conducted in the absence of adequate oversight and long-term impact studies.

6. A Slippery Slope Toward Herd Elimination

Once normalized, fertility control can become a covert tool for population reduction, circumventing public scrutiny associated with roundups or helicopter gathers. This quiet, ongoing suppression of reproduction risks reducing herds to non-viable levels. In several documented cases, overuse of PZP has led to reproductive collapse in localized populations.

This method is particularly concerning because it lacks clear thresholds, defined limits, or long-term monitoring requirements to ensure that treated herds remain genetically viable and demographically sustainable. In practice, this has resulted in year-after-year treatments that steadily reduce the number of reproductive mares—eventually tipping the population into long-term decline.

In several documented cases across the western United States, excessive and prolonged use of PZP has led to reproductive collapse in localized herds. For example, in the Pryor Mountain Herd and other small population areas, intensive application of PZP has resulted in sharp declines in foaling rates, skewed age structures, and a marked absence of younger generations needed to replenish the herd over time. These outcomes are difficult to reverse once fertility drops below critical replacement thresholds—effectively rendering the herd biologically non-viable, even if animals remain physically present on the landscape.

Such a scenario not only undermines the long-term health and sustainability of wild horse populations, but it also violates the spirit and intent of the Wild Free-Roaming Horses and Burros Act of 1971, which mandates the protection of wild horses as integral components of public lands—not as populations to be quietly phased out.

In this light, fertility control represents a dangerous and largely unregulated path to functional eradication. It allows for the disappearance of wild horses not through removal, but through the gradual extinguishment of future generations. This approach fails both the public trust and the legal responsibility to manage wild horses as self-sustaining, naturally reproducing populations on the lands where they live.

Such outcomes are inconsistent with the principles of conservation, ecological integrity, and the public mandate to protect wild horses on public lands.

Loss of Wildness: Fertility Control as a Fundamental Alteration of Wild Horse Nature

The very act of imposing fertility control on wild horses through behaviorally disruptive means such as PZP—undermines the essential character of wildness. Wildness is not simply the absence of captivity; it is defined by the ability of animals to live, breed, and structure their lives according to their own instincts, social bonds, and ecological relationships without human orchestration.

Once a population is subject to artificial reproductive suppression the animals cease to be truly wild in nature. They instead become a semi-managed, biologically manipulated population, subject to human-designed demographic targets and behavioral expectations.

1. Wildness Includes Autonomy in Reproduction, Social Bonds, and Life History

The Wild Free-Roaming Horses and Burros Act of 1971 declares that:

“wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms... and are to be protected from capture, branding, harassment, or death...” (16 U.S.C. § 1331).

The key terms here—“wild,” “free-roaming,” and “protected”—carry weight. A horse that is denied its natural ability to choose a mate, reproduce, nurture offspring, and participate in herd dynamics free of human intervention is no longer fully wild. Instead, such a horse becomes a biologically restricted organism, whose behavior and family structure have been constrained by artificial mechanisms and imposed schedules.

In short: wildness is not compatible with reproductive micromanagement.

2. Fertility Use Turns Horses into Managed, Engineered Animals

The use of fertility control transforms the wild horse from an autonomous being into a biologically engineered population unit. Consider:

Mares under treatment do not reproduce, altering not only their own behavior but the social fabric of the herd—from band structure to stallion dynamics to maternal learning across generations.¹

Because PZP-treated mares exhibit altered estrous cycles, delayed foaling, or foallessness altogether, they no longer function as fully reproductive agents in their ecosystem or herd structure.

These mares are instead programmed for non-reproduction based on human modeling goals, population caps, or habitat constraints. That is a form of biological control, not protection of wildness.

Thus, a herd in which most mares are under fertility control is no longer a wild herd in any ecologically or behaviorally meaningful sense. It is a managed, manipulated herd, artificially maintained at politically determined numbers through chemical suppression.

3. Fertility Control Introduces Domestication-by-Stealth

Though wild horses under fertility control remain physically free-ranging, they are no longer genetically or behaviorally free-breeding. This creates a condition of domestication-by-stealth—

a condition in which animals are still physically free, but their reproduction is under strict human control.

Domestication has always been defined in part by control over reproduction. The first step in domesticating animals is the human determination of who breeds, when, and how often. PZP or any form of fertility control administration mirrors this exact process, albeit in reverse: it determines who does not breed, and for how long. That is, by definition, partial domestication.

“The essential feature of domestication is the control by humans over the breeding of the animal... When that control is exercised—even subtly—it is no longer wild.” (Price, Behavioral Aspects of Animal Domestication, 1984).²

Even without fences, roundups, or branding, long-term contraception is a mechanism of human-driven evolutionary interference. It shapes the gene pool, alters behavioral traits, and severs natural life cycles. It is not a neutral management action—it is a profound interference in wildness itself.

4. The Wild Free-Roaming Horses and Burros Act Was Not Meant to Create Non-Reproducing Populations

The legislative intent of the WFRHBA was to allow wild horses and burros to exist “as an integral part of the natural system of the public lands.” (16 U.S.C. § 1331). Reproduction—natural, unmanaged reproduction—is a biological requirement of being part of any ecosystem. To allow horses to exist only as non-reproducing decorative symbols undermines their status as functioning wildlife, and reduces them to artifacts of wilderness—living museum pieces.

Nowhere in the Act is there support for converting wild herds into non-breeding, socially disrupted, genetically narrowed populations as policy.

5. Ethical and Ecological Integrity Requires a Moratorium on Widespread Fertility Suppression

Wild horse management must not sacrifice ecological and behavioral authenticity for numeric precision. Herds managed primarily through PZP or other fertility control are herds where natural selection has been interrupted, where foals no longer learn from experienced mares, and where the bonding patterns and hierarchy of equine society are disrupted.

It is ethically indefensible to describe these manipulated populations as wild, when:

Their genetic contribution is intentionally suppressed;

Their social structures are behaviorally altered;

Their reproductive autonomy has been chemically eliminated.

The EA must directly address whether its proposed use of fertility control would result in a population that no longer meets the statutory or biological definition of wild. If so, it is not merely a management decision—it is a declaration of policy abandonment.

Conclusion

Fertility control extinguishes the defining traits of wildness in free-roaming horses. It suppresses not only foal production, but natural behavior, ecological function, and the evolutionary autonomy of the animals. Such herds are no longer wild in spirit or reality—they are biologically managed populations, controlled for human convenience, not protected under law.

Therefore, the proposed fertility control program within the Heber wild horse herd must be reconsidered in light of these impacts on the legal and ecological identity of wild horses. A truly wild horse cannot be a chemically sterilized, socially disrupted, government-curated artifact.

The WFRHBA clearly intended for wild horses and burros to be self-sustaining components of the public land ecosystem.

The plan does not adequately explore or prioritize non-invasive alternatives to removals and fertility control, such as habitat enhancement, removal of livestock pasture fencing, conflict mitigation, or adjustments in permitted livestock grazing — all of which could contribute to ecological balance without compromising the wild status of the horses.

The Heber Wild Horse Territory management plan’s reliance on regular captures, removals, and fertility control fails to uphold the “minimal feasible level” standard required by the WFRHBA. The plan must be revised to align with the statutory requirement to manage wild horses in a manner that prioritizes non-intervention and preserves their wild character, reserving invasive management actions only for truly exigent circumstances backed by robust, site-specific data.

Suggested Remedy:

Revise the plan to ensure all wild horse management actions are demonstrably the least invasive and most limited in scope, consistent with WFRHBA’s “minimal feasible level” requirement. The plan must include detailed justification for any action that goes beyond monitoring and non-intrusive measures.

IV. Violation of WFRHBA’s Priority Protections over Multiple Use Statement of Issue:

The Heber Wild Horse Territory management plan violates the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) by failing to manage wild horses as an integral part of the public lands where they were found at the time of the Act’s passage. The plan prioritizes competing multiple uses — particularly livestock grazing — over the statutory protections afforded to wild horses, thereby undermining the core purpose of the WFRHBA.

Supporting Rationale:

WFRHBA Mandates Priority for Wild Horses Over Competing Uses

The WFRHBA was enacted to ensure that wild horses and burros are “protected from capture, branding, harassment, or death” and are to be “considered in the area where presently found, as an integral part of the natural system of the public lands” (16 U.S.C. § 1331). This statutory language clearly establishes that wild horses are not to be managed as one among many equal uses under the Multiple Use and Sustained Yield Act, but instead are afforded a special legal status that gives them priority over other resource uses, including domestic livestock grazing.

In *New Mexico v. BLM* (565 F.3d 683, 10th Cir. 2009) and other case law, courts have recognized that the WFRHBA creates distinct legal obligations that are not overridden by general multiple-use mandates. The Heber plan, however, appears to subordinate wild horse protections to grazing interests, in direct conflict with these legal precedents and the Act’s plain language.

Fencing of Cattle Pastures Restricts Free-Roaming Behavior

Continued fencing to delineate and protect livestock pastures directly interferes with the free-roaming nature of the horses, a core tenet of the WFRHBA. Wild horses must be allowed to move freely across the landscape without being constrained by artificial boundaries designed to manage private cattle.

Such fencing fragments the habitat and prevents horses from utilizing traditional migration routes and resource areas, undermining the very concept of “wild” and “free-roaming” populations as envisioned by Congress. These types of structural barriers serve the needs of grazing permittees, not the horses, and represent a prioritization of livestock interests that violates the intent and requirements of the WFRHBA.

De Facto Priority to Livestock Through Horse Population Reductions

The management plan aims to reduce and artificially limit the horse population, not based on clear evidence of ecological harm caused by the horses themselves, but to maintain or increase forage availability for domestic cattle. This is an impermissible basis for removals under the WFRHBA.

Rather than reducing grazing permits to achieve ecological balance, the plan disproportionately targets wild horses as the source of resource competition — an inversion of legal priorities. Nowhere in the WFRHBA is it authorized to reduce wild horse numbers merely to facilitate livestock grazing.

Lack of Demonstrated Overpopulation or Ecological Harm

Under 16 U.S.C. § 1333(b)(2), the removal of wild horses is only authorized when the Secretary “determines... that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals.” This requires a data-driven determination based on rangeland conditions, ecological balance, and carrying capacity specific to the wild horse population.

The current plan fails to demonstrate such an overpopulation. There is no comprehensive, transparent, and up-to-date analysis showing that the Heber wild horse population exceeds the land's natural carrying capacity absent the presence of livestock grazing. Instead, horse removals appear to be preemptively scheduled and population targets arbitrarily set in a manner that accommodates cattle use rather than genuine ecological need.

In doing so, the Forest Service fails to meet its statutory burden under the WFRHBA to first consider the condition of the range and then determine if removals are necessary — not to assume they are justified based on livestock-driven forage allocations.

The proposed Heber Wild Horse Territory management plan is fundamentally out of alignment with the WFRHBA's requirement that wild horses be protected and managed as an integral and prioritized component of public lands. By allowing livestock grazing to take precedence — through fencing, population reductions, and removals not justified by ecological data — the plan unlawfully elevates multiple use principles above the protections afforded to wild horses under federal law.

43 CFR § 4700.4710.5 - Closure to livestock grazing.
CFR

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

<https://www.law.cornell.edu/cfr/text/43/4710.5>

43 CFR § 4710.5 – Closure to Livestock Grazing (Expanded Explanation)

This regulation gives the BLM authority to restrict or prohibit livestock grazing on public lands to protect and manage wild horses and burros. The rule is broken into three main parts:

(a) Protective Closures for the Benefit of Wild Horses and Burros

This section allows the BLM's authorized officer (a designated official with decision-making power) to close certain areas to livestock grazing if it's necessary to:

Provide habitat for wild horses or burros

This ensures these animals have enough land to roam, graze, and reproduce without competition from domestic livestock (like cattle, sheep, or domestic horses and burros).

Implement herd management actions

These actions can include managing population sizes, genetic diversity, or ensuring ecological balance within Herd Management Areas (HMAs).

Protect wild horses or burros from disease, harassment, or injury

Livestock can spread disease or cause stress and conflict, especially when competing for food and water. This provision empowers the BLM to act proactively in preventing harm.

Apply the closure to all or specific types of livestock

The BLM can close the area to all livestock or just to certain kinds (e.g., cattle, sheep, or domestic horses) depending on the situation.

(b) Automatic Closure to Domestic Horses and Burros

This section is mandatory and not discretionary. It states:

All public lands where wild horses or burros live are automatically closed to grazing by domestic horses and burros under any permit or lease.

Why?

To prevent competition between wild and domestic equines and to maintain genetic integrity and herd health. Domestic animals can also bring disease or disrupt wild herds' social structure.

This ensures that the wild populations are managed independently of domestic animal interests.

(c) Duration and Notification of Closure

This section addresses how long closures can last and how they are communicated:

Closures may be temporary or permanent

Depending on the issue (e.g., seasonal migration needs or permanent habitat degradation), the BLM can impose short-term or indefinite closures.

Public consultation is required

Before making a closure official, the BLM must go through a process of notifying and consulting with affected or interested parties, which typically includes:

Livestock permit holders

Tribal governments

Local communities

Environmental and advocacy groups

State and federal agencies

A Notice of Closure must be issued

After consultation, the BLM issues a formal public notice to inform all stakeholders about the closure, its scope, and its duration.

Purpose and Policy Background

This regulation is grounded in the Wild Free-Roaming Horses and Burros Act of 1971, which recognizes wild horses and burros as “living symbols of the historic and pioneer spirit of the West.” Under this law, the BLM is required to:

Protect these animals from harassment and harm

Manage them in a way that ensures healthy herds and healthy rangelands

Balance the needs of wildlife, recreation, grazing, and other land uses

In Practice

The BLM may use this authority in situations such as:

Overgrazed rangelands, where wild horses are competing with cattle for limited forage

Water scarcity, where livestock access would stress resources needed by wild horses

Disease outbreaks, where contact with domestic animals may pose a health risk

Wildfire recovery, where fragile land needs protection to regrow

The principles of 43 CFR § 4710.5, while codified under the Bureau of Land Management (BLM) regulations, also apply to lands managed by the U.S. Forest Service (USFS) in the context of wild horse and burro protection and management.

Here’s how and why that applies:

Application of 43 CFR § 4710.5 to U.S. Forest Service Lands

Legal Foundation: The Wild Free-Roaming Horses and Burros Act of 1971

The authority for 43 CFR § 4710.5 comes from the Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92–195), which applies to both BLM and Forest Service lands. The Act mandates 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 found, as an integral part of the natural system of the public lands."

— Wild Free-Roaming Horses and Burros Act, Section 2(a)

Two Federal Agencies Are Responsible

BLM: Manages most Herd Management Areas (HMAs) on public lands.

U.S. Forest Service: Manages Wild Horse and Burro Territories (WHTs), primarily in national forests.

While BLM regulations are in Title 43 of the Code of Federal Regulations (CFR), Forest Service regulations are under Title 36 CFR, but both are bound by the same overarching federal statute — the 1971 Act.

How Closures Work on Forest Service Lands

Even though 43 CFR § 4710.5 is a BLM regulation, its core principles — particularly closure of areas to livestock grazing for the protection of wild horses and burros — are also carried out by the Forest Service through their own rules and management policies.

Forest Service Authority (36 CFR)

Under 36 CFR § 222.60–66, the Forest Service is authorized to:

Designate wild horse and burro ranges ("Territories")

Develop management plans for these areas

Adjust or restrict livestock grazing to protect wild horse and burro populations

In particular:

36 CFR § 222.63(b) allows the Forest Service to "limit livestock use" where necessary to ensure proper management of wild horses and burros.

This mirrors the authority in 43 CFR § 4710.5, allowing closures to:

Protect wild equines from harassment, injury, or disease

Manage their habitat

Ensure they are not outcompeted by domestic livestock

So even though 43 CFR § 4710.5 is technically a BLM regulation, its principles and requirements are mirrored and enforced on Forest Service lands under the same federal law — the Wild Free-Roaming Horses and Burros Act.

To comply with the WFRHBA, the plan must be revised to:

Eliminate fencing that restricts free-roaming behavior;

Halt population reduction efforts unless supported by a clear, data-backed finding of overpopulation;

Reevaluate and, if necessary, reduce permitted livestock use to restore ecological balance;

Explicitly recognize the legal priority status of wild horses in management decisions affecting the Heber wild horse herd.

V. Failure to Adequately Disclose and Analyze Forage Use by Wild Horses Compared to Livestock and Wildlife

While the Forest Service claims to have used "more accurate" methods for calculating available forage within the Heber Wild Horse Territory (H-WHT) — relying on pounds of forage rather than animal unit months (AUMs) — the Environmental Assessment still fails to provide critical, transparent, and comparative data necessary for informed public review and a lawful decision-making process under NEPA and the WFRHBA.

1. No Clear Accounting of Forage Use by Wild Horses Compared to Livestock and Wildlife

The Forest Service admits it did not use traditional animal unit equivalent (AUE) or AUM-based comparisons in estimating forage demand, citing the National Academy of Sciences' (NAS) critique of the AUM approach. However, by shifting to a "pounds of forage" metric without concurrently disaggregating consumption among wild horses, livestock, and wildlife, the agency obscures the true allocation and use of forage among competing species.

The National Academy of Sciences report (2013) did express concerns about variability in AUEs, but it did not recommend abandoning comparative analysis altogether. Rather, the NAS emphasized the need for better, more refined methods — not a removal of transparent species-specific accounting. Without such data, the public and decision-makers cannot assess:

How much forage is allocated to and consumed by permitted livestock, particularly during key grazing seasons.

How much is estimated to be consumed by wild horses under current population levels.

How wildlife forage needs — including for elk, deer, and other native ungulates — are considered or weighted in the resource balance.

The EA and AML determination documents fail to provide these numbers, leaving no way to assess whether the wild horses are being treated fairly in relation to other users of the land.

2. Failure to Distinguish Between Forage Availability and Allocation

The Forest Service conflates "available forage" with "allocated forage" without clearly delineating how much of that forage is allocated to each user group. In essence, the FS's methodology may reflect a forage budget pre-allocated to livestock, and then assesses how many horses that leftover forage could support — a deeply flawed approach that bakes livestock preference into the analysis without acknowledging or justifying it.

This method presupposes that livestock forage allocations are fixed and untouchable, even though the WFRHBA grants wild horses a unique status and requires that they be protected and preserved, not managed as subordinate to other uses.

3. No Transparent Forage Use Data Supporting the AML

Although the FS asserts that it used “three years of forage production data” and “annual utilization data,” it does not provide:

The actual raw or summarized data from those three years.

The spatial scale or locations of sampling within the territory.

How utilization was attributed to horses vs. cattle vs. wildlife.

Without this disclosure, the claim of an “accurate calculation” cannot be independently verified and fails the hard look standard required under NEPA.

Furthermore, the Final EA fails to include any monitoring or utilization studies that isolate wild horse impacts, which is essential to support an Appropriate Management Level (AML) determination. The WFRHBA requires that AML be based on current and site-specific conditions — not on generalized assumptions or data that are not made publicly available for review.

4. Inconsistent Application of NAS Recommendations

While the FS references the NAS to justify abandoning AUM comparisons, it ignores other key NAS recommendations, such as:

The need for rigorous, transparent, and science-based data collection;

The call to improve population modeling and ecological monitoring;

The importance of distinguishing between impacts from different grazers (horses, livestock, wildlife).

By selectively citing the NAS only when convenient, the FS undermines the credibility of its analysis and fails to implement the broader science-based reforms recommended in the 2013 report.

The Forest Service's forage analysis in the Heber Wild Horse Territory Final EA is methodologically inconsistent, lacks transparency, and fails to clearly compare wild horse forage consumption to that of livestock and wildlife. This obfuscation prevents meaningful public review and violates NEPA's requirement for a full and fair discussion of environmental impacts. It also undermines the WFRHBA's mandate to manage wild horses as a unique and protected part of the natural system — not as residual users left to compete for leftover forage after livestock needs are met.

Objection Regarding Forage Utilization Data as Justification for Wild Horse Management Actions in the Heber Wild Horse Territory Management Plan

The methods, assumptions, and conclusions presented in the plan regarding forage use are scientifically flawed, methodologically unsound, and legally insufficient to support the proposed drastic reduction of wild horse numbers. These issues render the forage utilization analysis inadequate under both the National Environmental Policy Act (NEPA) and the Wild Free-Roaming Horses and Burros Act of 1971.

1. Forage Utilization Data Is Not Species-Specific and Cannot Justify Horse Reduction

The Forest Service acknowledges that the forage utilization data were collected “to help with livestock management,” and that no distinction is made between cattle, horse, or wildlife use. Despite this, the data are being used to rationalize the reduction of the wild horse population.

This approach is scientifically invalid. Without distinguishing among species, the Forest Service cannot attribute any particular level of forage use to wild horses, and therefore cannot legitimately claim that wild horses are contributing to overgrazing or range degradation. Utilization levels must be species-specific to support any proposed population control measures. The failure to segregate horse use from cattle and wildlife renders the data unsuitable for making herd management decisions, violating the requirement under NEPA to use the best available scientific information.

2. Data Shows Low Utilization—Contradicting the Need for Herd Reduction

Utilization data presented for the Black Canyon and Heber Allotments from 2005 to 2019 demonstrate consistently low levels of forage use, often in the range of 0% to 20%, with only a few readings in the moderate range (41–50%). These findings do not indicate overgrazing by any species, including wild horses.

The plan's justification for reducing the Heber wild horse population to an AML (Appropriate Management Level) as low as 50 individuals stands in direct conflict with the data. If current forage utilization levels are sustainable—even with current wild horse numbers—then there is no ecological basis for reducing the herd. On the contrary, the data suggest that the environment is not being overused and that wild horses are not in conflict with the ecological health of the range.

3. Inappropriate Use of Livestock-Centric Methodologies

The plan relies on livestock-oriented methods such as the height-weight method, landscape appearance method, and ocular estimates—all of which are tailored to seasonal livestock grazing, not to year-round wild horse foraging patterns. Wild horses move differently across the landscape, utilize different forage species, and tend to graze more evenly across various habitat types, including upland and marginal areas typically avoided by cattle.

These differences are not captured by livestock-based monitoring methods, making them unsuitable for evaluating wild horse impacts. As a result, the data collected using these methods does not meet the scientific rigor required to inform wild horse management decisions under NEPA.

4. Failure to Consider Livestock Impacts or Alternatives

Although wild horses are targeted for reduction, the Forest Service continues to authorize livestock grazing within the Heber Wild Horse Territory and surrounding allotments. Yet the agency failed to:

Attribute forage utilization to livestock vs. wild horses;

Evaluate the cumulative impact of all grazing species;

Consider any alternative that would reduce or eliminate livestock grazing to preserve habitat for wild horses.

This represents a fundamental flaw in the environmental review process, as NEPA requires the consideration of all reasonable alternatives, including those that would shift forage allocation away from private livestock and toward federally protected wild horses.

5. Inconsistent and Contradictory Reasoning

The Forest Service cannot simultaneously claim that forage utilization is low—indicating healthy range conditions—and that wild horses must be drastically reduced to prevent overgrazing. This

contradictory reasoning suggests that the decision to reduce the herd may have been predetermined and not based on objective ecological conditions. This raises serious concerns about the integrity and transparency of the decision-making process.

6. Legal and Policy Failures

Under the Wild Free-Roaming Horses and Burros Act of 1971, wild horses are to be “protected from capture, branding, harassment, or death,” and managed as an integral part of the natural system of the public lands where they were found in 1971. The Act also requires that wild horse management be based on true multiple-use principles, not subordinate to private livestock interests.

By relying on forage utilization data that is not specific to wild horses, and by failing to consider livestock reduction as an alternative, the Forest Service is not fulfilling its obligations under the law. Additionally, the lack of transparent data, failure to use species-specific methods, and internal inconsistencies in the rationale violate NEPA’s requirement for a rigorous, science-based environmental analysis.

Remedy Requested

To resolve this objection, I respectfully request the following actions:

Suspend the implementation of any herd reduction until a new, species-specific forage utilization study is conducted that distinguishes between the impacts of wild horses, livestock, and wildlife.

Reevaluate the Appropriate Management Level (AML) based on updated ecological data that includes the full carrying capacity of the range with reduced or no livestock grazing.

Include a management alternative that reduces or eliminates livestock grazing within the Heber wild horse range to ensure that wild horses are given priority as federally protected animals.

Use ecologically appropriate methods for monitoring wild horse impacts—methods that reflect year-round presence, mobility, and foraging behavior unique to equines.

Disclose full, transparent forage utilization data, including sampling dates, locations, and attribution to species, to allow for public scrutiny and compliance with NEPA.

Conclusion

The Forest Service’s use of generalized, livestock-oriented forage utilization data is not scientifically or legally sufficient to support the proposed reduction in the wild horse population. The current data do not demonstrate overuse or ecological harm attributable to wild horses, and the methodologies employed are inappropriate for evaluating their actual impact. Until the agency corrects these deficiencies and conducts a transparent, species-specific environmental analysis, any decision to reduce the Heber herd is premature, unsupported, and unlawful.

A revised analysis must:

Disclose full forage production and utilization data;

Provide species-specific estimates of forage consumption;

Clarify forage allocation assumptions and justify them in light of the WFRHBA;

Include wild-horse-specific monitoring to support AML decisions.

VI. Inadequate Genetic Viability – Arbitrary AML Range

Statement of Issue:

The proposed Appropriate Management Level (AML) of 50–104 horses for the Heber Wild Horse Territory is scientifically unsupported and fails to ensure the long-term genetic viability of the herd, in violation of both the Wild Free-Roaming Horses and Burros Act (WFRHBA) and the requirements of the National Environmental Policy Act (NEPA). The Forest Service has not provided a site-specific genetic analysis to justify an AML that falls well below scientifically accepted thresholds necessary to maintain a self-sustaining, genetically healthy wild horse population.

Supporting Rationale:

WFRHBA Requires Protection of Wild Horses Including Genetic Health

The WFRHBA mandates that wild horses be protected and preserved on public lands as “an integral part of the natural system” and that they be “managed to maintain a thriving natural ecological balance” (16 U.S.C. § 1333(a)). Maintaining genetic diversity is an essential component of ensuring that a herd remains self-sustaining and ecologically viable over time. A management plan that knowingly sets a population below the level needed to maintain genetic health directly conflicts with the WFRHBA’s conservation-oriented purpose.

Scientific Consensus Establishes a Minimum Herd Size for Genetic Viability

A strong body of peer-reviewed research and agency guidance — including from the Bureau of Land Management (BLM), the National Research Council (NRC), and leading equine geneticists — clearly concludes that a wild horse population requires a minimum of 150–200 adult horses to maintain acceptable levels of genetic diversity and avoid inbreeding depression.

Dr. Gus Cothran, a leading expert in equine population genetics, has consistently found through multiple studies that wild horse herds below this threshold face increased risk of genetic drift, inbreeding, and loss of adaptive traits.

The BLM's Wild Horse and Burro Management Handbook (2010) recommends an AML of at least 150–200 horses per herd to ensure a minimum effective population size (N_e) of approximately 50–100 breeding individuals, which is necessary for genetic stability.

The National Research Council (2013) report on BLM wild horse management likewise emphasized that small, isolated populations are at risk of long-term genetic decline and should be managed with consideration for maintaining a genetically viable herd size.

The proposed AML of 50–104 total horses is far below these widely recognized standards and cannot support a genetically viable population over time, especially when considering age structure, sex ratio, and the subset of animals that will actually reproduce in any given year.

Lack of Site-Specific Genetic Data Violates NEPA and Undermines AML Justification

NEPA requires federal agencies to take a “hard look” at the environmental consequences of their actions and to base decisions on sound science and high-quality information. In this case, the Forest Service fails to provide any site-specific genetic analysis of the Heber herd — such as existing levels of genetic diversity or effective population size — to support its decision to set the AML as low as 50 horses.

Without this critical data, the proposed AML appears to be arbitrary and capricious, lacking a rational connection to the best available science.

Conclusion:

The proposed AML range of 50–104 horses is scientifically indefensible and violates both the WFRHBA's mandate to maintain healthy, self-sustaining wild horse populations and NEPA's requirement for science-based decision-making. By setting an AML well below established thresholds for genetic viability — and doing so without any site-specific genetic analysis — the Forest Service is adopting a management strategy that could lead to the long-term genetic collapse of the Heber herd.

To comply with federal law and agency best practices, the Forest Service must:

Reassess and increase the AML to a minimum of 150–200 breeding age horses;

Conduct and disclose a site-specific genetic viability assessment;

Include ongoing genetic monitoring as part of the long-term management plan;

Until these steps are taken, the proposed AML is arbitrary, unsupported by the best available science, and legally vulnerable under both NEPA and the WFRHBA.

VII. Violation of Forest Service Policy – Prohibition on Importing Horses

Statement of Issue:

The Heber Wild Horse Territory management plan proposes introducing wild horses from outside the territory as a potential remedy for anticipated genetic decline within the herd. This strategy directly contradicts Forest Service Range Management Handbook 2263.11, which explicitly prohibits the use of selective removals or the relocation of animals from other territories to compensate for management-induced genetic deterioration. Such an approach is not only inconsistent with internal agency policy, but also violates the ecosystem-based principles of the Wild Free-Roaming Horses and Burros Act (WFRHBA).

Supporting Rationale:

Clear Policy Prohibition Against Importing Horses to Improve Genetics

The Forest Service Range Management Handbook 2263.11 clearly states:

“The selective removal of excess animals or relocation of superior animals from other territories to improve gene pool is prohibited.”

This policy recognizes that manipulating herd genetics through artificial introduction of outside animals undermines the natural, free-roaming character of wild horse populations and is inconsistent with ecosystem-based, non-intrusive management. It also implicitly acknowledges that genetic viability must be maintained through responsible population management, not post hoc interventions that attempt to reverse the consequences of flawed planning.

By including the option to import horses from other territories after reducing the Heber population to genetically unsustainable levels, the Forest Service is proposing a remedy that it is explicitly barred from implementing under its own handbook guidance.

Violation of WFRHBA's Ecosystem-Based, Minimal-Intervention Mandate

The Wild Free-Roaming Horses and Burros Act (WFRHBA) mandates that wild horses be “protected and managed as an integral part of the natural system of the public lands” (16 U.S.C. § 1331). This includes preserving the naturally occurring characteristics of the herd that were present at the time of the Act’s passage in 1971. The introduction of outside horses to supplement genetics alters the integrity and historic character of the local population and subverts the Act’s intent.

Moreover, such introductions reflect a highly intrusive form of management, inconsistent with the WFRHBA’s requirement that actions be conducted at the “minimal feasible level” of interference (16 U.S.C. § 1333(a)). A plan that causes genetic collapse through excessive removals and then attempts to artificially correct that collapse via outside imports is the very definition of maximal, not minimal, interference.

Reactive Importation Does Not Justify Irresponsible AML Setting

Rather than proactively establishing an Appropriate Management Level (AML) that supports natural genetic sustainability (typically a minimum of 150–200+ horses, per best available science), the Forest Service proposes an AML as low as 50 horses — a level that virtually guarantees genetic erosion over time. The suggestion that this problem can be later solved by importing horses is a reactive and irresponsible approach that violates both agency policy and the intent of the WFRHBA.

If the Forest Service acknowledges that its proposed AML will likely lead to genetic bottlenecks, the solution is not to plan for artificial correction later, but to prevent the problem at the outset by setting a scientifically supported AML that sustains long-term viability.

Undermines Public Trust and Ecological Integrity

Importing horses from other herds — especially after deliberately removing local animals — risks undermining the ecological and historical continuity of the Heber herd. The Heber horses may have unique characteristics, behaviors, or genetic markers tied to their specific geography and history, particularly since this herd is not managed under BLM and has historically been more free-roaming and unmanipulated than many other herds.

Introducing outside animals may dilute or eliminate these characteristics, violating not just policy and law, but also the public's interest in preserving the unique natural heritage of the Heber wild horses.

Conclusion:

The Heber Wild Horse Territory management plan's consideration of importing horses from outside herds to mitigate anticipated genetic decline is a direct violation of Forest Service policy under Handbook 2263.11. It also contravenes the WFRHBA's intent to preserve the wild, natural, and historically rooted character of wild horse herds through minimal, ecosystem-based management.

Instead of relying on future horse introductions to correct a foreseeable problem, the Forest Service must:

Reject any plan that includes or implies future importation of outside horses;

Revise the AML upward to a minimum population size (150–200+ adult breeding age) that supports natural genetic viability;

Commit to ongoing, site-specific genetic monitoring to avoid the need for intrusive interventions;

Ensure all management actions comply with both internal Forest Service policy and the broader legal framework of the WFRHBA.

Any alternative would not only be scientifically flawed but legally indefensible.

VIII. Failure to Make a Lawful Determination of Excess Animals

The Forest Service proposes a drastic reduction in the Heber wild horse population based on assumptions of ecological impact, yet fails to make the required legal finding of “excess” animals under the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA). This failure constitutes a clear violation of federal law and renders the proposed management action unlawful.

1. Legal Standard: The Requirement to Prove “Excess”

Under the WFRHBA (16 U.S.C. § 1333(b)(2)), wild free-roaming horses and burros may only be removed from public lands if the “Secretary determines that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals.”

This determination requires a specific, evidence-based finding that:

An overpopulation exists relative to the land’s carrying capacity; and

Removal is necessary to maintain a thriving natural ecological balance and prevent deterioration of the range.

Courts have consistently held that this finding must be based on current, site-specific data, and not on outdated assumptions or arbitrary population targets. It is not enough to simply assert that horses are present or that they compete with livestock or wildlife.

2. The Forest Service Has Not Proven Excess

Nowhere in the Heber Wild Horse Territory Management Plan or its supporting documents does the Forest Service provide a valid determination that the current wild horse population is excessive. Specifically:

No current carrying capacity analysis is provided that demonstrates how many horses the land can support in the absence of livestock.

The forage utilization data cited in the plan show low to moderate use, not degradation or range deterioration.

There is no quantifiable evidence of ecological harm attributable to wild horses, such as reduced plant biodiversity, soil erosion, or damage to riparian zones.

The plan fails to distinguish between use by wild horses, cattle, and wildlife, making any conclusion about wild horse overuse speculative and unsupported.

Without such a finding, the Forest Service lacks the legal authority to remove or reduce the wild horse population. As the court ruled in *Friends of Animals v. Silvey*, 353 F. Supp. 3d 991 (D. Nev. 2018), “BLM may not remove wild horses from the range absent a determination that wild horses are excess animals.”

3. Inappropriate Reliance on Arbitrary AML

The proposed population reduction appears to rely on a predetermined Appropriate Management Level (AML) range of 50–104 horses, despite the lack of a legally required analysis to support that number. The AML itself is not defined based on current data or adjusted to reflect changing environmental conditions, forage availability, or the removal of livestock from the area.

Courts have found that an AML is not a substitute for a finding of excess. In *In Defense of Animals v. U.S. Dep’t of the Interior*, 751 F.3d 1054 (9th Cir. 2014), the court emphasized that “[t]he BLM must make a determination of excess animals before removing them, not just rely on AML.”

4. Management Must Favor Wild Horses Where Resources Are Limited

The WFRHBA directs the Forest Service and Bureau of Land Management to manage wild horses as an integral part of the natural system, giving them priority over livestock when resources are limited. The current plan appears to prioritize livestock grazing while targeting wild horses for reduction without exploring reductions in permitted livestock use.

This management approach violates the multiple-use and minimum-impact mandates of the WFRHBA, which require that when conflicts arise, wild horses cannot be treated as expendable in favor of commercial grazing interests.

Remedy Requested

To comply with federal law, the Forest Service must:

Conduct a current, site-specific analysis of range conditions, carrying capacity, and ecological health based solely on wild horse use, excluding livestock.

Provide a scientifically supported determination of “excess” animals, consistent with the requirements of the WFRHBA and relevant case law.

Suspend any proposed removals or fertility control actions until a lawful determination of excess is made and properly disclosed to the public through NEPA.

Reevaluate the AML based on updated and transparent data, ensuring that wild horses are not arbitrarily limited based on outdated or livestock-biased assumptions.

Conclusion

The proposed reduction in the Heber wild horse population is legally indefensible without a formal, evidence-based determination that an overpopulation exists and that wild horses are causing ecological harm. The Forest Service must meet the statutory threshold of proving "excess" before taking any action that would reduce the wild horse herd. Failure to do so is a clear violation of the Wild Free-Roaming Horses and Burros Act and the National Environmental Policy Act, and any action based on such a flawed foundation should be withdrawn or invalidated.

IX. Objection: Misclassification of Wild Horses as "Unauthorized Livestock" Outside Territory Boundaries

Summary:

The Heber Wild Horse Territory Management Plan improperly classifies wild horses found outside the designated territory boundaries as "unauthorized livestock," which directly contradicts the Wild Free-Roaming Horses and Burros Act of 1971 (the Act) and its implementing regulations. This misclassification not only undermines the intent of federal protections but also disregards the natural movement patterns of wild horse populations.

This issue highlights a more fundamental problem: the Heber Wild Horse Territory was inaccurately designated from the outset. At best, the original boundaries were based on unverified assumptions; at worst, they reflect a deliberate decision to limit the territory to just 19,700 acres—without scientific justification or evidence that this area accurately represented the range used by wild horses when the Act was enacted.

Legal Distinction Between "Range" and "Territory" in Wild Horse Management

The Heber Wild Horse Territory Management Plan and EA improperly centers its management framework around the concept of a "territory" rather than the legally mandated concept of a "range" as defined by the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA). The Act clearly states that wild horses and burros are to be managed on their historic range, which refers to the geographic area they occupied at the time the Act was passed — not an arbitrarily drawn "territory" established for administrative convenience. A "range," as defined in federal regulations (43 CFR § 4700.0-5(d)), includes "the amount of land necessary to sustain an existing herd or herds of wild horses and burros" and is meant to encompass the natural habitat and migratory patterns of wild horse populations. In contrast, the designation of the Heber Wild Horse Territory under U.S. Forest Service jurisdiction is narrower and does not reflect the full area historically used by the herd. By focusing solely on managing within the artificially limited "territory" boundaries, the EA ignores the broader ecological, legal, and historical context of wild horse use of the land. This misalignment not only limits the herd's natural behavior and access to resources, but also undermines the Act's intent to preserve the free-roaming character of wild horses on public lands. Effective and lawful management must prioritize the range — ensuring wild horses are protected across their full, historic habitat — not confined to administrative boundaries that do not serve the animals' welfare or the law.

Legal Basis of the Objection:

Violation of the 1971 Wild Free-Roaming Horses and Burros Act (Public Law 92–195):
The Act protects wild horses “wherever found on public lands,” not solely within arbitrary administrative boundaries. The intent of Congress was to safeguard wild, free-roaming horses as “an integral part of the natural system of the public lands.”

Misapplication of 36 CFR § 222.60(b)(13):

This regulation defines wild horses as “all unbranded and unclaimed horses and burros on public lands of the United States that have adapted to a wild, free-roaming existence.” Nowhere does it require horses to remain within fixed territorial boundaries to retain their legal status as wild.

Violation of NEPA's requirement to consider reasonable alternatives and cumulative impacts (40 CFR § 1502.14, § 1508.7):

By proposing to remove horses based solely on their location, the plan fails to account for natural migratory behavior and does not consider alternative management strategies that would maintain herd integrity across landscape boundaries.

Supporting Evidence and Reasoning:

The draft plan explicitly states that horses outside the arbitrarily designated Heber Wild Horse Territory will be prioritized for removal and classified as “unauthorized,” regardless of their origin or behavior.

This approach penalizes natural and essential behavior of wild horses—roaming across landscapes in response to environmental conditions—and creates a management regime that is ecologically unsound and genetically harmful.

Scientific research and U.S. Forest Service data recognize that wild horse movements often extend beyond artificial boundaries, particularly in response to forage availability, water, fire, or human activity.

By targeting horses outside the arbitrarily designated territory for removal, the plan risks depleting genetic diversity, removing culturally or biologically significant individuals, and undermining herd sustainability—without proper scientific justification or environmental review.

Requested Remedy:

The plan must be revised to explicitly recognize and protect wild horses that have naturally and historically roamed outside the current arbitrary territory boundary.

Horses exhibiting free-roaming behavior on adjacent public lands must not be automatically designated as “unauthorized livestock” but should instead be managed under the protections of the 1971 Act.

A boundary-wide review and expansion of the designated territory should be redrawn to include the entire Sitgreaves National Forest, along with habitat connectivity strategies, to reflect ecological realities and horse behavior.

X. Objection Point: Failure to Address Ongoing Illegal Threat to Federally Protected Wild Horses

The Heber Wild Horse Territory Management Plan and Final Draft Environmental Assessment (EA) fail to address a critical and ongoing threat to the Heber wild horse herd: the illegal shooting of federally protected wild horses. This omission is not only a failure of wildlife protection but also a dereliction of the agency's responsibilities under the Wild Free-Roaming Horses and Burros Act of 1971.

Multiple wild horse killing sprees began in the fall of 2018, starting with the fatal shootings of two bachelor stallions. In the years that followed, additional mass killings occurred periodically, with the most recent documented incident taking place in 2021. In total, over 40 wild horses consisting of stallions, mares, and foals have been fatally shot—some left to suffer before dying or being euthanized. Despite the gravity of these crimes — and their repeated nature — little to no effort has been undertaken by Forest Service officials to apprehend these killers and no arrests have been made. This ongoing lack of accountability raises serious concerns about both law enforcement effectiveness and the absence of meaningful deterrents in the area.

This is a federally protected herd. Under the Wild Free-Roaming Horses and Burros Act (16 U.S.C. §§ 1331–1340), wild horses are considered “living symbols of the historic and pioneer spirit of the West,” and the law makes it a federal crime to harass or kill them. The failure to prevent, investigate, or deter these crimes violates both the spirit and the letter of this law.

Requested Action:

The final management plan must be revised to include comprehensive and enforceable measures to address this persistent threat. Specifically, the plan should:

Acknowledge the repeated illegal shootings in the affected area, including the fact that no arrests have been made.

Establish a clear enforcement strategy, including collaboration with the U.S. Forest Service Law Enforcement, local sheriffs, and the FBI if necessary.

Deploy surveillance or monitoring equipment (e.g., remote trail cameras, aerial monitoring, or ranger patrols) in known hotspots for illegal activity.

Develop and fund a public outreach campaign to educate local communities on the legal protections afforded to wild horses and the penalties for violating them.

Create a tip line or reporting system for the public to report suspected illegal activity anonymously.

Include a detailed response protocol for when horses are found dead or injured under suspicious circumstances.

Conclusion:

Any management plan that fails to take into account repeated, unsolved, and illegal killings of protected wild horses cannot be considered a responsible or lawful management framework. The Heber wild horse herd cannot be managed effectively — or ethically — without first ensuring its protection from criminal acts. This should be a baseline component of any final plan.

XI. Objection: Failure to Analyze a Reasonable Alternative — Study Herd Designation

The Final Draft EA fails to comply with NEPA (42 U.S.C. § 4321 et seq.) and the APA (5 U.S.C. § 706) by omitting a reasonable alternative that would designate the Heber Wild Horse Herd as a scientific study population, with a moratorium on removals and fertility control for a defined research period.

1. Statutory and Procedural Framework

NEPA requires agencies to “rigorously explore and objectively evaluate all reasonable alternatives” (40 C.F.R. § 1502.14).

The APA prohibits arbitrary and capricious decision-making where an agency ignores or dismisses viable management alternatives (5 U.S.C. § 706(2)(A)).

The Wild Free-Roaming Horses and Burros Act (16 U.S.C. §§ 1331–1340) directs preservation of natural behaviors, authorizes scientific study, and grants management flexibility.

A “study herd” alternative fits squarely within these mandates and must be considered.

2. Heber Herd’s Unique Baseline Status

The Heber herd is the only known federally managed wild horse population that has never undergone legal removals or any kind of fertility control. It remains minimally managed, preserving natural herd dynamics. This unique status makes it the only available “control group” for scientifically evaluating the effects of decades of intervention on other herds.

3. Scientific Need and Data Gaps

The 2013 National Academies of Sciences report *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward* (pp. 47–54, 82–95) identified critical data gaps in social structure, reproductive behavior, mortality, and compensatory reproduction. The Heber herd, as

an unmanipulated population, presents the only opportunity to address these gaps through long-term monitoring.

By failing to include a study-herd alternative, the EA disregards the NAS recommendations and perpetuates reliance on speculative models rather than empirical field data.

4. Critically Flawed Foundation — 1973 “Purported Census” and FOIA Evidence

The EA and Territory Plan rely on a 1973 “purported census” that claimed a population of six mares and one stallion. The Plan itself uses the term “purported,” acknowledging the questionable reliability of this figure. Yet no documentation explains:

How the count was conducted,

Who conducted it,

What methodology was used, or

Whether recognized survey protocols were followed.

FOIA responses obtained from the U.S. Forest Service confirm that no formal wild horse population survey was ever conducted in the Heber Wild Horse Territory in 1973 or thereafter. While the Forest Service requested survey protocols from the Bureau of Land Management in 1973, those protocols (Inventory Procedures for Wild Horses and Burros) were never implemented.

As the BLM guidance itself warns:

“Collection of insufficient data or failure to keep adequate records will result in a meaningless inventory... Intensive inventories containing high quality information are especially important for wild horses and burros.” (1973 BLM Inventory Procedures, § .14(B))

The FOIA record (Exhibits A–C) demonstrates that:

The Forest Service requested wild horse inventory procedures from BLM (Exhibit A);

Only two responsive pages pertain to the Heber Territory designation, with no evidence of scientific surveys (Exhibit B); and

The BLM-provided protocols were never applied in establishing the herd’s baseline population or territory boundaries (Exhibit C).

Accordingly, the 1973 “purported census” is not a scientifically defensible baseline. Any AMLs or population models derived from it lack credibility under NEPA and the APA. This deficiency

further supports the need for a Study Herd Alternative, which would allow the collection of valid, peer-reviewed data to replace a foundation that the BLM itself defines as “meaningless.”

5. Fiscal and Public Policy Considerations

Roundups, removals, and fertility control programs impose significant financial burdens. A study-herd designation, combined with systematic data collection, could demonstrate whether natural ecological mechanisms (predation, forage limits, social regulation) maintain population balance at lower cost. This alternative must be analyzed under NEPA’s requirement to consider economically efficient and environmentally protective options.

Summary Statement

The agency cannot lawfully base its management plan on a “purported” 1973 census that FOIA records confirm was never conducted using recognized methods, while simultaneously refusing to evaluate the only scientifically defensible alternative available: designation of the Heber herd as a study population. To rely on a meaningless baseline while ignoring the one option capable of producing credible, peer-reviewed data is arbitrary, capricious, and contrary to both NEPA’s requirement for rigorous alternatives analysis and the Wild Free-Roaming Horses and Burros Act’s mandate to preserve natural behavior.

Requested Remedy

To correct these deficiencies, the Forest Service must:

Supplement the EA (or prepare a new EA/EIS) to include a “Study Herd Alternative”;

Impose a moratorium on removals and fertility control for a defined research period (10–15 years);

Establish independent, peer-reviewed monitoring partnerships with universities, wildlife ecologists, tribes, and other stakeholders;

Develop a scientifically credible dataset to replace the flawed 1973 “purported census” and guide adaptive management.

XII. Legal Grounding

The validity of any Wild Horse or Burro Territory rests upon compliance with the statutory mandate of the Wild Free-Roaming Horses and Burros Act of 1971 (“the Act”), 16 U.S.C. §§ 1331–1340. The Act requires that territories be designated on those lands “where wild free-roaming horses and burros were found in 1971.” A designation that fails to accurately reflect the horses’ or burros’ 1971 distribution is contrary to law. If that foundational designation is flawed, then every downstream decision—Territory delineation, AML-setting, gather/removal decisions, and even the scope of NEPA analysis—stands on legally unstable ground.

I. Statutory Mandate and APA / NEPA Review

Under the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331–1340, territories must reflect lands “where wild free-roaming horses and burros were found in 1971.” Any designation that deviates from that requirement is contrary to law.

Under the Administrative Procedure Act, courts must set aside agency actions that are “arbitrary, capricious, an abuse of discretion, or not in accordance with law.” 5 U.S.C. § 706(2)(A). The Supreme Court, in *Motor Vehicle Mfrs. Ass’n v. State Farm*, held that an agency must “‘examine the relevant data’ and articulate a satisfactory explanation for its action, including a rational connection between facts found and choice made.” 463 U.S. 29, 43 (1983).

Under NEPA, agency decisions must include a “reasonably thorough discussion of the significant aspects of the probable environmental consequences” (the so-called “hard look” doctrine). *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976) The Supreme Court emphasized that NEPA requires agencies to consider the environmental consequences of their actions in a detailed and meaningful way, not through superficial analysis. When an EA or EIS is based on a mischaracterized baseline—here, a flawed territorial designation—its analysis is tainted and cannot properly inform “reasoned decisionmaking.”

Thus, if the territorial baseline fails, the entire analytic architecture collapses.

II. Forest Service–Specific Precedents and Analogues

While many wild-horse decisions involve Bureau of Land Management actions, the Forest Service is not immune to judicial scrutiny. Below are key Forest Service (and federal forest law) cases that demonstrate how courts have treated Forest Service decisions under APA/NEPA and site-specific wildlife or resource management:

Friends of Animals v. McAdams (Forest Service)

In litigation over the Devil’s Garden Plateau wild horses, plaintiffs challenged the Forest Service’s policy of selling horses “without limitations” and its failure to supplement the environmental review to address changed conditions. The court held that the Forest Service’s failure to perform new or supplemental analysis in light of a changed policy was arbitrary and capricious.

Smokey Wire

This decision underscores that the Forest Service must revisit its NEPA baseline if new policies or changed facts affect foundational assumptions.

Animal Legal Defense Fund v. U.S. Forest Service (Devil’s Garden)

Plaintiffs challenged a Forest Service roundup and sale scheme in the Devil’s Garden Wild Horse Territory, alleging violations of the Wild Horses Act, NEPA, and APA. Although the case was ultimately dismissed following a congressional prohibition on sales for slaughter, the litigation reflects direct judicial scrutiny of Forest Service wild-horse decisions.

Animal Legal Defense Fund

Other Forest Service NEPA / APA precedent

The Forest Service has been held to strict NEPA obligations in various contexts—e.g., land management plans, project-level decisions, and supplementation when conditions change. See *Cottonwood Environmental Law Center v. Erickson*, in which plaintiffs challenged the use of categorical exclusions and the completeness of NEPA review.

Smokey Wire

Also, in *Klamath / Western Watersheds* litigation, the Forest Service was faulted for categorically excluding certain allotment decisions from NEPA review where they reasonably should have triggered further review.

Advocates for the West

These cases collectively establish that the Forest Service is bound by the same APA/NEPA duties as any other federal agency and has been held to account where foundational assumptions or baseline conditions were revealed to be arbitrary and capricious.

III. Integrating Forest Service Precedents into the Argument

Because the territorial designation is the foundation of the Heber Wild Horse Territory management plan, the Forest Service cannot permissibly:

Rely on an assumption about historic presence without substantiation.

Turn a flawed baseline into a static artifact immune from challenge.

Disclaim further analysis simply because the designation was made decades ago.

Foreclose proper supplementation of analysis once the flaw is exposed.

Courts have already invalidated (or threatened to invalidate) Forest Service wild-horse decisions where the agency failed to revise or supplement environmental review in the face of material change (e.g. *Friends of Animals / Devil's Garden*).

Smokey Wire

Moreover, courts reviewing Forest Service wildlife or resource management decisions (e.g. *Or. Nat. Desert Ass'n*) emphasize that deference does not permit agencies to avoid their duty to explain and to tether decisions to both law and evidence.

Environmental Law Reporter

The territorial baseline must be reopened or remanded for full review aligned with statute.

Any EA/EIS, AML determination, or management plan that rests on a defective territorial baseline is subject to reversal under APA.

The Forest Service must be required to conduct supplemental or new NEPA analysis once the flaw is recognized.

Accordingly, unless and until the Forest Service corrects and verifies the territorial boundaries to conform with the statutory requirement that they reflect where wild horses and burros were historically in 1971 and currently, its management framework lacks legal sufficiency. To proceed otherwise is to act in a manner that is not in accordance with law and fails to withstand review under the APA.

For these reasons, the proposed action must be set aside as arbitrary, capricious, and contrary to statutory mandate.

In Sum:

The Heber Wild Horse Territory Management Plan and Final Draft EA represent a fundamentally flawed approach that fails to comply with the Wild Free-Roaming Horses and Burros Act (WFRHBA) and Forest Service policy. The plan prioritizes repeated invasive management actions—such as captures, removals, and fertility control—without adequately considering or implementing non-invasive alternatives, in direct contradiction to the Act’s mandate for management at the “minimal feasible level.”

The use of questionable growth rate assumptions and reliance on unverified, anecdotal baseline data—rather than following established interagency protocols—undermine the integrity of the analysis and the justification for management actions. The plan fails to establish a legitimate ecological basis for removals, lacks evidence of excess or overpopulation or ecological degradation attributable to wild horses, and does not provide a clear comparison of forage use among horses, livestock, and wildlife.

Furthermore, the proposed AML of 50–104 horses is scientifically indefensible and falls far below the threshold for maintaining a genetically viable population. The inclusion of a plan to supplement the herd with horses from other areas, after intentionally reducing the population to unsustainable levels, constitutes a violation of Forest Service policy and good faith management.

The plan unlawfully gives de facto priority to livestock grazing over wild horse preservation, in clear violation of the WFRHBA’s intent to protect and preserve wild horses as an integral part of the public lands. 43 C.F.R. § 4710.5(a) authorizes the modification or cancellation of livestock grazing permits in order to ensure the protection of wild horses and burros and their habitat. By failing to prioritize the wild horses of the Heber herd, the Forest Service has abdicated its statutory responsibility.

Ultimately, the Heber Wild Horse Territory Management Plan and Final Environmental Assessment (EA) are legally, procedurally, and scientifically deficient. They fail to comply with the National Environmental Policy Act (NEPA), the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), and other applicable federal mandates. As such, the current Plan cannot be allowed to move forward.

Moreover, the Plan is procedurally flawed under NEPA. The Environmental Assessment fails to rigorously explore a reasonable range of alternatives, relies on outdated or incomplete data, and lacks a robust cumulative impacts analysis as required under 40 C.F.R. § 1508.7. The absence of a current and scientifically defensible population census undermines any claims of environmental or resource-based necessity for the proposed actions.

The Plan is mala in se—inherently wrong. It is not merely procedurally irregular; it is substantively unjust and inconsistent with both the spirit and letter of the law. The failure to incorporate the best available science, to ensure public transparency, and to uphold the legal protections afforded to wild horses constitutes a dereliction of the agency's fiduciary duty to the American public and to the stewardship of our shared public lands.

Accordingly, the Heber Wild Horse Territory Management Plan and Final EA must be withdrawn in their entirety. A full and lawful revision is required—one that reflects legal mandates, scientific integrity, and a genuine commitment to the preservation of wild horses as valued and protected components of our public lands. Until such a revision is undertaken, proceeding with the current Plan would represent not only an administrative failure but a violation of federal law.

The Heber Wild Horse Territory Management Plan and Final Environmental Assessment (EA) are not merely flawed—they are fatally defective in both substance and process. They violate the letter and intent of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), fail to satisfy the procedural mandates of the National Environmental Policy Act (NEPA), and disregard the public interest in the preservation of wild horses on our public lands.

Rather than fulfilling its statutory duty to protect wild horses as “an integral part of the natural system of the public lands,” the Forest Service has advanced a plan that effectively subverts that duty by emphasizing removal, population suppression, and intrusive control measures—all without a foundation in the best available science or a lawful environmental review process.

As the United States District Court for the District of Columbia powerfully 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.”

— Colorado Wild Horse and Burro Coalition, Inc. v. Salazar, 639 F. Supp. 2d 87, 98 (D.D.C. 2009) (Collyer, J.)

This is precisely what the Heber Plan threatens to do. Cloaked in the language of “management,” the agency proposes actions that strike at the heart of Congressional intent—actions that are not only administratively indefensible but also legally impermissible.

The Plan is mala in se—inherently wrong. It must be withdrawn in its entirety. Nothing short of a comprehensive and lawful revision will suffice—one that comports with statutory obligations,

reflects the best available science, and genuinely honors the public's interest in protecting wild horses as living symbols of the historic and pioneer spirit of the West.

Requested Remedy

Accordingly, I respectfully request that the Forest Service withdraw the current Heber Wild Horse Territory Management Plan, designate the Heber Herd as a protected scientific study population, and impose a moratorium on removals and fertility control for a defined research period. A revised Environmental Assessment must be prepared that corrects the deficiencies identified herein, incorporates the best available science, and fully analyzes the study herd alternative in compliance with NEPA and the Wild Free-Roaming Horses and Burros Act.

Exhibits Index

Exhibit A

BLM Inventory Procedures for Wild Horses and Burros (1973)

Submitted as part of a formal objection to the
Heber Wild Horse Territory Management Plan and Environmental Assessment

Summary:

This document was obtained via a FOIA request. It contains formal guidance from the Bureau of Land Management to the U.S. Forest Service outlining scientifically accepted methods for conducting wild horse and burro population inventories. It emphasizes the importance of sufficient data and recordkeeping. Despite receiving this guidance in 1973, the Forest Service never implemented these procedures in the Heber Wild Horse Territory.

Exhibit B

FOIA Response from U.S. Forest Service Confirming No Survey Records

Submitted as part of a formal objection to the
Heber Wild Horse Territory Management Plan and Environmental Assessment

Summary:

This document is a FOIA response from the U.S. Forest Service confirming that no records were found to indicate the agency implemented the BLM's recommended inventory procedures for wild horse population surveys in the Heber Wild Horse Territory. This lack of implementation undermines the validity of population estimates used in the current management plan.

Exhibit C

FOIA Response from U.S. Forest Service Cover Letter

Submitted as part of a formal objection to the
Heber Wild Horse Territory Management Plan and Environmental Assessment

Summary:

This document is a FOIA response cover letter from the U.S. Forest Service which identifies the scope of my request.