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Title:

Comments: Heber Wild Horse Territory Boundaries

The Forest Service HWHT management plan is a failure beginning with the establishment of incorrect territory boundaries and population estimates of which there were no surveys, no inventories, no data, and no facts to support the decisions made by the Forest Service regarding the Heber wild horses.

FOIA requests indicate the HWHT boundaries were never drawn up in accordance with the Wild Free-Roaming Horses and Burros Act of 1971 which states: It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

The Sitgreaves consists of 818,651 acres. The first step should have been to accurately determine where the HWHT boundaries should be based on where wild, free-roaming horses were presently found in 1971. The horses and their Territory go together. Where the horses were found was to be used to establish where their official Territory was to have been designated. The WH&B Act states: "the criteria for establishing a wild horse territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA".

While domestic livestock allotments are presently located on public lands portions of the Heber Wild Horse Territory they are only permitted and not designated. Contrarily, the wild horses are to have a designated Territory or HMA. ? ?Wild horses and burros are legally? ?DESIGNATED? ?on the Territory? ?and livestock are only? ?PERMITTED. ? ?Definition of the word? "?designated?" ?is to? "?set aside for?" ?or? "?assign?" ?or? "?authorize?"? ? ?Definition of? "?permit?" ?is to? "?allow?" ?or? "?let?" ?or? "?tolerate?"? ?

Commercial livestock grazing is only permitted on public lands, ? ?it is not a requirement under the agency's multiple use mandate as outlined in the Federal Land Policy and Management Act of? ?1976? (?FLPMA)? ? ?Public land grazing is not a right, it's a privilege. The USFS is mandated by law to protect wild horses? (?and burros)? ? ?Therefore, ? ?I require a complete, ? ?valid and scientific assessment including the explanation of the methods used for the assessment, ? ?of the past and current animal unit months? (?AUMs)? ?for the Heber wild horse area lands including allotments for livestock, ? ?wild horses and other wildlife be evaluated and presented to the public for review. ? In the 50 years since the WH&B Act was passed there has been no management plan for the Heber Wild Horse Territory. Therefore, in order to achieve a thorough assessment on which to base a HWHT management plan and that this proposed major federal action will significantly affect the quality of the human environment an Environmental Impact Statement should be prepared.

"Wild free-roaming horses and burros?" ?means all unbranded and unclaimed horses and burros on public lands of the United States. In order to accommodate the current wild horse population level? ?the law provides? ?the alternative of legal reduction of private/corporate domestic livestock grazing in the Apache-Sitgreaves National forest wild horse lands, ? ?pursuant to? ?3? ?C.F.R.? ?4710.3-2? ?and? ?43? ?C.F.R.? ?4710.5?(?a)?, ? ? ? ?The USFS authority and the duty to reduce livestock grazing pursuant to? ?43? ?C.F.R.? ?4710.5? ?in order? ?to provide habitat for wild horses or burros."

As the district court explained in Dahl v. ? ?Clark, ? ?the test as to appropriate wild horse population levels is whether such levels will achieve and maintain a thriving, ? ?ecological balance on the public lands. ? ?Nowhere in

the law or regulations is the USFS required to maintain any specific numbers of animals or to maintain populations in the numbers of animals existing at any particular time.?

The only law that requires the USFS to maintain populations is the 1971 Congressional law. The law must be followed and the law states, "that wild free-roaming wild horses [and burros] are to be considered in the area where presently found, as an integral part of the natural ecosystem of the public lands". Therefore, an AML established purely for any USFS administrative reasons because it was the level of the wild horse and/or burro use at a particular point in time or imagined to be an advantageous population for the USFS cannot be justified under statute.?

The horses and the correctly mapped Territory are the foundation on which the rest of the plan should have been developed. The horses and their Territory should take precedence but sadly and wrongly the FS has failed and given cattle ranching priority. This is obvious because even though the cattle pasture fences prohibit the horses from access to the entire area of the HWHT the FS has made it clear the fences will remain. Thus the FS has given priority to privately owned, non native animals that are only permitted in the forest rather than to the federally protected wild horses which are legally designated to be on the Territory.

The Forest Service failed on the first steps in the development of the Heber Wild Horse Territory. In order to be in compliance with the WH&B Act a census of horses and their locations in the Sitgreaves should have been taken, but it was never done. FOIA request responses from the Forest Service indicate a proper inventory of wild horses was never accomplished. No records have been produced with information as to why the FS decided on that particular area of land in the Sitgreaves was chosen, who drew up the boundaries, boundary surveys, horse surveys, etc.

FOIA request responses say there was an "estimated number of horses, December 1971 - seven (7)". Where is the documentation to show where the seven horses were in the Sitgreaves? What identified them so that they could be tracked and protected? Identifiers such as color, markings, ages, etc. Was the entire Sitgreaves part of the inventory as it should have been? The EA should produce proof if the entire Sitgreaves was part of the inventory. Historical documents indicate there were wild horses throughout much of the forest for many years prior to 1971. In fact, in 1929 the Forest Service decided it was going to "dispose" of wild horses in the Sitgreaves by shooting them. It is difficult to believe that in 1974 in all of the Sitgreaves there were only 7 wild horses left. Who provided that information? How was that number determined? Was it on horseback, in a motorized vehicle, on foot? By air? How many people took part in the count? What were their backgrounds? Did they have a bias? Was there a conflict of interest?

The wild horse survey was supposed to include the entire Sitgreaves in order to establish where wild horses were found at that time. Picking out an area then having some unknown person or persons estimate how many horses were on it was not how the Act was written nor intended. The basis of establishing a Wild Horse Territory is as the WH&B act states: "the criteria for establishing a wild horse territory is the presence of any unclaimed, unbranded wild horses and burros at the passage of the WFHBA".

The BLM provided the Forest Service with the proper procedure at the time for establishing a Wild Horse Territory. However, FOIA request replies indicate those protocols were ignored.

BLM PROPER PROCEDURE

Proper procedure for conducting an inventory included among many other items the following:

LOCATION (Location of the horses seen along with legal descriptions where available or locations of horses accurately plotted on a map in order to accurately depict band movement or territorial limits.)

NUMBER, AGE CLASS, SEX AND COLOR IDENTIFICATION

PLANT SPECIES UTILIZED

EVIDENCE OF OTHER ANIMAL SPECIES

WEATHER CONDITION

LOCATION OF WATER

ENCOUNTER REACTIONS

EXTERNAL INFLUENCES

COMMENTS

PHOTOGRAPHS (Photographs should be taken of each band at the time of observation)

But the FS cannot produce any documentation to indicate they did anything at all proper in identifying where the horses were in the Apache-Sitgreaves or to identify the bands or individual horses in order to determine accurate boundaries for the establishment of the Heber Wild Horse Territory. Proper procedure was not followed. Opinions from random people do not constitute proper procedure.

Therefore, the very first steps, correctly identifying the bands of horses in the herd and establishing the Territory boundaries according the WH&B Act and where they were presently found, was a fail on the part of the Forest Service. The HWHT management plan must not go forward until past mistakes are rectified. At this time we know the majority of wild horses live off of what the FS has by all indication arbitrarily deemed to be the HWHT.

There are reasons why the flight inventories in 2015 and 2017 and the on the ground survey in January of 2020 showed no horses on a large part of the Territory. Cattle pastures fences which crisscross the forest are one of the reasons. Also, rugged terrain with cliffs and canyons which make it impassible for the horses and therefore impossible for them to access all areas of what the FS has designated as the HWHT.

THE National academy of science? (?NAS?) ?research report

The? ?2013? ?NAS report states,? ?"Management of free-ranging horses and burros is not based on rigorous population-monitoring procedures.?"? The USFS has failed to provide and verify documented proof that the current designated Heber Wild Horse Territory boundaries were the historic range of all free-roaming horses in the Apache-Sitgreaves National Forests in 1971 when the WFHBA was enacted. ? There is no justification for limiting the Heber wild horse herd to the area which was either arbitrarily chosen or chosen with a motive involved that was not for the benefit or welfare of the horses. ?Therefore there is no justification for any capture/removal or temporary or permanent sterilization of wild horses.? ?None.?

ARBITRARY AND CAPRICIOUS

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

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

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

No Action should be taken regarding this failed HWHT management plan. This plan was flawed from the very beginning by having incorrectly drawn out and established an area to designate as the HWHT. The Heber Wild Horse Territory at the very least should extend in an eastern and southern direction which encompasses where the horses are seen now since where they were seen in 1971 was never documented and there was no official scientific study which included a complete and thorough inventory of horses and where they were presently found in 1971. There is no way to go back in time to conduct a past survey so we can only move on with what is obvious and available at present which shows where the horses are presently found in this year of 2021. Horses have illegally been killed and captured and removed by individuals and often times at the request of the Forest Service. It is past time to make amends and do the right and lawful thing by the horses and the citizens of the United States and follow the Act of Congress.

Regarding this plan, NO ACTION should be taken.

THE WILD FREE-ROAMING HORSES AND BURROS ACT OF 1971 (PUBLIC LAW 92-195) [sect]1331.

Congressional findings and declaration of policy Congress finds and 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 within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

I wish to bring to the attention of the USFS management that any employee of the Department of Agriculture that has made false statements or conceals information is subject to the following Title 18 violations which include fines and prison terms. Making false statements (18 U.S.C. [sect] 1001) is the common name for the United States federal crime laid out in Section 1001 of Title 18 of the United States Code, which generally prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government of the United States, even by mere denial 18 U.S.C. [sect] 1519.

NO ACTION: The EA failed to supply documentation of the total lands where wild horses were presently found within the Apache-Sitgreaves National Forest in 1971 at the time of the passage of the Wild Horse and Burro Act. This management plan is based on incomplete and inaccurate information. It demonstrates a major failure on the part of the Forest Service to do a correct, complete, thorough, inventory and study to determine where the Heber Wild Horse Territory boundaries should be established. The free-roaming horses do not even have full access to areas within the boundaries in order to access all water sources, forage, shelter, or each other.

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

"Regulatory Capture" is a form of political corruption that occurs when a regulatory agency, created to act in

the public interest,? ?instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating.? ?Regulatory capture is a form of government failure?; ?it creates an opening for firms to behave in ways injurious to the public.? ?The agencies are called? ?"captured agencies?"?.

Government agencies tend to elevate social,? ?cultural,? ?and political concerns over the natural environment.? ?Congress designed NEPA to achieve environmentally positive results through a compulsory procedural mechanism,? ?NEPA simply prohibits uninformed,? ?not unwise,? ?agency decisions? (?Nowlin? & ?Henry,? ?2008?)?..? ?The EA process is required to weigh the benefits versus the wild horse financial costs of the project.

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

In addition,? ?I require the EA include an explanation of the scoping document? ?that? ?states that a census was completed in? ?1974? ?and only found seven wild horses on the forest lands.? ?I require the EA provide a copy and detailed explanation of the following FS document where it clearly states that? ?("White Mt Apache Horses?") ?wild horses were captured and sold at public auction.? ?This explanation must include the proof that the horses captured originated from the nearby reservation as is stated in this document.? ?Who made that decision and what proof was provided that the captured and sold horses were actually from the reservation?? Was there any effort to contact the White Mountain Apache tribe to find out if any of the horses belonged to them? If the White Mountain Apache tribe identified horses as belonging to them were any attempts made to return the horses to the White Mountain Apache reservation? If so, please provide proof of such and what the response was from the WMA tribe.

I am hereby submitting the attached information for the administrative record?:

?Forest Service map showing the 2015 and 2017 wild horse inventory of where the horses presently found.

?Forest Service 2020 map of the ground wild horse inventory.

?FOIA information requested relating to the original development of the HWHT

?FOIA two page document response to the FOIA request for information requested relating to the original development of the HWHT

?FOIA request documentation from the BLM explaining the proper procedure at the time for doing an inventory of wild horses in the forest in order to determine and establish a Wild Horse Territory

?1974 Range Inspection Report

?I am in support of NO ACTION on the Heber Wild Horse Territory management plan and EA.