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First name: Anthony

Last name: Merrill

Organization: Snell & Wilmer L.L.P.

Title: Attorney

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VIA ELECTRONIC SUBMISSION, PRIORITY MAIL, AND FEDEX

Michiko Martin, Reviewing Officer

Attn: Administrative Review Staff

United States Forest Service

Southwest Region

333 Broadway SE

Albuquerque, NM 87102

Re: Heber Wild Horse Territory Management Plan Objections

Dear Ms. Martin:

Introduction

The International Society for the Protection of Mustangs and Burros ("ISPMB"), submits the following objections to the Final Territory Management Plan (the "Management Plan") for the Heber Wild Horse Territory (the "Territory"). ISPMB is a non-profit organization formed to promote animal welfare and protection, including the protection of wild horses. ISPMB is the oldest wild horse and burro organization in the United States. Along with its first president, Wild Horse Annie, ISPMB was instrumental in securing and implementing the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, et seq. (the "Wild Horse and Burro Act," or the "Act"). ISPMB was headquartered in Arizona from approximately 1993 until 2000 when it relocated its headquarters to Rapid City, South Dakota. ISPMB still has members who live in Arizona, including in or around Heber, and other members who visit the area frequently.

ISPMB filed a lawsuit against the United States Forest Service ("Forest Service" or "USFS"), among others, in the District Court for the District of Arizona in 2005 (the "2005 Litigation"). ISPMB sought a preliminary injunction and alleged that the USFS had not conducted a census, inventory, or any other type of survey to determine how many of these approximate 300 to 400 horses were "wild freeroaming" horses and thus entitled to protection under the Act. ISPMB also alleged that the USFS issued a solicitation entitled "Trespass Horse Capture and Transport", by which the horses were to be captured and transported out of the Apache-Sitgreaves National Forests. See Exhibit 1. The solicitation provided for the round-up and capture of all horses in the Apache-Sitgreaves Forest including those in the Heber Wild Horse Territory and all mares, even those with foals. ISPMB successfully obtained the injunction. See Order Granting Injunction, dated December 13, 2005, attached hereto as Exhibit 2.

In March 2007, the parties entered into a stipulated settlement agreement (the "Stipulated Settlement Agreement") and the court issued an order, dated March 21, 2007 (the "Federal Court Order"), which adopted the terms set forth in the Stipulated Settlement Agreement. See Stipulated Settlement Agreement, attached hereto as Exhibit 3 and Federal Court Order, attached hereto as Exhibit 4. Pursuant to the Federal Court Order:

* The USFS agreed that the Heber Wild Horse Territory still exists and has not been dissolved.

* The USFS agreed that wild horses are by law an integral part and component of the natural system of the public lands, as expressed by Congress in the Act.

* The USFS will work with the public, including ISPMB, in the development of a written Heber Wild Horse Territory Management Strategy in accordance with the provisions of the Act.

* The USFS will refrain from any gathering or removing of horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and Lakeside Ranger Districts, considered the Sitgreaves National Forest, until the USFS completes, with public involvement, an analysis and appropriate environmental document pursuant to NEPA and develops a written Heber Wild Horse Territory Management Strategy.

* The USFS will involve the public, including ISPMB, in scoping for the analysis.

* The USFS agreed to provide ISPMB with specific notice of the document and consider its comments on the same.

* The USFS agreed to continue to coordinate with the White Mountain Apache Tribe for repair and maintenance of the boundary fence.

Following the submission of the 2021 Heber Wild Horse Draft Territory Management Plan and Draft Environmental Assessment ("2021 EA"), ISPMB submitted timely and detailed comments on April 22, 2021. See Exhibit 5. In those comments ISPMB raised fundamental concerns about the agency's treatment of the Heber Wild Horse Territory, including the improper limitation of the Territory's boundaries, the arbitrary setting of the Appropriate Management Level at 50-104 horses, the mischaracterization of the herd's historical presence, the lack of reliable monitoring and census data, and the failure to explicitly recognize the herd as "wild free-roaming horses" under the Wild Horse and Burro Act.

Now, with the publication of the 2025 Final Management Plan and Environmental Assessment, ISPMB is once again compelled to submit formal objections due to USFS's arbitrary and capacious decision-making actions and willful pattern of ignoring the governing laws and regulations in furtherance of a thin-veiled scheme to decimate the federally protected wild horses. The Management Plan repeats many of the same flaws ISPMB identified in 2021, including its reliance on arbitrary population numbers, its refusal to consider reasonable alternatives, and its continued failure to address the herd's statutory status and genetic viability. See Exhibit 5, at pg. 13-18, Because the Forest Service has not meaningfully responded to our prior concerns, and because the issues we raised remain unaddressed and unresolved, we respectfully submit to ensure compliance with the law and to protect the Heber Wild Horse Territory for future generations (the last "untouched" wild horse herd in the country that represents the final hope to fulfill the purpose of the Wild Horse and Burro Act by preserving these majestic symbols of our historic Western past).

Objections

ISPMB respectfully submits the following issues arising from the Forest Service's 2025 Final Territory Management Plan and Environmental Assessment for the Heber Wild Horse Territory.

First, the Forest Service's determination of an Appropriate Management Level of 50-104 horses is arbitrary and capricious in violation of the Administrative Procedure Act. USFS erroneously relies on a faulty forage model that assumes horses cannot roam beyond Territory boundaries, adopts inflated growth projections contradicted by observed population stability, falls knowingly below genetic viability thresholds without a binding genetics plan, and fails to meaningfully respond to public comments or evaluate reasonable alternatives including livestock reductions.

Second, the Forest Service violated the Wild Horse and Burro Act, NEPA, and the 2007 Stipulated Settlement Agreement by failing to explicitly designate the Heber herd as "wild free-roaming horses" under 16 U.S.C. § 1332, thereby undermining statutory protections, creating evidentiary obstacles for prosecuting illegal killings, and disregarding extensive historical evidence of the herd's continuous presence since at least the early 1900s. Third, the Forest Service's authorization of long-term fertility control measures violates NEPA and the APA where the agency failed to identify specific methods, analyze their documented risks to herd behavior and genetics, ignored evidence that fertility control destabilizes natural band structures and paradoxically increases birth rates, relied on discredited modeling contradicted by empirical data, and refused to consider less intrusive alternatives such as livestock permit reductions.

Fourth, the Forest Service violated NEPA by issuing a Finding of No Significant Impact and proceeding with an Environmental Assessment rather than preparing a full Environmental Impact Statement, where the proposed actions are highly controversial, involve significant scientific uncertainty, acknowledge adverse effects on federally protected species, and will permanently alter the ecological and physical landscape of the Territory.

Fifth, the Forest Service's reliance on arbitrary territorial boundaries violates the Wild Horse and Burro Act's directive that wild horses be managed "where presently found," where livestock fencing prevents horses from

accessing their own habitat and water sources, the agency defers mitigation to speculative future actions, and refuses to evaluate alternatives including fence removal or Territory expansion despite historical evidence of the herd's presence across more than 134,000 acres.

Sixth, the Forest Service's failure to address the ongoing illegal killings of more than thirty Heber wild horses since 2018 violates NEPA, the APA, and the Wild Horse and Burro Act, where the Final EA contains no analysis of these killings' impact on herd viability and no enforceable protective measures despite detailed documentation provided in prior public comments.

I. The Appropriate Management Level Determination is based on faulty data

Under the Administrative Procedure Act ("APA"), an agency action is arbitrary and capricious if the agency relied on factors Congress did not intend to consider, entirely failed to consider an important aspect of the problem, offered an explanation that runs counter to the evidence, or reached a conclusion so implausible it could not be ascribed to agency expertise. See *Motor Vehicle Mfrs. Assoc. v. State Farm*, 463 U.S. 29, 43 (1983).

The Management Plan fixes the Appropriate Management Level ("AML") at 50-104 horses.

Although the Final Environmental Assessment ("EA") loosely references comments to the Draft Management Plan, including to substantive comments that ISPMB previously provided, the Forest Service's passing references do not equate a meaningful response. The agency merely repeated its foragebased AML calculation from the flawed 2021 "Proposed Appropriate Management Level Determination" document without substantive revision. The Final Plan still rests on (1) the false assumption that the Heber herd cannot and does not roam beyond the mapped Territory, (2) inflated and speculative growth rates that contradict observed stable population levels, and (3) an AML range far below recognized thresholds for genetic viability.

The U.S. Forest Service has an obligation to manage and protect wild horses residing on any public lands, such as the Apache-Sitgreaves National Forests and not only within the Heber Wild Horse Territory. See 36 C.F.R. Section 222.25. The regulations provide protection for the wild free-roaming horses even if they were to move or migrate off of protected territories onto lands of other ownership or jurisdiction. Under the Wild Horse and Burro Act, the Forest Service has a duty to protect wild horses so as to preserve their "free-roaming behavior," 16 U.S.C. § 1331, and "[m]anagement activities affecting [wild horses] shall be undertaken with the goal of maintaining free-roaming behavior." 43 C.F.R. § 4700.0-6(c).

The legislative history of the Act indicates that Congress felt strongly about allowing the wild horses to roam freely. The preamble and statement of policy for the Wild Horse and Burro Act states:

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.

The Forest Service has already stipulated in the Federal Court Order that "wild horses are by law an integral part and component of the natural system of the public lands" and located within the Territory and the surrounding Black Mesa and Lakeside Ranger Districts.

In the Draft 2021 EA, the Forest Service, relying upon the "Proposed Appropriate Management Level Determination" document, erroneously concluded that the Territory may only sustain 104 horses.

There, the Forest Service calculated the amount of forage that grows in the Heber Wild Horse Territory, allocated half of that forage to the horses, then divided that by the amount of forage the average horse consumes per day. This entire faulty analysis is based on the known false assumption that the Heber wild horses cannot and do not leave the Territory and cannot access any resources from outside the Territory.

The Wild Horse and Burro Act explicitly says that the Forest Service has a duty to preserve the "freeroaming behavior" of the wild horses. The lawmakers of the Act deliberately rejected efforts to confine wild horses to artificially limited areas. Likewise, the governing regulations make it clear that wild horses are not to be fenced into fixed boundaries but are entitled to range across adjacent lands, whether public or private. See, e.g., 43 C.F.R. § 4700.0-6(c) ("Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior." (emphases added)); 43 C.F.R. 4700.0-5(l) (defining "[w]ild horses and burros" to include that, "[w]here it appears in this part the term wild horses and burros is deemed to include the

term free-roaming").

In ISPMB's 2021 comments to the Draft EA, ISPMB specifically challenged the Forest Service's proposed AML of 50-104 horses. See Exhibit 5, at pg. 12-13. ISPMB explained that this range is scientifically indefensible, falls below genetic viability thresholds, rests on opaque assumptions, and relies on inflated growth projections not supported. Yet in the Final Territory Management Plan, the Forest Service did not meaningfully address or incorporate those comments. An agency action is arbitrary and capricious if the agency fails to respond to significant comments that cast doubt on the adequacy of the analysis. See *Forelawn on Board v. Johnson*, 743 F.2d 677, 685 (9th Cir. 1984).

NEPA imposes a procedural duty on agencies to take a hard look at how management decisions will affect the environment. *Oregon Nat. Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1099-1100 (9th Cir. 2010).

Once an agency solicits public comments, it must respond by one or more of the following:

(1) modifying alternatives including the proposed action, (2) developing and evaluating new alternatives, (3) supplementing improving, or modifying its analyses, (4) making factual corrections, or (5) explaining why the comments do not warrant further response, with supporting sources and reasons. 40 C.F.R. § 1503.4(a). The Forest Service did none of these things. Instead, the agency simply (and wrongfully) readopted the same AML range, with no modifications, no supplemental analysis, no factual corrections, and no explanation for why our comments did not warrant further consideration. This failure is not a mere oversight, it is a violation of the agency's legal duties under NEPA and the APA.

The Management Plan and Final EA now cite all three tiers of the BLM Handbook H-4700 and expressly reference the Tier-3 genetics guidance in responding to previous comments received. ISPMB acknowledges that the agency provided a technical response. But NEPA requires a meaningful response - one that either modifies the action, develops additional alternatives, supplements or corrects the analysis, or explains with record support why comments do not warrant changes. 40 C.F.R. § 1503.4(a). The Final EA's discussion falls short in four ways. First, Tier-2 is still misapplied. The Handbook provides that where land health standards are met, AML should be "set by considering the number of horses using the area during the evaluation year," not by back-solving from a constrained forage model. The Forest Service reasserts its 2021 forage-allocation methodology wholesale, without accounting for the record evidence that access to high-quality forage is artificially restricted by fencing, cattle guards, and closures, and that wild horses and burros have priority over livestock to forage. See, e.g., 43 C.F.R. § 4710.5(a) (authorizing closure of public lands "to grazing use by all or a particular kind of livestock" if necessary "to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros"). By declining to correct those inputs or even to analyze them, the agency failed to take a hard look that NEPA requires and offered an explanation that runs counter to the evidence before the agency.

Second, the Tier-3 genetics problem is acknowledged but not solved. The Forest Service quotes the BLM Handbook's minimum 150-200 total animals and even notes the NAS (2013) view that true herdfitness thresholds are higher. Yet, it keeps an AML of 50-104 and answers the viability gap with a nonbinding promise to "introduce one to three young horses" if needed. That is not a genetics plan; it is speculation. The agency never shows how sporadic, one-off introductions at that scale would maintain effective population size, avoid inbreeding depression, or meet the Cothran benchmark. Deferring specifics to later "adaptive management" is not a substitute for present, evidence-based analysis under NEPA.

Third, USFS relies on the same 2021 Proposed AML Determination without material update. ISPMB previously commented (Exhibit 5, at pg. 12-13, 25) that the very document they use is opaque and assumption-driven, but the Final EA does not revise its inputs, disclose sensitivity analyses, or reconcile contradictory record evidence (including observed long-term stability of the Heber herd and the freeroaming mandate). Re-citing a previously challenged analysis, without correction, is not a reasoned response under § 1503.4(a).

Fourth, reasonable alternatives remain unexamined. Our prior comments informed the Forest Service of reasonable alternatives to examine that would (i) remove or reduce livestock pressure within and adjacent to the Territory under available authority, (ii) open presently locked-out forage, and (iii) manage for a genetically viable floor (>150-200). The Final EA's AML response neither develops nor evaluates these options; it simply reiterates the chosen AML. That flouts NEPA's directive to rigorously explore and objectively evaluate all reasonable alternatives.

Finally, the experience of ISPMB's intact White Sands and Gila herds directly undermines the Forest Service's

reliance on the WinEquus modeling program. As documented in Exhibit 7, both herds had been free from roundups for decades before coming under ISPMB's management, and both demonstrated natural growth rates under 10% annually over nearly two decades. This is consistent with the National Academy of Sciences' own findings in 1980 that projected herd increase rates well below 10 percent are probable. By contrast, WinEquus assumes a 20% growth rate and predicts herds will double every four years. This assumption is based not on stable herds, but on the disrupted and destabilized herds repeatedly rounded up on public lands since the 1970s. The Heber herd provides even stronger evidence that WinEquus projections do not reflect reality. Untouched by roundups for twenty years, the Heber herd has maintained a growth rate of only about 3%, far below the inflated 20% figure the Forest Service continues to invoke.

If WinEquus projections were accurate, the Heber population today should number in the thousands. Instead, their stable, slow growth shows that undisturbed herds regulate themselves without intrusive management. This data makes clear that the AML determination cannot be premised on WinEquus modeling, which is both inapplicable and contradicted by empirical evidence.

While the agency "responded" in form, it did not respond in substance. Lip service without substance does not comply with the rigorous standards imposed by NEPA and the APA. The AML remains tethered to an undisclosed/unchanged forage model, out of step with Tier-2's direction; it knowingly falls below Tier-3 viability thresholds without an operable genetics program; and it refuses to consider obvious alternatives raised in comments. That makes the decision arbitrary and capricious under the APA, contrary to the Act's free-roaming mandate, and procedurally deficient under NEPA's hard-look and comment-response requirements.

The Forest Service must withdraw the AML of 50-104 and (1) correct the Tier-2 methodology by re-running AML with accurate access conditions and with scenario/sensitivity analysis; (2) adopt a Tier-3 compliant viability floor or present a concrete binding and quantitatively justified genetics plan that achieves equivalent effective population size; and (3) prepare a supplemental NEPA analysis that rigorously evaluates alternatives we proposed in previous comments including reductions/closures of livestock use to increase available habitat and management consistent with the herd's free-roaming behavior.

The AML of 50-104 horses must be vacated. The APA requires that arbitrary and capricious action be set aside. Likewise, the Forest Service has failed to comply with its duties under NEPA by declining to take a hard look required of it or to provide substantive responses to significant comments. The agency must be directed to cure those deficiencies before proceeding further. Accordingly, ISPMB respectfully requests that the Forest Service withdraw the AML determination as militated by the governing law. A. Failure to Preserve Family Bands During Gather Operations Exhibit 7 illustrates the severe disruptions caused by roundups. ISPMB's long-term observation of the Gila herd showed that when herds are left intact, band structures and natural social behaviors ensure that fillies do not foal until they are four or five years old, when they are physically mature, and stallions do not lead bands until they are at least ten years old. This stability kept reproduction in check naturally. In contrast, once the Gila herd was disrupted through removals, juvenile stallions as young as five or six began leading bands, fillies were impregnated at one or two years old, and birth rates spiked as social cohesion collapsed. The Pryor Mountain herd, another population subjected to selective removals, exhibited the same breakdown. Band stallions lost mares to juvenile males, mares were attacked in chaotic "rape trains," and fillies were bred far too early. These results show that fertility control and repeated removals do not reduce growth long-term but instead destabilize herds, accelerate reproduction, and erode the very natural behaviors that allow wild horses to self-regulate. The Forest Service's proposed gather methods, particularly the use of helicopters and mass roundups, would inflict further destabilization on the Heber herd. The plan makes no provision to observe existing family bands prior to gather operations or to ensure that stallions and mares from the same family groups are released together afterward. These methods violate the fundamental social structure of wild horse herds. Mature stallions play a critical role in maintaining stability, disciplining younger males, and protecting fillies from premature breeding. See Gray, M.E. 2009. An infanticide attempt by a free-roaming feral stallion (*Equus caballus*). *Biology Letters* 5:23-25 (studying state-managed "feral" horse population in Nevada and recognizing disruption to band stallion role can affect social roles and that foals not sired by band stallion have lower survival rates to weaning and may include infanticide).

When helicopter gathers scatter family bands and capture dominant stallions, the remaining "teenage" males, often five to seven years old, assume leadership prematurely. These inexperienced stallions cannot regulate

breeding behavior, leading to chaos, aggression, and a spike in early pregnancies among young fillies. See Stuska, S. 2006. Observing Wild Horse Behavior. Nat'l Park Serv. Park Resources Preserve & Protect 14, available at <https://www.nps.gov/calo/learn/nature/upload/2006-Observing-Wild-Horse-Behavior.pdf#:~:text=Horses%20are%20social%20animals.%20The%20wild%20herd,1/2%20to%202%201/2%20years%20of%20age.> (describing wild herds separating into "harems" with specific roles, with "young stallions form[ing] loosely organized bachelor bands" and stallions with harems protecting from other stallions). This breakdown in social hierarchy produces the opposite of the Forest Service's intended result. Instead of reducing growth rates, it increases them, an outcome repeatedly documented in disrupted herds like the Pryor Mountain population. The agency's failure to recognize and mitigate these well-known consequences reflect a disregard for the biological and behavioral realities of wild horse management.

II. Forest Service failed to Explicitly Designate the Herd as "Wild Free-Roaming Horses"

The Wild Horse and Burro Act defines "wild free-roaming horses and burros" as "all unbranded and unclaimed horses and burros on public lands of the United States." 16 U.S.C. § 1332. This designation is a legal status, not a descriptive phrase. This designation carries significant management and enforcement consequences. The Supreme Court has confirmed that Congress exercised plenary authority to protect these animals as part of the public lands. *Kleppe v. New Mexico*, 426 U.S. 529 (1976). The Final EA states that wild free-roaming horses and burros are all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto the National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership." This regulatory language closely tracks the Act. Yet, in the Final Territory Management Plan and EA, the agency avoids applying that definition to the Heber herd itself. Instead, the documents vaguely state only that the herd will be managed consistent with the Wild Horse and Burro Act hedging rather than explicitly recognizing the animals as wild free-roaming horses.

The rhetorical shift is not legally sufficient - in fact it is woefully inadequate. To "treat" or "manage as if" the horses were wild is not the same as conferring the legal status that Congress mandated. Without explicit recognition, the protections of the Act remain ambiguous, creating unnecessary uncertainty for both management and enforcement. The failure to expressly designate the Heber herd as "wild free-roaming horses" undermines statutory protections, weakens deterrence against illegal killings, and leaves the herd vulnerable to collateral challenges to its status. Equally troubling, the Final EA contains no substantive response to comments on this issue because the agency never acknowledged any comments raising it.

ISPMB's 2021 comments explicitly warned of this defect, explaining that without explicit designation, the Forest Service would strip the herd of its statutory protections and undermine enforcement of the Act's' criminal provisions. See Exhibit 5, at pg. 14-19.

ISPMB focused extensively on the historical record which firmly establishes that wild horses have long occupied the Mogollon Rim and surrounding areas of the Apache-Sitgreaves National Forests. Jesuit Priests, local newspapers, Arizona Highway magazine, have all confirmed their continuous existence and value to the local communities. See Exhibit 5, at pg. 14-19. Equine behaviorist Mary Ann Simonds concluded that the Heber herd has occupied the Rim since at least the early 1900s, and most likely since 1699 with field observations documenting multiple stable bands of horses inhabiting the territory. *Id.* at pg. 16. Despite the evidence, the Forest Service continues to discount the Territory's history and population, relying on a speculative or inconsistent inventories rather than conducting the current census required by the Act. Yet the Final EA does not acknowledge this, nor does it explain why it was disregarded. NEPA requires agencies to meaningfully respond to significant comments either by modifying the proposed action, developing new alternatives, supplementing the analysis, correcting factual errors, or explaining why the comments do not warrant further response. 40 C.F.R. § 1503.4(a). The Forest Service did none of these things. Its silence constitutes a violation of NEPA's public participation mandate and renders the Plan arbitrary and capricious under the APA. *Foreclaws on Board v. Johnson*, 743 F.2d 677 (9th Cir. 1984).

The stakes of this omission are not abstract. Since 2018, more than thirty Heber horses have been unlawfully shot and killed. See Exhibit 8, "Horse Slaughter in Apache-Sitgreaves forest highlights friction between animal and environmental concerns" CRONKITE NEWS (2022). Successful prosecution of such crimes depends on

clear proof that the herd qualifies as "wild free-roaming horses" under the Wild Horse and Burro Act. By refusing to make that explicit designation, the Forest Service creates evidentiary hurdles for prosecutors and undermines deterrence at a time when the herd faces unprecedented threats. Finally, the omission also violates the 2007 Stipulated Settlement Agreement, in which the Forest Service expressly recognized that the Heber Wild Horse Territory still exists and stipulated that "wild horses are by law an integral part and component of the natural system of the public lands." The Final Plan neither incorporates nor references this binding commitment. By ignoring a judicially enforceable settlement, the Forest Service not only undermines public trust but also breaches its prior obligations.

The Wild Horses and Burros Act defines "wild free-roaming horses and burros" as all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, but does not include those introduced by accident. The Forest Service continues to attempt to frame the Heber Herd as having only arrived "by accident" after the 2002 Rodeo- Chediski Fire, thereby stripping them of their free-roaming legal status. This narrative is flatly contradicted by the historical and scientific record (Exhibit 5, at pg. 14-19) yet the Forest Service continues to take an interest in ensuring the Heber herd is not entitled to its destined protection.

For these reasons, the Forest Service's refusal to explicitly designate the Heber herd as "wild freeroaming horses" violates the Act, NEPA, and the APA. This defect must be remedied in a revised territory management plan that expressly recognizes the herd's legal status as protected wild and free-roaming horses, responds meaningfully to prior comments, and incorporates enforceable measures to ensure the herd's protection.

III. The Forest Service Has Failed to Lawfully Evaluate and Justify Fertility Control Measures

The Management Plan and EA propose the implementation of long-term fertility control measures on the Heber Wild Horse Herd. These measures are referenced in the context of "adaptive management," with vague references to potential use of immunocontraceptive vaccines and sterilization techniques. While ISPMB raised serious concerns about the use of birth control in our 2021 comments (see Exhibit 5, at 10), the Final Management Plan does not meaningfully address these concerns. The Forest Service's response is conclusory, lacking both scientific analysis and legal justification.

The Final EA asserts that fertility control may be necessary to manage herd size but fails to provide any detailed analysis of which methods would be employed, how frequently, or at what scale. This omission is not a minor oversight. Fertility control methods such as porcine zona pellucida ("PZP") or GonaCon carry well-documented risks, including repeated treatments over time, behavioral disruption, and potential physiological impacts. See, e.g., Nuñez, C.M., J.S. Adelman, and D.I. Rubenstein. 2010. Immunocontraception in wild horses (*Equus caballus*) extends reproductive cycling beyond the normal breeding season. *PLoS one*, 5(10), p.e13635; Cooper, D.W. and E. Larsen. 2006. Immunocontraception of mammalian wildlife: ecological and immunogenetic issues. *Reproduction*, 132, 821-828. Moreover, permanent sterilization (vasectomies, spaying) is recognized even by the National Academy of Sciences as inappropriate for wild herds because of its irreversible impacts on genetic diversity and natural behavior. See Exhibit 9, "Methods and Effects of Fertility Management," National Academy of Sciences (2013). See also Exhibit 10, K. Sussman, "My name is Ina Ohitika" (story about mare who tried to steal five foals because she was permanently infertile). By failing to identify specific methods or analyze their effects, the Forest Service has deprived both the public decision makers of the information necessary to evaluate the legality and wisdom of these actions.

The Forest Service's own cited authorities in the Final EA recognize that wild horse populations require a minimum herd size of 150-200 animals to maintain genetic diversity and avoid inbreeding depression. See Final EA, at pg. 160 citing BLM Handbook H-4700-1. Yet the AML fixed at 50-104 horses falls far below that threshold, and the addition of fertility control measures will only exacerbate the risk of genetic collapse. In ISPMB's 2021 comments, ISPMB emphasized that indiscriminate removals and fertility control would disrupt natural family bands, which are a cornerstone of wild horse social stability and natural reproductive regulation. See Exhibit 5, at 31-34. Research shows that when family bands are disrupted whether through gathers or artificial fertility suppression-reproductive chaos ensues, often leading to increased rather than decreased birth rates. The Final EA does not address these dynamics, instead deferring analysis to an undefined adaptive management process. This deferral violates NEPA, which requires the agency to evaluate impacts before, not after, authorizing an irreversible course of action.

The Forest Service's claim that the Heber herd is subject to exponential growth-doubling every four years-is not supported by the evidence and rests on flawed modeling. See ISPMB Report attached hereto as Exhibit 11, "Denigration, Plan to Eliminate, Violations of the Act", at pg. 12. As ISPMB has long pointed out, much of the BLM's data on wild horse reproduction comes from herds that have been repeatedly disrupted by roundups, removals, and fertility control interventions. These disruptions fracture natural social structures and artificially inflate reproduction rates. By contrast, the Heber herd has remained largely undisturbed for nearly two decades and has shown a stable, self-regulating growth pattern between just 1.5-3% annually. This is consistent with ISPMB's own research on minimally managed herds, which found growth rates of only 8-9% under optimal feed conditions-far below the 20-28% rates claimed by the agencies. See id. ("The Agencies' Myth of 20% Yearly Increase and Herds Doubling Every Four Years Created Inaccurate Modeling Data"). Even the 1980 National Academy of Sciences report recognized that the 15-20% annual increase rates cited by the agencies were exaggerated, often the product of methodological biases or unrealistic assumptions of near-zero mortality. Id. The NAS concluded that growth rates well below 10% were more probable. Id. The Heber herd's actual data confirms this conclusion. For example, Arizona Game and Fish records placed the population under 300 horses in 2006, and ISPMB counts documented fewer than 450 in 2020. Id. If the Forest Service's doubling model were correct, the population would have exceeded 2,400 by 2021. Id. Instead, the herd has remained steady, demonstrating that wild horses, when left intact, naturally regulate their numbers through social stability. Id. The agency's refusal to consider livestock reductions as an alternative further demonstrates the arbitrary nature of its decision. The BLM Handbook H-4700 and 43 C.F.R. § 4710.5 expressly authorize closures of grazing allotments if necessary to provide habitat or to protect wild horses from harm. The Forest Service's own manual likewise directs the agency to manage and protect wild free-roaming horses on National Forest land rather than defer to livestock permits. Yet the Final Plan does not even acknowledge this authority, let alone evaluate it as a reasonable management option. By foreclosing this obvious alternative, the Forest Service has violated NEPA's duty to rigorously explore all reasonable options.

Then again, the historical record makes it clear that the Forest Service and BLM have long prioritized livestock interests over compliance over the Heber herd. The Taylor Grazing Act of 1934 entrenched the dominance of powerful ranchers by creating grazing allotments and boards that operated as local governing agencies, and the Grazing Service-later merged into BLM-adopted policies in the 1930s that sanctioned the extermination of thousands of wild horses. See Exhibit 11. This culture of favoring livestock persisted after 1971, when the agencies were charged with protecting wild horses. Instead of implementing neutral management, they manipulated forage allocations and "preference" rights to benefit ranchers, even allowing unlawful treatment of AUMs as private property. Id. In the 1980s, these practices culminated in the illegal removal of tens of thousands of wild horses, mass adoptions that funneled animals to slaughter, and regulatory schemes designed to reduce horse numbers rather than enforce the Act. Id.

Independent oversight bodies-from IBLA rulings in 1989 to the GAO's 1990 report-confirmed that the agencies were setting arbitrary AMLs and refusing to reduce livestock at proportionate rates, in direct violation of the law. Id.

The Forest Service never considered or evaluated alternatives that would avoid or minimize reliance on fertility control, despite the fact that such alternatives exist. For example, reducing or retiring cattle grazing allotments within the Territory could provide significantly more forage for horses, obviating the need to artificially suppress reproduction. The BLM Handbook H-4700 expressly authorizes the closures of livestock grazing where necessary to protect wild horse populations. By failing to consider this option, and by relying on fertility control as population management tool, the agency has violated NEPA's duty to rigorously explore all reasonable alternatives.

ISPMB has authored a comprehensive report on planning, monitoring and inventorying wild horse and burro populations and habitat which if formally approved would serve as an alternative to permanent fertility controls. See Exhibit 12. The reports emphasizes that wild horses and burros are integral parts of the lands and must be managed under principles of multiple-use through coordinated decision-making.

USFS expressly agreed to implement this framework as part of the court-stipulated settlement order and so any attempt to proceed with the current Management Plan would constitute a direct violation of that order and the commitments the agency made to the parties and the Court. See Exhibit 3. ISPMB recommends that BLM and

the Forest Service implement consistent inventorying and monitoring procedures to collect reliable population and habitat data, including behavioral observations, mapping of seasonal movements and resource overlap with livestock and wildlife, regular census counts using appropriate wildlife methods, and determination of minimum viable population levels based on genetics and herd integrity. The report also underscores the need for age and sex structure data to guide decisions not just on removals but on what must remain for herd viability. Because the Final Management Plan and EA authorize the use of fertility control without identifying methods, analyzing their impacts, or considering less intrusive alternatives, the decision is unlawful under NEPA and arbitrary and capricious under the APA. Accordingly, ISPMB requests that the Forest Service be directed to withdraw authorization of fertility control measures.

IV. Significant Impacts Demand an Environmental Impact Statement

To comply with NEPA, federal agencies must prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C). NEPA defines "human environment" as "the natural and physical environment and the relationship of people to that environment." 40 C.F.R. § 1508.14. Agencies should interpret human environment comprehensively to include the natural and physical environment and the relationship of people with that environment. To determine if an action is significant, the agency must consider the context and intensity. 40 C.F.R. § 1508.27.

In ISPMB's 2021 comments, ISPMB made clear that the Forest Service could not lawfully proceed with an EA in lieu of preparing a full EIS. See Exhibit 5, at pg. 41. ISPMB explained that the Draft Management Plan is precisely the kind of major federal action significantly affecting the quality of the human environment for which NEPA mandates an EIS. ISPMB emphasized that the plan's proposals, including aggressive AML reduction, fertility control, herd removal, and fencing-were highly controversial, involved significant scientific uncertainty, and carried cumulative consequences for land, livestock, wildlife, and the cultural values of the Apache-Sitgreaves National Forest. Each of these is a recognized "intensity factor" that triggers the obligation to prepare an EIS under 40 C.F.R. § 1501.3(b)(2).

Despite these clear triggers, the Forest Service persisted in pursuing an EA in 2021, and now in 2025, and has once again issued a Final EA and a Finding of No Significant Impact ("FONSI") that repeats the same deficiencies without addressing ISPMB's prior objections.

The agency never addressed the substantive points raised in ISPMB's 2021 comments about why an EIS was required. NEPA's procedural rules demand that agencies respond to significant public comments by either modifying alternatives, supplementing analysis, making factual corrections, or explaining why the comments do not warrant further response. Courts have been clear that this failure to engage with public comments renders agency action arbitrary and capricious. The Forest Service's own NEPA Handbook confirms that an EIS is the presumptive standard for a management action of this magnitude. Section 21 of the Handbook requires the agency to determine whether a proposal "normally requires an environmental impact statement" or falls under categorical exclusion. Only if the proposal does not fall within those categories should the agency proceed with an EA.

By issuing a FONSI in the face of overwhelming evidence of significance, the Forest Service has violated NEPA's hard-look requirements, its own NEPA Handbook, and the APA's prohibition on arbitrary and capricious decision-making. The failure to prepare an EIS is not a harmless procedural defect; it deprives decisionmakers and the public of the rigorous, transparent analysis that Congress mandated in NEPA. The Forest Service must prepare a full Environmental Impact Statement.

The 2025 Final EA states that the chosen alternative will fix AML at 50-104 horses, authorize permanent and temporary gather facilities, approve construction of a 61-acre holding facility, and implement long-term fertility control measures. These are not minor or speculative actions. They constitute permanent alteration to the ecological, physical, and cultural landscape of the Territory and surrounding National Forest lands. By any measure, they are significant under NEPA. Yet the agency's FONSI concludes that the project will have no significant impact on the environment. How can this be?

There is clear evidence in the Forest Service's own record that the Management Plan may "adversely" affect the Mexican Spotted Owl and the Yellow-billed Cuckoo, both federally protected species under the Endangered Species Act. See Final EA, at pg. 81-82, 91-92. Under NEPA, the significance of an action requiring an EIS is determined not only by the context of the decision, but also by the intensity of its impacts. 40 C.F.R. § 1501.3(b).

Adverse effects on listed species are among the strongest triggers for requiring an EIS, because they implicate irreversible impacts on biodiversity and habitat integrity. 40 C.F.R. § 1501.3(d)(2)(vi). The Forest Service has provided no explanation for how these acknowledged adverse effects can be reconciled with its FONSI. Even if local Arizona officials were consulted regarding potential impacts to the Mexican Spotted Owl and Yellow-billed Cuckoo, such concurrence cannot cure the Forest Service's independent legal obligation under NEPA to prepare an EIS where the record demonstrates potential significance effects.

ISPMB requests that the Forest Service prepare an Environmental Impact Statement that identifies, analyzes, and compares all reasonable alternatives. The EIS must rigorously evaluate cumulative impacts, disclose scientific uncertainties, and meaningfully respond to public comments in accordance with NEPA's hard-look requirements. Only through such a process can the agency ensure compliance with its statutory obligations and provide the transparent, evidence-based decision making that Congress requires.

V. Forest Service Promotes Unlawful Territorial Restrictions The Wild Horses and Burros Act provides that wild free-roaming horses are "to be considered in the area where presently found" as "an integral part of the public lands." 16 U.S.C. § 1331. The regulations reinforce this directive by extending protection to horses that migrate outside designated boundaries. 36 C.F.R. § 222.25 states that wild free-roaming horses and burros that move onto other federal lands or lands of other ownership shall be protected. Congress deliberately rejected proposals to confine wild horses to artificially limited territories, choosing instead to preserve their free-roaming character. See Exhibit 5, at pg. 6. By law, the agency's management responsibility is not limited to an arbitrarily drawn map of the Territory but extends to all public lands where wild horses are found.

Historical evidence further demonstrates that the Forest Service deliberately acted to suppress recognition of the Heber herd's historic presence prior to enactment of the Act. In an oral history interview conducted by Northern Arizona University, rancher Doy Reidhead recounted his personal participation in the Forest Service's authorized roundups of free-roaming horses from the Sitgreaves National Forest prior to December 1971. See Exhibit 13. According to Reidhead, these removals were initiated because the local Forest Ranger did not want the Forest to become a refuge for wild horses.

In 2021, ISPMB submitted extensive comments challenging the Forest Service's reliance on fixed and arbitrary territory boundaries. ISPMB emphasized that fencing, grazing allotments and other man-made obstructions have restricted the herd's ability to access forage and water within its own Territory. See Exhibit 5, at pg. 6, 43-44. ISPMB also documented, through affidavits, historical records, and expert reports, that the Heber herd historically roamed far beyond the current Territory boundaries, including the Black Mesa and Lakeside Districts, long before the 2002 Rodeo-Chediski Fire. See Exhibit 5, at pg. 23. ISPMB argued that the Forest Service's refusal to analyze expansion of the Territory, or removal of fencing obstructions, violated its statutory duty to protect wild horses "where found." A 1974 Range Inspection Report covering the Buckskin, Gentry, Mud Tank, and Heber allotments-over 134,000 acres-documented the presence of black and buckskin horses, some of which were rounded up and auctioned, with no credible explanation as to how they were identified as "trespass" rather than wild horses entitled to protection. See Exhibit 5, at pg. 34-35. Similarly, a 1989 Range Management Plan for the same allotments noted annual "trespass horse" problems on the Gentry and Buckskin pastures, though nearly 60 percent of those areas lay outside the designated Territory. Id. The existing Territory is not even suitable for sustaining the herd. Its geography includes sheer canyon walls that block natural migration east to west, and fencing associated with livestock allotments that blocks movement north to south. ISPMB members and local residents who have hiked the area confirm that gates remain closed even when cattle are absent, cutting the horses off from portions of their range and from several of the water sources the agency claims are "dependable." See Exhibit 14. On-the-ground inspections have shown that some of these supposed water sources are not accessible to the horses at all, and that the agency's water surveys are misleading because they capture temporary rainfall runoff rather than dry-season conditions. The practical result is that the horses are locked out of portions of their legal habitat while simultaneously blamed for not being genetically viable within the artificially constrained Territory.

The Final EA and Management Plan do not correct these defects. The Forest Service also conceded that existing livestock fences were in place before the Territory was designated and continue to prevent horses from accessing portion of their own habitat. The agency's proposed solution-"increasing fence permeability," "installing gates," or "developing additional water sources" as part of an adaptive management strategy-does not resolve

the core problem.

First, these measures are speculative, contingent on future monitoring, and lack enforceable commitments. NEPA requires agencies to analyze and disclose actual impacts, not defer substantive action until later. See *Kern v. BLM*, 284 F.3d 1062 (9th Cir. 2022) (rejecting agency's attempt to defer analysis to later site-specific proposals). By suggesting that fence adjustments "may" be considered in the future, the Forest Service is improperly postponing necessary mitigation. Second, the agency never explains why it rejected more meaningful alternatives raised in comment, such as removal of internal fences within grazing allotments, conversion of pasture fencing to let-down fencing, permit reductions, or negotiated buyouts of AUMs. These were concrete alternatives offered in several comments yet the Final EA dismisses them without analysis. NEPA requires a "rigorous exploration and objective evaluation of all reasonable alternatives." 40 C.F.R. 1502.14(a). The Forest Service's failure to even consider these options violates that mandate. Third, the agency's reliance on adaptive management ignores the practical reality of the herd's situation. The Forest Service admits that existing fences are already preventing horses from accessing key parts of the Territory. Deferring resolution of these barriers until after future monitoring condemns the herd to years of restricted movement.

Finally, the Forest Service contradicts itself. In its response, the agency admits that fencing wild horse territories "in total" would violate the Act and risk "zoo-like" management. Yet the Final Plan effectively does just that, by allowing livestock fences and cattle guards to serve as de facto barriers that fragment the Territory and fence the horses out of vital areas. This inconsistency highlights the arbitrary nature of the agency's reasoning.

Because the Final EA and Management Plan unlawfully restrict the Heber herd to arbitrarily drawn boundaries and fail to consider alternatives that would restore the herd's free-roaming character, the decision is contrary to the Wild Horses and Burros Act, NEPA, and the APA. The Act requires that wild horses be managed where found and protected even as they move beyond designated territories. By treating fencing and fixed maps as permanent constraints, the Forest Service has ignored its statutory mandate.

VI. Forest Service failed to Address Ongoing Illegal Killings

The 2025 Final Management Plan is fatally deficient in failing to meaningfully address the ongoing, well-documented illegal killings of Heber wild horses. Since 2018, more than thirty horses in the Territory have been shot and left to die, with additional suspicious deaths reported as recently as 2021. See Exhibit 7. These killings are not isolated events, they represent a persistent and escalating threat to the survival of the herd. Yet the Final EA remains silent on this issue, offering no analysis of the problem, no assessment of its impacts on herd viability or behavior, and no enforceable measures to prevent future killings.

This omission is not new. In ISPMB's 2021 comments, we specifically raised the unlawful killings as one of the most urgent threats to the Heber herd. See Exhibit 5, at pg. 20. ISPMB submitted eyewitness accounts, documented reports to Forest Service investigators, and evidence of repeated patterns of shootings. ISPMB explained that prosecution under the Wild Horse and Burro Act which requires proof that the victims are legally recognized as "wild free-roaming horses," and we emphasized that the Forest Service's failure to explicitly recognize this status undermines law enforcement's ability to deter or prosecute these crimes. Despite this record, the 2025 Final EA does not reference ISPMB's comments on this subject, does not evaluate the problem, and does not propose any solution.

ISPMB's previous comments also restated federal law which says: an individual who kills a wild horse or burro shall be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both. 16 U.S.C. § 1338. The Criminal Fine Improvements Act of 1987 further increased the maximum fine for such an offense to \$100,000 for an individual. 18 U.S.C. §§ 3571(b)(5), (c)(5). Yet, despite the seriousness of these crimes, the Forest Service's continued refusal to expressly recognize the Heber horses as "wild free-roaming horses" undermines the very foundation of law enforcement's ability to prosecute offenders. Prosecutors must prove every element of a crime, including the protected status of the animals. By declining to make this recognition, the Forest Service has transformed what should be a clear path to a conviction to unnecessary uncertainty, depriving prosecutors of the strongest legal tools Congress intended.

The failure to acknowledge or analyze these killings is legally indefensible. The Act declares that wild horses are "living symbols of the historic and pioneer spirit of the West" and requires that they be protected from harassment, capture, or death. By ignoring the ongoing unlawful shootings, the Forest Service has disregarded its statutory mandate and failed to take a hard look at environmental and management consequences required

by NEPA. An agency cannot simply ignore significant comments on a central issue of herd protection. The omission is also arbitrary and capricious under the APA. An agency action is unlawful where it entirely failed to consider an important aspect of the problem. Few aspects of the Forest Service's management responsibilities are more central than ensuring the herd is not illegally slaughtered. Yet the Final EA treats this ongoing crisis as if it does not exist.

Conclusion For the reasons set forth above, the International Society for the Protection of Mustangs and Burros respectfully submits that the 2025 Final Territory Management Plan and Environmental Assessment for the Heber Wild Horse Territory are legally deficient and must be withdrawn.

The Forest Service has failed to meet its obligations under the Wild Free-Roaming Horses and Burros Act, the National Environmental Policy Act, and the Administrative Procedure Act. The Appropriate Management Level of 50-104 horses rests on faulty data, inflated growth projections, and a forage analysis that ignores the herd's statutory right to free-roaming behavior. The agency has knowingly adopted an AML below recognized genetic viability thresholds without presenting a concrete, binding plan to address inbreeding and genetic collapse. It has refused to meaningfully respond to significant public comments, declined to rigorously evaluate reasonable alternatives-including livestock reductions and habitat expansion-and improperly deferred critical analysis to speculative "adaptive management" processes.

The Forest Service continues to evade its legal duty to explicitly designate the Heber herd as "wild free-roaming horses" under the Act, thereby undermining statutory protections and weakening enforcement against illegal killings. More than thirty horses have been unlawfully shot since 2018, yet the Final Plan offers no analysis of this crisis and no enforceable measures to prevent further violence. The agency has proposed fertility control measures without identifying specific methods, analyzing their behavioral and genetic impacts, or considering less intrusive alternatives. It has issued a Finding of No Significant Impact despite acknowledging adverse effects on federally protected species and despite the plan's controversial nature, scientific uncertainty, and permanent physical alterations to the Territory. And it has perpetuated unlawful territorial restrictions by treating arbitrary boundaries and livestock fencing as permanent constraints on the herd's movement, in direct contradiction of the Act's mandate to protect wild horses "where presently found."

These are not minor procedural oversights. They are fundamental violations of federal law that threaten the survival of one of the few remaining wild horse herds in the United States. The Heber herd has demonstrated remarkable stability and resilience over two decades without intrusive management. The Forest Service's refusal to acknowledge this reality, and its continued reliance on discredited modeling and faulty assumptions, reflects an arbitrary decision-making process untethered from the evidence in the administrative record.

ISPMB has participated in good faith throughout this process, providing extensive technical, scientific, and legal analysis in 2021 and again in 2025. The Forest Service has an obligation not only to solicit but to meaningfully consider and respond to such comments. That obligation has not been met.

Accordingly, ISPMB respectfully requests that the Forest Service withdraw the 2025 Final Territory Management Plan and Environmental Assessment and undertake the following corrective actions:

- * Vacate the Appropriate Management Level determination and prepare a revised AML analysis that corrects the Tier-2 methodology by accounting for actual habitat access conditions, adopts a Tier-3 compliant genetic viability floor of at least 150-200 horses or presents a concrete and binding genetics management plan, and rigorously evaluates alternatives that reduce or eliminate livestock pressure within and adjacent to the Territory.
- * Explicitly designate the Heber herd as "wild free-roaming horses" under 16 U.S.C. § 1332 and incorporate that designation into all planning documents, enforcement protocols, and management decisions.
- * Withdraw authorization for fertility control measures until the agency conducts a thorough analysis of specific methods, their impacts on herd genetics and behavior, and less intrusive alternatives, and provides meaningful responses to public comments on this issue.
- * Prepare a full Environmental Impact Statement in accordance with NEPA, addressing the significant environmental, social, and legal impacts of the proposed actions, including cumulative effects, scientific uncertainties, and effects on federally protected species.
- * Analyze and implement alternatives to remove territorial restrictions, including removal or modification of internal fencing, conversion to wildlife-friendly fencing designs, livestock permit reductions or buyouts, and expansion of the Territory boundaries to reflect the herd's historical and current range.

* Address the ongoing illegal killings by evaluating their impacts on herd viability, implementing enforceable protective measures, coordinating with law enforcement to ensure prosecutions under the Wild Horse and Burro Act, and responding substantively to prior comments on this critical issue.

The Heber Wild Horse Territory is not merely a line on a map. It is a living testament to the "historic and pioneer spirit of the West" that Congress sought to preserve when it enacted the Wild Free-Roaming Horses and Burros Act over fifty years ago. The Forest Service has a solemn duty to manage this herd in accordance with the law, the best available science, and the public trust. The 2025 Final Plan fails on all counts. ISPMB urges the agency to correct these deficiencies before irreversible harm is done to a herd that has survived against the odds and deserves the full protection of federal law.

Very truly yours,

Snell & Wilmer

Anthony W. Merrill

Amanda Z. Weaver

Sukhmani K. Singh

Attorney for ISPMB

cc: Karen Sussman ispmb@ispmb.org (via e-mail)