

# **EXHIBIT 20**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN DEFENSE OF ANIMALS, a )  
non-profit organization; the )  
ANIMAL WELFARE INSTITUTE, a )  
non-profit organization; and )  
the INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS and )  
BURROS, a non-profit )  
organization; PATRICIA HAIGHT, )  
an individual; RICHARD POTTS, )  
an individual, )

Plaintiffs, )

vs. )

No. CV-05-2754-PHX-FJM

UNITED STATES GOVERNMENT )  
DEPARTMENT OF AGRICULTURE, ANN )  
M. VENEMAN as acting UNITED )  
STATES SECRETARY OF )  
AGRICULTURE; UNITED STATES )  
FOREST SERVICE; ELAINE J. )  
ZIEROTH as the acting UNITED )  
STATES FOREST SUPERVISOR, )

Defendants. )

THE DEPOSITION OF KATHLEEN KLEIN

Phoenix, Arizona  
October 13, 2006  
3:09 p.m.

(ORIGINAL)  
PREPARED FOR:  
DISTRICT COURT

REPORTED BY:  
Marty Herder, CCR  
Certified Court Reporter  
CCR No. 50162

1 I don't use it.

2 It's a small town. We just generally say 260.

3 Q. And the postman can find you?

4 A. Well, we have a Post Office box.

5 Q. Okay.

6 Could you read for me, please, the paragraph below  
7 your address information that says can attest to?

8 A. Can attest to decisions related to the management  
9 of the Heber wild horse territory, issues with boundary  
10 fence maintenance, Rodeo-Chediski fire rehabilitation.

11 Q. Can you testify to all three of those issues here  
12 today?

13 A. Yes.

14 Q. Beginning with the first issue, what decisions  
15 have you made related to management of the Heber wild horse  
16 territory?

17 A. The only decision that I have made is when I --  
18 actually it was a recommendation, to -- I'm not sure what  
19 the right word is -- to disband the territory or remove the  
20 territory as a valid wild horse territory.

21 Q. I think that document's reflected in the  
22 administrative record.

23 A. Yes, it is.

24 Q. Which has been marked as Exhibit 1 to Elaine  
25 Zieroth deposition. I believe it's at tab nine.

1           Could you flip to tab nine and we'll look at that  
2 recommendation?

3           Is this tab nine containing the letter?

4           A.    Yes, it does.

5           Q.    And it's dated June 21st, 1993?

6           A.    Yes.

7           Q.    That is your signature on the bottom of the  
8 letter?

9           A.    It is.

10          Q.    And it says to forest supervisor.

11                   Who was the forest supervisor at that time?

12          A.    John Bedell.

13          Q.    First sentence: The wild horse territory on the  
14 Heber Ranger District should be eliminated from formal  
15 management designation.

16                   Did I read that correctly?

17          A.    Yes.

18          Q.    And why did you make that recommendation with  
19 Mr. Bedell?

20          A.    Well, I think the letter includes some rationale  
21 that at that point in time we felt that there were only two  
22 mares left in the herd, that it was not a viable herd, and  
23 that, in fact, the horses that were originally in the  
24 territory were -- and this was stated in the original  
25 nomination, I think -- were unclaimed animals from

1 Fort Apache Indian Reservation and some animals that were  
2 abandoned. When a local family left, my range staff  
3 recommended to me that it wasn't a viable herd and that we  
4 should request to have it withdrawn.

5 Q. Did you ever personally go out onto the forest to  
6 verify that there were only two mares left in the herd?

7 A. No.

8 Q. Did you direct anyone to do that?

9 A. No.

10 Q. Do you know if that was ever done?

11 A. My range staff was a field going person, and he is  
12 the one that told me that. And I accepted his -- I accepted  
13 his count without question.

14 Q. Did he tell you how he obtained that number?

15 A. No.

16 Q. Did you ever ask him how he obtained that number?

17 A. No.

18 Q. The first paragraph of your letter states: Indian  
19 horses have been claimed when the district has published a  
20 notice to impound stray animals.

21 Is that referring to a specific incident or just  
22 kind of a general statement?

23 A. General statement, to my knowledge.

24 Q. Is it your recollection that prior to you drafting  
25 this letter the tribal members were pretty good about

1 the administrative record.

2 Do you recognize what's represented there in  
3 document 14?

4 A. It's a table.

5 Q. Have you ever seen tables like that before?

6 A. No. I've seen tables, but not this one.

7 Q. Do you have any idea what that table, what  
8 information is represented in that table?

9 A. It says Heber territory, Black Mesa Ranger  
10 District, and has fiscal year, has the forest and district  
11 number.

12 It has number of animals and breeding mare  
13 numbers.

14 Has the zero number of animals and zero breeding  
15 mares.

16 Q. Do you know how those numbers were obtained?

17 A. I do not.

18 Q. Did you participate in any inventory in the fiscal  
19 year 2004 regarding horses on the Heber territory?

20 A. No.

21 Q. Did you direct anyone to do any inventory for  
22 fiscal year 2004 on the Heber territory?

23 A. No.

24 Q. Were there horses in the Black Mesa Ranger  
25 District in 2004?

1 protect them.

2 I believe that's what the general gist of it is.

3 Q. As district ranger for either the Heber or Black  
4 Mesa Ranger District, have you ever consulted the provisions  
5 of this act, reviewed them?

6 A. Yes.

7 Q. And why would you have reviewed the provisions of  
8 this act?

9 A. Because I have learned since 1993 that the  
10 territory was not disbanded and that we need to develop a  
11 plan.

12 Q. And when did you come to this realization?

13 A. After a lawsuit was filed.

14 Q. How does the act define a wild horse? What's your  
15 understanding of how the act defines a wild horse?

16 A. I think it says unbranded, unmarked, un-- I  
17 believe that's what it says. Unbranded, unmarked horses  
18 that are on public lands.

19 I don't remember exactly.

20 Q. To your knowledge, are there presently any  
21 unbranded, unmarked horses within the Black Mesa Ranger  
22 District?

23 A. I don't know.

24 Q. Have you ever tasked anybody to find that out?

25 A. No, not in any -- not in any formal manner, any

1 Q. Would you turn to tab 71 in the administrative  
2 record for me, please.

3 Tab 71 is an e-mail from Ms. Bailey Williams, that  
4 was eventually routed to mailroomR3Apache-Sitgreaves@FSNOTES

5 Ms. Klein, do you recognize that e-mail address at  
6 fs notes?

7 A. That's our -- it's our Apache-Sitgreaves mail  
8 room. Yeah.

9 Q. Who reviews e-mails that go to that address?

10 A. I don't know.

11 Q. Have you ever seen this e-mail prior to your  
12 deposition today?

13 A. I don't remember seeing it, no.

14 Q. If you could drop with me to the middle of the  
15 page, the text that Ms. Williams stated, she states I am  
16 writing to encourage the reevaluation of the  
17 Apache-Sitgreaves horses. A census taken 14 years ago  
18 cannot be expected to accurately determine the current  
19 status of wild horses in the area. As this is a protected  
20 wild horse and burro refuge, I encourage you to reevaluate  
21 your status on this matter.

22 Do you disagree with that statement?

23 A. Well, it's her opinion.

24 What do you mean do I disagree with it?

25 Q. For example, she states a census taken 14 years



1 ago cannot be expected to accurately determine the status of  
2 wild horses in the area.

3 Do you agree with that or not?

4 A. If I had thought that the territory was still in  
5 place, and that we were still managing it, yes, I would  
6 agree with that.

7 Q. Has the Forest Service reevaluated its position  
8 with respect to the protected wild horse territory?

9 A. Since when?

10 Q. Since your letter in 1993.

11 A. Yes.

12 Q. And the Forest Service now recognizes the  
13 existence of the wild horse territory?

14 A. Yes.

15 Q. And what steps has the Forest Service taken to  
16 reflect that reevaluation?

17 A. What steps have we taken?

18 Q. For example --

19 A. We have recognized that Mr. Bedell did not  
20 withdraw the territory, or he was not able to do that. I  
21 think we recognize that now.

22 Q. Is the Forest Service presently compiling a  
23 management plan with respect to the wild horse territory?

24 A. We've started working on it, yes.

25 Q. And I take it you're involved in that process?

## FURTHER EXAMINATION

BY MR. MERRILL:

Q. To follow up counsel's question, with respect to the management decisions that have affected the 14,000 acres, have any of those decisions concerned horses?

A. No.

Really just the only thing is the decision to put together an interdisciplinary team to develop a plan which we've done currently or recently.

Q. And that decision was made after the lawsuit was filed; correct?

A. That's correct.

MR. MERRILL: That's all I have.

MR. PATRICK: We'll read and sign.

(Whereupon, the deposition concluded at 4:41 p.m.)

*Kathleen Klein*

KATHLEEN KLEIN

\* \* \* \* \*

1 STATE OF ARIZONA            )  
  )            ss.  
2 COUNTY OF MARICOPA        )

3            BE IT KNOWN that the foregoing deposition was  
4 taken before me, Marty Herder, a Certified Court Reporter,  
5 CCR No. 50162, State of Arizona; that the witness before  
6 testifying was duly sworn by me to testify to the whole  
7 truth; that the questions propounded to the witness and the  
8 answers of the witness thereto were reduced to typewriting  
9 under my direction; that the witness elected to read and  
10 sign the deposition transcript; that the foregoing 62 pages  
11 constitute a true and accurate transcript of all proceedings  
12 had upon the taking of said deposition, all done to the best  
13 of my skill and ability.

14            I FURTHER CERTIFY that I am in no way related to  
15 any of the parties hereto, nor am I in any way interested in  
16 the outcome hereof.

17            DATED at Chandler, Arizona, this 8th day of  
18 November, 2006.

19  
20 

21 C. Martin Herder, CCR  
22 Certified Court Reporter  
23 Certificate No. 50162  
24  
25