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Comments: I submit the following comments, as a concerned citizen of the State of Arizona, frequent visitor to the Apache Sitgreaves National Forest, and individual who participated in the court process initiative to stop the Forest Service's ("FS's") prior attempt in 2005 to round up the Heber herds without proper prior analysis and consideration of the horses' best interests. I hereby incorporate by this reference my prior comments to the scoping memorandum dated March 16, 2020.

The following is a brief summary of some but not all of my comments in this letter. As you will see there are several themes running throughout my comments which are briefly described below.

(1) There is no current evidence of suggest that the Heber horses have inadequate sources of food/water or that damage is occurring to the range that would require removal at this time or any time in the near future; No action is the proper alternative; More study would be needed as to the current herd number and composition before any removals should be contemplated as the information in these reports is lacking data, vague, contains arbitrary conclusions, and is insufficient to comply with federal laws;

(2) The Heber horses are locked out or fenced out of their Territory due to livestock grazing; the FS cannot lock out the horses and then use that "lock as" and non-use of the Territory as ground to remove the horses;

(3) There is no understanding of the herd size or current population (what data is provided is very limited and stale data); the FS has no idea of the number of stallions versus mares, age of the horses, or what genetic testing would reveal about the ancestry of the horses; this makes any type of population modeling purely speculative;

(4) The AML calculation is based upon flawed assumptions of a double county methodology, stale and limited data, and no consideration to removal or reduction of livestock grazing in the Territory per CFR 4710.5;

(5) The growth rate or reproduction rate is estimated at 20% which is obviously false of the horse population that the FS estimated back in 2005 as 300-400 head of horses would have multiplied by now to an extraordinary number and horses would be starving but they are not; this confirms the FS does not know the composition of the herd and whether they have self-sustaining attrition or not;

(6) Heber horses are not being given the "principal" use of their Territory. While the horses removal is being planned, the livestock numbers are planning to grow from 25% to 35%. See The Wild Horse Conspiracy, Craig C. Downer (2014) for more information on this point and as to the political control by cattle ranchers over the Bureau of Land Management ("BLM") and FS. Among other things; please consider the materials and information cited to by Mr. Downer in his book as incorporated into my comments;

(7) Funding is notably absent from these reports and while the apparent goal of removal for the continued management and survival of the herd; the necessary funds to implement the Territory Management Plan ("TMP") must be addressed before implementation or removal of any horses further, as noted throughout my comments, additional research hand study is required on herd composition and reproduction rates and there is likewise no mention of whether "funding" will be able to will be available to implement this proposed actions and implement the TMP.

(8) The discretion to remove "excess" horses lies solely in the hands of one individual' this allows for an abuse of discretion and authority with no checks or balances in place, once the horses are removed they cannot be

returned and the harm is irreparable.

(9) There is an incomplete "project record." The record is not available to the public and is referenced throughout the proposed actions yet a number of the underlying materials relied upon by the FS are not available on-line. I have tried to review the items the FS has posted on-line but, items continue to be posted as recently as April 16, 2021, despite the fact that these items were not available on day 1 of the comment period. For this reason, the comment period is flawed and must be restarted once all sources relied upon by the FS are made available. The 2019 Band Observation Data in particular will not load and is unavailable for review. I was unable to locate "Horse Territory Analysis - Available Forage Production 2018" cited in the AML on p 18, anywhere in the project record.

#### GENERAL COMMENT 1: LACK OF DATA AND EXISTING DATA IS LIMITED AND STALE/OUT-DATED

No recent survey on horse population. The draft Environmental Assessment ("EA") and Territory Management Plan (TMP) both rely upon outdated information from 2014, 2015, and 2018. The most "recent" information is over 4 years old. There is no data on horse migration or mapping, not data on stallions, mares or foals, i.e. herd current composition, no data on herd ages, and stale data on forage production among other things. The Equus population modeling was not created based upon the information from the Heber herd but rather The Garfield Herd Management Area in Nevada in 1997 (which is different from the Heber herd and not at all comparable). Underlying expert reports relied upon by the FS were selected to support the FS position and are not objective. Vast amounts of contrary reports and studies exist on key issues to this management plan that were ignored or overlooked completely. The forage production estimates were based upon outdated years of information (2007-2008).

#### GENERAL COMMENT 2: THE AML CALCULATIONS ARE FLAWED, BASED ON INCORRECT ASSUMPTIONS AND/OR STALE AND LACK OF DATA SPECIFICALLY RELATING TO THE HEBER HERD

Specific comments:

History of the Area - p.1 - AML - relies upon a single "letter" from 1974 to claim that there were only 7 horses in the area at that time and calls it the "first recorded census." The AML then takes the position from 1974 through 1993 there were only 5 to 8 horses total over this approximate twenty year period. This is evidence that the FS has not, is not, and never did comply with its obligations to manage the wild Heber horses or the Territory. Not a single scientific census, ever.

The so-called Ethnographic Study was nothing more than "oral histories given by people with various associations with the territory." AML p.2. Not sure who people with "various associations" with the territory know about the horses, if anything. Pure speculation and conjecture. Nothing scientific here.

AML p.3 BLM handbook says to use "animal unit equivalents". The proposed actions fail to follow BLM handbook that prescribed "utilization monitoring" and "use-pattern mapping" for determining forage availability. Only three years of forage, carefully cherry picked, were used for making the forage calculations; the AML is tied to forage consumption annually not any per animal unit in contravention of the guidelines.

AML p.7 FS admits it never did any census or surveys for decades. It readily admits that from 1993 through 2000 wild horse numbers were reported as zero and "it is not known if this is because horses were not present or if inventories were not conducted." Obviously, it is the latter based upon FS present population estimates.

AML p. 9-10 Aerial Survey data for used for population estimates are OUT-DATED. Aerial surveys from 2006 (26 horses), 2014, 2015, and 2017. The most "recent" aerial survey is over four (4) years old.

There is zero explanation or support for the so-called "double count" methodology used in the AML and thus it should be disregarded as lacking in any basis or scientific support. The on-line project record does not contain the report where this double count methodology was taken. Thus, there is no opportunity to comment on it.

AML, p. 12, Tables 4 and 5 show that two different methods of counting horses were used; to count horses within the Territory, a photo mark-recapture methodology was used whereas outside the Territory a "double count" survey was used; there is no explanation why but the issue is that one cannot compare apples to oranges and one must use the same process on both surveys to properly compare them.

Figure 8, p. 17 AML - [EXHIBIT 1, attached] - The Heber horses are located out of their Territory. Exhibit 1 hereto demonstrates that the FS has "fenced out" the wild horses from their Territory in violation of The Wild Free-Roaming Horses and Burros Act of 1971 ("WHBA"). The fences appear to serve no other purpose than to hold livestock within the Territory borders and allow cattle grazing. There are also numerous gates throughout the Territory that lock the horses out from access to forage and water sources.

At some point, the horses don't bother to check to see if the gates are open or closed anymore and must move onto to other areas for water that they can access. Being fenced out of the Territory, the horses only choice is to go off the Territory for other sources of forage and water. The FS actions in fencing out the horses from their Territory is a blatant violation of the WHBA to act in protection of the horses. The Territory is supposed to be used for the "principal" purpose of management of the wild horses who were "designated" as of right to be in the Territory; whereas the livestock are mere "permittees" who have no designated rights under federal law to be in the Territory. While other uses can and should be balanced with the horses' principal use, it should not be done in a ways to the detriment of the horses nor in a way that locks the horses out from using the Territory. Ironically, the SF wants to use its own violation of the WHBA as a reason to round up the horses. Any claim that the horses are not using the Territory by choice is completely absurd and patently false.

AML p. 18 Forage. A key component of the AML calculation is the amount of forage available. However, the FS has chosen erratic and stale years for selection of production levels. Rather than rely on the last three years forage production or an average of the last 5-10 years, the FS carefully selects the years 2007, 2008, and 2018. It is not clear why the FS reached back in time approximately 14 years ago to rely on this important number for forage. With extensive livestock grazing all over the Territory and surrounding areas, there is certainly more complete data on forage production that is more recent than 2007-08 era. This forage calculation cannot be relied upon and appears to have been reverse engineered for a desired result.

AML p. 21 Figure 9 [exhibit 2, attached]. Demonstrates that 5 grazing allotments cover ENTIRE Territory: King Phillip, Stermer, Sharp Hollow, Gentry, and Bunder.

AML p. 22, Forage Use. The FS analysis takes livestock grazing as a "given right" to the ranchers and views the situation as an "obligation" of the forest to the ranchers. There are termination rights in the grazing leases which can and should be exercised and the wild horses allowed to return to their Territory. See also CFR 4710.5 [exhibit 3, attached].

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.

AML p. 22, Figure 11. The Heber Allotment has over 900 head of cattle in the horses Territory yet the AML for wild horses is a mere 100 head?

AML p. 22, Forage Use. Admission by FS that for the past ten years, forage levels have been adequate for all uses. If the FS was correct in its allegations in 2005 for removal of so called "unauthorized" 300-400 head of horses (which was enjoined by the Honorable Fredrick Martone) it means that for a period of approximately 16 years, the horses reproduction rate could not have been 20% as the FS now claims it to be. Otherwise, the current horse population would be well beyond any current estimates by the FS and forage would not be sustainable. But the horses are healthy and look great. Thus forage is not an issue and the estimated 20% reproduction rates by the FS are completely inaccurate. The proof is readily available in history - all one needs to do is look back in time to 2005 and compare to herd levels estimated by the FS then with those of the FS today. The Heber herd maintains natural attrition numbers and no aggressive management or round ups are required. At most, the livestock exclusive use of the Territory through permitted grazing needs to be analyzed and re-evaluated before a single wild horse is removed under the guise of "over population." Livestock over population is an issue that has been curiously ignored. Why are the wild horses not treated as the "principal" use of the Territory in violation of the WHBA? 1000 head of cattle to 100 head of horses, who has principal use?

AML p.23 confirms this point: "These low utilization levels indicate that the use of the territory by all grazing animals, over the past ten years has been within the forage-producing capability of the area."

AML p. 24, Table 12. Shows forage use of ALL animals (livestock, horses, and wildlife) for the time period from 2007 through 2017 and notes that 2018 data is still not available as of 2021. According to this chart, for ALL animals, forage use is only 36% or less in any given year. Therefore, according to the FS data, there is no shortage of forage now or in the foreseeable future for any of the animals. This raises the question as to when would, if ever, a removal be appropriate, especially since the FS readily admits it has no CURRENT data on the composition of the Heber herd, number of bands, migration patterns, and a study on the forage usage of ONLY the Heber horses. Figure 12 include cattle in the forage use which obviously takes up the majority of all usage since the cattle sole purpose in the Territory is to forage on cheap grazing leases and then be taken to auction for slaughter at the monetary benefit of exclusively the cattle ranchers. Figure 13 includes the elk use. Curiously absent is any data on wild horse use. As the FS has failed their duties once again.

AML p.26 determination of forage sufficiency. The AML report concludes how much forage the AS forest is capable of production of approximately \$2 million pounds in an "average" year "BASED UPON THREE YEARS OF PRODUCTION DATA" collected across the territory. There were only THREE years of forage used to come up with this average of forage production for the entire forest and the years chosen were not current years. Over 66 percent of the average forage production number was taken from survey data that is over 14 years old or stale. The years selected include 2007, 2008, and 2018. The Rodeo Chediski Fire was only 5 years prior to the first data year selected. Once has to question why these older years were selected to represent CURRENT forage levels or potential forage production levels. Thus, it is not an accurate calculation of the current forage availability.

AML, p. 27 states that "When the territory was established, the northern portion was identified as winter range; this is the lowest (6,700 to 7,000 feet) elevation and consequently the warmest part of the territory." It is a violation of the WHBA for the FS to allow extensive cattle grazing in the Territory and completely fence out and lock out the horses from the warmest part of the Territory.

AML, p. 30. Lack of Data - admission that FS does not know the migratory pattern of the horses in question. "The horses in the area may be behaving similarly, but there is a lack of data to support or dispute this assumption."

AML, p. 31, Figure 14 demonstrates the horses are FENCED out of their Territory and how they must migrate to the south. Not a single horse is found in the upper quadrant of the Territory due to fencing. The few horses found in the southern areas of the Territory must be attributable to gates left open or gates closed to allow cattle

grazing, while horses were already inside their Territory.

\*\*\*AML, p.32 - Lack of Data - Twisted Interpretation of Heber Horses non-use of Territory - Fenced out - This page contains some of the most incredulous statements by the FS. "[I]t appears that the fences [hellip] may be restricting the horses to the southern and eastern portions of the analysis area, with most horse use occurring outside the designated territory." The FS in the next paragraph states, "The above discussion indicates the horses have not been and are not consistently utilizing all the delineated territory. Based upon aerial surveys and on-the-ground observation, horses are primarily using the southern portion of the territory during the spring, summer, fall and mild winters. There is an assumption the horses may move to areas of lower elevation outside the territory or off the Mongolian Rim during severe winters following the behavioral patterns observed with the wildlife but monitoring data specific to horse use patterns is lacking. As noted in the Bureau of Land Management Wild Horse and Burro Handbook (USDI Bureau of Land Management 2010), a recurring pattern of movement out of a territory to access forage, water, or thermal or hiding cover is an indication the territory cannot sustain year-long horse use. However, there appears to be sufficient forage, water, and cover available within the territory. It appears the fences within the territory are likely limiting movement to the lower elevations in the north; while snow accumulation in parts of the territory effectively push large ungulates to lower elevations during severe weather. While these observations indicate the cover and space may be insufficient in the territory, we cannot ascertain with certainty why wild-free roaming horses are moving off the territory. Additional monitoring is needed to better understand how horses are using the territory."

The above quoted statements by the FS make absolutely no sense. On one hand. They say there appears to be sufficient forage and they scratch their heads as to why the horses are not using the area and need more studies. Yet on the other hand, they readily admit the horses are fenced out of the territory due to all the allotments and cattle grazing areas inside the Territory. These statements are contradictory and make no sense as written and should be struck as non-sensical. The FS must admit that they have fenced the Heber horses out of their Territory and the only reason the horses are not using the Territory is because they cannot.

AML, p. 33. The "average available forage production" model was chosen by the FS to set the AML for the Heber horses. This approach is flawed because the average forage production for the AS forest was chosen based upon an average of forage production for years 2007, 2008, and 2018. That means 2/3 of the basis of this number is based upon outdated data some 14 years old! Why select 2007 or 2008? If that is the only forage data available then the FS does not have sufficient information to make the analysis required to issue either the EA or TMP.

AML, p. 33. "It was determined that half the available forage should be used to establish the high end of the appropriate management level[hellip]" How was 50% selected? There is no citation to authority and thus it appears this number was arbitrary and capriciously selected. If one refers to the use of the Territory designated for the wild horses under the WHBA, the wild horses should be the "principal" use for the area. Assuming the outdated information from 2007-2008 is found to be appropriate as a measure of average production for the AS forest, fifty percent (50%) of the forage devoted to the wild horses still does not give them the status of a "principal use."

AML, p. 33. Why do the wild horses need to give up 25% of their Territory forage for the raising of livestock? The Territory is the only protected place for the wild horses. Granted multiple uses are encouraged across the public lands of our federal government, however, wild horse territories are very few and in those areas, wild horses should be the primary use. Allowing 35% livestock grazing in this Territory and requiring wild horse removals, is not consistent with the WHBA. Before wild horses are removed, livestock interested in the TERRITORY should be re-evaluated. See CFA Section 4710.5.

AML, p. 33 and elsewhere in the FS proposed actions. The allotments are not an "obligation" per se that cannot be changed or that are set in stone. There are termination rights held by the US government on those leases

and/or rights that exist in equitable principals that would allow for the termination of those leases such that compliance with the WHBA could be achieved.

AML, p. 34. The FS overestimates the Heber herd forage needs - "[T]he 1.2 animal unit equivalent Forest Service personnel use for permitted horses is based on a horse weighing about 1,200 pounds, and the horses seen in the area are generally smaller (800 to 1,000 pounds)."

AML, p. 34. Using "pounds of forage" instead of customary and standard "animal unit months" is not an accurate way of calculating the AML in the Territory.

AML, p. 34. The federally listed endangered species of the Mexican spotted owl resides within the Territory. The propose plans (EA and TMP) fail to take into consideration the necessary protections for this owl species. Grazing and other disruptions should be kept to a minimum. Allowing a 35% livestock presence within the Territory runs contrary to the guidelines for protection and simply makes no sense within the Territory.

AML, p. 34. The 2013 National Academy of Science committee review stated that to maintain herd fitness, the minimum herd size is approximately 5,000 horses. The 2013 report by this committee was not available in the project record for viewing by the public so it is impossible to analyze this information.

AML, p. 34. The FS ignores the warnings of a reduction in herd size that could cause a decline in fitness of the herd due to genetic variations from mutations, inbreeding depression, deleterious mutations in smaller populations.

AML, p. 35. Genetic diversity concerns. The FS admits that : Genetic analysis of the free-roaming horses currently occupying the territory has not been conducted. The FS admits that it needs more data: "it is recommended that genetic analysis be conducted and that the proposed action for the territory include actions that will be taken to ensure genetic variability, if needed." Possible management actions include more removals (which would take the herd lower than 104 horses) purportedly to allow only horses ages between 6 to 10 years old for better reproduction rates. It is unclear what this means but if the FS is suggesting that further reductions are necessary to somehow increase genetic diversity, it is absurd, not supported by science, not is any cited.

AML, p. 35. FS is recommending introducing mares/horses from outside the territory every generation which blatantly violates the WHBA, Section 1339.

AML, p. 35. Once again, the FS - after admitting the horses are fenced out of the Territory (at p. 32), have the audacity to state that "Horse use monitoring is needed to determine the reasons for the lack of use."

AML, p. 35. The FS concludes that 104 horses is the maximum the Territory can sustain considering "other uses." Somehow it is a "given" that the livestock are "entitled" to thirty-five (35%) of the grazing areas within the Territory. The WHBA requires the horses be given the "principal" use of the Territory and additionally it should be noted that the horses are restricted to the Territory but are permitted to graze on surrounding public forest lands.

AML, p. 35. FUNDING? - How will the FS determine or anticipate if the Heber herd is not maintaining genetic diversity unless it has a plan in place to test or monitor such diversity. The proposed action is devoid of any discussion on this topic and lacking of any discussion on the availability of funds to do such work. The EA and TMP cannot be adopted unless sufficient funding exists to execute on the information in the EA and the TMP, not only execute certain parts such as removal of the horses and then nothing further.

GENERAL COMMENT 3:

## WINEQUUS POPULATION MODELING IS FLAWED AND SHOULD BE DISREGARDED FOR LACK OF SPECIFIC DATA RELATING TO THE HEBER HERD

### Specific Comments:

The Win Equus population modeling for the Heber herd was created using data from the Garfield Herd Management area in 1997, over twenty years ago and from another state with different topography than Heber, Arizona. Significantly, the modeling does not rely upon information available. Below is an excerpt from the FS Win Equus report:

Parameters Utilized for Population Modeling All simulations used the standard survival probabilities, foaling rates, and sex ratio at birth that were supplied with the model for the population for the Garfield Herd Management Area, 1997. These are standard data used when we don't have site specific data for a territory.

There is no discussion or evidence that the Heber herd and its corresponding Territory are at all similar to Garfield Flats in terms of topography, geography, climatic patterns, vegetation, and wild horse characteristics. Whereas here, these characteristics do not align, the use of the Garfield Flat population data is inappropriate and provide results that are inaccurate.

This is significant in that critical population modeling is not based upon the Heber herd. Until such time as herd specific information is available, any modeling is pure speculation and conjecture and should be rejected outright. How can the FS properly make a determination as to which sex age of horses to remove to control population until such time as they understand and have data on the current herd composition? Any removals without such information as to the Heber herd compositions would be purely arbitrary and capricious.

### GENERAL COMMENT 4:

## HEBER WILD HORSE TERRITORY MANAGEMENT PLAN, Wild Horse Report (WHR) LACKS DATA AND IS ARBITRARY AND CAPRICIOUS

### Specific Comments:

WHR, p.1 Once again the FS admits in one sentence that they have fenced out the Heber Herd from their Territory and in the next sentence, the FS acts like it does not know why the horses are not using the Territory??? To quote the FS on p.1 of WHR, "Existing livestock fencing within the territory may be limiting horse movement to the lower elevations in the northern portion of the territory. However, current monitoring is not sufficient to ascertain with any certainty why horses are utilizing the northern portion of the territory nor is it sufficient in determining why they are not moving off the territory. Additional monitoring is needed to better understand how the horses are using the territory." See my comments above to AML, p. 32

WHR, p.2 The "annual" growth rate lacks any scientific bases. A 19 to 21 percent growth rate is based upon three aerial surveys from years 2014, 2015, and 2017. Tables 1 and 2 have the term "Estimated Population" footnoted as "1" but there is no corresponding footnote section contained in the WHR. The number of horses actually observed in the Territory in 2014 was 18 and in 2015 it was only 16, two less horses than the year before. This does not support an increase in the herd size but rather a decrease. This aerial data is stale and out of date and not sufficiently reliable to use in calculating a growth rate which is a critical issue to determine proper management. More reliable data and detailed information about the Heber horses is required to calculate a growth rate.

WHR, p.2. Band Observation Data 2019 is not available for review in the project record on-line. It appears to be posted but when you click on it nothing happens. The FS claims there are 59 separate "bands" of horses and

uses a single horse in some instances to count as a "band". There is no scientific support for a band of "one" horse. It fails by definition and demonstrates that the FS knows very little about wild horses.

WHR, p.4. The No Action Alternative is dismissed out of hand and fails to consider reality. The FS claimed in 2005 that there were 300-400 head of horses in Heber [exhibit 4, attached] and today they are making the same claims but now it is 16 years later. This proves that the alleged population growth numbers arbitrarily selected by the FS are not accurate. See above, AML comment at pp. 7, 9, 10, 12.

WHR, p.5 Lack of Data - The FS states that "further monitoring is needed to better understand how the horses are using the territory" and on the very next page 6, the FS begins preparation for reduction of herd size. When would the FS get a better understanding of the horses, before or after removal??? There is no plan for studies to be done in any of these documents. The FS needs to complete the studies of the horses and their composition, head count, migratory patterns, bands and the like before it starts rounding up the horses.

WHR, p.6. There is no discussion about what happens to the bands of horses when one or more members are trapped by water baiting in corrals. Each time a horse is captured, the remaining members of the band (its family) are disrupted and chaos will ensue if several bands lose various members around the same time.

WHR, p.8. The FS admits that "The current herd age distribution is unknown." There are a number of bachelor bands in the territory and surrounding areas and they obviously do not reproduce. The FS has failed to study the specifics of these horses and cannot make management decisions until it understands the horses, fully inventoried, with ratios of male to female, ages of horses, number of bands, and the like.

WHR, p.9. The FS admits that "An analysis of the genetics within this territory has not been conducted to date[hellip]" Many of the buckskin horses exemplify traits of those horses (Cerbat) brought over from Spain by Father Kino yet no genetic testing is being recommended before these horses are removed.

WHR, p.10. One would think the FS would research carefully the possible changes to herd dynamics as a result of the removal of individual band members. Unfortunately, according to the FS, there will be no impact on the bands. The FS dismisses without much discussion of the effects of removal of some band members on the remaining members. The FS claims that bands are "dynamic" and "not a static condition" which runs contrary to the majority of research in this area and just plain common sense. And if the removed member is the stallion and lead of the band then what happens to the band? Zero discussion on this very significant topic.

WHR, p.10. Helicopter gathers are identified as a possible tool to roundup the horses but there is no discussion about the possible effects of helicopter use in this area full of rough terrain. Many horses would lose their lives being chased off cliffs and other difficult terrain in this area. None of that is considered and the use of helicopters is dismissed with very little discussion - two sentences, saying effects on herd dynamics would be the same as bait and trap technique which cannot possibly be accurate when there is chaos by helicopter chase. All bands would be forever disrupted.

WFR, p. 20. Cumulative Effects. Without any support, the FS comes to the startling conclusion that livestock grazing can actually "improve" the conditions of the range and forage. This is simply absurd and that is not the analysis undertaken by Holechek. And if you review the other plans for livestock grazing, the FS is actually increasing livestock grazing in the area of the territory from 25 to 35% meanwhile, the FS proposing that the horses must be removed. This is no analysis whatever but simply a result in driven conclusion. A single report that is misinterpreted and relied upon by the FS while ignoring other reports that come to opposite conclusions, see below e.g.:

Livestock Grazing Reports - negative impacts to environment and animals



[https://www.biologicaldiversity.org/programs/public\\_lands/deserts/sonoran\\_desert/pdfs/SDCP-Report.pdf](https://www.biologicaldiversity.org/programs/public_lands/deserts/sonoran_desert/pdfs/SDCP-Report.pdf)

[https://www.biologicaldiversity.org/programs/public\\_lands/grazing](https://www.biologicaldiversity.org/programs/public_lands/grazing)

<https://www.britannica.com/explore/savingearth/public-lands-ranching-the-scourge-of-wildlife>

[See exhibit 5, attached] The FS concludes that livestock grazing "is not expected to have impacts on horses or their habitat." No citation. No support but the above articles demonstrate otherwise.

WHR, p. 21. The FS concludes that horse herd under the proposed action i.e. roundups would be "beneficial" or "slight"? The FS notes that no action would result in risk of death due to a lack of forage and water? Yet not a single documented case is provided in any report from the FS showing that the horses are starving. All of this is based upon the FS conclusion of a 20% growth rate which is completely unsubstantiated.

WHR, p.23. The FS proposed action of horse removal without sufficient information and reliable studies available to confirm with any precision an alleged 20% growth rate, lacking any information on the current composition of the horses (by age and sex) and recent head count leads to but one conclusion which is a violation of the federal laws designed to protect the horses and the process including NEPA (no Environmental Impact Statement is proposed and this step is skipped without justification), WHBA, Administrative Procedures Act, and other laws. The FS also suggests reintroducing other horses (strangers to the Heber territory) to assist with genetic diversity which is a blatant violation of the WHBA Section 1339.

GENERAL COMMENT 5:

THE DRAFT ENVIRONMENTAL ASSESSMENT (EA) LACKS DATA AND IS ARBITRARY AND CAPRICIOUS

FS ADMISSIONS demonstrating critical LACK OF DATA include:

EA, p.1 "Throughout the years, no actual scientific data or monitoring was documented on the [Heber horse] population."

EA, p. 1 In 1993, the FS violated the APA and closed the Territory and ceased monitoring of the horses.

EA, p. 2 The FS has decided to manage horses in the Territory and nearby areas as "wild" under the Act meaning that each and every horse is protected by the WHBA and all procedures must be followed. I applaud this decision to treat all the Heber horses as "wild" but suspect the FS must do so because they do not have information to data to prove the horses should be treated otherwise.

EA, p.13. "[T]here is no conclusive information from which to determine that horses on the Sitgreaves National Forest are not the progeny of wild free-roaming horses that utilized what was established as the Heber Wild Horse Territory after the passage of the Act."

EA, p. 37. "An analysis of the genetics within this territory has not been conducted to date,[hellip]"

EA, p. 38. The FS admits they do not know the detrimental effects of separating band members.

EA, p. 47. Per Figure 4, the FS admits that Territory is 100% used by livestock through grazing allotments: King Phillip, Sharp Hollow, and Stermer from the mid-section to the north and Gentry and Bunder to the south portion.

Additional Specific Comments to the EA:

EA, p. 7. Purpose and Need to establish AML. There is no evidence that the current level of horses is not sustainable. In fact, all photographs of the current horses demonstrate that they are well fed from the forage and in great condition. Yet, the FS concludes that the AML should be 100 cutting the head by three quarters or 75% of its alleged current size. All this is based upon the conclusion that a growth rate of 20% is valid. It is not. The proof is shown by the attrition level from 2005 to 2021. The herd size is the same as the FS claimed it to be back in 2005. [See exhibit 4] Therefore no action is required at this time. Nor is there any evidence of starvation or even a threat of starvation in the near future of the herd. The growth rate and claims of starvation are all "make believe" in an attempt to clear the path to maintain and increase livestock grazing from 25 to 35%. The horses compete for the cattle grazing when they are entitled to priority to those areas especially within their Territory. The FS has ignored the "principal" use concept of the Territory per the WHBA and allowed grazing rights for livestock to increase while planning removals of the herd. Multiple use concepts are not set in stone and when the need arises to protect the horses, removing the cattle is authorized under CFR 4710.5.

EA, p. 7. Why do the horses only get half the forage? The WHBA requires that the horses use shall be "principal" not equal or less than.

EA, p. 8. The FS has no idea how many horses are in the Territory and surrounding areas. Their most current estimates are based upon outdated aerial surveys that are 4-7 years old. Even the FS estimate of the herd is based upon an extremely large viable between 270 and 420. More current data is required including herd composition, male v. female, age, and condition. The WHBA requires that sick and lame or injured horses be removed before any healthy horses yet the proposed action of the FS is void of any discussion on this point.

EA, p. 8. The suggestion that by 2022 (next year) the horse population could increase 10 times is absurd, lacking in any support, and just plain false. The herd has remained the same size since 2005 but the FS refused to acknowledge this FACT [exhibit 4]

EA, p. 8. Stakeholder involvement was not welcomed. The single horse advocate selected for the "independent" working group was ostracized by others in the group. The working group was nothing more than a process that the FS had to do but it was clear that it was not an effort to listen to wild horse advocate concerns or more advocates would have been selected to participate and the one that was selected would not have been treated so rudely so much that she ultimately resigned.

EA, p. 9. Tribal consultation is not completed.

EA, p. 10. Scoping Comments were disregarded or ignored; and/or were not addressed in any meaningful way.

EA, p. 12. Impact to travel and tourism was not considered as an option for the herd. Viewing stations along State Rt 260 could prove to be a valuable tool to increase awareness of the wild horses and provide an enjoyable recreational opportunity for the public but this option was not considered. It could also be a revenue source to fund proper care and management of the herd. This option was not considered by the FS in any of the project record reports.

EA, p. 13. There were numerous comments during the Scoping Memo period that suggested redrawing the Territory or opening up the fencing in the Territory to allow the horses to roam freely through their Territory but this was not addressed because the "interdisciplinary team" i.e. the FS did not "identify any unusual circumstance or other rationale to justify expanding the territory[hellip]". Before a mass round up is proposed which is an unusual circumstance in and of itself, the other options should have been considered such as removing fencing to allow the horses to actually use their Territory, removing the livestock or limiting the allotments substantially (CFR 4710.5), terminating the grazing leases as the government is entitled to do, give the horses the principal use of the Territory as they have been designated. None of these actions were even considered.

EA, p. 14. The fact that livestock grazing was in place within the Territory prior to establishment of the Territory does not mean it must continue especially when the FS is considering round ups and capture of the wild horses. The horses need not be the "exclusive" use but the WHBA requires that the horses have the "principal" use. That is not happening now nor under any of these proposed actions by the FS, which is in violation of the WHBA. See also CFR 4710.5 specifically providing for the curtailment or cancellation of livestock grazing privileges on public lands in order to ensure thriving, healthy herds of wild horses and in their territories. See also, Craig Downer, *The Wild Horse Conspiracy* (2014) [exhibit 6, attached].

EA, p. 15. The "no action" proposal has worked well for the FS since the Territory's inception in 1970s and should continue. The horses are not starving but healthy and there is no evidence of any imminent or impending lack of forage availability. The horse population is obviously not growing at 20% as alleged by the FS or the herd from 2005 should be a massive size today and it is not. The proof is in reality of the current herd size which seems to be maintaining an attrition rate that keeps the herd population in balance naturally. No action is the best alternative but was dismissed out of hand all hinging on the alleged growth rate of 20% which is flawed as explained in my comments to the AML. The FS does not have the data to back up a 20% reproduction rate and uses outdated information from some other herd in 1997 - The Garfield Herd.

EA, p. 17. Suggests introducing young animals from outside the territory to maintain or increase genetic diversity and is prohibited by the WHBA Section 1339.

EA, p. 17. FUNDING? The FS obviously doesn't have the funding now to complete the aerial and other surveys necessary to determine the herd size, herd composition, and migratory patterns. Without an increase in funding, the FS will not have resources to continue to monitor closely the population and this obligation too will not be followed. There is no discussion of funding availability for all the activities and follow up required in this proposed action. Why would taxpayers have to take on the obligation of paying for the care and feed of wild horses in captivity? What is the source of the funding available to care for the horses once rounded up? If funds fall short, are these horses headed to slaughter (immediately after auction)? What protections have been put in place for the removed horses to ensure they do not end up in meat markets? Simply put, none. In 2014, a FOIA request revealed an internal memo from Joan Guilfoyle, national director of BLM's wild horses program urging suspending roundups until those horses already in captivity can be placed elsewhere but that has fallen on deaf ears.

EA, p. 17. Genetic sampling would be done after the round ups occur. At that point, it is too late. Once removed the horses cannot be replaced and new horses from outside the territory cannot be used to replace the wild ones that inhabited this territory and surrounding areas.

EA, p. 21. The AML is too low and not supported by current data or the majority of scientific research available on the topic. See my comments to the AML report.

EA, pp 21-22. Determination of Excess horses is vague and arbitrary. One government official can send "a letter to the file" unbeknownst to the general public and remove wild horses if a single threshold is deemed exceeded. There should be detailed process in place before such conclusion can be reached including consulting independent experts, data to back up the conclusion, and giving public notice. One of the thresholds is horses not using the territory for "long term" use (which is not defined and vague) yet the FS has fenced the horses out of the territory. Utilizing "key" grazing areas exceeding 35% yet the term "key" grazing areas is not defined and vague. Likewise, "sensitive areas" is not defined yet if these areas are impacted negatively by horse use, the horses can be removed. Animal health is another reason to remove yet there is no process for certification by a veterinarian. Then there is a "catch all" provision for "other circumstances" which is not defined and is vague and arbitrary power in one person's hands, the Forest Supervisor. Despite all these flaws, one comes back to the central question, how can the FS remove horses for not using the territory when they are the ones who locked them out? This is a disgrace and violation of the FS duties under federal law.

EA, p. 23 Figure 2. All roads lead to removal. It appears to be a pretty easy path with no back up or supporting documentation and vaguely defined or undefined terms which meanings are critical.

EA, p. 25. Herd health and population. There is no identification of available funding for any monitoring of the horses in fact outside volunteers would be relied upon which once again is the FS passing on its duties in hopes that others will do it. Surveys of the horses would only be done every 2 to 5 years "as funding allows." Where are the funds for this management? The FS is taking on a task and giving lip service to a management plan that it lacks and the funding to support.

EA, p. 26. Potential Management Actions. Alter the herd age distribution when the FS does not even know the current age distribution. The plan calls for removal first, ask questions later. No horse removals should be permitted until a study and understanding of the current herd is accomplished. If the FS lacks the funds to do that much, it certainly lacks the funds necessary to implement its proposed actions. Once again, the FS states that it will "introduce young horses from outside the area" for genetic diversity which is prohibited by the WHBA. Why not study the composition of the Heber herd first before any removals could be done and then the FS would not have to worry about introducing stranger horses for genetic diversity. Habitat management includes "increase fence permeability" but what is required is removal of the fences and movement of livestock to other grazing areas outside the Territory.

EA, p. 27, Figure 3 shows corrals set up inside the Territory. Why would FS capture horses within the Territory when they seem to be complaining that the horses are not staying in the Territory? Once would think bat and trap would focus on horses outside the Territory?

EA, p. 29. There are owls and wolves within the area and all the FS says is that they will not be disturbed but no details on any plans how that will be accomplished or where specifically the dens and nests are located. Have these species been studied to understand where exactly they are located?

EA, p. 30. Public notice. A plan for providing public notice of any removal of excess horses is critical yet no plan is developed or in place.

EA, p. 34. Band observation data collected by the FS and relied upon for its proposed action was not available to the public during this comment period, on-line or otherwise. Once horsed does not constitute a "band". And the FS admits that "This data is being presented as the beginning steps to obtain herd information[hellip]" Shouldn't the FS have this information before making a proposed action plan? Aren't the results of the herd information and composition relevant to any removal of so-called excess horses? The proposed actions are premature.

EA, p. 36. The FS has no credible data to support the notion that the horse herd could reach 16,000. From 2005 to 2021, the herd has remained the same size. The claim of a 20% growth rate is belied by the facts of recent history. See AML comments generally, above.

EA, p. 38. The FS admits they do not know the detrimental effects of separating band members. The effects upon reproduction by disturbing the bands has not been addressed or considered in any detail other than to acknowledge it is an issue.

EA, p. 47. Figure 4 shows that the Territory is completely over-layed 100% with grazing allotments: King Philip, Sharp Hollow, and Stermer from the mid-section to the north and Gentry and Bunder to the south portion.

EA, pp. 51-53. The FS plans to increase the livestock grazing allotments from 25% to 35% within the Territory arguing that when cattle eat the grasses it actually improves forage production but when horses do the same, it does not. So while the cattle numbers increase, the horses get removed. This is not what was envisioned in the

WHCA and is a blatant violation. No EAs for livestock grazing have been produced by the FS despite pending FOIA requests that remain outstanding. Why is this information being withheld from the public?

EA, p. 51 (and throughout the EA) and "ADAPTIVE MANAGEMENT PLAN" is not plan at all. It simply means the FS lacks the necessary documentation to support its current proposed actions and it will wing it as it goes. This lack of any certainty and lack of understanding of the current herd composition makes the proposed action plan vague and arbitrary.

EA, p. 54. There are no plans to reduce livestock grazing within the Territory to accommodate the principal use for the wild horses in direct contravention of the WHBA. Indeed, the FS states that livestock usage will actually increase from 25 to 35%.

EA, p. 63-64. Numerous species are identified in the Sigreaves Forest including the Mexican spotted owl, Mexican wolf, birds and falcons including the Goshawk and bald eagle, bats, mice and yet every single determination was "No action" with a short conclusion lacking in any study that the species is "not likely" to be effected by their proposed activities, including bait and trapping and helicopters. Insufficient study or no study was done.

EA, p. 71. The FS suggests that wild horse grazing "negatively affects" the Mexican spotted owl with no support cited. If there is a report posted online to support some of the FS bald conclusory statements throughout this EA, the FS should pinpoint the cite for their statement but it repeated fails to do so leaving the public commentaries required to scour the record in search of support for the FS statements.

EA, p. 81. The FS claims that horses affect all life stages of leopard frogs yet any harm from the horses to wildlife or other species would equally apply to livestock grazing yet livestock get a pass. Why would protected horses be removed before "permitted" livestock?

EA, p. 133. The FS claims to have relied upon the "best available science" for its proposed actions which is obviously inaccurate as the majority of research as to the destruction and damage caused by livestock to the territory was ignored as if it does not exist. As for the endangered and other sensitive species in the forest, lip service was given that they will not be disturbed. The history of the territory was based upon oral accounts by whom is not clear. The FS shut down the territory for decades and would just as soon do that same now by removal of all the horses or to such a low level that they horses are not viable. Then the FS will have succeeded in its mission in support of the livestock interests which is pretty clear from reviewing this report.

## GENERAL COMMENT 6

### Proposed Action

Heber Wild Horse Territory Management Plan (TMP) is premature and lacks credible data.

### Specific comments:

TMP, p. 10 Figure 4 demonstrates that the FS has allowed the horses to be completely fenced out of their Territory.

TMP in general all above comments on AML and other items are incorporated here by reference.

TMP, p. 13 states that an "environmental assessment" will be prepared which will analyze the environmental effects associated with development and implementation of the proposed action." Where is that plan, the EA? See comments to EA generally, above.

TMP, p. 14. Too much authority in a single person. The forest supervisor has extraordinary unchecked power to remove the horses without consultation with experts or even notice to the public. Horse advocates should be intimately involved in any proposed removals and any removals should be well supported with study and data to back it up which has not been presented to date.

TMP, p. 15. An "Adaptive Management" style simply allows the FS to do whatever they want. The FS has ignored the horses for decades why would they start now to do the research and study necessary to understand the herd. Add to that, there are no funds identified as available for the work that would need done under an "Adaptive Management" plan. It requires proactive work and that is not the practice of the local FS.

TMP, p. 19 Figure 5 confirms the horses are fenced out of the Territory.

TMP, p. 25. "Horses determined (in consultation with Arizona Department of Agriculture brand inspectors) to be domestic animals will be treated in accordance with State law." What does this mean? The FS stated that all the horses would be treated as protected under the WHBA since they could not prove otherwise. This statement appears to be contradictory with other statements in the reports by the FS. There are no details on what this means or how a horse could be viewed as "domestic"? If this statement is intended for future horse management, it is still missing details sufficient to allow public comment.

#### GENERAL COMMENT 7: AN ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED

Numerous other protected/endangered species in the area yet no real plan or details on how close activities would be or if these protected species would be affected; plans speak in very general terms with very little to no detail. The FS statement that sensitive or protected species will not be affected without more is insufficient. Additionally, separating wild horses by bait and trap will certainly cause chaos in the forest and could result in destruction to areas of the forest by the remaining bands, to the corrals or pens, to the wild horses inside, and to nearby sensitive wildlife. Checking baits every 12 hours is too long a period of time for checking and there could be injury to the horses and the wildlife nearby.

#### GENERAL COMMENT 8: Heber horses are not given the "principal" use of the Territory

The WHBA provides in Section 1332 (c) that the term "range" means the amount of land necessary to sustain an existing herd or hers of wild free-roaming horses and burros, [hellip] which is devoted principally [hellip] to their welfare [hellip]" The term "principally" is not defined in the WHBA but common synonyms include chiefly, mainly, predominantly, primarily, substantially. When the AUM allows cattle to be counted as 2 for 1 (cows and calves) and horses and fillies/colts are not, the numbers double quickly. Moreover, from the FS own data, it is clear that the grazing allotments which cover the entire Heber Territory are the predominant or primary use of the Territory, not the wild horses. This is a clear violation of the WHBA.

#### GENERAL COMMENT 9: FSM 2200 is not being followed and a TMP is premature

First, Section 2262 provides a requirement for "Inventory and Studies" - the FS must maintain a current inventory including "herd composition, reproduction rates, seasonal feeding habits, herd unit area, seasonal distribution or movement, external influences, and the effects of other animal species on behavior of wild horses." Then AFTER Section 2262 comes Section 2263.1 which provides for preparation of a "Territory Management Plan." It follows that you cannot develop a management plan until you understand what you are managing. That is why the inventory section comes first. The FS has no inventory of the Heber horses and therefore, it is premature to prepare a management plan. The head count is based upon very limited and stale data, there is no information as to stallions/mares or ages. The reproduction rates were adopted from modeling of the Garfield Herd, wherever that is, from 1997.

In conclusion, the FS failure to study the Heber horses and conduct an inventory of what they are trying to manage i.e. the Heber horses, any territory management plan is premature. You cannot develop a plan to manage something that you know very little about. The population modeling which is critical in the calculation of the AML is based upon another herd area that has not been shown to be at all similar to the Heber territory (or have similar horse characteristics). The three limited aerial surveys that were conducted by the FS are over four years old and some much older. The Environmental Assessment acknowledges potential issues with separation of the bands and disturbances to sensitive of endangered species yet they are dismissed without explanation other than they do not think it will be an issue and refuse to do an EIS. The fall back to an "Adaptive Management" approach only means that the FS will round up first, ask questions later, anticipate nothing, and be reactive once it is too late. The FS has failed to manage or study these horses for decades and is now trying to check the boxes by going through the process required without really doing the necessary leg work and research needed to truly fulfill their duties to protect these wild horses. And as for funding, it is completely absent from any of these discussions. Add to all this, the tremendous influence exerted by the livestock industry on the BLM and FS, the preferences and deference given to cattle allottees, all make it crystal clear that the Heber horses are receiving much less than the "principal" use of the Heber Territory, as required under the WHBA.

Attachment: Exhibit 1- map of HWHT general overview of water sources

Attachment: Exhibit 2 - map of HWHT range allotments and pastures

Attachment: Exhibit 3 - 43 CFR 4710.5 Closure to livestock grazing

Attachment: Exhibit 4 - News Release - Unauthorized Horses to be Removed from the National Forest

Attachment: Exhibit 5 - Livestock Grazing and the Sonoran Desert Conservation Plan - A Conservation Perspective

Attachment Exhibit 6 - The Wild Horse Conspiracy