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Date: September 2, 2008

Dear Interested Party:

The Apache-Sitgreaves National Forests have developed a proposal to prepare a Territory Plan for the Heber Wild Horse Territory. We are including with this letter a scoping narrative outlining background information, the purpose of and need for action, and the proposed action.

We are requesting your comments on the proposed action. We encourage you to be as specific as possible with your comments, which will be considered by the agency as it prepares the Environmental Impact Statement for the project. Please provide comments within 30 days, as that will be the most helpful for consideration in the environmental analysis.

Written, facsimile, hand-delivered, and electronic comments concerning this proposed action will be accepted. Written comments may be submitted to: Allison Stewart, Acting Forest Supervisor, Apache-Sitgreaves National Forests, Supervisor's Office, 30 South Chiricahua Drive, P.O. Box 640, Springerville, AZ 85938, or FAX 928-333-5966. The office business hours for those submitting hand-delivered comments are 8:00 AM – 4:30 PM Monday through Friday, excluding holidays.

Electronic comments must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), or Word (.doc) to [r3\\_asnf\\_heber\\_horse@fs.fed.us](mailto:r3_asnf_heber_horse@fs.fed.us). In submitting all comments, please provide: (1) your name, address, telephone number, and organization represented, if any; (2) title of the document on which the comment is being submitted; and (3) specific facts along with supporting reasons that you believe should be considered.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record for this project, and will be available for public inspection.

After this scoping comment period, we will continue the environmental analysis process. We anticipate the draft EIS will be published in May, 2009. The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency publishes a Notice of Availability for it in the *Federal Register*. After the 45 day draft EIS comment period, we anticipate the final EIS and Record of Decision will be completed in November 2009.

If you provide comments for this proposed action that include your name and address, you will receive a copy of the draft EIS when it is completed. In the event that you choose not to comment but you would still like to view the draft EIS, it will be posted to the Apache-Sitgreaves National Forests website.

We appreciate your help and interest in our forest management programs.

Sincerely,

ALLISON L. STEWART  
Acting Forest Supervisor

Enclosure

333-01



# SCOPING SUMMARY

## Heber Wild Horse Territory Environmental Analysis

Black Mesa Ranger District  
Apache-Sitgreaves National Forests  
Navajo County, Arizona

### Background

This report summarizes a Forest Service proposal to develop and implement a plan to manage the Heber Wild Horse Territory (HWHT).

Federal actions such as development of a Territory Plan must be analyzed to determine potential environmental consequences and effects must be disclosed (*National Environmental Policy Act of 1969 (NEPA)*). This report has been prepared to inform interested and affected parties of the proposal and to solicit comments to assist in the project-level NEPA analysis of the proposal.

The HWHT is the only designated wild horse territory on the Apache-Sitgreaves National Forests. Wild horse management within designated wild horse territories is prescribed through Acts of Congress, their implementing regulations, policies and other relevant documents. These laws and documents include:

- Wild Horse Protection Act of 1959
- Wild Horses and Burros Protection Act of 1971, as amended by Federal Land Policy Management Act of 1976 and Public Rangelands Improvement Act of 1978
- Management of Wild Free-Roaming Horses and Burros - 36 CFR 222 Subpart B
- Forest Service Manual (FSM) Chapter 2200 (Range Management) and Chapter 2260 (Wild Free-Roaming Horses and Burros)
- Portions of the 1987 Apache-Sitgreaves National Forest Land and Resource Management Plan (herein called LRMP)
- Wild horses may also be managed outside the designated HWHT in relation to private land, as described in the 1971 Wild Horses and Burros Protection Act and under FSM 2264.3 and 2265.2.

### History of Horses in the Area

Modern horses have been a part of the fabric of western range lands since their 16th century re-introduction by Spanish explorers and missionaries. Western wild horse herds were made up of primarily Spanish stock until settlers from the eastern seaboard arrived with stock that traced their bloodlines to Northern Europe and Great Britain. Although some isolated populations of relatively pure Spanish type horses have been found in the wild, most present wild horse herds are likely a mixture of several blood lines. During the west's settlement period it was common practice to use the wild horse herds as a pool from which stock could be drawn for use as needed by anyone who could catch them. It

was common for horses to be both released to and taken from the wild herds as dictated by need or circumstance.

Although it has not been done on public ranges for decades, the practice of keeping free ranging horses for potential use by a livestock association or an individual is still active on some Indian Reservations. This is true of the Fort Apache Indian Reservation (the Reservation) that shares a boundary with most of the Lakeside and Black Mesa Ranger Districts. Until the Reservation boundary was first fenced, Reservation horses moved freely back and forth between ownerships (Klein, 1993). As livestock production on National Forest lands became more regulated, free ranging horses were steadily removed either by herding them back over the Reservation boundary or by removing them to auction. However, horses in limited numbers were still often authorized to graze on public land allotments and very often pastures were set aside just for the horses necessary to work the permitted cattle. These horse pastures, with a few exceptions, have been eliminated in present livestock grazing allotments. Forest Service-authorized horses and donkeys are used by ranchers to help manage sheep and cattle allotments on the ASNF, but except for allotments with yearlong grazing they are all removed at the end of the grazing season.

### **Establishment of the Heber Wild Horse Territory**

With passage of the Wild Horses and Burros Protection Act of 1971 (the Act) came a mandate to establish territories for the use and protection of wild horses. "Wild horse" is a legal status provided to unmarked and unclaimed horses and their progeny that were considered wild and free roaming at the time of passage of the Wild Horses and Burros Protection Act of 1971 (see 36 CFR 222.20(b)(13)).

In compliance with the law and its subsequent implementing regulations, a territory of approximately 19,700 acres was established in the Black Canyon area of the then Heber Ranger District (see map). The territory was established in an area where it was known that seven horses ranged. There are no records or indications that any burros were in the area other than those owned by sheepmen.

The first recorded census (1974) of the HWHT showed seven horses, with notations that the stallion was thought to be sterile because no foals were seen for several years. By 1975 five horses were being reported and their numbers remained stable for the next several years. By the early 1990s, only two mares could be found.

### **Unauthorized Use by Other Horses**

During the 1980s-1990s other horses continued to move back and forth between the Reservation and the ranger districts, especially whenever boundary fences needed repair. It was common for the fence to fall into disrepair during winters and require significant maintenance before cattle could be turned on to the allotments the following spring. This need for fence maintenance has been the subject of at least one Memorandum of Understanding and other correspondence between the Forest and the Reservation. Horses arriving onto public lands after December 15, 1971, do not automatically acquire the status of a wild horse under the Act. Any horse introduced onto the Forest on or after

December 15, 1971 by accident, negligence or willful disregard of private ownership is not a wild horse. Such horses are defined as unauthorized livestock (see 36 CFR 261.2).

### **Rodeo-Chedeski Fire**

In June of 2002, the 460,000-acre Rodeo-Chedeski Fire started on the Reservation and burned north onto the Forest, resulting in extensive damage or destruction of the boundary fence. This fire burned about 40 percent on the Forest and 60 percent on the Reservation. About three fourths of the HWHT was involved in the fire. Immediately following the fire there was minimal forage available in the burned area and horses and wildlife alike had to move to wherever forage, cover, and water could be found. This included any ownership within reach. By the winter of 2002 the Reservation had substantially reconstructed the boundary fence. However, there were gaps in this fence since it took longer to install gates and cattle guards. Also, as dead trees began to decay and fall they damaged the new fence, so there was no effective barrier to livestock for several more years. This provided easy access to the Forest for Reservation horses, and they began to establish themselves on a more permanent basis throughout the 166,000 acres the fire burned on the Apache-Sitgreaves National Forest.

Burned area rehabilitation projects began during the summer and fall of 2002 and continue to the present. To provide for soil stabilization many of these projects involved seeding of grasses. As grass seedlings emerged they became desirable forage for horses and some wildlife. It is a Best Management Practice that grazing of newly established grass plants be deferred until they have had the opportunity to develop an adequate root structure. This several year deferment helps to provide for both soil stabilization and plant health. It was to this end that permitted livestock grazing of the burn was deferred for a few years, until vegetation and fences were reestablished.

### **Current Situation of Horses in the Area of the Heber Wild Horse Territory**

In 2005, based on concern that the increased number of unauthorized horses was adversely impacting the recovery of the burned lands, the Forest advertised a contract to gather and remove unauthorized livestock accessing the Apache-Sitgreaves National Forests in an area corresponding to the Rodeo-Chediski Fire. Prior to completion of the contracting process a lawsuit was filed and the Forest was enjoined by the court from proceeding with any gather of horses. The lawsuit was settled by a Stipulation Agreement that among other things prevented any gathering until a Wild Horse Territory Management Strategy was developed.

The horses occupying the HWHT and surrounding National Forest System land are currently unmanaged. Recent winter aerial sample surveys conducted in November 2006 and January 2007 by the Arizona Game and Fish Department counted 10 and 37 head of horses respectively in the general area of the HWHT. Observations indicate that the summer population becomes much higher. The horses move across fences either by finding areas where fences are down or gates left open, or by jumping over fences.

## **Purpose of and Need for Action**

There is a need to develop a Heber Wild Horse Territory Management Plan in order to be in compliance with the Wild Horses and Burros Protection Act of 1971 as amended by Federal Land Policy Management Act of 1976 and Public Rangelands Improvement Act of 1978, regulation at 36 CFR, Part 222, Subpart B, 222.21(a)(4), and the Forest Service's manual direction at FSM 2263.1. In addition, Item 4 of the *In Defense of Animals, et al., vs. United States Forest Service, et al.* Stipulation Agreement dated March 13, 2007, directs the Forest Service to develop a Heber Wild Horse Territory Management Strategy, in accordance with the provisions of the Wild Horses and Burros Protection Act of 1971, which requires a Territory Management Plan.

## **Proposed Action**

The Forest Supervisor of the Apache-Sitgreaves National Forest proposes to develop a Territory Plan for the Heber Wild Horse Territory. One of the components of the Plan would be to set the appropriate management level (AML) for free-roaming wild horses on the HWHT at a range of 28 and 35 horses, in order to maintain proper use of forage resources in light of multiple considerations.

Wild horse herd numbers vary widely from year to year, though the trend is for the herds to increase yearly in the absence of effective predation. The Proposed Action calls for managing horse numbers within a range that allows some measure of population fluctuation. The proposed action allows grazing use levels and range conditions to dictate the number of horses allowed to remain on the Territory within the AML range of 28 - 35 horses. Forage will be available first to wildlife and then balanced between wild horses and permitted livestock. The horse herd will be managed within the designated wild free-roaming horse territory (HWHT). Management will comply with the Wild Horses and Burros Protection Act of 1971, as amended, and the Apache-Sitgreaves National Forest Land and Resource Management Plan, as amended.

## **Range and Ecological Monitoring**

Determining the number of horses on the HWHT requires an adaptive approach to management. The number of wild horses maintained on the HWHT will depend on existing rangeland health, the predicted severity of droughts, and forage utilization guidelines. Monitoring of range vegetation conditions, soil stability, predicted weather patterns, and forage utilization levels are part of this proposed action. The upper and lower limits of the AML ensure sustainable rangelands and must be verified by periodic vegetation monitoring under actual field conditions.

Range/ecological conditions will be monitored periodically using established and accepted methods for assessing vegetation and soil stability conditions. Methods such as Parker 3-step, line intercept and Daubenmire plots are examples of acceptable methods. The assessments may be done as part of those scheduled for the overlapping cattle allotments.

Forage utilization will be monitored annually, again along with the overlapping cattle allotments, to assure that utilization standards are being met. Methods such as those described in FS Region 3 Range Analysis Handbook and/or the *Utilization Studies and Residual Measurements Interagency Technical Reference* (Interagency, 1999) will be used.

### **Population Monitoring**

Population monitoring will be conducted to compare the existing horse population to the AML range and current resource conditions. The gathering and removal of horses to adjust the population to the appropriate management level may be necessary on a periodic basis dependent on monitoring results.

The following criteria will trigger the need for an adjustment in horse numbers and a subsequent gather and adoption and/or other population control measures:

- Drought conditions. The Standardized Precipitation Index (SPI) or its successor will be used to define drought conditions. SPI values are available monthly from the Western Regional Climate Center at [www.wrcc.dri.edu](http://www.wrcc.dri.edu). Conditions will be determined by the size of the negative number. The larger the negative number, the more severe the drought. SPI values of  $-0.70$  or less for the past month signal drought conditions. SPI values of positive 1.0 or more for the past 12 months signal the end of drought.
- Utilization in key grazing areas exceeding 25 percent of current annual growth of key forage species for two consecutive years.
- Key grazing areas are sampled for range/ecological conditions and show that range and soil stability conditions are trending downward. This criterion, in combination with forage utilization guidelines being exceeded, is one likely to lead to a change in the estimated AML rather than a short-term change in numbers.
- Forage production, based on sampling in key areas, shows insufficient forage to support the present population.
- The number of horses within and surrounding the HWHT is estimated to exceed 35 (determined generally by aerial survey).

Gathers will be initiated to bring the population within the AML range, with strong emphasis on horse health and safety as well as safety of contractors, Forest Service personnel, and the public.

Some mares could be given a multi-year contraceptive such as the Porcine Zona Pellucida vaccine during gather to help reduce excess recruitment to the Territory herd and help to reduce the frequency of gathers.

## **Gathering Timing and Methods**

To avoid gathering during peak periods of foaling, no gather on the HWHT and surrounding National Forest System lands will be conducted between the first of April and the end of June. Those months are when most of the foals are born, but they can be born at other times.

Selection of the gathering method to be used will be based on safety to the wild horses and people involved, season of the year, the area to be gathered, the number to be gathered, the location and history of the band or bands to be gathered, and contractor availability. Any contractors used must indicate that they are able to successfully capture wild horses in a safe and humane manner. Any helicopter capture and handling activities will be conducted in accordance with Bureau of Land Management's Standard Operating Procedures for Removal for Wild Horse Herds. Wild horses that are captured and removed will be managed in accordance with the Wild Free-Roaming Horses and Burros Protection Act of 1971, as amended and 36 CFR 222.29, which authorize several options for excess horses, including adoption.

Methods for gathering horses could include helicopter herding, food-baiting into trapping facilities, herding on foot, and/or roping of individuals. If other methods become available that are humane and reduce stress on the horses, they would also be evaluated.

## **Criteria for Determination of which Horses will be Removed from the Territory after Gathering**

Unauthorized livestock on National Forest System lands may be impounded and transferred to the State of Arizona, under the provisions of grazing regulations in 36 CFR 222.8(3) dealing with stray livestock, and the provisions of Arizona State law.

Since the area of the HWHT receives consistent periodic influxes of large numbers of unauthorized domestic horses from adjacent ownerships and from deliberate abandonment of unwanted privately owned equines, criteria will be set as follows for determining which animals are unauthorized livestock and which have wild horse status. Of the wild horses, criteria will be set for which ones will be released back onto the HWHT and which will become excess.

At each gather, horses selected for release back onto the HWHT will be examined and photographed, and documentation kept of those horses' appearances and ages. At subsequent gathers, those previously-released horses will in general have first priority for release back onto the Territory. Accompanying unweaned foals of HWHT-authorized mares will have next priority for re-release, and will count as part of the AML. Horses meeting criteria for release will be released back onto the HWHT, to the extent that the Forest Service determines there are vacancies within the AML of the HWHT of their sex and age class.

All equines determined to be unauthorized domestic livestock and their accompanying unweaned foals will be removed under the procedures specified in the Memorandum of Understanding between the Forest Service and the State of Arizona that interprets how

State law will factor into Forest Service livestock management. The following will be criteria for determination:

1. Any equine not a horse, such as a mule or burro, will be considered unauthorized domestic livestock.
2. Any horse with physical signs of human use, such as gelding, brands, shoes, nail holes from shoes, white spots of hair on the withers or other signs of riding/handling, will be considered unauthorized domestic livestock.
3. Any horse showing acceptance of human handling, such as allowing itself to be haltered or accepting handheld food, will be considered unauthorized domestic livestock.

Any horse and accompanying unweaned foal not meeting the above criteria for removal, but for which there is no HWHT AML vacancy, will be considered an excess wild horse and managed in accordance with the Wild Horses and Burros Protection Act of 1971, as amended and 36 CFR 222.29, which has several options for excess wild horses including adoption.

### **Territory Horse Population**

In general, the HWHT's AML of 28 to 35 horses will be managed so that after a gather and re-release, 28 to 35 horses remain in the Territory area. We will attempt to retain herd composition of about 60 percent male and 40 percent female. Age distribution will approximate 20 percent aged between 0 and 5 years old, 60 percent between six and fifteen years old, and 20 percent sixteen years or older. An example is to release four males and two females in the 16+ age class, 10 males and 6 females in the 6-15 year class, and an undetermined ratio of males to females in the 0-5 year class depending on the sex of unweaned foals being released.

### **Preliminary Alternative Development**

In addition to the proposed action, the Interdisciplinary Team for the project has identified the following alternative for analysis to date. Further alternatives may be identified or alternatives may be revised if scoping identifies significant issues related to the proposed action that cannot be mitigated, or if additional management practices are identified that achieve the desired condition.

### **No Action/Do Not Develop a Territory Plan**

Full analysis of this alternative is required under the provisions of the National Environmental Policy Act and is used as the baseline for comparison of other alternatives. Under this alternative, the existing situation would continue..

### **Preliminary Concerns**

The Interdisciplinary Team for this project identified the following preliminary concerns about the proposed action and will consider them in the NEPA analysis. Other public

concerns have been used in the development of the proposed action presented here. Comments received on this scoping summary will be used to identify issues, mitigation measures, and other alternatives for the draft EIS.

- How to coordinate horse occupancy and allocated capacity with wildlife allocated grazing capacity.
- How to coordinate horse occupancy and allocated grazing capacity with livestock management.
- Economic effects on the grazing permittees.
- Cost to the taxpayers of managing the horses in the area.
- Effects on adjacent private landowners.

### **Decision Framework**

Given the purpose and need, the Responsible Official will review the proposed action, the alternatives, and the environmental consequences in order to make a decision. The Forest Supervisor for the Apache-Sitgreaves National Forests is the Responsible Official who will decide what the AML and other aspects of a plan will be for the HWHT, as proposed, or as described in an alternative. In addition, the Responsible Official may elect to require certain mitigation measures to minimize environmental impacts.

### **Public Input Needed**

We are requesting your comments regarding the proposed action, preliminary concerns, evaluation methodology, and alternatives to assist us in the NEPA review. Comments made on this proposal would be most helpful if they are received within 30 days of receipt of this correspondence; however, comments will be accepted throughout the analysis process. After this scoping comment period, we will continue the environmental analysis process. We anticipate the draft EIS will be published in May, 2009. The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency publishes a Notice of Availability for it in the *Federal Register*. After the 45 day draft EIS comment period, we anticipate the final EIS and Record of Decision will be completed in November 2009. Issues that are outside of the scope of the proposal will not be addressed at this level of planning.

Please provide written comments to Denise Van Keuren, Analysis Team Leader, Apache-Sitgreaves National Forests, P. O. Box 640, Springerville, AZ 85938. Electronic (email) comments should be sent to [r3\\_asnf\\_heber\\_horse@fs.fed.us](mailto:r3_asnf_heber_horse@fs.fed.us).