

EXHIBIT 26



United States
Department of
Agriculture

Apache-Sitgreaves
National Forests

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File Code: 5330-4

Date: September 7, 2005

Ms. Debra Sirower
Bryan Cave LLP
One Renaissance Square
Two North Central Ave., Suite 2200
Phoenix, AZ 85004-4406

Dear Ms. Sirower:

This letter is in response to your letters of August 26 and 31, and September 2, 2005, concerning the proposed gathering of stray livestock on the Apache-Sitgreaves National Forest. Specifically you were inquiring about the approximately 300 horses that have strayed from the Fort Apache Reservation onto National Forest System lands in the area from Pinetop to Heber, Arizona. You also cited two Freedom of Information requests in your letters and those will be formally processed through our FOIA Officer.

We are confident that the horses involved in this action strayed onto the forest after the Rodeo-Chediski Fire in 2002. The fences between the reservation and the national forest were burned by the fire and were ineffective in stopping the movement of livestock. According to our Bureau of Indian Affairs and Tribal contacts, the BIA rounded up several hundred of the horses that graze freely on reservation land, to prevent damage to the areas being reclaimed following the fire. During their round-up, they indicated that hundreds of horses likely were pushed onto the national forest. The BIA then rebuilt the fences, trapping the horses on the forest.

We have very clear direction under 36 CFR 262.10 and our policy Handbook for Law Enforcement, FSH 5309.11 on impoundment procedures for stray livestock. Impoundment of stray livestock is a law enforcement activity and under 7 CFR 1b.3, the Secretary has excluded from documentation (EA or EIS) certain categories of actions, including law enforcement activities. Therefore, we are not required to complete an environmental document for this action.

I have provided Dr. Haight with a copy of our impoundment policies. We have notified the White Mountain Apache Tribal Chairman and Tribal Attorney of a Notice of Impoundment Action and given tribal members more than 30 days to come gather their horses. No horse owners have come forward. As I stated, there are hundreds of horses grazing freely on the reservation so they are not really managed there. The next step is to gather the horses and contact the State Department of Agriculture, under our Cooperative Agreement (C.A.) with the State of Arizona Livestock Sanitary Board. We have received a letter from the State concerning the procedures. The State Brand Inspector inspects the horses for brands and the owners of the brands are contacted and given five days to redeem their animals. The C.A. states: "That unbranded, unmarked or branded unknown ownership horses, mules, asses, cattle, sheep or goats impounded by the agencies on Public Lands will be turned over to the Board for disposal...".

As you are aware, we have advertised for a contractor to gather the horses. We have a FOIA request from Dr. Haight, asking for the contractor's name once the contract is awarded. You



have also asked under FOIA how the award of the bid was extended. We will formally respond to the FOIA, but let me explain that the contract itself was not extended, but our time limit for obligating Fiscal Year 2005 funds under contracts was verbally extended to September 10, 2005. With the impacts from Hurricane Katrina in New Orleans, we are not certain whether our National Finance Center there will be able to find alternative locations for processing our financial instruments. We are trying to award the bid this week, but do not know if we will be successful. I will inform you if we do award the bid.

We do not classify these stray horses as "wild and free-roaming horses", nor do they have any connection to the Heber Horse Territory of record. The 1974 report on the Heber Territory lists 7 horses within the territory. The "Ninth Report to Congress on the Administration of the Wild Free-Roaming Horse and Burro Act" (following the 1990-91 censuses) lists 5 horses. The 1991 report FS-2200-E also notes: "Approximately 5 feral horses wander along the Mogollon Rim back and forth from the White River Apache Reservation. The Indians do not manage the horses, neither does the Forest Service. Natural Attrition will eliminate the horses eventually". The 2200-E report goes on to state, under program needs: "Elimination of incidental feral horses and burros from formal management consideration to reduce impacts on management resources, personnel and time. The A/S "herd" should not be recognized at all." The 1993 letter from the Heber District Ranger lists 2 mares in the territory. We always have a certain number of stray horses from the reservation, and these are no doubt the horses that some of your contacts see in the area.

If you would like to send me any of the materials you mentioned, I would welcome seeing them. I would also be available for a meeting in my office if you wish. I do not have any plans to be in Phoenix, however, this month. Please contact me if you would be available to meet.

Sincerely,

/s/ Elaine J. Zieroth
ELAINE J. ZIEROTH
Forest Supervisor

cc:
Ralph Giffen, WO Range
Gene Onken, RO
Deb Bumpus, A-S Range Staff
Ed Collins, Lakeside District Ranger
Kate Klein, Black Mesa District Ranger

cc: