

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHARLENE TOBIN, CARL MROZEK, and
CRAIG DOWNER

Plaintiffs,

vs.

BROOKE L. ROLLINS, in her official capacity as
the U.S. Secretary of Agriculture; UNITED
STATES FOREST SERVICE, an agency in the
U.S. Department of Agriculture; DOUG
BURGUM, in his official capacity as the U.S.
Secretary of the Interior; and BUREAU OF LAND
MANAGEMENT, an agency of the U.S.
Department of the Interior

Defendants.

Civ. No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Finding that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West” that “contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress unanimously passed the Wild Free-Roaming Horses and Burros Act (WHBA), 16 U.S.C. §§ 1331-1340, in 1971 to protect wild horses and burros as “an integral part of the natural system of the public lands.” 16 U.S.C. § 1331. Congress outlined clear restrictions and responsibilities when it “directed [the Secretaries] to protect and manage wild free-roaming horses and burros as components of the public lands.” *Id.* at § 1333.

2. This case challenges the decision made by the Bureau of Land Management (“BLM”) and United States Forest Service (“USFS”) (collectively, “the Agencies”) to remove almost 90% of the Montgomery Pass wild horse herd (“the Herd”), leaving all but 70 wild horses in an area that the Agencies are statutorily mandated to manage at a minimum of 138 horses. This decision entails the deracination of 624 out of 694 wild horses that Congress explicitly protected through the WHBA’s creation of the Montgomery Pass Wild Horse Territory (“Territory” or “MPWHT”) in 1971. The Agencies’ decision will leave the Herd at a population that will be unlikely to survive in the long term due to predation and—by BLM’s own terms—lack of genetically diversity.

3. This case represents yet another attempt by the Agencies to evade their statutory duties to protect, preserve, and manage the Herd, as the Agencies have been neglecting these duties for decades and now wish to wipe their hands clean by eradicating the Herd almost entirely. The Herd, when on the Territory, has a population that is naturally controlled by mountain lion predation and needs little to no human intervention, as evidenced by the lack of any agency population control measures since 1984. However, largely due to the Agencies’

1 failure to meet their 1988 objectives—such as securing water and reducing vehicular use within
2 the Territory, creating perimeter fencing around the Territory, and staying vigilant about gate
3 closures—the Herd has slowly wandered off the Territory in the previous decades and now faces
4 an unnecessarily drastic decision. This decision violates the Agencies’ duties under the WHBA,
5 duties that do not disappear merely because the horses have wandered off the Territory. Their
6 decision is a quick and inadequate fix for the Agencies’ decades of mismanagement; it is a death
7 sentence to hundreds of undeserving wild horses. The Agencies have stubbornly refused to
8 consider a variety of other solutions that would be less expensive, less extreme, and more
9 effective to the Herd’s long-term protection, preservation, well-being, and very survival.

10 4. Moreover, the Agencies made this decision based on data that the Agencies
11 themselves deemed incomplete and unreliable, as the arbitrary number used to make an “excess”
12 determination is the number that happened to be the most recent population count in 1988 and
13 has never received further analysis or inspection. Indeed, the number the Agencies rely on to
14 make an excess determination was only meant to be used for the ensuing five years of study—
15 until 1993. The Agencies have completed no further research into confirming or changing this
16 number, yet they use it to justify permanently reducing the Herd’s size by 90%. This number is
17 typically determined in a Herd Area Management Plan (HMAP); importantly, the Agencies have
18 not yet completed an HMAP for the Territory, which multiple courts have held is required.

19 5. Finally, the Agencies wholly ignored their duties owed to the Herd in making this
20 decision without even considering its impact on the remaining wild horses or on the Territory’s
21 ecosystem. The Agencies explicitly only considered the impacts of the decision on the area
22 outside of the Territory, contrary to their duty to determine that the land *within* the Territory will
23 maintain a “thriving natural ecological balance.” The wild horses provide a variety of positive

impacts on their ecosystem, such as creating and maintaining water sources, preventing wildfires, enriching soil, and improving biodiversity, and the loss of wild horses from the Territory as a result of this decision will change the ecological balance on the Territory's landscape and wildlife populations.

6. If allowed to stand, this decision would set a dangerous precedent that would allow the Agencies to remove wild horses from public lands without meeting their statutory obligation to maintain a thriving and viable herd. For these reasons, as explained further below, the Agencies have violated the WHBA, the Federal Land Policy and Management Act (“FLPMA”), the National Forest Management Act (“NFMA”), the National Environmental Protection Act (“NEPA”), and the Administrative Procedure Act (“APA”).

PARTIES

7. Plaintiff CHARLENE (“CHERIE”) TOBIN, D.O., is a primary care physician who visits the Montgomery Pass wild horses three to five times each year to photograph, study, and film them. Her interest stems from the herd’s unique social structure that involves their living together in large groups and their resulting complex social dynamic for handling conflict, educating their young, and protecting the herd from the mountain lion predation that keeps their numbers in check. She is completing a photographic essay containing seasonal photographs of the herd, and she currently has each season other than winter. Her intimate knowledge of the herd’s movement on the Territory leads her to conclude that removal, especially by helicopter, will cause horses to impale themselves on barbed wire fences that surround their habitat. She finds, and agency sources confirm, that the number of horses remaining after the planned roundup will reduce them to a non-viable level due to the remaining horses’ lack of genetic diversity and the herd’s subsequent inability to sustain itself in response to continuing mountain lion predation.

1 8. Plaintiff CARL MROZEK is a documentary filmmaker whose works have
2 appeared on “Wild America,” “The New Wilderness,” and the National Geographic and
3 Discovery channels. He is in the process of finishing a documentary on the Montgomery Pass
4 wild horses in early October, 2025, having already aired a segment on “CBS Sunday Morning.”
5 Underpinning his films is his conclusion that “this is the most unique herd of wild horses and
6 burros I’ve encountered or heard of, since I began filming wild horses and burros over 20 years
7 ago,” in part because they appear to have evolved in North America and predate the introduction
8 of horses by the Spaniards and because they quickly acclimated to his presence, acting
9 completely natural in front of the camera. He anticipates his finished film will appeal to his
10 investors and a global audience.

11 9. Plaintiff CRAIG DOWNER is a scientist, a wildlife ecologist, and author of
12 scientific and popular articles and books concerning wild horses, burros, tapirs, and all members
13 of their Order Perissodactyla. He is also a nature photographer and the president of the Andean
14 Tapir Fund/Wild Horse and Burro Fund. He is an expert on the biologies and niches of both
15 horses and tapirs and a member of the IUCN Species Survival Commission, for which he has
16 done action plans and species descriptions for Endangered species. He has been visiting and
17 observing the Montgomery Pass wild horses and their habitat for sixty years. He now visits them
18 annually to photograph, film, and scientifically document their behavior, ecological
19 interrelationships, health status, and social integrity. He recognizes them as one of the best and
20 longest studied wild horse herds in the nation. He has concluded that the herd is unique due to its
21 relatively larger numbers compared with other herds in the nation, and that they possess a more
22 truly wild and natural behavior that revives ancient and long-standing instincts. He particularly
23 values the fact that their physiology is unaltered by fertility suppressive drugs and that their

1 documented history shows a high degree of population self-stabilization due to mountain lion
2 predation and mature social units. He has given professional input to the Inyo National Forest
3 and BLM concerning the welfare of this special herd for many years and has had a significant
4 role in their preservation in the face of serious past threats to their continued survival in this area.

5 **JURISDICTION AND VENUE**

6 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
7 question). This action presents a case and controversy arising under NEPA and the WHBA,
8 federal statutes. This Court also has jurisdiction pursuant to 28 U.S.C. § 1346, as the United
9 States is a defendant.

10 11. This Court has authority to grant Plaintiff's requested relief pursuant to 28 U.S.C.
11 §§ 2201-2202 (declaratory and injunctive relief) and 5 U.S.C. §§ 701-706 (Administrative
12 Procedure Act).

13 12. Venue is proper in this judicial district and Court pursuant to 28 U.S.C. §
14 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claims
15 occurred in this district, and a substantial part of the property that is the subject of this action is
16 situated in this district.

17 **LEGAL FRAMEWORK**

18 **The Wild Free-Roaming Horses and Burros Act**

19 13. In 1971, Congress passed the Wild Free-Roaming Horses and Burros Act
20 (WHBA), 16 U.S.C. §§ 1331 et seq., finding that "wild free-roaming horses and burros are living
21 symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life
22 forms within the Nation and enrich the lives of the American people; and that these horses and
23 burros are fast disappearing from the American scene." 16 U.S.C. § 1331. Upon finding this,

1 Congress stated that “wild free-roaming horses and burros shall be protected from capture,
2 branding, harassment, or death, and to accomplish this they are to be considered in the area
3 where presently found as an integral part of the natural system of public lands.” *Id.* To
4 implement that mandate, Congress required that the Secretaries,¹ and USFS and BLM as their
5 delegates, “protect and manage wild free-roaming horses and burros as components of the public
6 lands . . . at the minimal feasible level.” 16 U.S.C. § 1333(a); *see also* 43 CFR 4710.4
7 (“Management of wild horses and burros shall be undertaken with the objective of limiting the
8 animals’ distribution to herd areas. Management shall be at the minimum level necessary to
9 attain objectives identified in land use plans and herd management area plans.”).

10 14. BLM manages wild horses and burros on public lands within certain types of
11 management areas, one of which is a herd management area (“HMA”). Likewise, USFS refers to
12 an area designated for wild horse management as a wild horse territory (“WHT”). HMAs and
13 WHTs (collectively, “wild horse areas”) are “established for the maintenance of wild horse and
14 burro herds,” 43 C.F.R. § 4710.3-1, based on the geographic areas that were used by these
15 animals in 1971 when the Wild Horse Act was enacted. 43 C.F.R. § 4700.0-5(d). That wild
16 horses move outside of these wild horse areas, however, does not absolve the Agencies of their
17 duties to protect and manage wild horses in accordance with the WHBA. *See, e.g.*, 36 C.F.R. §
18 222.60 (“The [USFS] . . . shall maintain vigilance for the welfare of wild free-roaming horses
19 and burros that wander or migrate from the National Forest System.”).

¹ The WHBA provides the Secretary of the U.S. Department of the Interior (“DOI”) and the Secretary of the U.S. Department of Agriculture (“USDA”) parallel authority to manage wild horses on lands under their jurisdictions. 16 U.S.C. § 1332(a). BLM acts on behalf of the Secretary of the Interior for land that is under the jurisdiction of the DOI, and USFS acts on behalf of the Secretary of Agriculture for land that is under jurisdiction of the USDA.

15. The Agencies may only designate a wild horse area through the land-use planning process conducted pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1787, and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §§ 1600-1614. FLPMA's implementing regulations require the Agencies to periodically develop, revise, and maintain resource management plans ("RMP"), which are written documents—adopted only after extensive public comment—that are "designed to guide and control future management actions." 43 C.F.R. § 1601.0-2; *see also*, 16 U.S.C. § 1604 (imposing similar requirements on USFS). Modifications to wild horse areas, including alterations to an HMA's boundaries, may only be adopted through this land-use planning process, which requires public notice and comment. *See* 43 C.F.R. § 4710.1; BLM, *H-4700-1 Wild Horses and Burros Management Handbook* (July 7, 2010) ("BLM Handbook"), 7-8, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H-4700-1.pdf (explaining that decisions to "designate HMAs for the maintenance of WH&B, or to remove all or a portion of an area's designation as an HMA must be made through a [land use plan] amendment, revision or new RMP"). Likewise, any "removal of the area's designation as an HMA should be considered through land use planning." BLM Manual, 4720.24.

16. The Agencies are required to manage wild horse areas in accordance with the management plans created through the FLPMA and NFMA processes and consistent with other federal, state, and local laws and policies. 43 U.S.C. § 1732; 16 U.S.C. § 1604.

17. The Agencies are required to prepare a herd area management plan ("HMAP")² that directs how to manage each wild horse area. 43 C.F.R. § 4710.3-1 ("The authorized officer

² The USFS refers to these plans as "Wild Horse and Burro Territory plans" or "territory plans." *See* FS Manual at 2263.1-11. Because these herd management obligations are effectively identical to BLM's, Plaintiffs will refer to them jointly as "HMAPs."

1 shall prepare a herd management area plan”); 36 C.F.R. § 222.61(a)(4) (“The [USFS] shall .
 2 . . [a]nalyze each wild horse or burro territory and, based on the analysis, develop and implement
 3 a management plan.”). HMAPs are distinct documents from Land Use Plans (LUPs) and
 4 Resource Management Plans (RMPs). *See, e.g.*, 43 C.F.R. § 4710.4 (distinguishing between
 5 HMAPs and LUPs); *see also* BLM Handbook at 5 (distinguishing between HMAPs, LUPs, and
 6 RMPs); USFS, *Forest Service Manual 2200 – Rangeland Management, Chapter 2260 - Wild*
 7 *Free-Roaming Horses and Burros* (Jan. 24, 2003) (“FS Manual”), 2263.1-
 8 11, [https://www.fs.usda.gov/about-agency/regulations-policies/manual/2260-wild-free-roaming-](https://www.fs.usda.gov/about-agency/regulations-policies/manual/2260-wild-free-roaming-horses-and-burros)
 9 [horses-and-burros](https://www.fs.usda.gov/about-agency/regulations-policies/manual/2260-wild-free-roaming-horses-and-burros) (distinguishing between territory plans, LMPs, and RMPs); *Leigh v. Raby*
 10 (“*Leigh I*”), 726 F. Supp. 3d 1207, 1218-19 (D. Nev. 2024) (explaining the substantive and
 11 procedural differences between HMAPs, LUPs, and RMPs). “HMAPs are prepared with public
 12 involvement through a site-specific environmental analysis and decision process (NEPA).” BLM
 13 Handbook at 36.

14 18. The WHBA requires BLM and USFS to manage wild horses “in a manner that is
 15 designed to achieve and maintain a thriving, natural ecological balance [TNEB] on the public
 16 lands.” 16 U.S.C. § 1333(a). In accordance with this mandate, for each HMA, the Secretary
 17 must: (1) maintain a current inventory of wild horses in the management area, (2) “determine
 18 [the] appropriate management level” (“AML”) of wild horses that the HMA can sustain, and (3)
 19 determine the method of achieving the designated AML and managing horses within that AML.
 20 16 U.S.C. § 1333(b)(1); 43 C.F.R. §§ 4710.2, 4710.3-1; *see* BLM, *BLM Manual Section 4720 —*
 21 *REMOVAL* (July 7, 2010) (“BLM Manual”), 4710.45,
 22 https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual4720.pdf
 23 (procedures for conducting population inventories).

1 19. An AML is "expressed as a population range within which [wild horses] can be
2 managed for the long term" in a given HMA without resulting in rangeland damage. See BLM
3 Handbook at 17. The upper limit of the AML is "the maximum number" of wild horses within a
4 given HMA that "results in a TNEB and avoids a deterioration of the range." *Id.* The lower limit
5 of the population range is "established at a number that allows the population to grow (at the
6 annual population growth rate) to the upper limit over a 4-5 year period, without any interim
7 gathers." *Id.*

8 20. The BLM is instructed to maintain a population of at least 150-200 wild horses in
9 each HMA to "maintain an acceptable level of genetic diversity within reproducing [wild horse]
10 populations." BLM Handbook at 22. Where the minimum wild horse herd size cannot be
11 maintained, the BLM must consider various options as part of the NEPA analysis to mitigate
12 genetic concerns. *Id.*

13 21. BLM may only modify an AML after "[a]n interdisciplinary and site-specific
14 environmental analysis and decision process (NEPA) with public involvement," which is
15 ordinarily done during the land-use planning process. BLM Handbook at 18.

16 22. The Agencies may remove "excess" animals from the public lands, but only after
17 determining that: (1) "an overpopulation [of wild horses] exists on a given area of the public
18 lands," and (2) "action is necessary to remove *excess* animals." 16 U.S.C. § 1333(b)(2) (emphasis
19 added). WHBA defines "excess" horses as those "which must be removed from any area in order
20 to preserve and maintain a thriving natural ecological balance and multiple-use relationship in
21 that area." 16 U.S.C. § 1332(f).

22 23. Once the Agencies make an "excess determination," they may remove only those
23 "excess animals from the range so as *to achieve appropriate management levels*." 16 U.S.C. §

1 1333(b)(1) (emphasis added); *see also id.* (the Agencies must use the wild horse inventories to
2 "determine whether appropriate management levels should be achieved by the removal or
3 destruction of excess animals."). According to BLM's own horse management manual, "[w]ild
4 horses or burros should generally *not be removed below the AML lower limit.*" BLM Manual at
5 4720.2(21)(B) (emphasis added); *see also* BLM Handbook at 17 (wild horse removals should be
6 conducted to "maintain population size within AML."). Likewise, FS's horse management
7 manual does not allow the FS to remove "excess" horses below the "acceptable population range
8 identified in the management plans." FS Manual at 2265.3.

9 24. Removal of wild horses below low AML is warranted only when an adequate
10 NEPA analysis subject to public participation indicates that the removal is necessary to address
11 "escalating problems" or "in emergency situations based on limited forage, water, or other
12 circumstances." BLM Manual at 4720.2(21)-.2(22). For the agency to exercise its limited
13 authority to remove horses below the AML, it must not only conduct "[a]n appropriate NEPA
14 analysis and issuance of a decision . . . prior to removing the animals," but must also provide a
15 compelling "[r]ationale to justify a reduction below the AML lower limit . . . [which] should
16 include a discussion of the available forage, water and any other limiting factors." *Id.*

17 25. The agencies may only remove excess "so as to restore a thriving natural
18 ecological balance to the range, and protect the range from the deterioration associated with
19 overpopulation." 16 U.S.C. § 1333(b)(1).

20 26. Moreover, the FS is required to relocate excess wild horses "to other National
21 Forest System lands [or] federally-owned lands which were identified as 1971 wild horse or
22 burro occupied lands" before destroying them. 36 CFR § 222.69; *see also* FS Manual at
23 2260.3.10 (noting that only when "it is not practical to capture or relocate the animals" may the

1 FS “destroy excess wild horses”). Indeed, the FS is obligated to first “[r]elocate wild horses and
2 burros if they are excess.” FS Manual at 2265.4.

3 27. In addition to the statutory authority to remove "excess" horses from the range, in
4 Section 4 of the Wild Horse Act, Congress provided BLM with the very limited authority to
5 remove wild horses that "stray from public lands onto privately owned land," when "the owners
6 of such land . . . inform the nearest Federal marshall or agent" 16 U.S.C. § 1334. This very
7 narrow authority is triggered only by a "written request from the private landowner" that
8 specifies "the numbers of wild horses or burros, the date(s) the animals were on the land, legal
9 description of the private land, and any special conditions that should be considered in the
10 gathering plan," 43 C.F.R. § 4720.2-1, at which point BLM must "arrange to have the animals
11 removed." However, private landowners are also allowed to maintain wild free-roaming horses
12 or burros on their private lands or on lands leased from the Government provided that they do so
13 in a manner that protects them from harassment and that the animals were not willfully removed
14 or enticed from the public lands. This is an opportunity for the public to help in preserving and
15 protecting the wild horse and burro herds at healthy population levels, i.e., to complement wild
16 horse areas.

17 28. Section 4 does not authorize the Agencies to remove any wild horses from public
18 lands, nor does it authorize the Agencies to permanently remove wild horses from the range.
19 Even when action under this Section 4 authority, the FS must still “[r]eturn all wild free-roaming
20 horses and burros from private lands to their normal herd territories with minimum physical
21 damage or stress to the animals.” FS Manual at 2265.2.

22 29. Section 6 of WHBA authorizes cooperative agreements with landowners and state
23 and local governments to better accomplish the goals of the WHBA. This allows for providing

complete and unimpeded habitats for long-term-viable wild horse/burro populations. 16 U.S.C. § 1336.

30. Furthermore, Section 10 of the WHBA allows the Secretaries of Interior and Agriculture to designate special Study Herds together with its habitats. 16 U.S.C. § 1340.

The National Environmental Policy Act

31. Before conducting a gather, the BLM must conduct analysis of the potential environmental impacts that could result from implementation of a proposed gather in accordance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370f. BLM Manual at 4720.3.

32. NEPA "is our 'basic national charter for protection of the environment.'" *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008) (quoting 40 C.F.R. § 1500.1³).

³ In ruling on a NEPA claim, a division of this Court recently addressed the repeal of NEPA's implementing regulations as promulgated by the Council on Environmental Quality (CEQ):

"The few provisions of 40 C.F.R. relied upon by the cases cited in this section were originally promulgated by the [CEQ] to implement NEPA. The entire set of CEQ NEPA regulations was repealed effective April 11, 2025. This followed the D.C. Circuit's ruling in *Marin Audubon Soc'y v. Fed. Aviation Admin.* . . . which held that the CEQ 'had no lawful authority to promulgate these regulations' . . . and a related district court ruling vacating those rules Many questions remain unanswered about the impact of this repeal. The Court cites cases here that rely on the repealed regulations for general background only. Moreover, the repeal does not appear to materially impact the resolution of this case."

Ctr. for Biological Diversity v. United States Bureau of Reclamation, No. 1:20-cv-00706 JLT EPG, 2025 U.S. Dist. LEXIS 124184, *52 n. 14 (E.D. Cal. June 29, 2025) (internal citations omitted). Likewise, Plaintiffs cite to cases relying on the repealed regulations for general background only and do not believe the repeal of the regulations materially impacts this case.

1 33. "Although NEPA does not impose any substantive requirements on federal
2 agencies, it does impose procedural requirements." *N. Idaho Cmty. Action Network v. U.S. Dept.*
3 *of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008). "Through these procedural requirements, NEPA
4 seeks to make certain that agencies will have available, and will carefully consider, detailed
5 information concerning significant environmental impacts, and that the relevant information will
6 be made available to the larger public audience." *Id.* (internal citations and quotations omitted).

7 34. NEPA mandates that federal agencies analyze the potential environmental
8 impacts of any "major Federal actions significantly affecting the quality of the human
9 environment." 42 U.S.C. § 4332(2)(C). In this analysis, the agencies must provide "a detailed
10 statement by the responsible official on (i) reasonably foreseeable environmental effects of the
11 proposed agency action; (ii) any reasonably foreseeable adverse environmental effects which
12 cannot be avoided should the proposal be implemented; [and] (iii) a reasonable range of
13 alternatives to the proposed agency action" *Id.*

14 35. NEPA requires that agencies take a hard look at the environmental consequences
15 of their proposed actions. To satisfy NEPA's hard look requirement, agencies preparing an EA
16 must provide "a reasonably thorough discussion of the significant aspects of the probable
17 environmental consequences." *350 Mont. v. Haaland*, 50 F.4th 1254, 1265 (9th Cir. 2022); see
18 also, *N. Cascades Conservation Council v. United States Forest Serv.*, 136 F.4th 816, 830-831
19 (9th Cir. 2025) (recently applying NEPA's "hard look" requirement).

20 36. "When confronted with two Acts of Congress allegedly touching on the same
21 topic, [courts] strive to give effect to both. . . . This is especially so in the case of NEPA, which
22 directs that, to the fullest extent possible . . . public laws of the United States shall be interpreted

1 and administered in accordance with [it].” *Stand Up for Cal.! v. United States DOI*, 959 F.3d
 2 1154, 1163 (9th Cir. 2020) (internal citations omitted).

3 **The Administrative Procedure Act**

4 37. Under the APA, a reviewing court “shall” set aside agency actions, findings, or
 5 conclusions when they are “arbitrary, capricious, an abuse of discretion, or otherwise not in
 6 accordance with law; . . . in excess of statutory jurisdiction, authority, or limitations, or short of
 7 statutory right; [or] without observance of procedure required by law.” 5 U.S.C. § 706(2)(A),
 8 (C), (D).

9 38. An agency action is arbitrary and capricious if the agency “relied on factors which
 10 Congress has not intended it to consider, entirely failed to consider an important aspect of the
 11 problem, offered an explanation for its decision that runs counter to the evidence before the
 12 agency,” or if the agency’s decision “is so implausible that it could not be ascribed to a
 13 difference in view or the product of agency expertise.” *Motor Vehicle Mfr. Ass’n v. State Farm*
 14 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). 33. When reviewing agency action under the APA,
 15 the court must ensure that the agency reviewed the relevant data and articulated a satisfactory
 16 explanation establishing a “rational connection between the facts found and the choice made.”
 17 *State Farm*, 463 U.S. at 43. The agency’s failure to do so renders its decision arbitrary and
 18 capricious. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989).

19 39. The APA also provides that a reviewing court “shall . . . compel agency action
 20 unlawfully withheld or unreasonably delayed . . .” 5 U.S.C. § 706(1).

21 40. The APA defines “agency action” as “the whole or part of an agency rule, order,
 22 license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

41. “An agency's action is arbitrary and capricious if it fails to consider important aspects of the issues before it, if it supports its decisions with explanations contrary to the evidence, or if its decision is either inherently implausible or contrary to governing law.” *Sparks*, 200 F. Supp. 3d at 1121 (citing *The Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005)).

42. Further, the Supreme Court and 9th Circuit have established that agency action will be arbitrary and capricious if the agency changes or departs from its policy without (1) displaying an “awareness that it is changing position,” (2) showing that “the new policy is permissible under the statute,” and (3) providing “good reasons” for the new policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *see also Ctr. for Biological Diversity v. United States BLM*, 141 F.4th 976 (9th Cir. 2025).

FACTUAL ALLEGATIONS

A. Montgomery Pass Wild Horse Territory

43. The Montgomery Pass Wild Horse Territory (“Territory” or “MPWHT”) contains over 200,000 acres along the California/Nevada border and is located north of Bishop, California and east of Mono Lake in the Eastern Sierra Nevada Mountains. The Territory includes all the area that was inhabited by wild horses on December 15, 1971, and comprises of federal, state, and private land.⁴

⁴ Plaintiffs question whether the Decision challenged in this complaint accurately represents the total area of the Territory. MPWHT Steering Committee notes from 1993 indicate that previous Agency documents do not accurately represent the Territory’s boundaries. *Montgomery Pass Wild Horse Territory Coordinated Resource Plan Steering Committee Meeting Notes*, 1 (June 3, 1993) (“1993 Steering Committee Notes”). Additionally, statements in the EA indicate the Agencies plan on removing horses that are located ON the Territory, even if the decision only authorizes removing wild horses outside the Territory. *See, e.g.*, EA at 28 (describing the project area as including River Springs which is located on the Territory).

1 44. The Montgomery Pass wild horse herd (the “Herd”) was designated by Congress
2 as a protected wild horse herd on December 15, 1971.

3 45. The Herd is unique and unprecedented. Unlike other wild horse herds in the U.S.,
4 it has a natural predator, the mountain lion, that has largely kept its population in check. See
5 Turner (2015) at 2460 (“Clearly the mountain lion predation on foals has played a critical role in
6 moderating growth of the MPWHT horse population . . .”). Indeed, the Territory has not
7 experienced a gather/removal since 1984, EA at 2, giving it rare qualities of a “truly free-
8 ranging” wild horse herd. Turner (2015) at 2438 (also noting that a herd is generally subject to a
9 removal every four years).

10 46. The Herd’s unique characteristics has made it the subject of researchers,
11 photographers, journalists, and authors, illustrating how it is deeply ingrained into Western
12 United States culture. *See, e.g.*, Turner at 2438 (noting that the Herd’s unique characteristics
13 “offered the rare opportunity to document the long-term functioning of a wild horse population
14 in the absence of purposeful human interventions.”). These horses are one of the most studied
15 wild horse herds in the nation. The horses are a part of local Native groups’ history and culture,
16 written about extensively by journalists and authors, and are the frequent subject of
17 photographers (*see, e.g.*, Illustration 1) and tourist visits. *See* EA at 37 (“Recreational
18 photography and viewing of the horses have been observed both inside and outside of the
19 MPWHT.”).

20 47. The Herd is also an instrumental part of the natural environment it inhabits, as it
21 increases accessibility to surface water in the area by digging wells, supports biodiversity,
22 reduces risk of wildfire, and enhances ecosystem function. *See* Erik J. Lundgren et al., *Equids*
23 *engineer desert water availability*, *Science*, 1, 4 (April 30, 2021); *see also* German Centre for

Integrative Biodiversity Research (iDiv) Halle- Jena-Leipzig, *Large herbivore can reduce fire risks*, Science Direct (2021); William E. Simpson II, *Impact Of Wild Horses On Wilderness Landscape And Wildfire — Preliminary Finding Report*, 3-4, 7 (2019); Garrido et al., *Experimental rewilding enhances grassland functional composition and pollinator habitat use*, Journal of Applied Ecology, 2019. For example, the horses located on the River Spring Lakes Ecological Reserve are a keystone species for that wet alkaline Meadow and wetlands ecosystem and removing them will unquestionably have a profound impact on the area’s biology and ecology.

B. Agency Management of the Territory

48. As previously noted, both USDA and DOI maintain land in the Territory. The Territory is jointly managed by the USFS (through the Mono Lake Ranger District, Inyo National Forest (INF), and the Bridgeport Ranger District, Humboldt-Toiyabe National Forest) and BLM (through the Bishop and Stillwater Field Offices) (collectively, the “Agencies”). Inyo National Forest (“INF”) is the lead unit for management of the Territory.

49. In 1988, USFS and BLM published a Coordinated Resource Plan for the Territory (“1988 CRP”) to “analyze the capacity of the Territory to serve each resource use and determine a proper balance between various resource values, including but not limited to wild horses, wildlife [sic], domestic grazing and recreation.” 1988 CRP at 6.

50. The 1988 CRP found there were 184 horses within the Territory and established an objective to manage the wild horses within twenty-five percent of this number for the ensuing five-year study period (*id.* at 10, 22) also noting that the data was “incomplete.” *Id.* at 12 (“Further analysis is needed to determine the appropriate carrying capacity for the MPWHT”); *id.* at 18 (“Present capacity of the range has not been determined. Range conditions need

1 further analysis prior to establishing a carrying capacity”). The 1988 CRP also found that
 2 further studies would be needed to collect “essential data” on the wild horse population. *Id.* at
 3 23-24.

4 51. The 1988 CRP also established various objectives for how the Herd should be
 5 managed, including:

- 6 • to complete the research into understanding the Territory’s ecological balance, to
 7 provide adequate water for the horses, to maintain the herd consistent with their
 8 “capacity,”
- 9 • to limit vehicular use within the Territory (off-highway vehicular (OHV) use has
 10 been known to disturb both the horses and the water resources within the
 11 Territory), and
- 12 • if population control is necessary, to perform analysis to determine favorable
 13 age/sex/distribution characteristics for the Herd. *Id.* at 19-23.

14
 15 These objectives have been echoed throughout Agency documents concerning the MPWHT
 16 since 1988. *See, e.g.,* Montgomery Pass Wild Horse Territory Coordinated Resource Plan
 17 Steering Committee Meeting Notes, June 3, 1993 (“An objective was identified that the steering
 18 committee needs to pursue water development as a means of keeping wild horses within the
 19 HMA boundary.”).

20 52. The 1988 CRP stated that “[a] full analysis of all data collected will occur at the
 21 five-year timeframe to evaluate if the habitat and horse population are both healthy and in
 22 balance and to identify specific long-term objectives in the Territory.” 1988 CRP at 34.

23 53. To date, none of these objectives have been achieved. The Agencies have not
 24 completed their research into the Territory either within a Herd Management Area Plan (HMAP)
 25 or elsewhere.

26 54. Starting at least as early as 2005, the Agencies have been aware of and expressed
 27 concern about the Herd’s movement out of the Territory. *See* Montgomery Pass Wild Horse

1 Coordinated Resource Plan Steering Committee Letter, INF, August 26, 2005; *see also* EA at 20.
2 The Agencies have continued to document the Herd's movement since 2012. EA at 20-21.

3 55. The agencies state the movement began "after cessation of cattle presence in the
4 Adobe Lake grazing allotment [that] became accessible to horses *via open gates and*
5 *unmaintained fences.*" *Id.* at 20 (citing Turner 2015) (emphasis added). The Territory is also
6 unique in that it is one of the only, if not the only, U.S. federal wild horse area that has no
7 perimeter fencing.

8 56. The Agencies have likewise documented the Herd's increase in population since
9 2005, noting its correlation with the movement. *Id.* The Agencies believe that this correlation is
10 due to less mountain lion predation at lower elevations. *Id.* (citing Turner and Morrison, 2001).

11 57. Despite knowing of the Herd's increased movement off the Territory and its
12 resulting increase in population, the Agencies took no action to analyze the Herd's movement off
13 the Territory, much less to prevent or halt it (by, as a simple expedient, closing fences).

14 **C. 2025 Removal Plans**

15 58. The INF and BLM Bishop Field Office ("BIFO") announced their intention to
16 conduct a removal of Montgomery Pass wild horses on November 7, 2023, thereby opening a
17 public scoping period. On May 28, 2024, the Agencies released a Preliminary Environmental
18 Assessment ("PEA") and opened a 30-day public comment period.⁵

19 59. Plaintiffs timely submitted comments during the public scoping and comment
20 periods. During these periods, the Agencies received comments about, *inter alia*, concerns about
21 reducing the Herd's population below 138, including potential impacts from the decision on both

⁵ All NEPA documents can be found at <https://eplanning.blm.gov/eplanning-ui/project/2026934/570>

1 the remaining Herd's viability and the Territory's ecology; concerns that 138-230 is not
2 representative of the Territory's true minimum and maximum capacity and that continued
3 reliance on the figure is arbitrary; and concerns that the agencies should conduct more research
4 on proper management of the Herd before authorizing a removal. Further, the comments
5 included suggestions to relocate the horses back onto the Territory; to consider less invasive, less
6 expensive, and more natural management techniques such as implementing fences, water wells,
7 and limiting vehicular use; and to carry out management obligations in the 1988 CRP before
8 authorizing the removal. The Agencies largely responded either that the comment was "outside
9 the scope" of the project or by pointing the commenter to a section of the EA that did not address
10 the question. The Scoping Outcome Summary (Appendix 2) maintained that "[b]ecause [the wild
11 horses] are outside the Territory, the only management option is to remove them," thus failing to
12 recognize the variety of management options available to the agencies under the WHBA.
13 Scoping Outcome Summary at 7.

14 60. The Final Environmental Assessment ("EA") was released on August 8, 2024,
15 and on March 7, 2025, the Agencies released a Finding of No Significant Impact ("FONSI") and
16 Decision Record ("DR") (collectively, the "Decision").

17 61. BLM Bishop Field Manager announced the gather would begin summer of 2025.
18 [https://www.blm.gov/press-release/blm-and-usfs-approve-plan-remove-wild-horses-near-mono-](https://www.blm.gov/press-release/blm-and-usfs-approve-plan-remove-wild-horses-near-mono-lake)
19 lake. USFS estimates the Decision would be implemented in August 2025. *Removal of Wild*
20 *Horses Outside the Montgomery Pass Wild Horse Territory (MPWHT) Project Summary*, Forest
21 Service, U.S. Department of Agriculture, <https://www.fs.usda.gov/r05/inoyo/projects/64950#>.

62. The Decision estimated that 624 wild horses out of the total of 694 horses are located off the Territory, determined that these 624 are “in excess,” and mandated that they “must be removed.” EA at 2; DR at 1.

63. The EA further states that “[g]athering wild horses would occur as necessary, until the excess of horses is resolved” EA at 10.

64. Citing the 2019 Land Management Plan for the Inyo National Forest (2019 LMP), the Decision states the Territory is managed for a wild horse herd size of 138 to 230, or $\pm 25\%$ of 184.

65. The Decision states that “[h]orses *could be* relocated back into the Territory to meet the low end of the AML range” but contained no requirement to do so. EA at 10 (emphasis added).

66. The planned August removal would leave only 70 remaining horses on the Territory, far below the Territory’s AML⁶ minimum of 138.

67. Reducing the Herd’s population to 70 would fatally impact the Herd’s ability to fend off mountain lion predation.

68. Reproductive health of the Herd is dependent, in part, on maintaining desirable genetic diversity (avoiding inbreeding depression). BLM, H-4700-1 Wild Horses and Burros Management Handbook, 21 (2010) (“WHB Handbook”).

69. Reducing the Herd’s total population to 70 would not allow the Herd to maintain desirable genetic diversity. *See* BLM Handbook at 22 (“A minimum population size of 50

⁶ As discussed above, the Territory’s AML of 138-230 was never formally adopted as the number of horses the Territory can sustain while maintaining thriving natural ecological balance. *See* 1988 CRP at 12, 18, 23-24. The Decision credits the 2019 LMP for this number, which cites the 1988 CRP. *See* 2019 LMP at 111 (“Management of wild horse and burro territories is guided by individual management plans.”). Nonetheless, the Agencies have used 138-230 consistently as the Territory’s AML (EA at 2; DR at 1).

1 effective breeding animals (i.e., a total population size of about 150-200 animals) is currently
2 recommended to maintain an acceptable level of genetic diversity within reproducing WH&B
3 populations.”).

4 70. The Decision does not address or rectify the Agencies’ incomplete determinations
5 on proper management of the Herd.

6 71. The Decision does not address implementing, nor the Agencies’ failure to
7 implement, stated objectives, such as securing water for the wild horses within the Territory or
8 limiting OHV use in the Territory. Nor does the Decision address the impact of these failures on
9 the horses’ migration from the Territory.

10 72. The anticipated reduction of the Herd’s population will negatively and
11 permanently impact the Herd’s long-term survival. With only 70 wild horses remaining, the
12 Herd’s population will steadily diminish until it disappears.

13 73. The Agencies have failed to determine how the Decision will impact the
14 ecological balance within the Territory’s boundaries.

15 74. The Agencies have failed to attempt to analyze the impacts of the removal on the
16 Territory. The sole discussion of the impacts is limited to the “project area” which “excludes the
17 MPWHT,” thus wholly excluding consideration of impacts to the Territory’s ecological balance.
18 EA at 3.

19 75. The anticipated reduction of the Herd’s population will negatively and
20 permanently impact the ecological balance within the Territory’s boundaries.

21 CLAIMS

22 FIRST CAUSE OF ACTION 23 VIOLATION OF WHBA, FLPMA, AND APA: FAILURE TO MAINTAIN AML

24
25 76. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

1 77. The Agencies have not completed any public process under FLPMA and NEPA to
2 formally lower the effective AML in the Territory, which is the only legal mechanism for doing
3 so.

4 78. The Agencies have neither determined that removal below the Territory's
5 effective AML is necessary to address "escalating problems" or an "emergency" nor provided
6 such rationale to justify removal below AML. *See* BLM Manual at 4720.2(21)-.2(22),
7 4720.22(B).

8 79. Even if an "emergency" determination is made, such a determination is arbitrary,
9 capricious and an abuse of discretion and violates the APA.

10 80. Therefore, in the absence of any legally adequate rationale, the Agencies'
11 decision—which will bring the wild horse populations in the Territory to below its effective
12 AML of 138—violates the WHBA, U.S.C. § 1333(b)(1), the Agencies' own governing directives
13 and longstanding policy and practice, *see* BLM Manual at 4720.22(B); BLM Handbook at 18; FS
14 Manual at 2265.3, and APA, 5 U.S.C. § 706(2).

15 81. The Agencies have been aware of the Herd's movement off the Territory and
16 resulting increase in population for at least two decades. The Decision itself indicates that the
17 increase in population could have been easily mitigated by merely closing gates. EA at 20. The
18 Agencies' failure to address these issues and instead authorize the drastic decision to
19 permanently remove *all* 624 wild horses below the Territory's AML violates the WHBA's
20 requirement that "[a]ll management activities [related to wild horses] shall be at the minimal
21 feasible level . . . to protect the natural ecological balance of all wildlife species which inhabit
22 such lands," 16 U.S.C. § 1333(a), WHBA's implementing regulations, 43 C.F.R. § 4710.4, and
23 the APA, 5 U.S.C. § 706(2).

82. Further, the Decision's failure to prioritize relocation of the wild horses to the Territory or some other wild horse management area violates WHBA's implementing regulations, 36 C.F.R. § 222.69, the FS's governing directives and longstanding policy and practice, *see* FS Manual at 2260.3.10; 2265.4, and the APA, 5 U.S.C. § 706(2).

83. The Agencies provide no explanation for how they can de facto modify the AML for the Territory outside of the FLPMA and NEPA processes that are legally required for such modifications. BLM has failed to adhere to its own binding RMP and LUP and has not provided any explanation to justify this departure. As a result, BLM's decision violates the agencies' own 1988 CRP and 2019 INF Land Use Plan, *see* 1988 CRP at 22; LUP at 111, FLPMA, *see* 43 U.S.C. § 1701(a)(2), FLPMA's implementing regulations, *see* 43 C.F.R. §§ 4710.1, 1601.0-2, BLM's own governing directives and longstanding policy and practice, *see* BLM Handbook at 18, and the APA, 5 U.S.C. § 706(2).

84. For all of the reasons set forth above, the Decision violates the WHBA, 16 U.S.C. §§ 1331-1340, FLPMA, 43 U.S.C. §§ 1701-1787, the Agencies' implementing regulations, 43 C.F.R. §§ 4700.0-1–4770.5; 36 C.F.R. §§ 222.60–222.76, the agency's past practice and guidance, and/or the APA, 5 U.S.C. § 706.

**SECOND CAUSE OF ACTION
(VIOLATION OF WHBA, NEPA, AND APA: FAILURE TO CONSIDER IMPACTS TO
THE ENTIRE RANGE)**

85. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

86. The Agencies refused to consider the impacts of the Decision on the remaining Herd population, thus failing to consider projected population size, annual growth rate, and effects to genetic diversity. The Agencies have not determined that the Herd will be able to survive at a population of 70 horses, much less that 70 is "a number that allows the population to

1 grow (at the annual population growth rate) to the upper limit over a 4-5 year period” *See*
2 BLM Handbook at 17.

3 87. Even where the minimum wild horse herd size cannot be maintained, the BLM
4 must consider various options as part of the NEPA analysis to mitigate genetic concerns. BLM
5 Handbook, 22.

6 88. The Agencies, in explicitly analyzing only the impacts on the “project area”
7 which “excludes the [Territory],” wholly disregarded the impacts of the removal on the
8 Territory’s ecological balance in violation of WHBA’s mandates to manage wild horses “as
9 components of the public lands . . . in a manner that is designed to achieve and maintain a
10 thriving natural ecological balance [TNEB] on the public lands, ” 16 U.S.C. § 1333(a), and to
11 only remove wild horses “so as to restore a thriving natural ecological balance to the range, and
12 protect the range from the deterioration associated with overpopulation,” 16 U.S.C. § 1333(b)(1).
13 Moreover, by making an excess determination without determining that the removal is necessary
14 “to preserve and maintain a thriving natural ecological balance and multiple-use relationship” in
15 the Territory, the Decision violates WHBA’s excess provision, 16 U.S.C. § 1332(f)(2).

16 89. By failing to consider impacts to the entire range, the Decision violates NEPA’s
17 requirements to consider all reasonably foreseeable environmental effects of the proposed
18 agency action and all reasonably foreseeable adverse environmental effects which cannot be
19 avoided should the proposal be implemented, 42 U.S.C. § 4332(2)(C), and/or the APA, 5 U.S.C.
20 § 706(2). Further, the Decision failed to consider a reasonable range of alternatives to the
21 proposed action that would protect the Territory in violation of NEPA, 42 U.S.C. § 4332(2)(C),
22 and/or the APA, 5 U.S.C. § 706(2).

90. For all the reasons set forth in paragraphs #-#, the Decision violates WHBA, 16 U.S.C. §§ 1331-1340, WHBA’s implementing regulations, 43 C.F.R. §§ 4700.0-1–4770.5; 36 C.F.R. §§ 222.60–222.76, the agency’s past practice and guidance, FLPMA, 43 U.S.C. §§ 1701-1787, and/or the APA, 5 U.S.C. § 706.

**THIRD CAUSE OF ACTION
(VIOLATION OF WHBA, APA, FLPMA, NFMA, AND NEPA: FAILURE TO MANAGE
THE MPWHT)**

91. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

92. Under the APA, courts may compel withheld or delayed agency action if that action is both discrete and legally required. *See* 5 U.S.C. § 706(1).

93. Preparing an HMAP is a discrete action that the Agencies are legally required to prepare and cannot be sufficiently replaced by other land management plans. *See* 43 C.F.R. § 4710.3-1 (“The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.”); *see also Leigh v. Raby* (“*Leigh I*”), 726 F. Supp. 3d 1207, 1215 (D. Nev. 2024); *Leigh v. United States DOI* (“*Leigh II*”), No. 2:22-cv-01200-MMD-BNW, 2024 U.S. Dist. LEXIS 171947, *23-24 (D. Nev. Sep. 23, 2024).

94. As the Agencies’ have failed to prepare an HMAP for the MPWHT, the Agencies’ have unreasonably withheld or delayed a discrete action they are legally required to take in violation of WHBA, 16 U.S.C. § 1333, its implementing regulations, 43 C.F.R. § 4710.3-1; 36 C.F.R. § 222.61(a)(4), and/or APA, 5 U.S.C. § 706(1).

95. Despite acknowledging that “[t]he data necessary to effectively manage the wild horse population and habitat is currently *incomplete*,” 1988 CRP at 23 (emphasis added), that “carrying capacity data will need further analysis to establish *reliable* wild horse population and distribution information,” 1988 CRP at 12 (emphasis added), and that a full analysis of all data

1 would occur by 1993 “to evaluate if the habitat and horse population are both healthy and in
2 balance and to identify specific long term objectives in the Territory,” the Agencies have taken
3 no action to complete this data or perform this analysis in violation of WHBA, 16 U.S.C. § 1333,
4 FLPMA, 43 U.S.C. § 1732, NFMA, 16 U.S.C. § 1604, and/or APA, 5 U.S.C. § 706(1).

5 96. Despite the 1988 CRP requiring the Agencies to conduct analysis on favorable
6 age, sex, and distribution characteristics of the Herd prior to implementing any population
7 control measures, 1988 CRP at 19, the Decision fails to consider the Herd’s characteristics and
8 genetics entirely in violation of WHBA, 16 U.S.C. § 1333, FLPMA, 43 U.S.C. § 1732, NFMA,
9 16 U.S.C. § 1604, and/or APA, 5 U.S.C. § 706(1).

10 97. Despite the Agencies’ knowledge since 2005, if not earlier, that the Herd has been
11 moving off the Territory and that potential causes include lack of water resources and
12 disturbance due to vehicular use within the Territory, the Agencies have failed to carry out the
13 objectives specified in the 1988 CRP to secure sufficient water sources within the Territory and
14 limit vehicular use in violation of WHBA, 16 U.S.C. § 1333(b)(1), FLPMA, 43 U.S.C. § 1732,
15 NFMA, 16 U.S.C. § 1604, and/or APA, 5 U.S.C. § 706(1).

16 98. The Decision failed to consider implementing less expensive and less invasive
17 management activities—such as digging wells in the Territory, restricting vehicular use in the
18 Territory, herding horses back onto the Territory, working with the California Department of
19 Transportation to place highway warning signs on horse crossings, and/or closing gates to
20 prevent access to grazing off the Territory—in violation of WHBA, 16 U.S.C. § 1333(a),
21 FLPMA, 43 U.S.C. § 1732, NFMA, 16 U.S.C. § 1604, and/or APA, 5 U.S.C. § 706(1).

22 99. For all the reasons set forth in paragraphs #-#, the Decision violates the WHBA,
23 16 U.S.C. §§ 1331-1340, the Agencies’ implementing regulations, 43 C.F.R. §§ 4700.0-1–

1 4770.5; 36 C.F.R. §§ 222.60–222.76, the agency’s past practice and guidance, FLPMA, 43
2 U.S.C. §§ 1701-1787, NFMA, and/or the APA, 5 U.S.C. § 706.

3 **FOURTH CAUSE OF ACTION**
4 **(VIOLATION OF WHBA, NEPA, AND APA: RELIANCE ON IMPROPER AND**
5 **INCOMPLETE DATA)**
6

7 100. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

8 101. The Decision relies on an AML of 184—a number that happened to be the most
9 recent population count in 1988, indicative of “inconsistencies in the methodology in the
10 collection of census data,” and only meant to be used until 1993, *see* 1988 CRP at 10; 22—as a
11 basis for making an “excess” determination and authorizing the removal of 624 out of 694 wild
12 horses in violation of WHBA, 16 U.S.C. §§ 1332(f), 1333, NEPA, 42 U.S.C. § 4332(2)(C),
13 and/or the APA, 5 U.S.C. § 706(2).

14 102. Relying on data that the Agencies themselves recognized is incomplete and
15 unreliable, and without the data “necessary to effectively manage the wild horse population and
16 habitat” obtained from creation of an HMAP or elsewhere, *see* 1988 CRP at 23, 12, the Agencies
17 have made an uninformed decision that will permanently alter the Territory and its surrounding
18 land without understanding the reasonably foreseeable effects in violation of WHBA, 16 U.S.C.
19 § 1333, NEPA, 42 U.S.C. § 4332(2)(C), and/or the APA, 5 U.S.C. § 706(2).

20 103. For all the reasons set forth above, the Decision violates the WHBA, 16 U.S.C. §§
21 1331-1340, the Agencies’ implementing regulations, 43 C.F.R. §§ 4700.0-1–4770.5; 36 C.F.R.
22 §§ 222.60–222.76, the agency’s past practice and guidance, FLPMA, 43 U.S.C. §§ 1701-1787,
23 NFMA, and/or the APA, 5 U.S.C. § 706.

PRAYER FOR RELIEF

Plaintiffs respectfully ask this Court to:

A. Declare that BLM and USFS have acted in a manner that is arbitrary, capricious, an abuse of discretion, and/or contrary to law pursuant to NEPA (and its implementing regulations), the WHBA, and the APA in issuing the Decision and undertaking the Gather and removal of all wild horses outside the Territory;

B. Vacate, reverse and set aside BLM's and/or FS's Decision authorizing the planned gather and removal of all wild horses outside the Territory;

C. Prevent the removal of wild horses *within* the Territory, or the removal of wild horses which frequently roam between on-Territory and off-Territory lands;

D. Enjoin BLM from implementing the Decision unless and until the agency demonstrates compliance with all applicable laws;

E. Require the Agencies to complete an HMAP for the Montgomery Pass Wild Horse Territory;

F. Award Plaintiffs their reasonable attorney's fees, expenses and costs incurred in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or other provisions of law; and

G. Grant Plaintiffs such injunctive and additional relief as the Court deems just and equitable.

Respectfully submitted, this 11th day of August, 2025,

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