

1 DANIELLE M. HOLT
(Nevada Bar No. 13152)
2 DE CASTROVERDE LAW GROUP
1149 S Maryland Pkwy
3 Las Vegas, NV 89104
Ph (702) 222-9999
4 Fax (702) 383-8741
danielle@decastroverdelaw.com
5

6 JESSICA L. BLOME
(Cal. Bar No. 314898, pro hac vice application pending)
7 GREENFIRE LAW, PC
P.O. Box 8055
8 Berkeley, CA 94707
(510) 900-9502
9 jblome@greenfirelaw.com

10 *Attorneys for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 WILD HORSE EDUCATION, a non-profit
14 corporation; and LAURA LEIGH,
individually,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF
18 INTERIOR, BUREAU OF LAND
MANAGEMENT, and JON RABY, Nevada
19 State Director of the Bureau of Land
20 Management,

21 Defendants.
22
23

CASE NO. 3:23-cv-00372

**PLAINTIFFS' REQUEST FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Complaint Filed: July 26, 2026

Hearing:

24 Plaintiffs Laura Leigh, individually, and Wild Horse Education, a non-profit corporation,
25 by and through their counsel, Danielle Holt, Esq., move this court for a temporary restraining
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1 order and preliminary injunction against Defendants United States Department of Interior,
2 Bureau of Land Management, and Jon Raby, Nevada State Director of the Bureau of Land
3 Management (“Defendants”). This request is submitted pursuant to Rule 65(a) and (b) of the
4 Federal Rules of Civil Procedure (FRCP).

5 Plaintiffs’ motion is based upon the following Declaration of Danielle Holt, Esq. and
6 Memorandum of Points and Authorities; the Declaration of Laura Leigh attached hereto as
7 Exhibit “1;” the Declaration of Colette Kaluza attached hereto as Exhibit “2;” the Declaration of
8 Marie Milliman attached hereto as Exhibit “3;” Equine Heat Index, attached hereto as Exhibit
9 “4”; as well as any oral argument the court may entertain, and any other papers and pleadings in
10 this action. *See* ECF No. 1, Plaintiffs’ Complaint for Injunctive and Declaratory Relief
11 (“Complaint”).

12 Plaintiffs are requesting a temporary restraining order and preliminary injunction to stop
13 the Bureau of Land Management’s gather of wild horses and burros at the Antelope Complex
14 due to the BLM’s violations of the Wild Free-Roaming Horses and Burros Act’s humane
15 handling requirements, 16 U.S.C. § 1331, *et seq.*, and the inadequacy of the Bureau of Land
16 Management’s Comprehensive Animal Welfare Policy (CAWP), pursuant to the Administrative
17 Procedure Act. 5 U.S.C. § 551 *et seq.*, as well as violations of Plaintiffs’ First Amendment rights
18 in viewing the gather and handling of wild horses under the United States Constitution. Plaintiffs
19 request that Defendants be enjoined from:

- 21 • Further gather activity at Antelope Complex until confirming that gather activity is
22 warranted (providing an equivalent of a Decision of NEPA adequacy). (*See* ECF No.
23 1, Complaint).
- 24 • A pattern of repeatedly denying public access to view the capture and handling of
25 wild horses – a pattern that is expected to continue. (*See* Exhibit “1”, Laura Leigh
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Declaration; Exhibit “2” Colette Kaluza Declaration).

- Continuing to operate during heat index warnings. Plaintiffs request the BLM suspend operations until heat index warnings subside. BLM is approved to operate until Aug 22, 2023, and can easily reach capture quota without rounding up horses when the heat index is high. (*See* Exhibit “1”, Laura Leigh Declaration at Exhibit “A”).
- Operating the helicopter during foaling season and in a manner in which young foals fall behind and are separated from their mothers, often left out on the range alone and lost. (*See* Exhibit “1”, Laura Leigh Declaration; Exhibit “2”, Colette Kaluza Declaration; Exhibit “3” Marie Milliman Declaration). BLM is not ensuring that all foals are able to keep up with the drive and none are left behind from the herd. (*See* Exhibit “1” Laura Leigh Declaration, at Exhibit A).
- Setting traps in unsafe locations containing barbed wire fencing. (*See* Exhibit “1”, Laura Leigh Declaration; Exhibit “2”, Colette Kaluza Declaration).
- Inhumanely and untimely euthanizing animals suffering from catastrophic, life-threatening injuries. (*See* Exhibit “1”, Laura Leigh Declaration; Exhibit “2”, Colette Kaluza Declaration).
- Gathering horses in traps that are not safely enclosed such that the animals escape and cause themselves injury and death. (*See* Exhibit “1”, Laura Leigh Declaration; Exhibit “2”, Colette Kaluza Declaration).

1 rights.

2 5. Plaintiffs and their members and supporters are distraught and horrified at the
3 callous behavior of Defendants observed during the roundup of wild horses and burros in the
4 Antelope Complex without regard to humane handling practices of the Bureau of Land
5 Management's Comprehensive Animal Welfare Policy, the BLM Handbook (H-4700-1), as well
6 as the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331, *et seq.*

7 6. Because Plaintiffs allege that the Bureau of Land Management's Comprehensive
8 Animal Welfare Policy is a rule within the meaning of the Administrative Procedure Act, 5
9 U.S.C. § 551(4), by ignoring the Comprehensive Animal Welfare Policy Defendants are, in turn,
10 violating the Administrative Procedure Act itself. 5 U.S.C. § 551 *et seq.*

11 7. As more fully described below, Plaintiffs are suffering irreparable injury as a
12 result of the Bureau of Land Management's continuous and repeated violations of the Wild Free-
13 Roaming Horses and Burros Act, 16 U.S.C. § 1331, *et seq.* Plaintiffs are also suffering
14 irreparable injury by the BLM's violation of their First Amendment rights to view the Antelope
15 Complex trap on public land and temporary holding corrals.

16 8. All requests by Plaintiffs for administrative remedies to review, revise and
17 enforce current BLM policy and the Wild Free-Roaming Horses and Burros Act have been
18 ignored by Defendants during this gather. (*See* Exhibit "1" Declaration of Laura Leigh).

19 9. Accordingly, a Temporary Restraining Order and Preliminary Injunction is
20 necessary to stop the Antelope Complex roundup immediately until Defendants comply with the
21 mandates of the Wild Free-Roaming Horses and Burros Act, the Comprehensive Animal Welfare
22 Policy, the Administrative Procedure Act, and the First Amendment to the United States
23 Constitution.

24 10. This Motion for Temporary Restraining Order and Preliminary Injunction is
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1 brought in good faith, for good cause, and not for purposes of undue delay or harassment.

2 11. I declare under penalty of perjury the foregoing to be true to the best of my
3 knowledge and recollection.

4 Further this Declarant Sayeth Naught.

5 DATED this 1st day of August, 2023.

6 /s/ Danielle Holt
7 Danielle Holt

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Memorandum of Points and Authorities

A. Introduction

Plaintiffs respectfully request a Temporary Restraining Order (TRO) and Preliminary Injunction preventing Defendants from gathering and removing any additional wild horses and burros from the Antelope Complex until Defendants comply with the mandates of the Bureau of Land Management’s Comprehensive Animal Welfare Policy, the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331, *et seq.*, which mandates that “excess wild free-roaming horses and burros . . . be **humanely captured and removed**” and then placed for “humane treatment and care” with private individuals or entities. 16 U.S.C. § 1333(b)(2)(B) (emphasis added); 43 CFR 4700.0-05(e).

Despite this clear directive, between July 9 and 24, 2023, the BLM gathered and removed more than 1,000 wild horses by helicopter in the Antelope Complex, located in Nevada. Observers watched in horror, as the BLM’s helicopters chased stallions, mares, and foals, causing such panic that many animals were injured or broke their legs and had to be euthanized. At least one stallion was forced to stumble around on a broken leg, in obvious pain and agony, until a BLM official finally intervened after more than thirty minutes. In total, as of July 28, 2023, twenty-six wild horses have suffered and died cruel and inhumane deaths because of the BLM’s removal action.

B. Statement of Material Facts

1. The Antelope Complex

The Antelope Complex is in northeastern Nevada. The complex lies approximately 8 miles south of Elko and Wells to the north and Ely, Nevada, which is approximately 50 miles to the south. The Antelope Valley Complex encompasses approximately 1.4 million acres and consists of the Antelope Valley, Antelope, Goshute, and Spruce Pequop Herd Management Areas. The

1 Bureau of Land Management is conducting two wild horse and burro gathers in the Antelope
2 Complex: one in the South and one in the North.

3 The topography is varied and contrasting with valley floors, alluvial fans, canyons,
4 mountains, steep ridges, and basins. Elevations range from 5,700 feet up to 10,000 feet. The
5 climate is semi-arid with approximately 16 inches of precipitation per year at higher elevations,
6 and approximately 8 inches at lower elevations. Due to the variance of topography, wild horses
7 can be seen at different elevations throughout the year, but normally follow a pattern based on
8 climatic and seasonal conditions.

9 For the first time BLM has split the gather of the complex into two sections due to the size
10 of the area. Instead of doing the operation concurrently (standard practice), the operation in the
11 north and south of the same complex ran simultaneously using one helicopter roundup contractor
12 and the same equipment and gather staff. These are not distinct operations in separated areas. These
13 are in the same complex with authorities under the same gather planning authority (DOI-BLM-
14 NV-E030-2017-0010-EA).
15

16 **2. Plaintiffs Laura Leigh and Wild Horse Education**

17 Plaintiff Wild Horse Education is a national non-profit corporation dedicated to research,
18 journalism, and public education concerning the activities and operations of federal and state
19 management of the free-roaming wild horse and burro populations. (*See* ECF No. 1, Complaint).
20 Plaintiff Laura Leigh is the Founder and President of Plaintiff Wild Horse Education. Ms. Leigh
21 works with multiple non-profit organizations engaged in public land issues and provides in-field
22 documentation and commentary on public land issues such as wild horse and burro gathers and
23 removals. Ms. Leigh is also a free-lance photojournalist, whose work has appeared internationally
24 in media broadcast outlets, such as CNN, BBC/ITV, ABC, Common Dreams, and CounterPunch.
25 Ms. Leigh has visited, observed, and photographed the wild horses and burros at the Antelope
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1 Complex at least once a year since 2010. (*See* Exhibit “1”, Declaration of Laura Leigh). Ms. Leigh
2 experiences great enjoyment from watching and monitoring individual horses and burros in the
3 Antelope Complex. Of particular interest, Ms. Leigh commonly seeks out and photographs unique
4 stallions in the Antelope Complex, as this is one of the only areas where stallions with certain color
5 patterns are located. Ms. Leigh has also attended several wild horse and burro roundups throughout
6 the United States, and frequently reviews photographs and videos from any roundups she is not
7 able to attend in person. When Ms. Leigh recognizes individual horses and burros that she has
8 previously observed as wild, free-roaming horses and burros, she experiences great sadness, but
9 feels it is her responsibility to the animals to observe their treatment and capture and share it with
10 others to educate them on the plight of wild horses and burros. Ms. Leigh has personal knowledge
11 of, and relationships with, individual wild horses in the Antelope Complex. (*See* Exhibit “1”).
12

13 **3. The Wild Free-Roaming Horses and Burros Act, Comprehensive**
14 **Animal Welfare Policy, and the Administrative Procedure Act.**

15 The Bureau of Land Management (BLM) proceeded with its removal of horses from the
16 Antelope Complex, beginning on July 9, 2023, despite extreme heat, during a Heat Index public
17 health warning, at temperatures exceeding ninety-five (95) degrees Fahrenheit and often
18 exceeding one hundred (100) degrees Fahrenheit, in violation of the humane handling standards
19 of the Wild Free-Roaming Horses and Burros Act. 16 U.S.C. § 1331, *et seq.* (*See* Exhibit “1”
20 Declaration of Laura Leigh). Additionally, the BLM’s gathering of wild horses and burros
21 pursuant to its outdated and inadequate Comprehensive Animal Welfare Policy (CAWP)
22 disregards humane handling standards.

23 Pursuant to the BLM’s Comprehensive Animal Welfare Policy, a gather can proceed if
24 temperatures exceed 95 degrees with approval of the lead COR/PI. Plaintiffs contend that even in
25 ninety-five (95) degree heat, the roundups of wild horses and burros, especially with foals,
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1 should not be occurring. The majority of the deaths at Antelope Complex have occurred on high
2 heat index days. (*See* Exhibit “1” Declaration of Laura Leigh, at Exhibit A & B). According to
3 the Equine Heat Index, temperatures above eighty-nine (89) degrees cause additional stress and
4 health issues, and the ability for a horse to regulate temperature is **greatly reduced**. *See Equine*
5 *Heat Index*, Davis Equine Services, attached hereto and incorporated herein as Exhibit “4”
6 (emphasis added).

7
8 The extreme heat temperatures are expected to continue where the Heat Index will
9 remain at levels where extreme caution is required with very young and old equines and continue
10 to have spikes into the Extreme Caution zone where even riding a domestic horse in good
11 condition is discouraged. (*See* Exhibit “1” Declaration of Laura Leigh; Exhibit “3” Declaration
12 of Marie Milliman). Furthermore, temperature alone is inadequate to determine impacts on
13 physiology and judgment. (*See* Exhibit “1”). Standard veterinary and husbandry practices
14 addressing unsafe conditions have used Heat Index to measure safe parameters in both equine
15 and humans for nearly a decade. (*See* Exhibit “1”). BLM has refused to revise the
16 Comprehensive Animal Welfare Policy to meet accepted husbandry practices. These factors are
17 leading to a significant increase in wild horse and burro mortality rates from not only broken
18 limbs and necks, but from heat-related stress and exhaustion. (*See* Exhibit “1”). Pregnant and
19 nursing mares, and newborn foals are being forced to run in extreme temperatures. (*See* Exhibit
20 “1”). Most reported deaths during this operation, including catastrophic injuries, have occurred
21 during Heat Index rises into areas where health alerts have been issued. (*See* Exhibit “1”). Death
22 is not the only measure of inadequate precautions. Catastrophic injuries rise with the Heat Index
23 and rise again if that index is extended for consecutive days. (*See* Exhibit “1”). Many are dying
24 from a lack of adequate care in the extreme heat. (*See* Exhibit “1”). Many are showing signs of
25 nonfatal impacts such as colic and injuries to feet and legs and will continue to suffer
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1 consequences long after the operation ends. (*See* Exhibit “1”).

2 Additionally, the BLM uses helicopters to roundup horses only if foals are not present,
3 yet it proceeded with its roundup of horses within the Antelope Complex aided by helicopters
4 even though it observed foals and was informed of the presence of foals. In fact, the BLM’s own
5 website notes that as of Thursday, July 27, 2023, 115 foals have been gathered from Antelope
6 Complex North¹ and 232 foals have been gathered from Antelope Complex South.² At least 7
7 foals have been reported orphaned and countless are showing signs of hoof, leg, and capture
8 stress even after transport to processing facilities located north of Reno, Nevada. Of the 22
9 deaths reported as of (June 29), 7 have been foals. The deaths include colic (a condition most
10 often resulting from stress and/or dehydration), lameness and dehydration. (*See* Exhibit “1”
11 Declaration of Laura Leigh at Exhibit A).

12 BLM has never provided any data-based determination of the length of foaling season in
13 the Antelope Complex. (*See* Exhibit “1”). While the BLM prohibits use of helicopters during
14 “peak foaling season” which it describes as between March 1st and June 30th, it has never
15 accounted for the Antelope Complex herd’s specific foaling season. (*See* Exhibit “1”). Moreover,
16 researchers at Colorado State University researching equine contraceptives have determined
17 “primary breeding season” to be between March 1st and August 1st.³ Accordingly, BLM is
18 impermissibly gathering horses with helicopters during “primary breeding season”, which is
19 confirmed by the high number of foaling deaths and captures. (*See* Exhibit “1”).
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23 ¹ <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2023-antelope-complex>

24 ² <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-ely-do/2023-antelope>

25 ³ [Reimmunization increases contraceptive effectiveness of gonadotropin-releasing hormone vaccine \(GonaCon-Equine\) in free-ranging horses \(Equus caballus\): Limitations and side effects - PMC \(nih.gov\)](#)
26

1 BLM has never accounted for, included in, or determined impacts on, the additional
2 stressors resulting from a gather operation during an already stressful breeding season. A horse's
3 gestation is about 12 months and coincides with foaling season.

4 Additionally, a Palomino stallion known to Plaintiffs was captured on July 13, 2023. (*See*
5 Exhibit "1" Declaration of Laura Leigh, at Exhibit B). He jumped the fence of the enclosure and
6 suffered a compound break of his back leg. (*See* Exhibit "1" at Exhibit B). Instead, of shooting
7 the horse at a distance, he was pursued for over thirty (30) minutes before being shot. (*See*
8 Exhibit "1" at Exhibit B). The inhumane treatment of this beloved horse is unacceptable and
9 violates the humane handling requirements of the Wild Free-Roaming Horses and Burros Act. 16
10 U.S.C. § 1331, *et seq.* Thus, BLM must be ordered to immediately and humanely euthanize
11 animals who are suffering from catastrophic, life-threatening injuries and ensure that horses are
12 safely enclosed in traps such that they cannot escape and cause themselves further injury.
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14 Due to the extreme heat, inhumane handling, prohibited use of helicopters, general
15 disregard for CAWP standards, and the failure to revise standards and deny public input, the
16 BLM admits that its removal action has injured or killed at least 25 wild horses as of July 28,
17 2023:

18 2 mares have suffered broken necks, 1 mare was killed because she was blind in one eye, A
19 stallion suffered a catastrophic compound fracture of his rear leg, 4 foals have died (2 from
20 dehydration, 1 from colic that can be caused by heat and dehydration and one due to
21 lameness), Sorrel foal died : umbilical hernia (an umbilical hernia doesn't kill you, it can
22 interfere with things like breathing when overly stressed). A stallion broke his neck during
23 loading into a semi-truck to ship to short-term holding. Bay, 15-year old Mare (Female);
24 Death (Chronic-Pre-existing); mare blind in one eye. 20 year old Sorrel mare; Death
25 (Acute/Unexpected); lameness, left rear leg. Sorrel foal (male); Bay, 9-year old Stud, (Male);
26 Death (Chronic-Pre-existing); blind in right eye. Death (Chronic/Pre-existing); club footed,
both front feet. Bay, 4-year old Stud (Male); Death (Acute/Unexpected); fractured, right rear
leg. Bay, foal Colt (Male); Death (Chronic/Pre-existing); fractured, right rear leg (because it
happened before capture). Bay, 3-year old Stud (Male); hernia; Sorrel, 1-year old
Stud (Male); Death "humpback" (often a sign of extreme pain) 2 on the same day: 20+ year
old Bay, blind in one eye. Bay, colt (Male); BLM euthanized saying he had a deformed right
leg (with no further explanation). Bay, 12-year old Stud (Male); BLM said because of

1 blindness in the left eye. Bay, 2-year old Mare (Female); Death; BLM said Sarcoid tumor on
2 the head. Bay Filly (foal) (Female); Death BLM said she was deformed in both front legs.

3 See BLM Daily Gather Reports, dated July 28, 2023.⁴ At least (seven) 7 orphaned foals
4 have been reported to onsite observers. On July 30, 2023, a twenty-sixth (26th) horse was killed –
5 a foal for torticollis, a non-life-threatening muscle spasm of the neck. On July 31, 2023, a twenty-
6 seventh (27th) horse broke her neck and had to be euthanized. See BLM Daily Gather Report,
7 updated July 31, 2023.⁵

8 The BLM's actions in the Antelope Complex roundup have violated the statutory
9 requirement of the Wild Free-Roaming Horses and Burros Act that wild horses be handled
10 humanely by using helicopters to round up horses during primary breeding season, and despite
11 the actual, observed presence of foals, using helicopters to run horses and foals in extreme heat.
12 See 16 U.S.C. 1333(b)(2)(B); 43 CFR 4700.0-5(e). The BLM will continue to disregard the
13 statutory mandates of the Wild Free-Roaming Horses and Burros Act if not enjoined by this
14 Court.

15 4. The First Amendment to the U.S. Constitution

16 In the Ninth Circuit, wild horse gathers conducted by the BLM qualify for the right of
17 access established in *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 8-
18 9, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986). See *Leigh v. Salazar*, 677 F.3d 892, 897-900 (9th Cir.
19 2012). Thus, the government must demonstrate “an overriding interest based on findings that
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22 ⁴ BLM Daily Gather Reports, 2023 ANTELOPE COMPLEX-NORTH WILD HORSE GATHER,
23 <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2023-antelope-complex>; 2023 ANTELOPE COMPLEX-SOUTH WILD HORSE GATHER,
24 <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-ely-do/2023-antelope> (last visited August 1, 2023).

25 ⁵ BLM Daily Gather Reports, 2023 ANTELOPE COMPLEX-NORTH WILD HORSE GATHER,
26 <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2023-antelope-complex> (last visited August 1, 2023).

1 closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.*
2 (quoting *Press-Enterprise II*, 478 U.S. at 9.) The government cannot meet this burden.

3 Access to the trap at Antelope Complex is being denied by Defendants. BLM is stating
4 that there is access to the trap only through a private road, which Plaintiffs are not permitted to
5 use. (See Exhibit “1” Declaration of Laura Leigh; Exhibit “2” Declaration of Colette Kaluza).
6 However, according to Plaintiffs there are public roads that do not interfere with private land that
7 could be used to access the trap. (See Exhibit “1”). BLM admitted that it did not want Plaintiffs
8 at the trap site. (See Exhibit “2” Declaration of Colette Kaluza). A photograph of the trap
9 configuration was requested. BLM stated, “FOIA it.” (See Exhibit “2”). In a separate instance,
10 BLM admitted to not having any public affairs personnel to escort Plaintiffs to the trap location.
11 (See Exhibit “1”). Furthermore, Plaintiffs view of the processing chute, and loading chutes have
12 been blocked by trailers and other equipment at the temporary holding corrals repeatedly during
13 critical times to assess the handling and welfare of wild horses. (See Exhibit “2”). Therefore,
14 Plaintiffs First Amendment rights to view the traps (which are on public land), as well as the
15 temporary holding facilities, have been denied. This court must intervene to protect Plaintiffs’
16 rights by ordering the BLM to provide meaningful access to document the conditions of this
17 roundup, not only at the trap site but when the horses are moved to temporary holding corrals.

19 **C. Standard of Review**

20 The standard a moving party must meet to obtain injunctive relief in the form of a
21 temporary restraining order (TRO) or a preliminary injunction is the same: “A plaintiff seeking a
22 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
23 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
24 favor, and that an injunction is in the public interest.” *Winter v. Natl Res. Def. Council, Inc.*, 555
25 U.S. 7, 20, 129 S. Ct. 365, 374 (2008); see *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d
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1 1281, 1289 (9th Cir. 2013); *see also, e.g., Quiroga v. Chen*, 735 F.Supp.2d 1226, 1228 (D. Nev.
2 2010).

3 **1. Irreparable Injury**

4 “[P]laintiffs must establish that irreparable harm is likely, not just possible, in order to
5 obtain a preliminary injunction.” *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
6 Cir. 2011). “Turning first to the significance of environmental injury, the Supreme Court has
7 instructed us that ‘[e]nvironmental injury, by its nature, can seldom be adequately remedied by
8 money damages and is often permanent or at least of long duration, *i.e.*, irreparable. If such
9 injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an
10 injunction to protect the environment.’” *The Lands Council v. McNair*, 537 F.3d 981, 1004 (9th
11 Cir. 2008) (quoting *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987)). Reducing a
12 species’ population through government action has often been recognized by courts to cause
13 irreparable harm justifying injunctive relief. *See Fund for Animals v. Norton*, 281 F. Supp. 2d
14 209, 219-22 (D.D.C. 2003) (enjoining a state plan to kill 525 mute swans from a state population
15 of 3,600); *Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C. 1998) (enjoining a bison
16 hunt); *Fund for Animals v. Espy*, 814 F. Supp. 142, 151 (D.D.C. 1993) (same).

18 Plaintiffs have already suffered great irreparable injury and continue to suffer irreparable
19 harm each day that the BLM continues its inhumane gather operations of wild horses and burros
20 in extreme heat with the use of helicopters during foaling season. Most of the injuries and deaths
21 during this gather have occurred during high heat index days. At least four foals have died from
22 heat-related illnesses. Additionally, the use of helicopters during foaling season is prohibited
23 because newborn foals have undeveloped hooves and legs. Requiring foals to run for long
24 periods of time while being chased by a helicopter is not only highly traumatic for the foals, but
25 destroys their legs and feet, preventing them from ever having a normal, healthy life.
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1 Here, Plaintiffs suffer irreparable harm in continuing to view the government violate its
2 own policies, procedures, and laws of the United States, including the humane handling
3 requirements of the Wild Free-Roaming Horses and Burros Act, and the Comprehensive Animal
4 Welfare Policy. These are not only injuries, but irreparable injuries as required for a TRO and
5 permanent injunction. *See, e.g., Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th
6 Cir. 2010) (affirming district court's grant of a permanent injunction enjoining BLM's unlawful
7 regulations).

8 Plaintiffs also suffer irreparable harm in being precluded from viewing the trap site in
9 Antelope Complex, as well as the processing and loading chutes. Plaintiffs' First Amendment
10 rights in viewing the BLM's activities have been violated, which has caused and will continue to
11 cause irreparable harm if this Temporary Restraining Order is not granted. Plaintiffs and their
12 members have visited and observed the wild horses at Antelope Complex, and they continue to
13 visit, enjoy, and photograph the horses there. Plaintiffs actively work to protect wild horses,
14 including those at Antelope Complex. The inhumane removal and lack of access to view the trap,
15 processing, and loading chutes harm Plaintiffs' aesthetic enjoyment of the land and their work
16 attempting to protect these horses.

18 **2. Balance of Equities**

19 The balance of equities in this case strongly favors the entry of a Temporary Restraining
20 Order because Plaintiffs' interest in observing the government's humane handling and gather of
21 wild horses and burros, in temperatures that will not cause the animals additional stress and
22 death, and without the use of helicopters during foaling season far outweighs the governments
23 interest in rounding up these horses on high heat index days with the use of helicopters.
24 Defendants have until August 22, 2023, to complete the roundup. There is no legitimate reason
25 to conduct this roundup in extreme heat temperatures and with the use of helicopters when foals
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1 are present, especially when the BLM has plenty of time to conduct this gather in a humane
2 manner as the law requires.

3 Without injunctive relief, Plaintiffs' will continue to be permanently and irrevocably
4 harmed in witnessing the atrocious and horrific sights of wild horses and burros dying due to the
5 inhumane handling, extreme heat, and use of helicopters during foaling season. With the
6 requested injunctive relief, the BLM may continue gather operations when temperatures are
7 more appropriate to do so. It is common sense that there will be a greater mortality of wild
8 horses and burros in extreme heat. It is common sense that the use of helicopters during foaling
9 season is forbidden because of the resulting high rate of injury and death. Therefore, the balance
10 of hardships undoubtably tips in favor of Plaintiffs.

11
12 Moreover, BLM is now denying access to the Antelope Complex trap and processing and
13 loading chutes. This access is being denied so that Plaintiffs are unable to produce evidence of
14 the inhumane gather and handling techniques the BLM is employing. The BLM was aware of
15 this lawsuit and is now denying access to prevent Plaintiffs from gathering the evidence and
16 information they need, let alone denying Plaintiffs legitimate First Amendment rights to view
17 and document the gather operations of the BLM. Accordingly, the balance of the equities and
18 hardships tips in Plaintiffs favor.

19 **3. Public Interest**

20 Seeing horses, especially vulnerable foals, elderly horses, and heavily pregnant mares,
21 chased by helicopters is unfortunately perhaps an image as iconic as the animals themselves.
22 Seeing government agents euthanize horses whose wholly preventable injuries were caused by
23 inattentive planning is tragic for not only the Plaintiffs herein, but for everyone who cherishes
24 these iconic and symbolic creatures. The public interest is in favor of *humanely* managing these
25 iconic creatures without harming the animals unnecessarily, but the threat continues and will
26

1 continue if the Antelope Complex horse gather continues in extreme heat and with the use of
2 helicopters during foaling season. The public interest is also benefited from Plaintiffs access to
3 BLM gather operations. The public has a right to know whether the government is violating its
4 own policies, procedures, and laws of the United States, including the humane handling
5 requirements of the Wild Free-Roaming Horses and Burros Act, and the Comprehensive Animal
6 Welfare Policy.

7 **4. Success on the Merits**

8 Under this factor, plaintiffs must show a “fair chance of success on the merits” of her
9 claim. *Sports Form, Inc. v. United Press International, Inc.*, 686 F.2d 750, 754 (9th Cir. 1982)
10 (internal citation omitted). There is no doubt that the gather of wild horses in burros in
11 temperatures exceeding ninety-five (95) degrees is inhumane and a clear violation of not only the
12 Wild Free-Roaming Horses and Burros Act, but of the government’s own Comprehensive
13 Animal Welfare Policy. It is also clearly inhumane to conduct a gather using helicopters during
14 foaling season, when newborn foals are expected to run on their brand-new undeveloped legs
15 and hooves forever damaging them. At least four (4) have died as a direct result of the heat, and
16 many more have lost their mothers in the panic due to their inability to keep up.

17 These outcomes are happening at Antelope Complex - outcomes that could have been
18 prevented had the BLM followed its Comprehensive Animal Welfare Policy. Preventable
19 outcomes such as these are directly caused by the inhumane handling and capture practices of the
20 BLM in rounding up these horses with helicopters during foaling season in extreme heat. This is
21 a clear violation of the Wild Free-Roaming Horses and Burros Act. Now, BLM is denying access
22 so that Plaintiffs are prevented from viewing the trap operations at Antelope Complex in
23 violation of their First Amendment rights. Under this factor, Plaintiffs respectfully submit that
24 they have demonstrated a “fair chance of success on the merits” of their claim. *See Sports Form,*
25
26

1 *Inc.*, 686 F.2d at 754.

2 **D. Leave to Testify**

3 Plaintiffs respectfully request that Plaintiff Laura Leigh, individually and on behalf of
4 Wild Horse Education, be permitted to testify during the hearing on this matter to inform the
5 court of the atrocities occurring at Antelope Complex and the ways in which her rights are being
6 denied. Plaintiff has first-hand knowledge of the conditions in the field, and it is respectfully
7 requested that she be allowed to inform the court of the inhumane handling observed, as well as
8 Defendants actions in prohibiting access to view and document the roundup now that Plaintiffs'
9 Complaint has been filed.

10 **E. Conclusion**

11 Plaintiffs respectfully request that this Court grant Plaintiffs' motion for Temporary
12 Restraining Order and Preliminary Injunction enjoining Defendants from further gathering
13 activities in the Antelope Complex until Defendants comply with the humane handling mandates
14 of the Wild Free-Roaming Horses and Burros Act, and the mandates of the Comprehensive
15 Animal Welfare Policy, and allow Plaintiffs access to the trap and temporary holding corrals in
16 accordance with their First Amendment rights.

17 DATED: August 1, 2023

18 Respectfully Submitted,

19 /s/ Danielle M. Holt

20 Danielle M. Holt
21 (Nevada Bar No. 13152)
22 DE CASTROVERDE LAW GROUP
23 1149 S Maryland Pkwy
24 Las Vegas, NV 89104
25 Ph (702) 222-9999
26 Fax (702) 383-8741
danielle@decastroverdelaw.com

Jessica L. Blome
(Cal. Bar No. 314898, pro hac pending)
GREENFIRE LAW, PC

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P.O. Box 8055
Berkeley, CA 94707
(510) 900-9502
jblome@greenfirelaw.com

Attorneys for Plaintiffs