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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 CANA FOUNDATION, a non-profit
corporation, LAURA LEIGH, individually,
16 and WILD HORSE EDUCATION, a non-
profit corporation,

17 Plaintiffs,

18 v.

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

23 Defendants.
24
25
26

CASE NO. 2:22-cv-01200-CDS-BNW

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 1. Plaintiffs respectfully bring this case to challenge a decision by the United States
2 Department of Interior, Bureau of Land Management (“BLM”) to gather and remove wild, free-
3 roaming horses and burros from Herd Management Areas in violation of the Wild Free-Roaming
4 Horses and Burros Act, 16 U.S.C. § 1331, et seq., which, as implemented through federal
5 regulations, requires that such plans be carried out pursuant to a Herd Management Area Plan, or
6 “HMAP.” *See* 43 C.F.R. § 4710.4. The BLM has not yet adopted an HMAP for the area in question.
7 Nonetheless, between August 1st and 12th, BLM gathered and removed over 1,000 wild horses
8 and burros by helicopter in the Blue Wing Complex of Herd Management Areas, located in
9 Nevada. In only ten days, BLM gathered 1,022 animals from the public range. In only seven days,
10 BLM gathered 804 wild burros—the priority target species for this gather operation. As a result of
11 BLM’s gather, 14 wild animals were killed. The remaining 1,008 animals were shipped to off-
12 range holding corrals to be prepared for BLM’s adoption and sales program or to live at long-term
13 holding facilities. BLM shipped all of the burros to an off-range holding corral that is closed to the
14 public. BLM denied meaningful public access to observe the gather operations and to observe the
15 animals in temporary holding corrals. Plaintiffs and the public were denied any meaningful access
16 to view or document a single burro during capture or in holding.

17 2. Though required by the Wild Free-Roaming Horses and Burros Act, an HMAP
18 does not yet exist for the Blue Wing Complex or any of its Herd Management Areas. The BLM
19 also failed to follow proper procedure (including consideration of relevant public comment) in
20 developing the gather plan in 2017. BLM’s decision to conduct a 2022 gather of wild horses and
21 burros pursuant to that plan, and any future gathers pursuant to that plan, violates the mandate that
22 BLM immediately remove excess animals based on current information. 16 U.S.C. § 1333(b)(2).
23 This 2022 gather took place five years after the 2017 approval of the twenty-year gather plan
24 without any further analysis, introduction of new scientific information, or incorporation of new
25 priorities including climate change concerns. Plaintiffs file this First Amended Complaint for
26 Injunctive and Declaratory Relief (“Complaint”) to prevent the BLM from implementing further
herd management activities until Defendants have complied with the Wild Free-Roaming Horses

1 and Burros Act (“Wild Horse Act”), National Environmental Policy Act (“NEPA”),
2 Administrative Procedure Act (“APA”), and the First Amendment of the United States
3 Constitution.

4 **JURISDICTION AND VENUE**

5 3. This Court has jurisdiction over the subject matter of this action pursuant to 5
6 U.S.C. § 706, 28 U.S.C § 1331, and 28 U.S.C. § 1361.

7 4. Venue is proper in this district court pursuant to 28. U.S.C. § 1391. The BLM has
8 sufficient contacts to subject it to personal jurisdiction in this district.

9 **THE PARTIES**

10 5. Plaintiff CANA FOUNDATION is a non-profit corporation that works with
11 science-backed information to create rewilding initiatives for wild horses and environments.
12 CANA Foundation’s principal place of business is at 6150 Northern Boulevard, East Norwich,
13 N.Y., 11732. CANA Foundation’s rewilding initiatives foster community empowerment, land
14 conservation, and the sustainable management and preservation of America’s wild horse
15 populations. CANA Foundation rescues, re-wilds, and re-homes wild horses in order to improve
16 their quality of life and ensure that they can live with dignity in protected habitats. CANA
17 Foundation actively monitors for any Herd Management Area Plans that are available for public
18 comment in the United States and routinely submits comments throughout the public commenting
19 process. The Blue Wing Complex is one of the wild horse herds that CANA Foundation monitors
20 and advocates for. The further gathering and removal of wild horses and burros in the Blue Wing
21 Complex due to the challenged actions will adversely affect the substantial recreational, aesthetic,
22 scientific, and conservational interests of CANA Foundation and its staff, volunteers, members,
23 and supporters.

24 6. Defendants’ failure to comply with the requirements of the Wild Horse Act injured
25 CANA Foundation because Defendants’ failure to prepare the required HMAP thwarted their
26 organizational mission to advance rewilding as an alternative management strategy for wild horses
and burros. Because the BLM failed to prepare an HMAP (and refused to entertain comments it

1 considered outside the scope of its NEPA review that would have been appropriate in the context
2 of an HMAP review), CANA Foundation has been and continues to be injured by Defendants'
3 violations of the law.

4 7. Plaintiff WILD HORSE EDUCATION is a national non-profit corporation
5 dedicated to research, journalism, and public education concerning the activities and operations of
6 federal and state management of the free-roaming wild horse and burro populations. Wild Horse
7 Education's principal place of business is 216 Lemmon Drive, # 316, Reno, N.V., 89506. Wild
8 Horse Education has more than 150,000 members and educates and informs the public about wild
9 horses and burros through articles, photographs, videos, and sharing data and other information.
10 Wild Horse Education also frequently submits comments on Herd Management Area Plans,
11 Environmental Assessments, and other wild horse management documents and hearings made
12 available for public comment. Advocating for the wild horses and burros in the Blue Wing
13 Complex is a past, present, and future important issue for Wild Horse Education. Wild Horse
14 Education attended Bureau of Land Management's public tour of the Blue Wing Complex in
15 March 2016 and actively participated in the public commenting process of the Environmental
16 Assessment for the Blue Wing Complex Gather Plan, which was finalized on October 23, 2017.

17 8. Wild Horse Education sent a representative to the Blue Wing Complex to observe
18 and document BLM's August 2022 wild horse and burro gather and the condition of the animals
19 in the temporary and off-range holding corrals. The representative sent by Wild Horse Education,
20 Laurie Ford, is highly experienced and knowledgeable in burro health and welfare. Ms. Ford
21 travelled from New Mexico to Nevada specifically to assess the gather and handling of burros
22 since they were the primary target species of the gather operations. Burro gather, capture, and
23 handling, differs from that of wild horses and the physiological and behavioral impacts are distinct.
24 The documentation and information obtained at BLM gather operations is critical to Wild Horse
25 Education's mission to educate the public and lawmakers regarding the federal government's
26 treatment of America's wild horses and burros. Wild Horse Education has actively participated in
the review of wild horse and burro management and gather plans, and their members and

1 supporters regularly attend and observe wild horse and burro gathers, removals, and holding pens.
2 The further gathering and removal of wild horses and burros in the Blue Wing Complex due to the
3 challenged actions will adversely affect the substantial recreational, aesthetic, and conservational
4 interests of Wild Horse Education and its staff, volunteers, members, and supporters.

5 9. Plaintiff LAURA LEIGH is the Founder and President of Plaintiff WILD HORSE
6 EDUCATION. In addition, Ms. Leigh works with multiple non-profit organizations engaged in
7 public land issues and provides in-field documentation and commentary on public land issues such
8 as wild horse and burro gathers and removals. Ms. Leigh is also a free-lance photojournalist, whose
9 work has appeared internationally in media broadcast outlets, such as CNN, BBC/ITV, ABC,
10 Common Dreams, and CounterPunch. Ms. Leigh has visited, observed, and photographed the wild
11 horses and burros at the Blue Wing Complex at least once a year since 2009. Ms. Leigh experiences
12 great enjoyment from watching and monitoring individual horses and burros in the Blue Wing
13 Complex. Of particular interest, Ms. Leigh commonly seeks out and photographs paint burros at
14 the Blue Wing Complex as this is one of the only areas where there are wild paint burros. Ms.
15 Leigh has also attended several wild horse and burro roundups throughout the United States, and
16 frequently reviews photographs and videos from any roundups she is not able to attend in person.
17 When Ms. Leigh recognizes individual horses and burros that she has previously observed as wild,
18 free-roaming horses and burros, she experiences great sadness, but feels it is her responsibility to
19 the animals to observe their treatment and capture and share it with others to educate them on the
20 plight of wild horses and burros. The further gathering and removal of wild horses and burros in
21 the Blue Wing Complex due to the challenged actions will adversely affect the substantial
22 recreational, aesthetic, and conservational interests of Ms. Leigh.

23 10. CANA Foundation and Wild Horse Education (collectively, the Nonprofit
24 Plaintiffs) and their members, supporters, and staff have a long-standing interest in wild, free-
25 roaming horses and burros and routinely advocate for wild horses and burros in Nevada. If they
26 had been given the opportunity, Nonprofit Plaintiffs would have submitted comments to BLM
regarding an HMAP for the Blue Wing Complex.

1 11. Wild Horse Education’s members, supporters, and staff visit the Blue Wing
2 Complex for photography, observing wildlife, and other recreational and professional pursuits.
3 Nonprofit Plaintiffs’ members, supporters, and staff gain aesthetic enjoyment from observing,
4 attempting to observe, hearing, seeing evidence of, and studying wild horses and burros. The
5 opportunity to possibly view wild horses and burros, or signs of them, in these areas is of
6 significant interest and value to Nonprofit Plaintiffs’ members, supporters, and staff, and increases
7 their use and enjoyment of Nevada’s public lands. Nonprofit Plaintiffs’ members, supporters, and
8 staff have engaged in these activities in the past and have specific plans to do so again in the future.

9 12. Nonprofit Plaintiffs’ members and supporters are adversely impacted by the
10 gathering and removal of wild horses and burros from the Blue Wing Complex. Nonprofit
11 Plaintiffs’ members also have an interest in the health and humane treatment of animals, and work
12 to rehabilitate sick and injured wildlife, including horses and burros. Nonprofit Plaintiffs’
13 members, staff, volunteers, and supporters have engaged in these activities in the past and intend
14 to do so again soon.

15 13. Nonprofit Plaintiffs, as well as their members, supporters, and staff, are dedicated
16 to ensuring the long-term survival of the wild, free-roaming horses and burros throughout the
17 contiguous United States, and specifically in Nevada, and to ensuring that Defendants comply with
18 all applicable state and federal laws related to the survival and humane treatment of wild horses
19 and burros in Nevada. In furtherance of these interests, Nonprofit Plaintiffs’ members, supporters,
20 and staff have worked, and continue to work, to protect and advocate for wild horses and burros
21 in Nevada and throughout the contiguous United States.

22 14. The interests of Nonprofit Plaintiffs’ members, supporters, and staff have been, and
23 will continue to be, injured by Defendants’ improper and inhumane gather and removal of wild
24 horses and burros in the Blue Wing Complex. The interests of Nonprofit Plaintiffs’ members,
25 supporters, and staff have been, and will continue to be, injured by Defendants’ failure to comply
26 with their obligations under the Wild Horse Act, NEPA, APA, and First Amendment in gathering,
removing, and processing wild, free-roaming horses and burros in gruesome, inhumane, and

1 completely hidden ways in the Blue Wing Complex pursuant to an outdated twenty-year gather
2 plan and without an HMAP.

3 15. The injunctive relief requested provides the only remedy that can redress the
4 injuries of Nonprofit Plaintiffs, including of their members, supporters, volunteers, and staff. The
5 relief requested by Plaintiffs, if granted, would require Defendants to comply with the
6 requirements of the Wild Horse Act, NEPA, APA, and the First Amendment before further
7 gathering and removing wild, free-roaming horses and burros from the Blue Wing Complex. The
8 relief requested by Plaintiffs, if granted, would reduce the number of wild, free-roaming horses
9 and burros needlessly injured, killed, or removed by Defendants.

10 16. Defendant JON RABY is Nevada State Director of the BLM, and is charged by
11 federal statute with managing, administering, and protecting the wild horses and burros in the State
12 of Nevada, including the Blue Wing Complex, pursuant to the Wild Horse Act.

13 17. Defendant DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGE-
14 MENT is charged by federal statute to manage administer and protect the wild horses and burros
15 in the State of Nevada, including the Blue Wing Complex, pursuant to the Wild Free-Roaming
16 Horses and Burros Act, 16 U.S.C. §§ 1331–1340.

16 GENERAL ALLEGATIONS OF FACTS

17 A. Wild Free-Roaming Horses and Burros Act

18 18. Finding that “wild free-roaming horses and burros are living symbols of the historic
19 and pioneer spirit of the West,” and that “they contribute to the diversity of life forms within the
20 Nation and enrich the lives of the American people,” Congress enacted the Wild Horse Act to
21 ensure that “wild-free roaming horses and burros shall be protected from capture, branding,
22 harassment, [and] death,” and will “be considered in the area where presently found, as an integral
23 part of the natural system of the public lands.” 16 U.S.C. § 1331.

24 19. “Wild free-roaming horses and burros” are defined under the Wild Horse Act as
25 “all unbranded and unclaimed horses and burros on public lands of the United States,” which
26 include lands “administered by the Secretary of the Interior through the Bureau of Land

1 Management or by the Secretary of Agriculture through the Forest Service.” *Id.* §§ 1332(b), (e);
2 *see also* 36 C.F.R. § 222.60(b)(13).

3 20. The Wild Horse Act directs the Secretary of the Interior to “manage wild free-
4 roaming horses and burros as components of the public lands ... in a manner that is designed to
5 achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1331.
6 To further ensure this objective, the statute provides that “[a]ll management activities shall be at
7 the minimal feasible level.” 16 U.S.C. § 1333(a).

8 21. The Wild Horse Act also gives the Secretary the ability to remove “excess” wild
9 free-roaming horses and burros from the public range. “[E]xcess animals” are defined in the statute
10 as wild free-roaming horses and burros “which must be removed from an area in order to preserve
11 and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16
12 U.S.C. § 1332(f).

13 22. The Secretary must first make a determination that 1) an overpopulation of animals
14 exists and 2) that action is necessary to remove excess animals, before immediately removing the
15 excess animals. 16 U.S.C. § 1333(b)(2). The Secretary must determine both of those requirements
16 on the basis of the current inventory of lands, information contained in any land use planning
17 documents, information contained in court ordered environmental impact statements, and any
18 additional information currently available to him/her. *Id.*

19 23. A wild horse and burro gather plan violates the immediate removal mandate of the
20 Wild Horse Act when it permits the removal of excess animals up to ten years from its
21 promulgation. *Friends of Animals v. Culver*, No. 19-3506 (D.D.C. Jun. 28, 2022).

22 24. Excess horses must be “humanely captured and removed” per the Wild Horse Act’s
23 mandates. 16 U.S.C § 1333(b)(2)(B).

24 25. “[H]umane treatment” is defined as “handling compatible with animal husbandry
25 practices accepted in the veterinary community, without causing unnecessary stress or suffering to
26 a wild horse or burro.” 43 C.F.R. § 4700.0-5(e). “Inhumane treatment” is defined as “any
intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a

1 wild horse or burro and is not compatible with animal husbandry practices accepted in the
2 veterinary community.” 43 C.F.R. § 4700.0-5(f).

3 26. The Secretary delegated responsibility to administer the Wild Horse Act to the
4 BLM. 43 C.F.R. § 4700.0-3.

5 27. The BLM’s regulations require that the Secretary establish Herd Management
6 Areas for the maintenance of wild horse and burro herds. 43 C.F.R. § 4710.3-1. In delineating each
7 herd management area, the BLM must consider the appropriate management level for the herd, the
8 habitat requirements of the animals, the relationships with other uses of the public and adjacent
9 private lands, and the constraints contained in § 4710.4, which limits management of wild horses
10 and burros to “the minimum level necessary to attain the objective identified in approved land use
11 plans and herd management area plans.” 43 C.F.R. § 4710.4.

12 28. Once a Herd Management Area is established, the BLM “*shall* prepare a herd
13 management area plan, which may cover one or more herd management areas.” 43 C.F.R. § 4710.4
(emphasis added).

14 29. The HMAPs assist the BLM in meeting the regulatory policy requirements to
15 manage wild horses and burros “in balance with other uses and the productive capacity of their
16 habitat” and to ensure that wild horses and burros are “considered comparably with other resource
17 values[.]” 43 C.F.R. §§ 4700.0-6(a)-(b).

18 30. An HMAP is the only wild horse and burro management document that is expressly
19 identified and required by the Wild Horse Act regulations.

20 31. The BLM implements its regulations through a policy document referred to as the
21 “Wild Horses and Burros Management Handbook H-4700-1,” (“BLM Handbook”).

22 32. The BLM Handbook is not an agency rule; it was not subject to notice and comment
23 rulemaking and does not have the force and effect of law, like the Wild Horse Act and BLM
24 Regulations. The BLM Handbook is a policy document that presents guidance to BLM staff for
25 implementing BLM’s statutory and regulatory obligations in a uniform matter.

26 33. Nevertheless, the BLM Handbook mirrors the BLM Regulations and requires that

1 all wild horse and burro herd management activities be carried out “at the minimum feasible level
2 of management necessary to attain the objectives identified in approved land use plans (LUPs) *and*
3 Herd Management Area Plans (HMAPs).” BLM Handbook, Chap. 1, p. 6 (emphasis added).

4 34. Nothing in the BLM Handbook gives BLM authority to ignore its statutory and
5 regulatory mandate to conduct herd management activities in a way that maintains the minimum
6 feasible level required pursuant to a LUP *and* HMAP. *See* 43 C.F.R. § 4710.4 (“Management shall
7 be at the minimum level necessary to attain the objectives identified in approved land use plans
8 and herd management area plans.”)

9 35. The BLM Handbook goes on to clarify that HMAPs, rather than LUPs, must be
10 used to identify and document habitat and population management and monitoring objectives for
11 specific complexes of HMAs. *Id.* at Chap. 2, p. 10. In fact, the BLM Handbook dictates that
12 HMAPs must tier to and be in conformance with applicable LUPs. *Id.*

13 36. To achieve statutory goals, HMAPs must also include a plan for monitoring and
14 evaluating management actions and decisions and require the collection of data/information
15 necessary to evaluate the effectiveness of those decisions. *Id.* at Chap. 6.2, p. 43. The BLM
16 Handbook further emphasizes that “[a]s required in 43 C.F.R. § 4710.4, management shall be at
17 the minimum level necessary to attain the objectives identified in approved LUPs and HMAPs.”
18 *Id.*

19 37. Importantly, in evaluating and selecting the wild horse and burro management plan
20 authorized by an HMAP, the BLM must consider a range of alternatives, including taking no
21 action. *Id.* at p. 38. The BLM Handbook provides the example of “consider[ing] differing gather
22 seasons or methods, various tools to slow population growth, or various habitat tools, projects, or
23 techniques” as possible considerations for an alternatives analysis. *Id.* The alternative management
24 strategies identified in an HMAP are intended to be broader and more long-term than just single
25 and one-time management tools, projects, or methods.

26 38. HMAPs may be prepared for a single HMA or a complex of adjacent HMAs where
animal interchange occurs and must “identify and set objectives for [wild horse and burro] herds

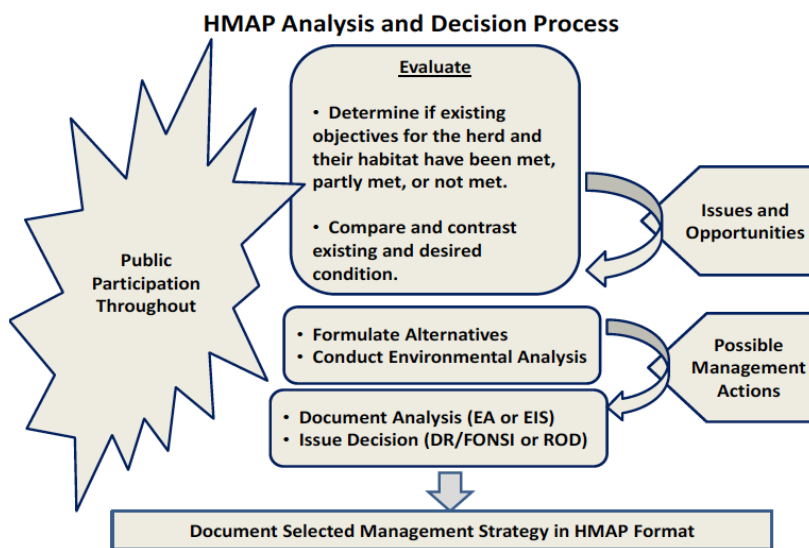
1 and their habitat.” *Id.* at Chap. 6, p. 11, 36.

2 39. Habitat management and monitoring consists of analyzing the forage, water, cover,
3 and space available for wild horses. *Id.* at Chap. 3, p. 12–13.

4 40. Examples of habitat management projects include seeding, emergency fire
5 rehabilitation, constructing and maintaining fencing, rewilding, and water developments. *Id.* at p.
6 13–15. Examples of population control methods include gathers and removals, fertility control,
7 and adjusting male/female sex ratios. *Id.* at Chap. 4, p. 23–27.

8 41. The BLM makes clear that the public participation process for an HMAP involves
9 public review and comment to allow for public scoping of the key issues identified and the range
10 of alternatives to be considered in the HMAP. *Id.* at p. 37.

11 **Figure 6.1**
12 **Overview of the HMAP Analysis and Decision Process**



13 42. Figure 6.1 of the BLM Handbook demonstrates the separate and important
14 decision-making process undertaken by agency officials when developing required HMAPs,
15 including public participation. *See* BLM Handbook, Figure 6.1, p. 36.

16 43. During HMAP development, herd-specific and habitat-specific information and
17 concerns may be raised during public participation. For example, the public could submit
18 information and data regarding the foaling season of the particular herd or local weather conditions
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1 that effect the range and horse and burro movement during certain months. BLM would then be
2 required to consider and address these site-specific concerns in the HMAP and any management
3 actions that result from the HMAP would be in conformance with these considerations. This leads
4 to more tailored, efficient, and humane management actions.

5 44. In the few HMAPs that BLM has developed, BLM affirms that it uses the HMAP
6 to attain the mandate in the Wild Horse Act to establish a “thriving ecological balance” between
7 and among wild horses, burros, and their habitat.

8 45. The BLM has identified no other mechanism to attain the goals specific to the Wild
9 Horse Act, including ensuring the humane treatment and, if necessary, capture of wild horses and
10 burros.

11 **B. National Environmental Policy Act**

12 46. A second statute, NEPA, 42 U.S.C. § 4321 et seq., governs decisions by the BLM
13 to gather horses and burros. NEPA requires federal agencies to take a “hard look” at the
14 environmental consequences before carrying out federal actions. *Marsh v. Or. Nat. Res. Council*,
15 490 U.S. 360, 373–74 (1989).

16 47. NEPA serves the dual purpose of, first, informing agency decisionmakers of the
17 significant environmental effects of proposed major federal actions and, second, ensuring that
18 relevant information is made available to the public so that it “may also play a role in both the
19 decision-making process and the implementation of that decision.” *See Robertson v. Methow*
Valley Citizens Council, 490 U.S. 332, 349 (1989).

20 48. To meet these goals, NEPA requires a comprehensive Environmental Impact
21 Statement (“EIS”) for “major Federal actions significantly affecting the quality of the human
22 environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3.

23 49. To determine whether a proposed action will have significant effects, an agency
24 may prepare an Environmental Assessment (“EA”). 40 C.F.R. § 1501.54. An EA is a “concise
25 public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining
26 whether to prepare an [EIS].” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004) (quoting

1 40 C.F.R. § 1508.9(a)).

2 50. Unlike the Wild Horse Act, NEPA does not impose any substantive obligations
3 upon an agency but requires that an agency take a “hard look” at the environmental consequences
4 of its decision-making. *Robertson*, 490 U.S. at 350.

5 51. If in its EA the agency finds that the proposed action will not significantly affect
6 the human environment, it may issue a finding of no significant impact (“FONSI”) in lieu of an
7 EIS. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (citing
8 40 C.F.R. § 1508.9(a)(1)); *see also* 40 C.F.R. § 1501.6(e).

9 52. A FONSI “briefly present[s] the reasons why an action ... will not have a
10 significant effect on the human environment and for which an [EIS] therefore will not be
11 prepared.” 40 C.F.R. § 1508.1(1).

12 53. When preparing an EA, agencies are only required to conduct brief discussions of
13 reasonably feasible alternatives that are reasonably related to the purpose of the project. *See*
14 *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004). Agencies need
15 not “consider alternatives which are infeasible, ineffective, or inconsistent with the basic policy
16 objectives for the management of the area.” *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180 (9th
17 Cir. 1990) (citing *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)).

18 54. Critically, an agency’s “obligation to consider alternatives under an EA is a lesser
19 one than under an EIS,” and so long as “‘reasonable alternatives’ have been considered,” there is
20 no “minimum number of alternatives that an agency must consider.” *Native Ecosystems Council*,
21 428 F.3d at 1246 (finding sufficient the consideration of two alternatives including the no-action
22 alternative).

23 55. According to the BLM Handbook, if the BLM decides to implement the objectives
24 of an HMAP by removing excess wild horses and burros, it must prepare an environmental
25 assessment to comply with NEPA for that specific gather plan. BLM Handbook, at p. 27–28; *see*
26 *id.* at Chap. 7, p. 48 (the environmental analysis for gather plans should tier to HMAPs). (A gather
plan that has gone through the NEPA process will be referred to as a “Gather-EA” throughout this

1 Complaint.)

2 56. BLM has determined that under NEPA, Gather-EAs are not required to solicit
3 public scoping comments and are limited in scope to analyzing the proposed action’s effect on the
4 human environment.

5 57. Because the broad management of wild horses and burros under an HMAP is also
6 a federal action that may significantly affect the human environment, the BLM may prepare an
7 HMAP-EA that analyzes herd management and the environmental impacts associated with a range
8 of alternative herd management strategies for the herd and its habitat. *Id.* at Chap. 6, p. 38. (A
9 finalized HMAP that has gone through the NEPA process will be referred to as an “HMAP-EA”
throughout this Complaint.)

10 58. Though the NEPA process may be used to analyze the HMAP’s potential impacts
11 to the human environment, the NEPA process is one discreet part of the HMAP preparation process
12 which, when completed, is intended to analyze the broad and long-term potential impacts to the
13 wild horse and burro herds and their habitats. *See id.* at Chap. 6, pp. 36–44 (Herd Management
14 Area Planning).

15 59. To further illustrate the distinction between an HMAP/HMAP-EA and a Gather-
16 EA, the BLM Handbook indicates that the separate decision to gather and remove horses has a
17 different appeal process than the appeal process for the HMAP generally. *Id.* at Chap. 7, p. 45.

18 60. Additionally, a Gather-EA is not the proper analysis for the long-term management
19 of wild horses and burros. *Friends of Animals v. Culver*, No. 19-3506 (D.D.C. Jun. 28, 2022)
20 (holding that “BLM’s ten-year [phased gather-EA] exceeds its discretion, per statutory
21 command”).

22 61. Therefore, a Gather-EA simply cannot substitute an HMAP or an HMAP-EA.

23 **C. First Amendment to the U.S. Constitution**

24 62. The First Amendment prohibits any law “abridging the freedom of speech, or of
the press.” U.S. Const. Amend. I.

25 63. Newsgathering is a recognized activity protected by the First Amendment. *See e.g.*,

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1 *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (“[W]ithout some protection for seeking out the
2 news, freedom of the press could be eviscerated.”). Finding that “many governmental processes
3 operate best under public scrutiny,” the Supreme Court has held that there is a qualified right of
4 access for the press and public to observe government activities. *Press-Enterprise Co. v. Superior*
5 *Court*, 478 U.S. 1, 8–9 (1986).

6 64. There is a two-part test for right of access claims. “First, the court must determine
7 whether a right of access attaches to the government proceeding or activity by considering (1)
8 ‘whether the place and process have historically been open to the press and general public’ and (2)
9 ‘whether public access plays a significant positive role in the functioning of the particular process
10 in question.’ Second, if the court determines that a qualified right applies, the government may
11 overcome that right only by demonstrating ‘an overriding interest based on findings that closure
12 is essential to preserve higher values and is narrowly tailored to serve that interest.’” *Leigh v.*
Salazar, 677 F.3d 892, 898 (9th Cir. 2012) (quoting *Press Enterprise*, 478 U.S. at 8–9).

13 65. This Court has found that BLM’s removal of wild horses and burros and other
14 gather activities on public land meet the first part of the right of access claim—i.e., that a qualified
15 right of access applies to gather activities. *Leigh v. Salazar*, 954 F. Supp. 2d 1090, 1101 (D. Nev.
16 2013).

17 66. When looking to the second part of the right of access claim, “a court cannot rubber-
18 stamp an access restriction simply because the government says it is necessary” and “courts have
19 a duty to conduct a thorough and searching review of any attempt to restrict public access.” *Leigh*,
20 677 F.3d at 900.

21 67. Further, a court “must protect the compelling interests set forth by the
22 Government through the least restrictive means possible.” *United States v. Harris*, 204 F. Supp.
23 3d 10, 15 (D.D.C. 2016).

24 **D. The Winnemucca District Resource Management Plan**

25 68. The Blue Wing Complex consists of 2,283,300 acres of land. The Blue Wing
26 Complex is made up of five Herd Management Areas (“HMAs”), four Herd Areas (“HAs”), and

1 other non-HMA areas. The HMAs are: Kamma Mountains, Seven Troughs Range, Lava Beds,
2 Blue Wing Mountains, and Shawave. The HAs are: Antelope Range, Selenite Range, Trinity
3 Range, and Truckee Range.

4 69. The Blue Wing Complex is located in the Winnemucca District of Nevada and is
5 therefore subject to the land use planning and management directives in the 2015 Winnemucca
6 District Resource Management Plan (DOI-BLM-NV-W000-2004-0001-RMP-EIS).

7 70. Appendix K of the Winnemucca District Resource Management Plan consists of
8 Wild Horse and Burro Standards and Guidelines that were approved on August 30, 2007. The
9 Standards and Guidelines state the following Implementation directives which require the
10 development of HMAPs:

11 Following adoption of the Standards and Guidelines for Wild
12 Horses and Burros, subsequent planning decisions and management
13 actions must be consistent with the Standards and Guidelines.
14 Standards and Guidelines for Wild Horses and Burros as outlined
15 above will be implemented through a multi-step process involving:

16 1. *Development of herd management area plans* and
17 establishment of long-term objectives for managing wild horses and
18 burros and their habitat, initiation of the necessary management
19 actions, monitoring to assess progress toward achievement of plan
20 objectives; periodic adjustments of population levels to maintain
21 AMLs; and periodic evaluation of management actions to assure
22 they are being implemented and effective in achieving plan
23 objectives.

24 2. *Herd management area plans (HMAPs)* will be the vehicle
25 for determining the management and objectives for the herds and
26 their habitat. Assessments of wild horse and burro herds and
individual animals will occur through periodic censuses of the
animals as well as notation of the condition, age, and sex of animals
that have been captured. . . .

Department of the Interior Bureau of Land Management Winnemucca District, *Record of Decision
and Resource Management Plan for the Winnemucca District Planning Area* (May 22, 2015),
Appendix K (emphasis added).

71. The Winnemucca District Resource Management Plan also requires that BLM

1 evaluate and adjust Appropriate Management Levels (“AMLs”) as applicable based on the multi-
2 tiered process outlined in BLM Handbook 4700-1. *Id.* at Action WHB 5.6, p. 2-32.

3 72. Further, the Winnemucca District Resource Management Plan states that “[i]f
4 monitoring data indicate that adverse impacts on resources are occurring as a result of livestock,
5 wild horses, or burros, appropriate management actions (e.g., adjust AUMs or AMLs, fence,
6 season of use) will be made to the specific class of use (i.e., livestock, wild horses, burros) causing
7 the impacts. In absence of specie specific monitoring data, adjustments in available forage will be
8 proportional to applicable livestock active AUMs and WHB AMLs.” *Id.* at Action WHB 5.7, p. 2-
32.

9 **E. The Blue Wing Complex Gather EA**

10 73. The BLM has never prepared an HMAP for the Blue Wing Complex or any of its
11 HMAPs or HAs.

12 74. Instead, on October 23, 2017, the BLM published the phased twenty-year Blue
13 Wing Complex Gather Plan Final Environmental Assessment, DOI-BLM-NV-W010-2015-0034-
14 EA, and its associated FONSI and Decision Record. (This assessment will be referred to as the
15 “Gather EA” throughout this Complaint.)

16 75. The Gather EA cites Appropriate Management Levels (“AMLs”) that were
17 purportedly established through Final Multiple Use Decisions (“FMUDs”). *See* Gather EA,
18 Section 1.1, p. 3–5. The most recent FMUD cited is from a 1999 Appeal Order. Gather EA, Table
19 2, p. 4.

20 76. The Gather EA relies on monitoring data from December 2014 animal count
21 *estimates*. Gather EA, Table 1, p. 3, n.2 (“Fall 2017 estimates are based directly on the December
22 2014 estimates (Lubow 2015), with three years of projected population growth”).

23 77. The Gather EA specifically notes that “[f]uture decisions regarding long-term
24 management within the Blue Wing Complex would continue to be accomplished through a *Herd
Management Area Plan...*” Gather EA, Section 1.3, p. 5 (emphasis added).

25 78. Far narrower in scope than an HMAP, the Gather EA analyzed the proposed gather
26

1 as a population control tool and did not analyze this tool as an activity to be utilized in conjunction
2 with various other habitat and herd management tools.

3 79. The Gather EA did not identify or analyze the herd-specific foaling season, nor the
4 habitat-specific ground conditions during different seasons, both of which would have been a
5 required component of an HMAP.

6 80. The Gather EA purports to allow BLM to implement a “wide range of management
7 actions...designed to...meet low AML and maintain AML ranges within approximately 20 years.”
8 Gather EA, Section 2.4, p. 19. Alternative B, the preferred alternative and the one chosen in the
9 Decision Record, admittedly “allows for the most flexibility.” Gather EA, Section 2.0, p. 9.

10 81. The Gather EA did not identify or analyze the significant impacts to the
11 environment caused by removing over 88% of the horses and burros that make up the Blue Wing
12 Complex. *See* Gather EA, Table 1, p. 3 (Fall 2017 Estimate of 3,340 horses and burros, compared
13 to the AML low of 388 horses and burros).

14 82. The Gather EA did not consider impacts to *horses and burros* as opposed to *the*
15 *human environment* because it was prepared under NEPA, which reflects government
16 environmental policy, whereas the Wild Horse Act reflects government policy for the humane
17 treatment and management of wild horses and burros.

18 83. Proving this point, every time Plaintiff Laura Leigh, on behalf of Plaintiff Wild
19 Horse Education, commented on the preliminary Gather EA regarding subject matter that would
20 have been considered during the development of an HMAP, the BLM responded by advising that
21 the comments were outside the scope of the Gather EA, which addressed environmental impacts
22 only.

23 84. For example, though BLM has authority under the Wild Horse Act to close public
24 lands to livestock grazing if necessary to protect wild horses and burros (43 C.F.R. § 4710.5),
25 when Ms. Leigh and other commenters commented on the preliminary Gather EA regarding the
26 impact of livestock grazing on wild horse and burro habitat, the BLM responded that it was
“outside the scope of this EA” and “[a]djustments to livestock grazing cannot be made through a

1 WH&B gather EA.” Gather EA, Appendix J, p. 22.

2 85. Without a proper HMAP, BLM failed to consider recent data—see Public
3 Employees for Environmental Responsibility (PEER), *BLM Rangeland Health Status (2020) – The*
4 *Significance of Livestock Grazing on Public Lands* (available at
5 [https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-](https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands)
6 [livestock-grazing-on-public-lands](https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands))—indicating that livestock grazing, rather than wild horses and
7 burros, is a significant reason why a majority of BLM land does not meet its own land health
8 standards.

9 86. In response to public comments, BLM also deemed evidence requiring the
10 evaluation and adjustment of AMLs to be outside the scope of the Gather EA. Gather EA,
11 Appendix J, p. 5–7.

12 87. BLM also deemed range improvements, such as moving fencing and developing
13 water sources, to be outside the scope of the Gather EA, though both greatly impact the
14 management of the Blue Wing Complex wild horses and burros and would be considered in an
15 HMAP. Gather EA, Appendix J, p. 18.

16 88. Though BLM briefly discussed genetic diversity in the Gather EA, it refused to
17 solicit and consider the public’s local knowledge of rare genetic lineages present in the Blue Wing
18 Complex such as paint burros which are not common in other HMAs in the United States.

19 89. The Gather EA also failed to appropriately consider that wild horses are a native
20 species and the resulting harmful environmental impacts of removing native species.

21 90. To comply with the Wild Horse Act’s humane handling directive, BLM
22 incorporated its own Comprehensive Animal Welfare Policy (“CAWP”). Gather Plan, Section 2.2,
23 p. 10.

24 91. CAWP includes standards for off-range corrals. See BLM, *Permanent Instruction*
25 *Memorandum 2021-002* (2021); see also BLM, *Comprehensive Animal Welfare Program*
26 *Standards: Off-Range Corral Facilities, Transportation, Adoption Events* (Jan. 29, 2016),
available at <https://www.blm.gov/sites/default/files/docs/2020-12/PIM2021-002%20att2.pdf>.

1 92. However, the BLM refused to consider any gather-specific public comment on the
2 CAWP or CAWP implementation.

3 93. The CAWP itself is a published instruction memorandum and was never subject to
4 notice and opportunity for public comment. BLM, *Instruction Memorandum 2015-151* (2015).

5 **F. Blue Wing Complex Gatherers**

6 94. Since finalizing the 2017 Gather EA, but before the 2022 gather, BLM had
7 previously gathered and removed 1,653 horses and 626 burros from the Blue Wing Complex. In
8 2019, two years after the 2017 Gather EA, BLM gathered 188 wild burros and shipped 187 of
9 them from the Seven Troughs Range HMA; 1 burro death resulted from the gather. In August
10 2020, BLM gathered 1,653 wild horses, shipped 1,596 wild horses, and gathered and shipped 220
11 burros from the Shawave HMA. A total of 44 mares were released back onto the range after being
12 treated with a fertility control vaccine. In late 2020, BLM gathered 218 wild burros and shipped
13 215 of them from the Selenite Range HA; 3 burro deaths resulted from the gather.

14 95. In 2020, Plaintiff Wild Horse Education was granted access to the temporary
15 holding corrals located on private property in the Blue Wing Complex to view and document the
16 wild horses gathered from the range.

17 96. On January 4, 2022, BLM published the “FY2022 Proposed Wild Horse and Burro
18 Gather and Fertility Control Schedule” which included a proposed Blue Wing Complex gather for
19 August 2022. These proposed schedules are published by BLM at the beginning of each year and
20 are subject to change.

21 97. On July 26, 2022, BLM announced the upcoming gather of 200 horses and 800
22 burros from the Blue Wing Complex to begin on August 1. *See* BLM, *Bureau of Land Management*
23 *to Begin the FY2022 Blue Wing Complex Wild Horse and Burro Gather* (July 26, 2022), available
24 at <https://www.blm.gov/press-release/bureau-land-management-begin-fy2022-blue-wing-complex-wild-horse-and-burro-gather-0> (“FY2022 Blue Wing Complex Press Release”). Based
25 on 2021 aerial surveys, BLM estimated that the Blue Wing Complex was home to 1,695 wild
26 horses and 1,327 wild burros before the gather. *Id.*

1 98. The August 2022 gather was conducted under the 2017 Gather EA. *Id.*

2 99. No additional planning or analysis documents were released prior to the August
3 2022 gather. No new scientific information or incorporation of new priorities such as climate
4 change concerns were considered.

5 100. The gather and shipment operations took place every day beginning August 1 until
6 August 12; a total of only twelve days. *See* BLM, *2022 Blue Wing Complex Wild Horse and Burro*
7 *Gather* (last visited Aug. 24, 2022), available at [https://www.blm.gov/programs/wild-horse-and-](https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-humboldt-fo/2022-blue)
8 [burro/herd-management/gathers-and-removals/nevada-humboldt-fo/2022-blue](https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-humboldt-fo/2022-blue) (“2022 Blue Wing
9 Complex Gather Page”).

10 101. The August 2022 Blue Wing Complex gather resulted in 1,022 animals gathered,
11 1,008 animals shipped to off-range holding corrals, and 14 animal deaths. *Id.* Of the 1,022 animals
12 gathered, 804 were wild burros and 218 were wild horses. *Id.* Of the 1,008 animals shipped, 794
13 were wild burros and 214 were wild horses. *Id.* Of the 14 animal deaths, 10 were wild burros and
14 4 were wild horses. *Id.* At least one paint burro was euthanized, and BLM has not indicated how
15 many paint burros were gathered and shipped from the range. *Id.*

16 102. All of the shipped wild burros went to the Axtell Off Range Corrals in Axtell, Utah
17 and all of the shipped wild horses went to the Palomino Valley Off-Range Corrals in Reno,
18 Nevada. FY2022 Blue Wing Complex Press Release, *supra* ¶ 93.

19 103. Plaintiff Wild Horse Education sent a representative who is also a burro specialist,
20 Laurie Ford, to the Blue Wing Complex to observe and document BLM’s gather, holding, and
21 shipment operations. These operations were particularly important and crucial to Wild Horse
22 Education’s mission and purpose because the Blue Wing Complex is one of the very few HMAs
23 that has a population of wild burros in Nevada. Wild Horse Education seeks to educate the public
24 on BLM’s handling of wild burros, rather than solely wild horses, and the Blue Wing Complex is
25 one of the few places where they have that opportunity due to the low number of HMAs that
26 contain a burro population in the United States.

 104. Burro capture and handling differs from that of wild horses and the physiological

1 and behavioral impacts are distinct.

2 105. Ms. Ford notified BLM that she would be attending the first day of the operations.

3 106. When Ms. Ford arrived on the morning of August 1, she was escorted by BLM to
4 a public observation site that was approximately 1.8 miles away from the trap site. The trap site is
5 where low-flying helicopters and wranglers drive the wild animals towards and the animals are
6 sent through chutes, into pens, loaded onto trucks, and brought to temporary holding corrals.

7 107. From the observation site, Ms. Ford could hardly observe nor document the gather
8 operations at the trap site because of the distance and obstruction from BLM trucks and stock
9 trailers. Even using a 500 mm camera lens and a 3000 mm video camera, Ms. Ford could not view
10 BLM's actions nor assess the condition of the animals being gathered and loaded onto trucks.

11 108. On August 1, Ms. Ford was denied access to the temporary holding corrals where
12 the gathered burros were being held. Historically, the public has been allowed daily tours of and/or
13 access to temporary holding corrals to assess the condition of the animals and to document any
14 individual markings or tags on the animals.

15 109. On August 1, Ms. Ford was also informed that the public would never be allowed
16 any sort of access to the temporary holding corrals during the entire gather and shipment operation;
17 nor would they have access to observe processing or assess the condition of burros at the Axtell
18 Off Range Holding Corrals.

19 110. On August 2, Ms. Ford again attended the daily gather operations. She was once
20 again escorted to the public observation site 1.8 miles from the trap site. During the day, Ms. Ford
21 could just barely see a burro being roped by a wrangler on horseback near the trap site. The burro
22 appeared to struggle for over an hour, falling onto his side and perhaps flipping over at one point.
23 Ms. Ford was denied access to view the burro close enough to identify him or his tag so that she
24 could track him through BLM's adoption and sales program or permanent placement in a long-
25 term holding facility. Ms. Ford was also denied access to the temporary holding corrals at the Blue
26 Wing Complex so that she could assess his condition after the struggle.

111. Ms. Ford remained at the Blue Wing Complex and attended the gather on August

1 3 and 4 as well. On August 4, the trap site was moved, and the public observation site was likewise
2 moved to approximately 0.7 miles from the new trap site.

3 112. Ms. Ford attended the gather each day until all of the target burros were gathered
4 from the range on August 7.

5 113. The public and Plaintiffs were denied any access to the gathered animals in the
6 temporary holding corrals at the Blue Wing Complex.

7 114. After the target number of burros had been gathered, Ms. Ford left the Blue Wing
8 Complex and traveled to Utah to observe the Bible Spring Complex HMA gather operations.

9 115. Plaintiff Wild Horse Education asked Ms. Ford to travel to the Utah gather because
10 Wild Horse Education and Ms. Ford wanted to be close to the Axtell Off Range Corrals where the
11 Blue Wing Complex burros were shipped to. They desperately wanted to view the burros at the
12 off-range holding facility to assess the condition of the burros after the gather and to document
13 any identifying markings or tags in order to track the burros.

14 116. Though privately owned, Axtell Off Range Corrals have been under contract with
15 BLM since 2015. While under contract, the Axtell Off Range Corrals have historically been open
16 to the public on select visitation days. *See* BLM, *BLM Invites the Public to Tour Axtell Wild Horse*
17 *Off-Range Corrals* (June 24, 2022), available at [https://www.blm.gov/press-release/blm-invites-](https://www.blm.gov/press-release/blm-invites-public-tour-axtell-wild-horse-range-corrals)
18 [public-tour-axtell-wild-horse-range-corrals](https://www.blm.gov/press-release/blm-invites-public-tour-axtell-wild-horse-range-corrals) (announcing a public tour where “attendees will have
19 an opportunity to tour the facility” and “observe approximately 1,000 wild horses”).

20 117. As part of its CAWP Internal Assessments, BLM assessed the Axtell Off Range
21 Corral on July 5, 2022. *See* BLM, *Comprehensive Animal Welfare Program Team Assessment*
22 *Report: Axtell Off-Range Corral* (July 5, 2022), available at
23 [https://www.blm.gov/sites/default/files/docs/2022-](https://www.blm.gov/sites/default/files/docs/2022-07/Axtell%20ORC%20CAWP%20July%202022%20Team%20Report.pdf)
24 [07/Axtell%20ORC%20CAWP%20July%202022%20Team%20Report.pdf](https://www.blm.gov/sites/default/files/docs/2022-07/Axtell%20ORC%20CAWP%20July%202022%20Team%20Report.pdf).

25 118. Most concerning, the internal assessment found that there were holding pens that
26 prevented simultaneous access to hay for all animals inside the pens (*id.* at 2), many horses were
observed with very long hooves due to lack of required trimming (*id.* at 3), and horses were

1 observed being brought out of pens at a high rate of speed that can cause stress and injury (*id.*).

2 119. The facility received an 88% for compliance with applicable CAWP Standards. *Id.*
3 at 1.

4 120. The public is currently allowed to view the wild *horses* being held at Axtell Off
5 Range Corrals on select visitation days, but BLM informed Ms. Ford that no such access to view
6 the wild *burros* being held there will ever be granted. BLM has indicated that this is because its
7 contract with the Axtell Off Range Corrals inexplicably only allows for select public viewing days
8 of wild horses, and not of wild burros.

9 121. On August 7, Plaintiff Wild Horse Education reached out to BLM and again
10 requested access to view the wild burros being held at the Axtell Off Range Corrals that were
11 gathered from the Blue Wing Complex. Wild Horse Education did not receive a response to their
12 request. Wild Horse Education notified BLM of their desire to assess the condition of the burros
13 after their capture by BLM and how this is a time-sensitive matter.

14 122. As of the filing of this Complaint, the public and Plaintiffs continue to be denied
15 access to view, identify, and assess the wild burros that were gathered from the Blue Wing
16 Complex and shipped to the Axtell Off Range Corrals in Axtell, Utah.

16 **G. Exhaustion of Administrative Remedies**

17 123. Plaintiff Laura Leigh, in her individual capacity and on behalf of Plaintiff Wild
18 Horse Education, actively participated in the public commenting process of the Blue Wing
19 Complex Gather EA, which was finalized on October 23, 2017.

20 124. Plaintiffs CANA Foundation and Wild Horse Education also sent a letter to
21 Defendant Jon Raby on July 18, 2022 demanding that Defendants cancel all future gathers under
22 the 2017 Gather EA until Defendants develop an HMAP and a new or supplemental gather EA
23 pursuant to recent case law.

24 125. On August 5, 2022, BLM responded with its decision to continue the Blue Wing
25 Complex gather operations even though an HMAP has never been prepared.
26

FIRST CAUSE OF ACTION

Writ of Mandamus, 28 U.S.C. § 1361

1
2
3 126. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
4 though fully set forth herein.

5 127. Defendants have a mandatory duty to prepare a Herd Management Area Plan for
6 each Herd Management Area prior to conducting any herd management activities, including the
7 gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, “Management
8 shall be at the minimum level necessary to attain the objectives identified in approved land use
9 plans and herd management area plans.” 43 C.F.R. § 4710.4, *see also* 16 U.S.C § 1333.

10 128. Defendants violated 16 U.S.C. § 1333 and 43 C.F.R. § 4710.4 when they authorized
11 the gather and removal of wild horses and burros from the Blue Wing Complex without first
12 developing a Herd Management Area Plan.

13 129. To the extent Defendants have interpreted the BLM Handbook to conflict with
14 Defendants’ mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild
15 horse and burro herds at the minimum level necessary to attain the objectives identified in
16 approved land use plans and herd management area plans, BLM has exceeded its authority and
17 jurisdiction to comply with statutory and regulatory mandates.

18 130. Defendants only have authority to immediately remove excess animals from the
19 range when current information indicates that there is an overpopulation and action is necessary
20 to remove excess animals. 16 U.S.C. § 1333(b)(2).

21 131. Defendants relied on a 2017 Gather Plan Final Environmental Assessment as
22 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in
23 violation of 16 U.S.C. § 1333.

24 132. Defendants’ failure to adopt a Herd Management Area Plan and a new or
25 supplemental Environmental Assessment for the Blue Wing Complex has injured Plaintiffs in the
26 manner described in this Complaint.

133. The Mandamus and Venue Act, 28 U.S.C. § 1361, vests district courts with original

1 jurisdiction over any action in the nature of mandamus to compel a federal officer or agency to
2 perform a duty owed to plaintiffs.

3 134. Plaintiffs seek a writ of prohibition preventing Defendants from gathering and
4 removing wild horses and burros under the Blue Wing Complex Gather Plan Final Environmental
5 Assessment, DOI-BLM-NV-W010-2015-0034-EA, until Defendants have fully complied with the
6 Wild Free-Roaming Horses and Burros Act and developed a Herd Management Area Plan and a
7 new or supplemental Environmental Assessment for the Blue Wing Complex.

8 **SECOND CAUSE OF ACTION**

9 **Administrative Procedure Act, 5 U.S.C. § 706(1)**

10 135. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
11 though fully set forth herein.

12 136. Defendants have a mandatory duty to prepare a Herd Management Area Plan for
13 each Herd Management Area prior to conducting any herd management activities, including the
14 gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, “Management
15 shall be at the minimum level necessary to attain the objectives identified in approved land use
16 plans and herd management area plans.” *See* 43 C.F.R. § 4710.4 (implementing 16 U.S.C § 1333).

17 137. Defendants violated 16 U.S.C. § 1333 and 40 CFR § 4710.4 when they authorized
18 the gather and removal of wild horses and burros from the Blue Wing Complex without first
19 developing a Herd Management Area Plan.

20 138. Defendants only have authority to immediately remove excess animals from the
21 range when current information indicates that there is an overpopulation and action is necessary
22 to remove excess animals. 16 U.S.C. § 1333(b)(2).

23 139. Defendants relied on a 2017 Gather Plan Final Environmental Assessment as
24 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in
25 violation of 16 U.S.C. § 1333.

26 140. Defendants have unlawfully withheld or unreasonably delayed their mandatory
duty to prepare an HMAP for the Blue Wing Complex or for the individual Herd Management

1 Areas that make up the Complex and their mandatory duty to *immediately* remove animals on the
2 basis of *current* information.

3 141. Defendants' failure to adopt a Herd Management Area Plan and failure to complete
4 a new or supplemental Environmental Assessment for the Blue Wing Complex has injured
5 Plaintiffs in the manner described in this Complaint.

6 142. The Administrative Procedure Act gives this court authority to compel agency
7 action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

8 **THIRD CAUSE OF ACTION**

9 **Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**

10 143. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
11 though fully set forth herein.

12 144. Defendants have a mandatory duty to prepare a Herd Management Area Plan for
13 each Herd Management Area prior to conducting any herd management activities, including the
14 gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, "Management
15 shall be at the minimum level necessary to attain the objectives identified in approved land use
16 plans and herd management area plans." *See* 43 C.F.R. § 4710.4, 16 U.S.C § 1333.

17 145. Defendants violated 16 U.S.C. § 1333 and 43 C.F.R. § 4710.4 when they authorized
18 the gather and removal of wild horses and burros from the Blue Wing Complex without first
19 developing a Herd Management Area Plan.

20 146. To the extent Defendants have interpreted the BLM Handbook to conflict with
21 Defendants' mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild
22 horse and burro herds at the minimum level necessary to attain the objectives identified in
23 approved land use plans and herd management area plans, Defendants have acted arbitrarily and
24 capriciously and contrary to the law and abused their discretion.

25 147. Defendants only have authority to immediately remove excess animals from the
26 range when current information indicates that there is an overpopulation and action is necessary
to remove excess animals. 16 U.S.C. § 1333(b)(2).

1 148. Defendants relied on a 2017 Gather Plan Final Environmental Assessment as
2 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in
3 violation of 16 U.S.C. § 1333.

4 149. Defendants' decision to proceed with the gather and removal of over 1,000 wild
5 horses and burros from the Blue Wing Complex was arbitrary and capricious, an abuse of
6 discretion, and contrary to the law.

7 150. Defendants' failure to adopt a Herd Management Area Plan and failure to complete
8 a new or supplemental Environmental Assessment for the Blue Wing Complex has injured
9 Plaintiffs in the manner described in this Complaint.

10 151. The Administrative Procedure Act gives this court authority to hold unlawful and
11 set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not
12 in accordance with law." 5 U.S.C. § 706(2)(A).

13 **FOURTH CAUSE OF ACTION**

14 **Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**

15 152. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
16 though fully set forth herein.

17 153. Defendants exceeded their statutory jurisdiction and authority as well as their own
18 regulatory limitations when they removed over 1,000 wild horses and burros from the Blue Wing
19 Complex without ensuring its management was at the minimum level necessary to attain the
20 objectives identified in a herd management area plan. *See* 43 C.F.R. § 4710.4.

21 154. To the extent Defendants have interpreted the BLM Handbook to conflict with
22 Defendants' mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild
23 horse and burro herds at the minimum level necessary to attain the objectives identified in
24 approved land use plans and herd management area plans, Defendants have acted in excess of
25 statutory jurisdiction, authority, or limitations.

26 155. Defendants' failure to adopt a Herd Management Area Plan and failure to complete
a new or supplemental Environmental Assessment for the Blue Wing Complex has injured

1 Plaintiffs in the manner described in this Complaint.

2 156. The court may also set aside agency actions “in excess of statutory jurisdiction,
3 authority, or limitations.” 5 U.S.C. § 706(2)(C).

4 **FIFTH CAUSE OF ACTION**

5 **National Environmental Policy Act and Administrative Procedure Act, 5 U.S.C. § 706(2)**

6 157. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
7 though fully set forth herein.

8 158. The BLM violated NEPA when it failed to analyze the significant environmental
9 impacts of removing wild horses from the Blue Wing Complex as alleged herein, including by
10 failing to analyze (1) alternative methods of habitat management, such as rewilding and retiring
11 livestock grazing allotments and licenses; (2) population control, including managing to preserve
12 rare genetic lines of wild horse and burro breeds; (3) adjustment of the Appropriate Management
13 Levels that were last evaluated in 1999; and (3) significant environmental impacts of removing the
14 vast majority of the wild horses and burros on the range.

15 159. In addition, the BLM violated NEPA by abusing its discretion to permit a phased
16 twenty-year Environmental Assessment for multiple gathers. *See Friends of Animals v. Culver*,
17 No. 19-3506 (D.D.C. Jun. 28, 2022) (holding “BLM’s ten-year deadline [in a wild horse gather
18 EA] exceeds its discretion, per statutory command”).

19 160. Defendants’ decision to proceed with the gather and removal of over 1,000 wild
20 horses and burros from the Blue Wing Complex without analyzing significant environmental
21 impacts was arbitrary and capricious, an abuse of discretion, and contrary to the law.

22 161. Defendants’ actions have injured plaintiffs in the manner described in this
23 Complaint.

24 162. The BLM’s decision to adopt the Blue Wing Gather Environmental Assessment
25 was arbitrary and capricious, and not in accordance with law in violation of the APA, 5 U.S.C. §
26 706(2).

SIXTH CAUSE OF ACTION

U.S. Constitution, First Amendment

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3 163. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
4 though fully set forth herein.

5 164. Plaintiffs have a right, under the First Amendment to the United States Constitution,
6 to observe and document the BLM's gather of the wild horses and burros at the Blue Wing
7 Complex, including in capture pens, sorting pens, temporary holding corrals, and off-range holding
8 corrals where horses and burros are held for veterinary treatment and prepared for potential
9 adoption or sale or to live at long-term holding facilities.

10 165. Defendants have interfered with Plaintiffs' protected right under the First
11 Amendment by refusing them access to the gather, holding, and shipment operations and only
12 providing them access from far vantage points with known obstructed views.

13 166. Defendants have completely denied Plaintiffs of their qualified right of access to
14 view and assess the condition of the wild burros after being gathered. Off-range holding facilities,
15 such as the Axtell Off Range Holding Corrals, have historically been open to the public, subject
16 to some limitations, in order to allow the public to assess the animals' conditions and to facilitate
17 adoptions and sales. In fact, Plaintiffs were denied the right to observe a single wild burro during
18 or after gather at the Blue Wing Complex. This complete denial is not narrowly tailored to serve
19 any overriding interests.

20 167. Defendants' actions have injured Plaintiffs in the manner described in this
21 Complaint.

22 168. This Court is authorized to enjoin Defendants from further violations of Plaintiffs'
23 First Amendment rights, including by compelling Defendants to provide Plaintiffs meaningful
24 access to all locations where horses and burros removed during the gather are currently housed to
25 accurately document the BLM's activities.
26

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Issue a writ of prohibition preventing Defendants from gathering wild horses and burros until Defendants have fully complied with the Wild Free-Roaming Horses and Burros Act, National Environmental Policy Act, Administrative Procedure Act, and First Amendment;
- B. Issue an order and injunction compelling Defendants to immediately stop implementation of the Blue Wing Complex Environmental Assessment until Defendants have fully complied with the Wild Free-Roaming Horses and Burros Act, National Environmental Policy Act, Administrative Procedure Act, and First Amendment;
- C. Vacate and set aside the Blue Wing Complex Gather Environmental Assessment;
- D. Issue an order compelling Defendants to provide Plaintiffs with meaningful viewing access of the off-range holding corrals where gathered horses and burros from the 2022 Blue Wing Complex operations are currently held, and to each phase of future gather and removal efforts of horses and burros living in the Blue Wing Complex, including trap sites, temporary holding corrals, and off-range holding corrals;
- E. Maintain jurisdiction over this action until Defendants are in compliance with the Wild Free-Roaming Horses and Burros Act, National Environmental Policy Act, Administrative Procedure Act, First Amendment, and every order of this Court;
- F. Award Plaintiffs attorney fees and costs pursuant to and 28 U.S.C. § 2412; and
- G. Grant such additional and further relief to which Plaintiffs may be entitled.

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DATED: September 2, 2022,

Respectfully Submitted,

/s/ Alexandra J. Monson
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