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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BONNIE KOHLERITER, MARY KONCEL,
LAURA LEIGH, individually and WILD
HORSE EDUCATION, a non-profit
corporation,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, BROOKE ROLLINS,
Secretary of the United States Department of
Agriculture, UNITED STATES FOREST
SERVICE, and TOM SCHULTZ, Chief of the
United States Forest Service,

Defendants.

Case No. 2:25-cv-02446-DJC-JDP

**PLAINTIFFS' NOTICE OF RENEWED
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

To all parties and their attorneys of record:

PLEASE TAKE NOTICE that Plaintiffs BONNIE KOHLERITER, MARY KONCEL, LAURA LEIGH, individually and WILD HORSE EDUCATION, a non-profit corporation, hereby renew their motion for a temporary restraining order and preliminary injunction against Defendants UNITED STATES DEPARTMENT OF AGRICULTURE, BROOKE ROLLINS, Secretary of the United States Department of Agriculture, UNITED STATES FOREST SERVICE, and TOM SCHULTZ, Chief of the United States Forest Service. This renewed request is submitted pursuant

1 to Rule 65(a) and (b) of the Federal Rules of Civil Procedure (FRCP). This is Plaintiffs' second
2 request for emergency injunctive relief. *See* Dkts. 10, 16, 22.

3 Plaintiffs are renewing their request for temporary restraining order and preliminary
4 injunction to stop the Defendants' unlawful conduct. Even though Defendants were furloughed
5 during the government shutdown, Defendants continued to conduct gather operations in the Devil's
6 Garden Plateau Wild Horse Territory (WHT), including by gelding more than 60% of removed
7 horses in direct contradiction to Defendants' counsel's representations to this court during the
8 hearing on Plaintiffs' first motion for preliminary injunction. As detailed below, Defendants have
9 continued to violate the Wild Free-Roaming Horses and Burros Act (WHA), 16 U.S.C. § 1331, *et*
10 *seq.*, National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, despite this Court's
11 declaration that, as a matter of law, Plaintiffs will succeed on the merits of their NEPA claims. Dkt.
12 24. Plaintiffs do not trust Defendants and therefore, with this renewed request, they seek immediate
13 judicial review of Defendants' unlawful conduct, including a court order:

- 14 A. Requiring that the Forest Service release horse welfare data to Plaintiffs, the Court, and
15 the public for each horse gathered, including but not limited to those unlawfully gelded;
16 B. Allowing an observer of Plaintiff's choice to participate in the aerial survey that is set to
17 occur as early as next week; and
18 C. Prohibiting the Forest Service from treating any of the gathered horses with fertility
19 treatments (including but not limited to administering PZP or GonaCon-Equine and not
20 gelding any further stallions).

21 Plaintiffs' motion is supported by the following Memorandum of Points and Authorities, the
22 accompanying Declaration of Jennifer Rae Lovko and attached exhibits, Plaintiffs' First Amended
23 Verified Complaint for Declaratory and Injunctive Relief (Dkt. 25), briefing on Plaintiffs' initial
24 motion for a temporary restraining order and preliminary injunction (Dkts. 10, 16, and 22), this
25 Court's October 23, 2025, Order (Dkt. 24) and any written and oral argument and authorities that
26 are presented at or before the hearing on this motion.

1 DATED: November 26, 2025,

Respectfully Submitted,

2 /s/ Jennifer Rae Lovko

3 Jessica L. Blome

4 (Cal. Bar No. 314898)

Jennifer Rae Lovko

5 (Cal. Bar No. 208855)

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1 **I. INTRODUCTION**

2 On November 25, 2025, counsel for Defendants notified Plaintiffs that over 60% of stallions
3 gathered during the at-issue gather (conducted from August 27, 2025, through September 30, 2025)
4 have been gelded, despite the Forest Service repeatedly affirming to Plaintiffs and this Court that no
5 fertility treatments would be conducted until an aerial population survey was conducted for the
6 Court's consideration of Plaintiffs' motion for preliminary injunction. *See* Dkt. 24 at 5, 10 (“[T]he
7 Court also orders Defendants to provide the data from the aerial survey and notice prior to removal
8 of the gathered horses. This will ensure that if the aerial survey reveals issues with the
9 overpopulation determination, the Court and parties will have the opportunity to address it before
10 any harm occurs.”). This action is but the latest in a line of misrepresentations made by Defendants.
11 Defendants have established a pattern of acting without any legal authority so that they fulfill their
12 predetermined goal of appeasing the interests of livestock ranches and eradicate the viability of the
13 horses in the Devil's Garden Plateau WHT. Enough is enough. Where a government agency acts in
14 flagrant disregard of the law and further ignores Court instruction, such action must have some
15 consequence.

16 Plaintiffs renew their request that all of the gathered horses be returned immediately to the
17 Devil's Garden Plateau WHT. In the alternative, Plaintiffs request this Court issue an order
18 providing for the following:

19 (1) Defendants must provide to Plaintiffs and this Court, no later than December 5, 2025,
20 data addressing the status of each of the gathered horses. For each horse, Defendants must identify
21 their age, sex, and medical condition. Where horses have died (either during the gather or at the
22 Double Devil Corrals, where they are being kept), Defendants also are to include the date that this
23 occurred and the reason for the death. Where horses have been gelded, the information should
24 identify the date that this occurred.

25 (2) Until this Court issues an order on motions for summary judgment (to be filed in the
26 future), Defendants may not prepare any of the gathered horses for adoption nor actually allow
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1 adoption of any of the gathered horses and may not apply any fertility treatments on the gathered
2 horses.

3 (3) When the aerial survey occurs, an observer of Plaintiffs' choice may attend to monitor
4 the Defendants' conduct to ensure that Defendants' aerial survey is credible and reliable.
5 Defendants have demonstrated they cannot be entrusted with this important obligation.

6 II. MATERIAL FACTS

7 The following facts cannot be seriously disputed and demonstrate a consistent and continued
8 pattern of unlawful behavior.

- 9 • In 2013, the Forest Service adopted a territory management plan (TMP), which was
10 subsequently vacated by the D.C. Circuit Court. *Am. Wild Horse Pres. Campaign v.*
11 *Perdue*, 873 F.3d 914, 920–23, 932 (D.C. Cir. 2017).
- 12 • In 2022, the Forest Service began scoping for a new TMP. Dkt. 4, p. 15.
- 13 • Instead of waiting to complete its NEPA review for the new TMP, on August 15, 2025,
14 the Forest Service announced that the agency would begin gathering 350 wild horses.
- 15 • From August 27, 2025 through September 30, 2025, the Forest Service conducted this
16 gather, removing approximately 276 wild horses. Lovko Decl. at ¶ 2. In conducting this
17 gather, Defendants exceeded their legal authority.
- 18 • Defendants repeatedly changed their estimate of the number of horses residing in the
19 WHT prior to the gather, which changes occurred without any current, accurate data.
20 Dkt. 16, pp. 12-13.
- 21 • In an attempt to justify its unlawful gather, on September 11, 2025, the Forest Service
22 finally adopted a new TMP; however, this TMP does not cure the illegality of the gather
23 that occurred from August 27, 2025 through September 30, 2025. Dkt. 24, pp. 4-5.
- 24 • In addressing Plaintiffs' initial motion for a temporary restraining order or preliminary
25 injunction, Defendants stated that the gathered horses would not be prepared for
26 adoption nor given any fertility treatments until such time as a new aerial survey was
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1 conducted. Lovko Decl. at ¶ 3. The new aerial survey was planned for mid-October of
2 2025. Dkt. 20, p. 2.

- 3 • After this Court denied Plaintiffs' initial motion, Defendants' counsel confirmed with
4 Plaintiffs' counsel that it would not prepare any of the horses for adoption nor give them
5 any fertility treatments until the new aerial survey is conducted. Lovko Decl. at ¶ 4.
- 6 • The federal government shut down from October 1, 2025 through November 2, 2025. As
7 a result of this, Defendants claimed they lacked the staff to conduct the planned aerial
8 survey. Dkt. 20, pp. 1-2.
- 9 • When the shutdown ended, counsel for Defendants met and conferred with Defendants
10 to seek a stipulation for an extension of Defendants' deadline to respond to Plaintiffs'
11 amended complaint. Lovko Decl. at ¶ 5. Plaintiffs were amenable to this extension;
12 however, they asked Defendants to include language indicating that the gathered horses
13 were not being prepared for adoption nor given fertility treatments (including but not
14 limited to gelding). *Id.* Defendants responded by stating they would be willing to state
15 they did not "intend" to adopt or administer fertility treatments. *Id.* The parties were
16 unable to agree, and the stipulation was filed without any language regarding adoptions
17 or fertility treatments. Dkt. 27.
- 18 • On November 21, 2025, Defendants ordered a transcript of the hearing for Plaintiffs'
19 motion for a preliminary injunction. Dkt. 26. Plaintiffs believe this transcript was
20 ordered so that Defendants could ascertain exactly what language they had used in
21 guaranteeing the gathered horses would not be removed. Lovko Decl. at ¶ 6.
- 22 • On November 25, 2025, Defendants sent a letter to Plaintiffs stating that a
23 "miscommunication" had occurred, resulting in the Forest Service gelding 74 gathered
24 stallions. Lovko Decl. at Exh. A. Specifically: "On October 29, 2025, 25 stallions were
25 gelded. In addition, 24 stallions were gelded on November 6, and 25 stallions were
26 gelded on November 12." *Id.* This constitutes over 60% of the gathered stallions. Lovko
27 Decl. at ¶ 7.

- Counsel for Defendants has indicated the aerial survey will occur as early as next week. Lovko Decl. at ¶ 10.

III. ARGUMENT

Not only have Plaintiffs' interests been harmed by the Defendants' continued pattern of unlawful conduct, but the Defendants' actions completely ignore their mandate to protect the wild horses of the Devil's Garden Plateau WHT. 16 U.S.C. ¶ 1333. Besides killing the horses, what action could be more opposed to this mandate than gelding the horses without any legal authority? And, even should the horses be returned, the inability to reproduce will necessarily impact the herds viability.

The facts demonstrate that during the government shutdown, when Defendants' decried that an aerial survey could not be conducted in mid-October, Defendants nevertheless were able to find sufficient staff to select and geld 74 stallions. Lovko Decl. at Exh. A; Dkt. 20, pp. 1-2. The facts also show that this unlawful conduct was hidden from Plaintiffs until after Defendants obtained a stipulation regarding filing of Defendants' response to the First Amended Complaint. Lovko Decl. at ¶¶ 5-6 and Exh. A.

Plaintiffs' counsel has litigated many cases involving wild horses on public lands but has never had a government agency so blatantly ignore its obligations under the Wild Horse Act and NEPA. Lovko Decl. at ¶ 8. Plaintiffs' counsel also has never had a government agency lie so frequently. *Id.*

Accordingly, because it is clear that the Forest Service's actions are unlawful, and the agency has shown it is not trustworthy, Plaintiffs ask that all of the gathered horses be returned immediately or the requested relief be ordered. As regards the request for data on each gathered animal, Plaintiffs seek this information to ensure that they and this Court have reliable, current information. As regards the request that Defendants not be allowed to prepare any of the horses for adoption nor apply fertility treatments until such time as the Court rules upon future motions for summary judgment, this remedy is necessary because counsel for Defendants have indicated they may engage in such conduct as soon as the aerial survey data is supplied to the Court – without

1 waiting for any briefing on this data. Lovko Decl. at ¶ 9. Finally, Plaintiffs must be granted the right
2 to have an observer of their choice to attend the aerial survey as Defendants' conduct clearly
3 demonstrates the agency cannot be trusted to accurately report to Plaintiffs or this Court.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiffs ask that their motion be granted. And, in light of the
6 fact that the aerial survey may occur next week, Plaintiffs submit this request on the briefing alone.

7
8 Dated: November 26, 2025,

Respectfully Submitted,

9 By: /s/ Jennifer Rae Lovko

10 Jessica L. Blome

Jennifer Rae Lovko

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BONNIE KOHLERITER, MARY KONCEL,
LAURA LEIGH, individually and WILD
HORSE EDUCATION, a non-profit
corporation,

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UNITED STATES DEPARTMENT OF
AGRICULTURE, BROOKE ROLLINS,
Secretary of the United States Department of
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SERVICE, and TOM SCHULTZ, Chief of the
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Defendants.

Case No. 2:25-cv-02446-DJC-JDP

**DECLARATION OF JENNIFER RAE
LOVKO IN SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, J. RAE LOVKO, declare that if called as a witness in this action I would competently testify of my own personal knowledge, as follows:

1. I am an attorney with Greenfire Law, PC, counsel for Plaintiffs in the above-titled action.

2. From August 27, 2025 through September 30, 2025, the Forest Service conducted the gather of wild horses in the Devil's Garden Plateau Wild Horse Territory (WHT), removing approximately 276 wild horses. This is based upon information provided from the Forest Service's website at <https://www.fs.usda.gov/r05/modoc> (last accessed on November 26, 2025).

1 3. In addressing Plaintiffs' initial motion for a temporary restraining order or
2 preliminary injunction, Defendants stated that the gathered horses would not be prepared for
3 adoption nor given any fertility treatments until such time as a new aerial survey was conducted.

4 4. After the Court denied Plaintiffs' request for a preliminary injunction, Defendants
5 continued to state the gathered horses were not being prepared for adoption nor given fertility
6 treatments.

7 5. From November 13-20, 2025, Kamela Caschette, counsel for Defendants, and I met
8 and conferred regarding Defendants' request for a stipulation extending Defendants' deadline to
9 respond to Plaintiffs' amended complaint. Plaintiffs were amenable to this extension; however, they
10 asked Defendants to include language indicating that the gathered horses were not being prepared
11 for adoption nor given fertility treatments (including but not limited to gelding). Defendants
12 responded by stating they would be willing to state they did not "intend" to adopt or administer
13 fertility treatments. Because of this, the parties were unable to agree, and the stipulation was filed
14 without any language regarding adoptions or fertility treatments.

15 6. On November 21, 2025, Defendants ordered a transcript of the hearing for Plaintiffs'
16 motion for a preliminary injunction. Plaintiffs believe this transcript was ordered so that Defendants
17 could ascertain exactly what language they had used in guaranteeing the gathered horses would not
18 be removed.

19 7. Attached hereto as Exhibit A is a true and correct copy of the letter Defendants e-
20 mailed to Greenfire Law PC on November 25, 2025, informing Plaintiffs that 74 gathered stallions
21 had been gelded. Based upon the gather data contained on the Forest Service's website, this number
22 constitutes over 60% of stallions that were gathered.

23 8. I and other attorneys at Greenfire Law PC have litigated many cases involving wild
24 horses on public lands, we have never had a government agency so blatantly ignore its obligations
25 under the Wild Horse Act and NEPA. We also have never had a government agency lies so
26 frequently.

1 9. Defendants have indicated they may begin preparing the gathered horses for
2 adoption or administer further fertility treatments as soon as the aerial survey data is supplied to the
3 Court – without waiting for any briefing on this data.

4 10. Counsel for Defendants have indicated the aerial survey will occur as early as next
5 week.

6 11. Prior to filing this motion, I e-mailed Kamela Caschette, counsel for Defendants, and
7 informed her of Plaintiffs' requests as well as the intention to file the instant motion.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10
11 Dated this 26^h day of November, 2025,



Jennifer Rae Lovko

EXHIBIT A



U.S. Department of Justice

Environment and Natural Resources Division

*Natural Resources Section
P.O. Box 7611
Washington, DC 20044*

*Telephone (202) 305-0440
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November 25, 2025

Re: Kohleriter v. Department of Agriculture, 2:25-cv-02446 (E.D. Cal.)

Dear Ms. Blome and Ms. Lovko,

We write to you regarding a miscommunication which resulted in the gelding of some horses gathered during the Fall 2025 Devil's Garden Gather at the end of October. In September 2025, we informed you that the Forest Service did not intend to geld the stallions gathered from the Devil's Garden Territory before the end of October 2025. Indeed, it has been, and remains, our intention to wait until after the aerial survey is completed, which is now scheduled for early December, to perform fertility treatments. On October 23, 2025, employees at the Forest Service informed their colleagues, including staff working at the corrals for the horses gathered in the Fall 2025 Devil's Garden Gather, that the Court had denied Plaintiffs' motion for a preliminary injunction. Staff misinterpreted this message to mean that they should go forward with gelding. On October 29, 2025, 25 stallions were gelded. In addition, 24 stallions were gelded on November 6, and 25 stallions were gelded on November 12. On November 19, more senior Forest Service employees became aware that geldings had been performed, immediately cancelled all future scheduled geldings, and informed DOJ that geldings had occurred.

Counsel regrets and apologizes for the misunderstanding which resulted in geldings being performed contrary to Federal Defendants' intentions. No other fertility treatments, including injections, have been performed on horses gathered during the Fall 2025 Devil's Garden Gather. In addition, the Forest Service does not plan to perform any further fertility treatments on the gathered horses until after receiving the results of the upcoming survey.

Sincerely,

Kamela A. Caschette
Wildlife & Marine Resources Section
Kyle Lyons-Burke
Natural Resources Section
Environment & Natural Resources Division
United States Department of Justice