

1 JULIE CAVANAUGH-BILL, Nevada Bar No. 11533
Cavanaugh-Bill Law Offices
2 401 Railroad St #307
Elko, NV
3 Telephone: 775-753-4357
julie@cblawoffices.org
4

5 JENNIFER BEST, *pro hac vice pending* (will comply with LR IA 11-2 within 5 days)
ANDREIA MARCUCCIO, *pro hac vice to be filed* (will comply with LR IA 11-2 within 5 days)
6 Friends of Animals
Western Region Office
7 7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
8 TEL: (720) 949-7791
FAX: (888) 236-3303
9 jennifer@friendsofanimals.org
Andreia@friendsofanimals.org
10

11 *Attorneys for Plaintiff*

12 **IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

13 FRIENDS OF ANIMALS, a non-profit corporation, Case No. _____
14

15 *Plaintiff,*

16 v.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

17 DEB HAALAND, in her official capacity as
Secretary of the Interior; and

18 THE UNITED STATES BUREAU OF LAND
MANAGEMENT, an agency of the United States
19

20 *Defendants.*

21
22
23

INTRODUCTION

1
2 1. Congress vowed to protect wild horses and burros as they are living symbols
3 of the historic pioneer spirit of the West, contribute to the diversity of life forms, and enrich
4 the lives of the American people. Wild horses and burros, who are highly social and roam
5 large distances in the wild, do not belong in captivity in dirty and cramped factory-farm like
6 settings. These holding facilities not only harm wild horses and burros, but they also cause
7 damage to the environment and cost taxpayers millions of dollars every year. Decisions
8 involving these majestic animals and important resources must not be taken lightly and
9 must be based on clear evidence.

10 2. However, the United States Bureau of Land Management (BLM) failed to fully
11 consider the impacts of its decision when it awarded a contract to JS Livestock that
12 provides federal funding for the largest capacity off-range wild horse and burro corral
13 (ORC) to-date. The ORC is projected to be located in Winnemucca, Nevada and to provide
14 for the containment, feeding, and care for up to 4,000 wild horses and burros removed
15 from public lands (hereinafter, "Winnemucca ORC"). BLM will be involved with the
16 continued operation of the facility. The ORC will be located on 100 acres of private land
17 owned by JS Livestock. BLM rushed through the approval process without considering the
18 impacts of the unprecedented facility on wild horses and burros or the local community.
19 Moreover, the specific location presents unique hazards due to the clay soil that is prone to
20 dust and flooding and the intense heat in summer months. BLM's environmental
21 assessment (EA) for the Winnemucca ORC and subsequent finding of no significant impact
22 (FONSI) violates the National Environmental Policy Act (NEPA) because BLM improperly
23 relies on state permits and non-NEPA documents to satisfy review under NEPA. Further,
24 BLM summarily dismisses the harms that the Winnemucca ORC will inflict on wild horses
25 and burros and the environment. BLM's decision to fund the Winnemucca ORC also runs

1 counter to the purpose of, and violates multiple provisions of, the Wild Free-Roaming
2 Horses and Burros Act (WHBA).

3 3. Plaintiff, Friends of Animals, brings this action against Defendants, Deb
4 Haaland and BLM to force them to carry out their duties under NEPA, 42 U.S.C. §§ 4321, *et*
5 *seq.*, and the WHBA, 16 U.S.C. §§ 1331 *et seq.* By awarding JS Livestock this contact without
6 further analysis, Defendants have exceed their statutory authority, failed to comply with
7 their mandatory duties to protect wild horses under the WHBA. They also violated NEPA by
8 failing to conduct an Environmental Impact Statement, failing to disclose or analyze
9 impacts of the Winnemucca ORC on the environment, and failing to consider reasonable
10 alternatives. Thus, Defendants' decision violates the WHBA, NEPA, and is arbitrary,
11 capricious, and contrary to law within the meaning of the Administrative Procedure Act
12 (APA). 5 U.S.C. §§ 701-06.

13 4. To remedy Defendants' violation of the law, Plaintiff seeks declaratory and
14 injunctive relief vacating the Record of Decision and EA and requiring Defendants to
15 comply with the WHBA and NEPA.

16 JURISDICTION AND VENUE

17 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
18 (federal question). This action presents a case and controversy arising under the WHBA
19 and NEPA, which are federal statutes. This Court also has jurisdiction pursuant to 28 U.S.C.
20 § 1346, as the United States is a defendant.

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

24 7. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(e) and 16 U.S.C.
25 § 1540(g)(3)(A). The events giving rise to the cause of action occurred in this judicial
26 district and Defendant, BLM, maintains an office in this judicial district.

PARTIES

1
2 8. Friends of Animals is a nonprofit, international animal advocacy organization
3 incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000
4 members worldwide. Friends of Animals and its members seek to free animals from cruelty
5 and exploitation around the world and to promote a respectful view of nonhuman, free-
6 living, and domestic animals. Friends of Animals informs its members about animal
7 advocacy issues and its progress in addressing them through its magazine, *Action Line*, its
8 website, social media, and public events. Friends of Animals regularly advocates for the
9 right of wild horses to live freely on public lands, and for more transparency and
10 accountability in BLM’s “management” of wild horses and burros. Friends of Animals also
11 regularly advocates for environmental and habitat protection.

12 9. Friends of Animals and its members have a significant interest in wild horses
13 and burros that could be sent to the Winnemucca ORC.

14 10. Friends of Animals members live near and around the Winnemucca ORC.
15 Some members photograph, observe, and study wild horses and burros in Nevada and
16 throughout the western United States. They enjoy viewing and studying wild horses in the
17 wild and fear that the Winnemucca ORC will inhibit their ability to see natural, free-
18 roaming wild horses and burros on public lands. In addition, these members visit holding
19 facilities to check on the wild horses and burros and document the conditions of these
20 facilities. These members have reviewed the decision and EA for the Winnemucca ORC and
21 are very concerned that the facility will cause unnecessary pain, suffering, and death to
22 wild horses and burros they care deeply about. They plan to make appointments to see
23 wild horses and burros at the Winnemucca ORC. They will be harmed by seeing the wild
24 horses and burros that they care deeply about in the Winnemucca ORC. They will also be
25 harmed and distressed by knowing that the horses and burros they care about are being
26 confined in the Winnemucca ORC. In addition, Friends of Animals members will be harmed

1 by the inability to observe and study these wild horses and burros in the wild and by their
2 inability to view wild horses and burros without prior approval from the BLM facility
3 manager or Contracting Officer Representative (COR).

4 11. Friends of Animals and others expressed concerns about the location of the
5 Winnemucca ORC due to the condition of the soil and the weather in the area, which is
6 prone to drought, flooding, high wind, and extreme heat. These conditions will lead to
7 increased pollution from the facility and dangerous conditions for the wild horses and
8 burros.

9 12. One Friends of Animals members is a real estate agent and has two homes in
10 Humboldt County; one in Paradise Valley and one in Winnemucca. He is a wildlife advocate
11 and conservationists who enjoys living and working in rural Nevada. He is concerned about
12 the pollution, noise, and odor that the Winnemucca ORC will cause if it is allowed to move
13 forward. The construction and operation of the facility will injure the quality of life that he
14 enjoys. In addition, the construction and operation of the facility will decrease the value of
15 his homes and other homes in the area. Thus, the construction and operation of the
16 Winnemucca ORC will harm him both personally and professionally.

17 13. Defendant, Deb Haaland, in her official capacity as the Secretary of the
18 Interior, has responsibility for the protection and management of wild horses and burros
19 under the jurisdiction of the Department of the Interior and is responsible for complying
20 with all federal laws.

21 14. Defendant, the United States Bureau of Land Management (BLM), is an
22 agency located within the Department of the Interior. BLM is responsible for ensuring that
23 federally administered actions comply with the requirements of all federal laws.

LEGAL FRAMEWORK

A. The National Environmental Policy Act

15. NEPA is a procedural statute intended to “ensure Federal agencies consider the environmental impacts of their actions in the decision-making process.” 40 C.F.R. § 1500.1(a).

16. NEPA was enacted with the ambitious objectives of “encouraging productive and enjoyable harmony between man and his environment . . . promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulating the health and welfare of man; and enriching the understanding of the ecological systems and natural resources important to the Nation” 42 U.S.C. § 4321.

17. Recognizing humans’ “profound impact on the interrelations of all components of the natural environment,” Congress declared that it is the continuing policy of the Federal Government to use all practicable means and measures to, among other things, “create and maintain conditions under which man and nature can exist in productive harmony.” 42 U.S.C. § 4331(a).

18. To carry out NEPA’s policy, the Federal Government must use “all practicable means” to assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. 42 U.S.C. § 4331(b).

19. Congress explicitly recognized that “each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” 42 U.S.C. § 4331(c).

20. The Council on Environmental Quality (“CEQ”) was created to administer NEPA and has promulgated NEPA regulations, which are binding on all federal agencies. *See* 42 U.S.C. §§ 4342, 4344; 40 C.F.R. §§ 1500-1508.

1 21. In order to achieve the goals outlined in NEPA, a government agency must
2 prepare a detailed environmental impact statement (EIS) before the agency can undertake
3 a major federal action that significantly affects the quality of the human environment. 42
4 U.S.C. § 4332(C); 40 C.F.R. § 1508.1(j).

5 22. The Supreme Court has found that the preparation of an EIS serves NEPA's
6 "action-forcing" purposes in two primary ways: "It ensures that the agency, in reaching its
7 decision, will have available, and will carefully consider, detailed information concerning
8 significant environmental impacts; it also guarantees that the relevant information will be
9 made available to the larger audience that may also play a role in both the decisionmaking
10 process and the implementation of that decision." *Robertson v. Methow Valley Citizens*
11 *Council*, 490 U.S. 332, 349 (1989).

12 23. A major Federal action includes "[a]pproval of specific projects, such as
13 construction or management activities located in a defined geographic area. Projects
14 include actions approved by permit or other regulatory decision as well as Federal and
15 federally assisted activities." 40 C.F.R. § 1508.1(32)(iv).

16 24. The NEPA regulations define human environment as "comprehensively the
17 natural and physical environment and the relationship of present and future generations of
18 Americans with that environment." 40 C.F.R. § 1508.1(m).

19 25. If the proposed action is not likely to have significant effects or if the agency
20 is uncertain whether a full EIS is necessary, the agency must prepare an environmental
21 assessment (EA) to determine whether the effects of the proposed action are significant
22 enough to trigger an EIS. 40 C.F.R. § 1501.5(a); 40 C.F.R. § 1501.3(a).

23 26. After conducting an EA, if an agency determines that the proposed action will
24 not have a significant effect on the human environment and that an EIS is not warranted,
25 then the agency must prepare a finding of no significant impact (FONSI) explaining the

1 reasons why an action will not have a significant effect on the human environment. 40
2 C.F.R. §§ 1508.1(h)-(l).

3 27. The NEPA regulations define effects or impacts as “changes to the human
4 environment from the proposed action or alternatives that are reasonably foreseeable and
5 have a reasonably close causal relationship to the proposed action or alternatives,
6 including those effects that occur at the same time and place as the proposed action or
7 alternatives and may include effects that are later in time or farther removed in distance
8 from the proposed action or alternatives.” 40 C.F.R. § 1508.1(g).

9 28. The scope of NEPA is quite broad, mandating disclosure and consideration of
10 ecological, aesthetic, historic, cultural, economic, social, and health effects including both
11 beneficial and detrimental effects. 40 C.F.R. § 1508.1(g)(1).

12 29. Agencies should also consider the effects of connected actions that are
13 closely related to the proposed action and which should be discussed in the same
14 document as the proposed action. 40 C.F.R. § 1501.3(b); 40 C.F.R. § 1501.9(e)(1). Actions
15 are connected if they: “(i) Automatically trigger other actions that may require
16 environmental impact statements; (ii) Cannot or will not proceed unless other actions are
17 taken previously or simultaneously; or (iii) Are interdependent parts of a larger action and
18 depend on the larger action for their justification.” 40 C.F.R. § 1501.9(e)(1).

19 30. To determine whether the effects of a proposed action are significant,
20 agencies must “analyze the potentially affected environment and the degree of the effects of
21 the action.” 40 C.F.R. § 1501.3(b)(1).

22 31. To analyze the potentially affected environment, the agency must establish
23 baseline conditions before the project begins, otherwise “there is simply no way to
24 determine what effect the project will have on the environment and, consequently, no way
25 to comply with NEPA.” *Or. Nat. Desert Ass’n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019)
26 (citations and internal quotations omitted).

1 32. The potentially affected environment should include “the affected area
2 (national, regional, or local) and its resources.” 40 C.F.R. § 1501.3.

3 33. When determining the degree of the effects, agencies should consider short-
4 and long-term effects, beneficial and adverse effects, effects on public health and safety, and
5 effects that violate the laws protecting the environment. 40 C.F.R. § 1501.3(b)(2).

6 34. An EA must “provide sufficient evidence and analysis” for determining
7 whether to prepare an EIS or a FONSI. 40 C.F.R. § 1501.5(c)(1). An EA also must discuss the
8 purpose and need for the proposed action, alternatives to the proposed action, the
9 environmental impacts of the proposed action and alternatives, and a list of agencies and
10 persons consulted. 40 C.F.R. § 1501.5(c)(2).

11 35. An agency should only prepares a FONSI if, based on the EA, it determines
12 the proposed action will not have significant effects and decides not to prepare an EIS. 40
13 C.F.R. § 1501.6(a).

14 36. “Because the very important decision whether to prepare an EIS is based
15 solely on the EA, the EA is fundamental to the decision-making process.” *Metcalf v. Daley*,
16 214 F.3d 1135, 1143 (9th Cir. 2000).

17 37. When conducting an EA, an agency must take a “hard look” at the
18 environmental effects, including “considering all foreseeable direct and indirect impacts.”
19 *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

20 38. An agency fails to take a hard look at the environmental impacts where
21 significant questions “were ignored or, at best, shunted aside with mere conclusory
22 statements.” *Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1179 (9th
23 Cir. 1982). An agency cannot rely on mere “conclusory assertions that an activity will have
24 only an insignificant impact on the environment.” *Ocean Advocates v. U.S. Army Corps of*
25 *Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005).

1 39. An EA is only sufficient if it provides enough “evidence and analysis for
2 determining whether to prepare an [EIS] or a [FONSI].” *Anderson v. Evans*, 371 F.3d 475,
3 488 (9th Cir. 2004).

4 40. An agency must also consider reasonable alternatives to the proposed action
5 and “for alternatives that the agency eliminated from detailed study, briefly discuss the
6 reason for their elimination.” 40 C.F.R. § 1502.14(a). The agency must also “[i]nclude
7 appropriate mitigation measures not already included in the proposed action or
8 alternatives.” 40 C.F.R. § 1502.14(e).

9 41. An agency cannot avoid consideration of important environmental impacts of
10 a proposed action. *See* 42 U.S.C. § 4332(2)(C) (requiring an evaluation of “any adverse
11 environmental effects which cannot be avoided should the proposal be implemented,”
12 which must examine “the environmental impact of the proposed action” “to the fullest
13 extent possible”); 42 U.S.C. § 4332(2)(F) (requiring agencies to consider the “worldwide
14 and long-range character of environmental problems”); *Kleppe v. Sierra Club*, 427 U.S. 390,
15 409-10 (1976) (noting Congress’ mandate that agencies use “all practicable means” to
16 “assure consideration of the environmental impact of their actions in decisionmaking,”
17 requires consideration of cumulative effects) (citations omitted); *City of Davis v. Coleman*,
18 521 F.2d 661, 676-77 (9th Cir. 1975) (outlining the statutory obligation to consider the
19 indirect effects of agency actions).

20 42. A federal agency cannot rely on a non-NEPA document, especially ones
21 prepared by a state government, to satisfy its obligations under NEPA. *S. Fork Band Council*
22 *of W. Shoshone v. U.S. Dep’t of Interior*, 588 F.3d 718, 726 (9th Cir. 2009). Further, “[t]he
23 mere existence of an entirely separate draft EIS, discussing a similar issue with regard to a
24 different project, but without any indication that it discussed the specific environmental
25 impacts at issue, cannot satisfy [NEPA].” *Id.*

1 43. If an agency's FONSI is based on mitigation, the mitigated FONSI must "state
2 any enforceable mitigation requirements or commitments that will be undertaken to avoid
3 significant impacts." 40 C.F.R. § 1501.6(c).

4 44. Mitigation is defined as "measures that avoid, minimize, or compensate for
5 effects caused by a proposed action or alternatives as described in an environmental
6 document or record of decision and that have a nexus to those effects." 40 C.F.R. §
7 1508.1(s).

8 45. A FONSI relying on mitigation must contain strong evidence that mitigation
9 will be effective. Simply listing potential mitigation measures, without engaging in actual
10 analysis of the effectiveness of those measures, is "insufficient to demonstrate that the
11 mitigation measures would render the environmental impact so minor as to not warrant an
12 EIS." *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001),
13 *abrogated in part on other grounds by Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139,
14 157 (2010) (finding that "the proposed mitigation measures must be developed to a
15 reasonable degree" and rejecting agency attempt to "act first and study [mitigation
16 measures] later"). Agencies are required to discuss mitigation beyond "a perfunctory
17 description or mere listing of mitigation measures, without supporting analytical data." *Id.*
18 at 735.

19 **B. The Wild Free-Roaming Horses and Burros Act**

20 46. In 1971, Congress passed the Wild Free-Roaming Horses and Burros Act
21 (WHBA), 16 U.S.C. §§ 1331 *et seq.*, finding that "wild free-roaming horses and burros are
22 living symbols of the historic and pioneer spirit of the West; that they contribute to the
23 diversity of life forms within the Nation and enrich the lives of the American people; and
24 that these horses and burros are fast disappearing from the American scene." 16 U.S.C. §
25 1331. Upon finding this, Congress stated its policy was that "wild free-roaming horses and
26 burros shall be protected from capture, branding, harassment, or death, and to accomplish

1 this they are to be considered in the area where presently found as an integral part of the
2 natural system of public lands.” *Id.*

3 47. The WHBA requires BLM to “protect and manage wild free-roaming horses
4 and burros as components of the public lands . . . in a manner that is designed to achieve
5 and maintain a thriving, natural ecological balance on the public lands.” 16 U.S.C. § 1333(a).
6 Additionally, the WHBA requires management of wild horses and burros to be at “the
7 minimal feasible level.” *Id.*

8 48. BLM must manage wild horses and burros “as self-sustaining populations of
9 healthy animals in balance with other uses and the productive capacity of their habitat” and
10 “with the goal of maintaining free-roaming behavior.” 43 C.F.R. § 4700.0-6(a), (c).

11 49. Congress intended BLM to manage wild horses at a minimum level to reduce
12 costs and “deter the possibility of ‘zoo like’ developments” because it would “destroy the
13 very concept that [the WHBA] seeks to preserve.” 92nd Congress, Senate Report 92-242,
14 June 25, 1971 (2151-52). Further, Congress intended the protection of wild horses and
15 burros from unlawful death or harassment to be “paramount in management activities”
16 and Congress expressly intended “to remove the possibility of monetary gain from
17 exploitation of these animals.” *Id.*

18 50. The objectives of the WHBA regulations mandate that BLM manage wild
19 horses and burros “as an integral part of the natural system of the public lands under the
20 principle of multiple use;” to protect wild horses and burros “from unauthorized capture,
21 branding, harassment or death;” and to ensure “humane care and treatment of wild horses
22 and burros.” 43 C.F.R. 4700.0-2.

23 51. The WHBA regulations prohibit “[m]aliciously or negligently injuring or
24 harassing a wild horse or burro,” “[c]ommercially exploiting a wild horse or burro,” and
25 “[t]reating a wild horse or burro inhumanely.” 43 C.F.R. 4770.1(a), (e), (j).

1 52. "Humane treatment means handling compatible with animal husbandry
2 practices accepted in the veterinary community, without causing unnecessary stress or
3 suffering to a wild horse or burro." 43 C.F.R. 4700.0-5(e). "Inhumane treatment means any
4 intentional or negligent action or failure to act that causes stress, injury, or undue suffering
5 to a wild horse or burro and is not compatible with animal husbandry practices accepted in
6 the veterinary community." 43 C.F.R. 4700.0-5(f).

7 53. The WHBA does not authorize BLM to "relocate wild free-roaming horses or
8 burros to areas of the public lands where they do not presently exist." 16 U.S.C. § 1339.

9 54. Private parties may only maintain wild horses on private land or land leased
10 from the government "if the animals were not willfully removed or enticed from the public
11 lands" and if the private party maintains the horses "in a manner that protects them from
12 harassment." 16 U.S.C. § 1334.

13 55. BLM should manage wild horses and burros in accordance with approved
14 land use plans. 43 C.F.R. § 4710.1.

15 56. Nothing in the applicable land use plans authorizes the proposed
16 Winnemucca ORC.

17 **FACTUAL BACKGROUND**

18 **A. Roundups of wild horses and burros**

19 57. BLM manages 245 million acres of public lands in the United States. Only
20 10% (26.9 million acres) of BLM-managed lands are managed as wild horse and burro
21 habitat.

22 58. Wild horses live on public lands in ten western states; Arizona, California,
23 Colorado, Idaho, North Dakota, New Mexico, Nevada, Oregon, Utah, and Wyoming.

24 59. Wild horses are diverse in their coloring, ranging from solid brown and black
25 to colorful pintos and palominos.

1 60. Most wild horses stand 13 to 15 hands high (52 to 60 inches) and weigh from
2 700 to 1,000 pounds.

3 61. Wild horses are highly mobile and can run or gallop 25 to 30 miles per hour
4 and travel 10 to 20 miles a day.

5 62. Wild horses and burros benefit the ecosystem in many ways. They consume
6 dry flammable vegetation, reducing the risk of catastrophic wildfire. They can dig wells on
7 arid rangelands, increasing access to water for other species and biodiversity, and they
8 fertilize the soil with their droppings.

9 63. Wild horses living in the wild live 20 to 30 years and sometimes even longer.

10 64. Wild horses live year-round in small groups, or bands. The bands typically
11 consist of closely allied mares and their young offspring.

12 65. Individual bonds within bands are very important. Sometimes the bonds are
13 based on family ties, but often they are based on individual preference.

14 66. BLM removes wild horses and burros from public lands when it determines
15 that there are excess wild horses and burros and removal is necessary. BLM typically uses
16 helicopters to roundup wild horses and burros, which is extremely stressful for the wild
17 horses and burros and has resulted in emotional distress, physical injury, and death.

18 67. After a roundup, BLM transfers the wild horses and burros to off-range
19 corrals (ORCs), which are also called short-term holding facilities. Wild horses and burros
20 stay at the ORCs until they are adopted, sold, die, or there is availability at off-range
21 pastures (ORPs), which are also called long-term holding facilities. ORCs and ORPs are
22 collectively called "holding facilities."

23 68. The number of wild horses and burros removed from the range is far greater
24 than the number adopted or sold, which has resulted in a significant increase in the
25 number of animals in short- and long-term holding facilities and commensurate increases
26 in spending for their care.

1 69. Wild horses and burros are often held in ORCs for more than a year.

2 70. Some wild horses and burros are held at ORCs for two years or longer.

3 71. As of July 2022, there are over 58,000 wild horses and burros housed in
4 ORCs and ORPs, which is costing taxpayers over \$50 million annually.

5 72. The impacts of roundups are long lasting. For example, nine months after a
6 roundup, wild horses held at an ORC were observed as still unsettled, flighty as a group,
7 and easily disturbed in their pens.

8 73. BLM will only round up wild horses and burros if there is availability in
9 ORCs.

10 **B. The environmental assessment for the Winnemucca ORC**

11 74. On October 30, 2020, BLM solicited the public seeking contractors to provide
12 ORC space for wild horses and burros it rounded up on public lands in the West. BLM
13 stated it would award contracts to facilities in Idaho, Nevada, and Utah that can
14 accommodate 500-10,000 wild horses and burros. The solicitation number was identified
15 as 140L0120R0008 and was open from October 30, 2020, to December 4, 2020.

16 75. JS Livestock Inc. submitted a proposal for an ORC in Winnemucca, Nevada in
17 response the solicitation on November 30, 2020.

18 76. JS Livestock did not own the Winnemucca ORC property at the time it
19 submitted its proposal. Instead, JS Livestock's proposal had a purchase agreement on the
20 offered property signed November 24, 2020. The purchase agreement was contingent on
21 receiving a BLM ORC contract, with a final closing date of November 1, 2021.

22 77. JS Livestock does not have any experience in the containment, feeding, and
23 care for wild horses and burros.

24 78. or background in holding and caring for wild horses and burros.

25 79. BLM sent JS Livestock an apparent awardee letter on July 7, 2021.

1 80. BLM Headquarters was supposed to lead the EA for the Winnemucca ORC,
2 but it delegated the job to the BLM Nevada Field Office.

3 81. BLM Nevada began working on the EA in August 2021.

4 82. BLM Headquarters urged BLM Nevada to produce a signed decision record
5 by the end of the fiscal year, September 30, or shortly thereafter.

6 83. The Nevada Field Office responsible for drafting the EA did not have enough
7 time or resources to properly consider the Winnemucca ORC's impacts on the environment
8 and local community.

9 84. BLM determined, before completing the EA, that it would issue a decision
10 record and FONSI.

11 85. BLM did not do any scoping for the EA.

12 86. On September 2, 2021, BLM released a Draft EA and solicited public
13 comments on BLM's proposal to award a contract to JS Livestock that provides federal
14 funding for the containment, feeding, and care for up to 4,000 wild horses and burros
15 removed from public land. The ORC would be located on 100 acres of private land owned
16 by JS Livestock in Winnemucca, Nevada, outside of Paradise Valley, Nevada, which is
17 located in Humboldt County, Nevada.

18 87. The comment period was originally open for 15 days, from September 2 to
19 September 17, 2021. After Humboldt County asked for an extension, BLM extended the
20 comment period another 15 days, until October 1, 2021.

21 88. BLM received over 6,000 individual letters and emails during the comment
22 period. Concerns raised during the comment period included among other things, air
23 quality (odors), air quality (dust), animal waste management, disposal of dead animals,
24 groundwater contamination, disease transmission, public access to the facility, animal
25 health and safety, climate change, social and economic values, previous litigation,

1 environmental justice, flooding, grazing, NEPA process, water rights, and public health and
2 safety.

3 89. On November 3, 2021, BLM released the Final EA, FONSI, and Decision
4 Record concluding that awarding JS Livestock a contract for the Winnemucca ORC would
5 not significantly impact the human environment.

6 90. BLM decided not to conduct an EIS.

7 91. BLM incorporated solicitation #140L0120R0008 into the EA by reference.

8 92. The Winnemucca ORC is authorized to hold the largest number of wild
9 horses and burros out of all existing ORCs.

10 93. The EA states that the purpose of the Winnemucca ORC is to construct,
11 maintain, and operate an ORC facility through a BLM contract with JS Livestock for a
12 maximum of 4,000 excess wild horses and burros on 100 acres of private land near
13 Winnemucca, Nevada. The EA also states that the need for the Winnemucca ORC is to
14 provide holding space necessary to safely and humanely care for excess wild horses and
15 burros removed from public lands consistent with authority provided in Section 3 of the
16 WHBA.

17 94. Section 3 of the WHBA does not authorize the holding of up to 4,000 wild
18 horses and burros at a private facility.

19 95. BLM determines how many wild horses and burros it will remove, as well as
20 when it will remove them, based on the capacities of ORCs.

21 96. The address of the Winnemucca ORC is 9145 101 Ranch Rd, Winnemucca, NV
22 89445, which is located between Paradise Valley and Winnemucca: six miles from Highway
23 95 and 28 miles from Interstate 80, in Township 39 North, Range 39 East, Section 03
24 (Mount Diablo Base and Meridian).

1 97. The ORC project area is located on existing alfalfa fields. The alfalfa will be
2 removed from about 100 acres of the site and the area will then be graded to facilitate
3 construction of the corrals and working facility.

4 98. BLM guarantees the Winnemucca ORC will hold a minimum of 500 wild
5 horses year-round.

6 99. The EA does not disclose any financial information or agreements between
7 BLM and JS Livestock.

8 100. BLM typically pays ORC operators \$4.00 to \$5.00 per day, per horse or burro.

9 101. The absolute minimum cost to fund the ORC for one year is \$866,875.00.

10 102. The cost to fund the ORC for one year could be over \$7 million.

11 103. BLM's contract with JS Livestock is valid for one year with a renewal option
12 under BLM contract for four or nine one-year extensions.

13 104. Per the solicitation, a contracting officer representative (COR) and/or Project
14 Inspector (PI) will be appointed by the BLM contracting officer upon award of the contract.
15 The COR and the PI will be BLM employees and would be hired to staff these positions. The
16 COR will oversee implementation of the contract on behalf of BLM while the PI will be the
17 onsite assistant facility manager. The COR/PI will be responsible for giving JS Livestock any
18 special instructions or guidance necessary to complete delivery as required by the contract.
19 The COR or PI will not have the authority to modify or in any way amend the terms of the
20 contract.

21 105. The EA did not disclose the names of the COR or PI.

22 106. ORCs are intended to be short-term holding facilities where the animals
23 would remain until they are either placed into private maintenance through adoptions or
24 sales, transported to off-range pastures (ORP), or die. However, the Winnemucca ORC Final
25 EA does not include a specific or estimated time frame for how long individual wild horses

1 and burros are expected to be held at the ORC. The time spent in ORCs changes on a rolling
2 basis, depending on private placements as well as available space in ORPs.

3 107. There are over 18,000 wild horses and burros living at ORCs as of July 2022.

4 108. The Record of Decision and Resource Management Plan for the Winnemucca
5 District Planning Area (USDI 2015) do not authorize or address ORCs on private land.

6 109. BLM only considered two alternatives in the Final EA: (1) The Proposed
7 Action, and (2) No Action.

8 110. Many members of the public want to visit the wild horses and burros held at
9 the Winnemucca ORC to observe and document the wild horses and burros and conditions
10 of the Winnemucca ORC.

11 111. The Winnemucca ORC will be closed to the public, but the public could
12 contact the BLM facility manager or COR for potential site visits.

13 112. Without a contract with BLM, JS Livestock could not construct an ORC to
14 confine and manage up to 4,000 wild horses or burros on its private property.

15 **C. BLM did not consider the Winnemucca ORC's impact on wild horses and burros.**

16 113. The construction of the Winnemucca ORC will lead to additional roundups
17 and removals of wild horses and burros from public lands.

18 114. The proposed fiscal year 2022 roundup schedule relied on the addition of
19 the Winnemucca ORC holding space.

20 115. Commenters raised concerns that the creation of the Winnemucca ORC will
21 cause more roundups and negatively impact wild horses and burros in the wild.

22 116. The Final EA did not analyze in detail the Winnemucca ORC's negative
23 impacts on wild horses and burros. The Final EA also did not consider the positive impacts
24 of wild horses and burros on public lands or the impacts of removing them.

25 117. The Final EA failed to take a hard look at the no-action alternative, including
26 the benefits of leaving more wild horses and burros on public lands.

1 118. Wild horses and burros who are healthy on the range often deteriorate at
2 ORCs.

3 119. Commentors raised many concerns about the ORC's negative impact on wild
4 horses and burros including mental and physical suffering, disease, rotten hooves, weak
5 bones, lack of sufficient feed, and death.

6 120. The Final EA did not analyze in detail the Winnemucca ORC's negative impact
7 on the wild horses and burros that will be held at the Winneumcca ORC.

8 121. BLM concluded impacts to individual horses and burros were outside the
9 scope of the EA because they are analyzed in site-specific EAs.

10 122. BLM did not reference any particular site-specific EA that addresses the
11 impacts to individual horses and burros.

12 123. Separate EAs regarding the roundup and removal of wild horses and burros
13 do not address the concerns which were raised in comments about the individual horses
14 and burros to be held at the Winnemucca ORC.

15 124. BLM did not attempt to respond to concerns that the design of the ORC
16 discussed in the EA will result in the inhumane treatment of wild horses and burros.

17 125. BLM claimed that several other ORCs with similar settings, climates, and
18 requirements "have shown to provide humane care for the animals" and that any wild
19 horse or burro removed from public land "will be cared for in a similar facility with the
20 same or similar requirements as described in the site specific EAs, therefore there is not a
21 need to analyze the impacts to individual animals within this EA."

22 126. BLM did not reference any specific facility with the same or similar setting,
23 climate, conditions, or requirements as the Winnemucca ORC.

24 127. BLM did not provide any evidence or reports that demonstrated that the
25 alleged similar facilities have provided humane care for wild horses and burros.

1 128. No statute or regulation authorizes or governs the construction and
2 operation of ORCs.

3 129. BLM failed to take a hard look at the impact of ORCs on wild horses and
4 burros' health and mortality rates. BLM claimed these impacts were outside the scope of
5 the EA because impacts to individual animals are analyzed in site-specific EAs and "[a]s per
6 a 2008 US Government Accountability Office (GAO) report, average mortality is 5% in
7 ORCs."

8 130. BLM did not reference any site-specific EAs that assess mortality rate at
9 ORCs.

10 131. BLM did not reference any recent mortality rates at ORCs.

11 132. BLM did not disclose or consider mortality rates at ORCs compared to in the
12 wild.

13 133. BLM did not respond to comments regarding lack of food at ORCs for wild
14 horses and burros during droughts.

15 134. The wild horses and burros at the Winnemucca ORC will be held in 40 pens
16 that will cover only about 80 acres of the property. The pens will measure 250 feet long by
17 300 feet wide, with a capacity of 100 head per pen. At a 4,000-horse capacity, this only
18 allows for 750 sq ft per horse. This is about one quarter the size of a tennis court (2,808 sq
19 ft).

20 135. The wild horses and burros will remain in their pens during their time at the
21 Winnemucca ORC and will not be exercised.

22 136. Confining wild horses and burros to small pens where they are kept in close
23 quarters deprives animals from adequate space necessary for their well-being.

24 137. When responding to concerns regarding overcrowding, stress from
25 overcrowding, and lack of proper food and exercise due to overcrowding, BLM stated that
26 750 sq ft per horse or burro was sufficient because it is 300 sq ft more than BLM requires

1 potential adopters to provide and thus, 750 sq ft will provide for the health and safety of
2 the wild horses and burros.

3 138. BLM did not explain how this adoption requirement is relevant to whether
4 the Winnemucca ORC facility is humane and provides for the health and safety of wild
5 horses and burros.

6 139. An individual cannot adopt more than four horses or burros per year unless
7 the Secretary determines in writing that such individual is capable of humanely caring for
8 more than four animals.

9 140. BLM directs adopters to exercise their wild horses and burros regularly for
10 good overall health and condition.

11 141. There are no procedures for exercising the wild horses and burros at the
12 Winnemucca ORC.

13 142. BLM provided no evidence that housing 100 wild horses or burros per pen
14 with 750 sq ft per wild horse or burro is humane, would not result in overcrowding, and
15 would provide for health and safety of the wild horses.

16 143. JS Livestock will only clean the pens twice per year and up to four times per
17 year unless the COR or PI determines that more frequent cleaning is warranted.

18 144. Many commenters, including veterinarians, raised concerns about the
19 cleanliness of the pens.

20 145. BLM defines "cleaning pens" merely as removing excess manure.

21 146. BLM does not define what constitutes excess manure.

22 147. BLM did not explain why it defined cleaning pens as merely removing excess
23 manure, how this is humane, and how it constitutes a thorough cleaning.

24 148. The EA does not provide any evidence for why or how cleaning the pens two
25 to four times a year is adequate or humane.

1 149. BLM failed to take a hard look at how proposed cleaning policies would
2 impact wild horses and burros.

3 150. Horse manure is about 60% solids and 40% urine. A 1,000-pound horse
4 produces about 31 pounds of feces and 2.4 gallons of urine daily, which totals around 51
5 pounds of total raw waste per day.

6 151. In six months, 100 horses will produce about 465 tons of waste in a 750 sq ft
7 pen and about 930 tons annually. 4,000 horses will produce about 18,615 tons of waste
8 every 6 months and about 37,230 tons of waste annually.

9 152. BLM did not know or analyze JS Livestock's plan for the storage and disposal
10 of waste at the time of the EA or when it issued its decision.

11 153. BLM did not disclose or analyze JS Livestock's plan for the storage and
12 disposal of the waste.

13 154. BLM claimed that "[t]horough cleaning two times per year is adequate within
14 most ORCs, however corrals will be cleaned up to four times if conditions warrant
15 additional cleanings. Cleaning corrals too often can result in the removal of soil from within
16 the corrals."

17 155. BLM also stated that the horses and burros will be treated in a humane
18 manner in accordance with the Comprehensive Animal Welfare Program (CAWP) and that
19 the CAWP guidelines will be followed.

20 156. BLM does not view the CAWP as legally binding.

21 157. The CAWP did not go through notice and comment rulemaking.

22 158. The CAWP does not provide adequate guidance or assurances that wild
23 horses and burros will be treated humanely.

24 159. The CAWP does not contemplate how many times a year a pen must be
25 cleaned to be considered adequate or humane.

1 160. BLM did not provide any evidence or explain how cleaning pens two times
2 per year is adequate or humane for other ORCs.

3 161. BLM did not provide any evidence or explain how cleaning corrals too often
4 can result in the removal of soils from within the corrals.

5 162. The failure to require additional cleaning procedures will lead to unhealthy
6 conditions and cause wild horses and burros unnecessary stress and suffering.

7 163. The EA does not analyze the impacts of disease on the wild horses or burros,
8 or the neighboring community.

9 164. When commenters raised concerns about the horses contracting diseases
10 such as pigeon fever, BLM responded “[a]ll animals receive proper vaccinations for
11 infectious diseases in accordance with BLM IM2015-070.” BLM also stated that the horses
12 will be treated in a humane manner in accordance with the CAWP and that the CAWP
13 guidelines will be followed.

14 165. The CAWP and BLM IM2015-070 are unenforceable and do not contain any
15 penalties for operators that fail to comply with the guidance.

16 166. BLM does not frequently or regularly monitor whether operators comply
17 with the CAWP and BLM IM2015-070.

18 167. There are no vaccines for certain diseases such as pigeon fever or
19 pneumonia.

20 168. Despite the CAWP guidelines and BLM IM2015-070, disease outbreaks still
21 occur at ORCs. ORC death records commonly cite diseases such as equine strangles, pigeon
22 fever, and pneumonia as a cause of death.

23 169. Equine strangles or equine distemper is a highly contagious upper
24 respiratory infection. Equine strangles is caused by bacteria that crosses mucus
25 membranes in the nose and mouth to infect the lymph nodes, where they cause abscesses
26 that can eventually rupture. The infected lymph nodes become swollen and can compress

1 the upper respiratory tract, hence the name “strangles.” Horses can contract the disease
2 through inhalation or ingestion of the bacteria, such as through horse-to-horse contact,
3 drinking contaminated water or making contact with infected material.

4 170. Conditions at the Winnemucca ORC present a high risk for widespread
5 disease transmission, such as equine strangles or equine distemper.

6 171. In April and May 2022, at least 145 wild horses died from equine influenza at
7 the Cañon City ORC in Colorado. A Situation Report prepared by Colorado BLM and a
8 United States Department of Agriculture (USDA) veterinarian found despite being held at
9 the ORC for about nine months, some of the wild horses were unvaccinated, partially
10 vaccinated, or very recently vaccinated. Further, a BLM CAWP report found non-
11 compliance with 13 CAWP standards and revealed that staffing shortages were affecting
12 facility maintenance as well as the preparation, vaccination, and hoof maintenance of
13 animals at the facility.

14 172. Disease outbreaks at ORCs appear to occur approximately every year. For
15 example, in addition to the 2022 Cañon City ORC outbreak, in April 2022, five horses died
16 at the Wheatland ORC due to an equine strangles outbreak, despite there being a vaccine
17 for equine strangles. Further, in 2021 BLM closed the Litchfield ORC due to an outbreak of
18 pigeon fever, and BLM temporarily closed the Bruneau ORC in 2018 and the Axtell ORC in
19 2017 due to outbreaks of equine strangles. BLM did not conduct a CAWP report or
20 investigation on these ORCs and disease outbreaks.

21 173. BLM did not disclose or analyze the risk of disease outbreaks at the
22 Winnemucca ORC and the impacts of such outbreaks.

23 174. The Henneke body condition score (BCS) is a numerical scale used to
24 evaluate the amount of fat on a horse's body. It ranges between a score of 1 meaning poor
25 (extremely emaciated) and 9 meaning extremely fat.

1 175. The EA states that “most horses or burros should be maintained with a
2 Henneke body condition score of 4 or greater.” The solicitation states that “[n]o more than
3 5% of the animals should be < than BCS 4 and no animals should be maintained with BCS <
4 3.”

5 176. A BCS score of 4 means the horse is moderately thin with a faint outline of
6 the ribs discernable.

7 177. Nothing requires BLM to monitor BCSs at ORCs.

8 178. There is no protocol for what happens when a horse is, or many horses are
9 below a BCS of 4 at an ORC.

10 179. The EA states that “[m]inerals necessary to maintain wild horses and burros
11 in good condition would be provided,” but BLM did not explain what minerals are
12 necessary to maintain wild horses in good condition or how it would determine if the
13 minerals were being provided.

14 180. The Winnemucca ORC will not provide shelter or shade for wild horses or
15 burros unless the animal is compromised and in need of special care or if the managers
16 determine it is appropriate.

17 181. The lack of shelter and shade for wild horses and burros at the Winnemucca
18 ORC is inconsistent with standard animal husbandry practices. It will cause unnecessary
19 stress and suffering, heat exhaustion, and possibly death.

20 182. BLM failed to take a hard look at how the Winnemucca ORC will impact wild
21 horses and burros given the failure to provide shelter or shade, as is required by the
22 minimum adoption requirements and standard animal husbandry practices.

23 183. In its response to public comments regarding shelter and shade, BLM stated
24 the wild horses and burros will be treated in a humane manner in accordance with the
25 CAWP. BLM also claimed that “[s]hade and windbreaks are not a requirement for healthy
26 [wild horses and burros] as per the CAWP.”

1 184. The CAWP states that BLM should evaluate additional provisions and what
2 shelter is appropriate for the region, the function of their facility and the condition of the
3 animals in their care. The CAWP identifies this as a major issue that impacts the welfare of
4 wild horses and burros.

5 185. BLM provided no evidence that shade and windbreaks are not required for
6 healthy horses and burros given that conditions at the Winnemucca ORC. The temperature
7 in Winnemucca, Nevada can get very high in the summer and low in the winter. In addition,
8 there are extreme storms with rain, snow, and strong winds. These storms occur more
9 frequently due to climate change.

10 186. BLM failed to take a hard look at the no-action alternative, where more wild
11 horses and burros are allowed to remain wild and free on public lands. Under this
12 alternative, wild horses and burros have access to natural shelter, food, and water. They
13 have significantly more space for exercise and freedom of movement and association.

14 187. BLM also failed to take a hard look at the positive impact of additional wild
15 horses and burros on publics, under the no-action alternative, including the reduced risk of
16 catastrophic wildfire, increased access to water for other species, fertilization of the soil,
17 and increased biodiversity.

18 **D. BLM did not adequately consider other environmental and economic impacts of**
19 **the Winnemucca ORC and no-action alternative.**

20 188. The Winnemucca ORC qualifies as a large concentrated animal feeding
21 operation (CAFO) under the Clean Water Act (CWA). 40 C.F.R. § 122.23. Thus, JS Livestock
22 must obtain and follow the requirements of a National Pollutant Discharge Elimination
23 System (NPDES) permit for a large CAFO operation issued by the Nevada Division of
24 Environmental Protection (NDEP), (hereinafter, "CAFO permit").

25 189. Large CAFOs, such as the Winnemucca ORC, where large numbers of animals
26 are confined to small areas, are a significant source of pollution, parasites, and disease.

1 190. While CAFOs are required to have permits that limit the levels of manure
2 discharge, handling the large amounts of manure inevitably causes accidental releases
3 which have the ability to impact humans and the environment.

4 191. The most pressing public health issue associated with CAFOs stems from the
5 amount of manure they produce. CAFO manure contains a variety of contaminants. It can
6 contain plant nutrients such as nitrogen and phosphorus, pathogens such as E. coli, growth
7 hormones, antibiotics, chemicals used as additives to the manure or to clean equipment,
8 animal blood, silage leachate from corn feed, or copper sulfate used in footbaths for
9 animals.

10 192. When the Winnemucca ORC is operated at full capacity, 4,000 horses will
11 produce about 37,230 tons of raw waste annually.

12 193. Property values are lower in areas near CAFOs.

13 194. Large CAFOs are not zero discharge facilities. The Environmental Protection
14 Agency (EPA) has estimated that 75% of all CAFOs could experience discharges based on
15 standardized operational profiles. Further, the CWA contains a discharge exception for 25-
16 year, 24-hour storm events.

17 195. The Palomino Valley ORC in Nevada, which holds less wild horse and burros,
18 discharged 1.4 million gallons of wastewater during storm events in 2017 and 2018.

19 196. JS Livestock had not applied for a CAFO permit at the time BLM prepared the
20 EA and issued its final decision.

21 197. BLM was unaware of the terms and conditions of the CAFO permit and the
22 Nutrient Management Plan (NMP) when evaluating the environmental impacts of the
23 Winnemucca ORC and finalizing the EA.

24 198. BLM did not establish any baseline environmental conditions for the
25 Winnemucca ORC site.

1 199. The EA states that floodplains are “[p]resent, but not affected to a degree that
2 detailed analysis is required.” BLM relied of the Federal Emergency Management Agency’s
3 (FEMA) National Flood Hazard Layer to conclude the project area is in an area “determined
4 to be outside the 500-year flood and protected by levee from 100-year flood.”

5 200. However, BLM’s reliance on FEMA data was unreasonable.

6 201. The Winnemucca ORC is in a FEMA unstudied flood area.

7 202. The FEMA flood map of this area has not been updated since at least 2010
8 and possibly before then.

9 203. FEMA does not have all past flooding records for this area.

10 204. Commenters who live near the Winnemucca ORC, including someone that
11 shares a property line with the site, stated that they experience flooding. Humboldt County
12 submitted a comment requesting any decision on the Winnemucca ORC be put on hold until
13 a full environmental analysis can be conducted because the Winnemucca ORC is located in
14 a critical floodplain and the property has been under water on many occasions. Humboldt
15 County was concerned about how BLM will contain the effluent from the property when
16 the flood waters wash away the topsoil.

17 205. The EA states the Winnemucca ORC site is located on a soil type that is
18 subject to occasional flooding.

19 206. BLM did not address comments and concerns regarding grading, flatness,
20 drainage, flooding, and animal waste in the EA.

21 207. BLM instead, concluded that these issues will not significantly impact the
22 environment because JS Livestock must obtain required permits, including proper State of
23 Nevada approved CAFO infrastructure and drainage ponds.

24 208. BLM did not evaluate the specific requirements regarding grading, flatness,
25 drainage, flooding, and animal waste and concluded that they were outside the scope of the
26 EA. BLM did not further evaluate commenters’ claims about flooding in the area.

1 209. Without conducting its own analysis, BLM relied on NDEP requirements for a
2 CAFO permit to avoid analyzing the environmental impact of the Winnemucca ORC and to
3 conclude that the Winnemucca ORC would not have a significant impact on the
4 environment.

5 210. The EA claimed that “[i]mpacts to surface and ground water, potential for
6 nutrient release during flood events or creating nutrient plumes, would be negligible when
7 the requirements of the CAFO permit are implemented.” The EA rationalizes that impact
8 would be negligible because “Chapter 445A of the Nevada Revised Statutes (NRS) prohibits
9 discharge of pollutants to any waters of the State, including groundwater” and that the
10 NPDES permit requires the terms of the NMP “to include provisions to ensure compliance
11 with state groundwater quality standards.”

12 211. The CWA does not require CAFO permits to regulate groundwater and only
13 gives authority to NDEP to regulate groundwater if it chooses to.

14 212. Even though NDEP is the regulatory agency for the CAFO permit, the
15 construction and operation of the Winnemucca ORC is a connected action to authorizing a
16 contract to fund the ORC.

17 213. Thus, the EA must address the potential environmental impacts of the
18 construction and operation of the ORC, including specific comments regarding potential
19 groundwater contamination.

20 214. Despite concerns from the public and its own experts, BLM did not fully
21 disclose or analyze potential impacts to groundwater in the EA.

22 215. BLM concluded there would be negligible impacts to surface and
23 groundwaters.

24 216. During the EA process, BLM experts were also concerned about how manure
25 would be stored and managed.

1 217. BLM did not know how manure would be stored and managed when
2 conducting the EA let alone discuss or evaluate it in the EA.

3 218. The EA found soil resources were “[p]resent with potential for impact.”

4 219. The 100-acre Winnemucca ORC site is located in Soil Map Unit 1570 Delvada
5 Silty Clay, which are poorly drained, subject to occasional flooding, and may have a high-
6 water table. The soils are fine textured with high amounts of silt and clay and have a fairly
7 high erodibility index for wind erosion. These soils become “powdery” when disturbed.

8 220. BLM did not conduct a field site investigation to determine the water table
9 depth.

10 221. The EA relied on mitigation and found that the environmental impacts to soil
11 will not be significant because “[g]rading of the site will be accomplished to allow for
12 proper draining of the soils within the site. Design features, the dust prevention and control
13 plan, and the CAFO plan would reduce the risk of runoff and erosion.”

14 222. The EA does not analyze the mitigation measures in detail, and it does not
15 contain strong evidence that this mitigation will be effective.

16 223. The only design features in the EA that address the impacts to soil are the
17 Dust Prevention and Control Plan and the Soil Drainage Management section.

18 224. The Dust Prevention and Control Plan states that the operator will wet the
19 corrals and alleyways and the facility will have paved feeding areas to help reduce the dust.
20 It further states that “[t]he Contractor and BLM COR/PI would meet to determine the
21 proper method of eliminating any excess dust found and take the action needed to solve the
22 problem.”

23 225. The Soil Drainage Management section states “[a]ll corral pens will have
24 adequate slopes for drainage, which would help to keep the pens from being wet and
25 muddy. The Contractor would establish a plan to mitigate any standing water that is found
26 to occur and implement that plan immediately.”

1 226. BLM does not define what constitutes “adequate slopes.”

2 227. The Dust Prevention and Control Plan and the Soil Drainage Management
3 section of the EA are inadequate, and BLM failed to fully disclose and analyze the impacts of
4 the facility given the existing soil.

5 228. BLM’s experts expressed concerns about the soils and inadequacies of the
6 Dust Prevention and Control Plan and the Soil Drainage Management section of the EA.

7 229. According to BLM’s experts, because of the high amount of clay and silt in the
8 soil at the ORC, there will be excessive amounts of dust when it is dry and wetting the soil
9 to prevent dust will create a “huge muck-hole.”

10 230. In addition, soil erosion presents a long-term impact of the facility. The
11 proposed action did not include design features, such as trees or shrubs around the pen to
12 minimize soil erosion. Commenters and experts voiced their concerns to BLM about these
13 issues.

14 231. BLM did not modify the EA to address comments and concerns related to soil
15 condition, erosion, or drainage. Rather, BLM stated that the specific requirements of the
16 CAFO permit are outside the scope of the EA.

17 232. The EA also found hazardous or solid wastes were “[p]resent, but not
18 affected to a degree that detailed analysis is required.”

19 233. Commentators raised concerns about the environmental impact of the
20 disposal of wild horse and burro remains.

21 234. The EA stated that the design features and the CAFO permit would reduce the
22 risk or runoff and erosion.

23 235. Since the CAFO permit was not available when BLM was conducting the EA,
24 BLM did not know, let alone analyze, JS Livestock’s plan for disposal of wild horse and
25 burro remains.

1 236. Riparian areas and aquatic wildlife are present in the area around the
2 Winnemucca ORC.

3 237. BLM failed to provide detailed analysis of how riparian areas and aquatic
4 wildlife would be impacted by the Winnemucca ORC.

5 238. BLM relied on mitigation measures from a future and undisclosed CAFO
6 permit to conclude that there would not be significant impacts to riparian areas and
7 aquatic wildlife.

8 239. Since BLM did not consider the CAFO permit or NMP when conducting the
9 EA, BLM had no way of determining that the mitigation measures will be effective and thus,
10 the impact to riparian areas and aquatic wildlife will be negligible.

11 240. BLM concluded that air quality impacts are expected to be minimal.

12 241. BLM did not fully disclose or analyze the impacts of the Winnemucca ORC on
13 air quality in the surrounding area.

14 242. BLM relied on JS Livestock obtaining and complying with a NDEP Surface
15 Area Disturbance air permit for the project to conclude that the Winnemucca ORC would
16 not have significant impacts on air quality.

17 243. BLM did not know or disclose the terms of the NDEP Surface Area
18 Disturbance air permit.

19 244. The EA also found that the Winnemucca ORC “is not expected to significantly
20 affect GHG [greenhouse gas] emissions or climate change affects in Nevada” because “[t]he
21 alfalfa being replaced was presumably used as feed and so does not represent significant
22 carbon storage. The horses are being moved from other locations to the new corrals. Their
23 expected small GHG emissions are not new but have merely changed locations within the
24 Nevada State airshed.”

25 245. There is no evidence or guarantee that the horses and burros that will be
26 held at the Winnemucca ORC will be horses rounded up from the State of Nevada. Horses

1 removed from public land in one state are commonly moved to holding facilities in a
2 different state.

3 246. BLM did not analyze how the mitigation measures will be effective. Further,
4 BLM did not explain or provide any evidence how holding 4,000 horses on a 100-acre
5 property has similar environmental impacts to growing alfalfa and how it would not
6 significantly affect greenhouse gas emissions.

7 247. In addition, BLM did not consider the baseline air quality in the area and how
8 the Winnemucca ORC would impact local air quality.

9 248. Globally, livestock operations are responsible for approximately 18% of
10 greenhouse gas production and over 7% of U.S. greenhouse gas emissions. The type of
11 manure storage system used contributes to the production of greenhouse gases. BLM did
12 not know the type of manure storage system JS Livestock intends to use.

13 249. The cost of the Winnemucca construction and operational costs are built into
14 the unit price for specific services outlined in the statement of work over a base year and
15 nine option years. BLM is paying JS Livestock to provide all necessary facilities, personnel,
16 hay, and supplies for the ORC for a minimum of 500 wild horses and burros and maximum
17 of 4,000 wild horses and burros. JS Livestock receives a unit price per head, per day, per
18 animal to cover their costs.

19 250. BLM did not fully disclose or analyze the socioeconomic impact of the
20 Winnemucca ORC.

21 251. When evaluating the socioeconomic impact, BLM's economic expert asked
22 about the price per animal per day, but BLM did not provide that information.

23 252. BLM's economic expert admitted that without a cost estimate, he could not
24 do a socioeconomic impact analysis short of vague generalities.

25 253. There are hay shortages and rising prices, which are expected to continue
26 given climate change and decreased yields.

1 254. The EA does not adequately respond to concerns about hay shortages and
2 price increases.

3 255. The Winnemucca ORC is located in a community with Environmental Justice
4 concerns.

5 256. BLM did not fully analyze the Winnemucca ORC's impact on Environmental
6 Justice communities.

7 257. BLM did not fully consider or analyze how the Winnemucca ORC would
8 obtain water rights necessary to operate the facility or how the facilities water use impact
9 the environment.

10 258. BLM did not consider how climate change will increase drought, flooding,
11 and extreme temperatures and storms. BLM did not respond to comments on these issues
12 and, instead claimed that climate change was outside the scope of the EA.

13 259. The EA did not consider how the Winnemucca ORC could cause increased
14 traffic or potential danger to workers. The EA stated that comments about these issues
15 were opinions that did not warrant a change to the content on the EA.

16 260. The EA did not consider increased odor from the Winnemucca ORC.

17 261. The EA failed to fully consider or disclose the noise caused by the facility and
18 associated impacts.

19 262. The EA concluded "[t]he proposed facility is not expected to have
20 significantly different noise impacts than the current agricultural uses of the site."

21 263. BLM did not explain how a facility with 4,000 wild horses or burros will have
22 the same level of noise as alfalfa.

23 264. BLM heavily relied on the state permit and the CAWP as mitigation measures
24 to multiple environmental impacts, but BLM never engaged in an actual analysis regarding
25 the effectiveness of the state permits and the CAWP.

26 265. BLM failed to take a hard look at the no-action alternative.

1 266. BLM failed to consider how the no-action alternative could save wild horses
2 and burros from death, disease, and unnecessary suffering prevalent in ORCs, how it could
3 keep them as integral parts of the public lands, and how it would increase the public's
4 ability to view and see wild horses in the wild. BLM also failed to consider the beneficial
5 impacts of wild horses on the range under the no-action alternative and the economic
6 advantages of the no-action alternative comparatively to the one action the EA considered.

7 **E. BLM did not consider reasonable alternatives.**

8 267. Friends of Animals and others suggested specific alternatives for BLM to
9 consider, including reducing the number of wild horses and burros removed from public
10 lands. Commenters explained that this could be accomplished by reducing the number of
11 cattle and sheep that graze on public lands or the amount of forage allotted for such
12 grazing, managing wild horses and burros by natural means, and reevaluating appropriate
13 management levels.

14 268. Commenters requested that BLM consider an alternative that required more
15 humane conditions at the ORC, including providing space for wild horses and burros to
16 exercise, more frequent cleaning of the pens, limiting the amount of time wild horses and
17 burro could stay in these "short-term" ORCs, and providing all wild horses and burros
18 access to shade and weather blocks to shelter against wind, rain, snow, and other extreme
19 weather events that occur in the area.

20 269. Commenters also requested BLM consider an alternative that provided more
21 transparency and access to the public, including documenting all deaths and sickness at the
22 facility, placing cameras in the facility, and providing public access to the facility and access
23 to documentation and videos of the facility.

24 270. Commenters also suggested considering an alternative area for the facility
25 with conditions more suitable for humane management of wild horses and burros, and less
26 susceptible to dust, extreme heat, snow, floods, and pollution.

1 271. The alternatives submitted by the public and wild horse advocacy groups
2 were reasonable and viable alternatives.

3 272. BLM did not respond to comments regarding alternatives.

4 273. BLM did not explain why alternatives proposed in comments were not
5 reasonable.

6 274. BLM did not explain why it did not consider the alternatives proposed in the
7 public comment period.

8 275. The EA's stated purpose "to construct, maintain, and operate an ORC facility
9 through a BLM contract with the Contractor for a maximum of 4,000 excess [wild horses
10 and burros] on 100 acres of private land near Winnemucca, Nevada" was unreasonably
11 narrow and precluded consideration of a reasonable range of alternatives.

12 **FIRST CAUSE OF ACTION**

13 **(VIOLATIONS OF NEPA: FAILURE TO CONSIDER AND TAKE A HARD LOOK AT THE**
14 **IMPACTS OF THE PROPOSED ACTION)**

15 276. Friends of Animals herein incorporates all allegations contained in the
16 preceding paragraphs.

17 277. Defendants failed to provide a full and fair discussion of the significant
18 environmental impacts of BLM's decision to award a contract to JS Livestock that provides
19 federal funding for the containment, feeding, and care for up to 4,000 wild horses and
20 burros removed from public land.

21 278. Defendants violated NEPA by failing to independently and adequately
22 analyze the direct, indirect, cumulative, and site-specific effects of the decision to fund and
23 continually operate the Winnemucca ORC.

24 279. Defendants violated NEPA by predetermining that the EA would not disclose
25 any significant impacts and that a decision record would be signed without preparing an
26 Environmental Impact Statement.

1 operation of the ORC be more transparent and open to the public, and alternative locations
2 for the ORC.

3 288. Defendants defined the purpose and need in unreasonably narrow terms.

4 289. In issuing the Winnemucca ORC Decision without considering a reasonable
5 range of alternatives, Defendants actions are arbitrary and capricious, an abuse of
6 discretion, and not in accordance with law or required procedure, in violation of the APA, 5
7 U.S.C. § 706.

8 **FOURTH CAUSE OF ACTION**

9 **(VIOLATION OF NEPA: IMPROPER RELIANCE ON THE MITIGATION MEASURES)**

10 290. Friend of Animals herein incorporates all allegations contained in the
11 preceding paragraphs.

12 291. Defendants relied on state permits, including the CAFO permit and NMP as
13 mitigation measures, which were not provided with the EA and had not even been started.

14 292. The EA merely listed required permits as mitigation measures and lacked
15 substantive discussion of what the mitigation measures would be and how they would be
16 effective. The Defendants concluded that there will be no significant impact based on
17 proposed permits, plans, and standards that had not been developed yet. Thus, Defendants
18 clearly did not analyze these mitigation measures' ability to effectively mitigate water and
19 air pollution and other impacts. Defendants made no mention of the extent to which they
20 assume the measures will minimize or mitigate impacts.

21 293. Defendants Winnemucca ORC Roundup Decision is therefore arbitrary and
22 capricious, an abuse of discretion, not in accordance with law or required procedure, in
23 violation of the APA, 5 U.S.C. § 706.

1 **FIFTH CAUSE OF ACTION**
2 **(VIOLATION OF THE WHBA)**

3 294. Friend of Animals herein incorporates all allegations contained in the
4 preceding paragraphs.

5 295. Defendants violated the WHBA by making a decision that conflicts with the
6 purpose of the WHBA, allows for monetary gain from the exploitation of wild horses and
7 burros, and treats the wild horses and burros in an inhumane manner.

8 296. Defendants do not have authority to authorize the holding of up to 4,000 wild
9 horses or burros in the Winnemucca ORC as proposed.

10 297. Defendants' Winnemucca ORC Roundup Decision is therefore arbitrary and
11 capricious, an abuse of discretion, not in accordance with law or required procedure; in
12 excess of statutory jurisdiction, authority, and short of statutory right; in violation of the
13 APA, 5 U.S.C. § 706.

14 **REQUEST FOR RELIEF**

15 Friends of Animals respectfully requests that this Court enter judgment providing the
16 following relief:

- 17 A. Declare that Defendants' Winnemucca ORC Decision and Finding of No Significant
18 Impact violates the National Environmental Policy Act and Administrative
19 Procedure Act;
- 20 B. Declare that Defendants' Winnemucca ORC Decision violates the Wild Free-Roaming
21 Horses and Burros Act and the Administrative Procedure Act;
- 22 C. Enjoin any action previously authorized by Defendants' Winnemucca ORC Decision
23 at issue in this case unless and until the violations of federal law set forth herein
24 have been corrected to the satisfaction of this Court;
- 25 D. Vacate and remand back to Defendants Winnemucca ORC Decision;

1 E. Award Plaintiff reasonable costs, litigation expenses, and attorneys' fees associated
2 with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et*
3 *seq.*, and/or all other applicable authorities; and

4 F. Grant such further relief as the Court deems just and equitable.

5 Dated: August 15, 2022

Respectfully submitted,

6 s/Julie Cavanaugh-Bill
7 Julie Cavanaugh-Bill, Nevada Bar No. 11533
8 Cavanaugh-Bill Law Offices
9 401 Railroad St #307
Elko, NV
Telephone: 775-753-4357
julie@cblawoffices.org

10 /s/Jennifer Best
11 JENNIFER BEST (will comply with LR IA
12 11-2 within 5 days)
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
Telephone: (720) 949-7791
FAX: (888) 236-3303
jennifer@friendsofanimals.org

15 /s/Andreia Marcuccio
16 Andreia Marcuccio (will comply with LR IA
17 11-2 within 5 days)
Friends of Animals, Wildlife Law Program
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
Telephone: (720) 949-7791
FAX: (888) 236-3303
andreia@friendsofanimals.org

20 *Attorneys for Plaintiff*

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