

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF ANIMALS)
777 Post Road, Suite 205)
Darien, CT 06820)
)
Plaintiff,)
)
v.)
)
DEB HAALAND, in her official capacity)
as the U.S. Secretary of the Interior)
1849 C Street NW, Rm. 5665)
Washington DC 20240)
)
)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States)
1849 C Street NW, Rm. 5665)
Washington DC 20240)
)
Defendants.)
)

Civ. No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Recognizing that wild horses and burros “contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress unanimously passed the Wild Free-Roaming Horses and Burros Act (WHBA) in 1971 to protect wild horses and burros as “an integral part of the natural system of the public lands.” 16 U.S.C. § 1331. Understanding the immense pressure from certain commercial interests to eliminate wild horses and burros, Congress set up clear restrictions on the U.S. Bureau of Land Management’s (BLM’s) authority to remove wild horses and burros. The

WHBA mandates that BLM consult with independent experts, maintain a current inventory, and consider all information available in determining whether removal of wild horses or burros is necessary to maintain a thriving natural ecological balance. *Id.* § 1333(a), (b).

2. Likewise, Congress enacted the National Environmental Policy Act (NEPA) to ensure government accountability, public empowerment, and democratic decision-making by requiring federal agencies to consider the environmental impacts of their proposed actions and to involve the public in reviewing those impacts.

3. Multiple judges in this district have held that BLM does not have authority to continually round up wild horses for ten years under a single decision. Nor does BLM have authority to continually remove wild horses after appropriate management levels have been achieved without additional decision-making process and consultation.

4. But BLM continues to disregard the law, render court decisions meaningless, and cut the public out of decisions about wild horses and burros. This comes at a time when emerging science shows the important ecological role of wild horses and burros in the ecosystem, including their ability to reduce the risk of catastrophic wildfires and to buffer against the impacts of a changing climate.

5. Plaintiff, Friends of Animals, files this action to challenge BLM's latest effort to circumvent the WHBA and NEPA. BLM issued a decision to round up and permanently remove hundreds of wild horses and burros from the Twin Peaks Herds Management Area (HMA) in 2024 and to continually remove wild horses and burros even the population is within the appropriate management levels (AML). BLM issued this Decision without soliciting public comments and consulting with experts, and without considering significant new information and circumstances. Specifically, Friends of Animals challenges

BLM's April 18, 2024 Determination of NEPA Adequacy (DNA) ("2024 DNA") and Decision Record ("2024 Decision Record") for the Twin Peaks Wild Horse and Burro Gather Plan (DOI-BLM-CA-N050-2024-0009-DNA), as amended on May 3, 2024 (collectively, "2024 Decision").

6. Rather than assessing the impacts of BLM's 2024 Decision, BLM relied on an outdated 2019 Environmental Assessment ("2019 EA"), Finding of No Significant Impact ("2019 FONSI"), and Decision Record ("2019 Decision Record") (collectively, "2019 Decision") and did not conduct any additional analysis of the 2024 Decision under the NEPA. BLM did not solicit public comments on the 2024 Decision.

7. The 2019 Decision authorized BLM to continually round up, remove, drug, and castrate wild horses and burros in the Twin Peaks HMA for ten years after the initial roundup and without evaluation of whether additional roundups were necessary. The 2019 Decision does not discuss the current conditions of the Twin Peaks HMA and was prepared before a major roundup in 2022 that removed thousands of wild horses and burros from the Twin Peaks HMA. A court recently held that BLM's 2019 Decision was unlawful and remanded it to BLM. *See Friends of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022). Further, another court held that BLM's decisions authorizing roundups for ten years in four other HMAs were unlawful. *See Friends of Animals v. U.S. BLM*, No. 18-2029 (RDM), 2024 U.S. Dist. LEXIS 58642 (D.D.C. Mar. 30, 2024).

8. BLM's 2024 Decision does not meaningfully differ from the ten-year roundup decisions that those courts found unlawful. The 2024 Decision still authorizes BLM to round up and remove wild horses and burros for ten years without additional NEPA analysis and even after the population is within AML.

9. BLM's 2024 Decision fails to consider new information and circumstances significant to BLM's decision to round up and remove wild horses and burros from the Twin Peaks HMA in 2024 such as new environmental conditions and scientific studies.

10. For nearly fifty years, BLM's practice and policy was to issue site-specific documentation pursuant to NEPA before every non-emergency roundup. Until the unlawful 2019 Decision, BLM had followed this policy for roundup decisions in the Twin Peaks HMA and provided the public with an opportunity to comment on such decisions. This process provided the public with an opportunity to participate and provide information about the potential ramifications of BLM's proposed management decisions and to provide BLM with new information or circumstances significant to the proposed management decisions. It also allowed the courts to act as a check to prevent unlawful decisions from going into effect.

11. Here, without explanation, BLM has removed this important procedure and effectively cut the public out of the process.

12. BLM's 2024 Decision drastically conflicts with BLM's past policies and practices, undermines public participation, relies on the outdated 2019 EA, fails to consider new information and circumstances, threatens the health and viability of unique wild horses, and violates NEPA, the WHBA, and the Administrative Procedure Act (APA).

13. BLM will continue to attempt to round up and remove wild horses and burros from the Twin Peaks HMA for multiple years without preparing a new NEPA analysis and without regard for public input. As courts have previously found, these types of unchecked and limitless decisions are unlawful. Thus, Friends of Animals request that this Court vacate and remand BLM's 2024 Decision.

PARTIES

14. Friends of Animals is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals has thousands of members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of nonhuman, free-living and domestic animals. Friends of Animals informs its members about animal advocacy issues and its progress in addressing them through its magazine, ActionLine, its website, social media, and public events. Friends of Animals regularly advocates for the right of wild horses and burros to live freely on public lands, and for more transparency and accountability in BLM's "management" of wild horses and burros.

15. Friends of Animals and its members have a significant interest in wild horses and burros in the Twin Peaks HMA. For example, Friends of Animals' members Jessica Johnston and Craig Downer regularly visit the Twin Peaks HMA and observe and study the wild horses and burros who reside there. Ms. Johnston and Mr. Downer have participated in flights over the Twin Peaks HMA to assess the population and they evaluated the habitat condition in the Twin Peaks HMA. Ms. Johnston wrote a thesis on California wild horses and burros that included an in-depth analysis of BLM's Eagle Lake Field Office's management considerations for wild horses and burros in the Twin Peaks HMA. In May of 2022, Ms. Johnston performed an aerial and ground survey of the Twin Peaks HMA and determined there was no overpopulation of wild horses and burros. The video Ms. Johnston recorded showed the vastness and diversity of the Twin Peaks HMA with a comparatively small population of wild horses and burros. Ms. Johnston observed wild horses and burros in good body condition. She also found that the ecosystem and wild

horse and burro populations appear to be achieving a thriving natural ecological balance. In May of 2022, Ms. Johnston spent the day in the Twin Peaks HMA and spent over 8 hours and drove approximately 105 miles within the boundaries of the Twin Peaks HMA and saw 35 wild horses, no burros, 225 cows, and approximately 1,500 sheep. Based on her research and footage, Ms. Johnston concluded that the roundup in 2022 was not necessary. However, BLM proceeded to round up 2,111 wild horses and 339 burros. In May of 2024, Ms. Johnston observed the Twin Peaks HMA again and found very few wild horses and burros and very few signs of wild horses and burros. She did see approximately 100 cattle. The Twin Peaks wild horse and burro population is already at a critically low level, and Ms. Johnston is very concerned that rounding up additional wild horses and burros this fall would decimate the wild horse and burro population in the Twin Peaks HMA and have irreversible impacts.

Mr. Downer has written books about wild horses and has long evaluated the ramifications of the BLM's treatment of wild horse populations in the West. He has written articles about the benefits of wild horses to the ecosystem, including their positive role in fire suppression, as well as the impacts of the fertility control drug Porcine Zona Pellucida (PZP) on wild mares. Mr. Downer is very concerned about the future of the Twin Peaks wild equids and that rounding up additional wild horses and burros this fall would have irreversible impacts. He has observed that the wild horses and burros are in steep decline from the 2022 roundup and are continually being thwarted in filling their ecological niches.

16. Mr. Downer and Ms. Johnston both personally enjoy observing wild horses and burros in the Twin Peaks HMA. Mr. Downer and Ms. Johnston's professional and recreational interests in observing, studying, and photographing wild horses and burros in

the Twin Peaks HMA would be injured if BLM proceeds with the proposed actions laid out in the 2024 Decision. Friends of Animals members' injuries are fairly traceable to Defendants' conduct and would be redressed by the relief sought by Friends of Animals in this case.

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

18. Defendant, the United States Bureau of Land Management (BLM), is an agency located within the Department of the Interior. The agency administers over 245 million surface acres of public lands, most of which are in twelve Western states, including California and Nevada. The Twin Peaks HMA is located on BLM-administered public land, and the agency is responsible for ensuring that federally administered actions within the HMAs comply with the requirements of all federal laws.

JURISDICTION AND VENUE

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

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

21. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(e) as Defendant, BLM is a federal agency headquartered in Washington, D.C.

LEGAL FRAMEWORK

A. The National Environmental Policy Act¹

22. 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).

23. 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.

24. 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).

25. To carry out NEPA’s policy, the Federal Government must use “all practicable means” to ensure for all Americans safe, healthful, productive, and aesthetically and

¹ Friends of Animals cites to the NEPA regulations in effect on April 18, 2024 when BLM issued the 2024 DNA and the 2024 Decision Record unless otherwise noted. New NEPA regulation will become effective on July 1, 2024. National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024).

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).

26. 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).

27. 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.

28. Agencies must “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6(a).

29. Agencies must provide the public notice of “opportunities for public involvement and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions.” 40 C.F.R. § 1506.6(b).

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

31. The Supreme Court has found that the preparation of an EIS serves NEPA’s “action-forcing” purposes in two primary ways: “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be

made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

32. The NEPA regulations define human environment as “comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.” 40 C.F.R. § 1508.1(m).

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

34. After preparing an EA, if an agency determines that the proposed action will not have a significant effect on the human environment and that an EIS is not warranted, then the agency must prepare a finding of no significant impact (FONSI) explaining the reasons why an action will not have a significant effect on the human environment. 40 C.F.R. §§ 1508.1(h)-(l).

35. The NEPA regulations define effects or impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable” and include: (1) “Direct effects, which are caused by the action and occur at the same time and place”; (2) “Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems”; and (3) “Cumulative effects, which are effects on

the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.1(g). “Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.” 40 C.F.R. § 1508.1(g)(4).

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

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

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

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

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

41. When preparing an EA, an agency must take a “hard look” at the environmental impacts. “Simple, conclusory statements of ‘no impact’ are not enough to fulfill an agency’s duty under NEPA.” *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 154 (D.C. Cir. 1985).

42. An existing environmental analysis prepared pursuant to NEPA may be used to assess the impacts of a proposed action only if the “appropriate supporting documentation” includes “an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.” 43 C.F.R. § 46.120(c).

43. When new information comes to light, “courts must be satisfied that ‘the agency has made a reasoned decision based on its evaluation of the significance—or lack of significance—of the new information.’” *Loper Bright Enters. v. Raimondo*, 544 F. Supp. 3d 82, 123 (D.D.C. 2021) (quoting *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989)). Due to this consideration of new information, the issuance of an EIS “does not always mark the end of a NEPA process.” *Friends of the Capital Crescent Trail v. Fed. Transit Admin.*, 877 F.3d 1051, 1055 (D.C. Cir. 2017).

44. An agency must prepare a supplemental EIS if “major Federal action remains to occur” and “[t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns” or “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(d)(1).

45. Although the NEPA regulations regarding supplementation apply to EISs, courts regularly apply those same regulations to supplementing EAs. *See, e.g., Earth Island Inst. v. U.S. Forest Serv.*, 87 F.4th 1054, 1069 (9th Cir. 2023) (“NEPA requires agencies to prepare a supplemental EA when ‘[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.’”) (quoting 40. C.F.R. § 1502.9(d)(1)(ii)).

46. In fact, the new NEPA regulations that will become effective on July 1, 2024 make it clear that an agency must supplement an EA if “a major Federal action is incomplete or ongoing” and “[t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns” or “[t]here are substantial new circumstances or information about the significance of the adverse effects that bear on the analysis to determine whether to prepare a finding of no significant impact or an environmental impact statement.” National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442, 35558 (May 1, 2024).

47. “‘New circumstances’ are circumstances which significantly change the underlying project, and ‘new information’ is intervening information not already considered.” *Earth Island Inst. v. U.S. Forest Serv.*, 87 F.4th 1054, 1069 (9th Cir. 2023). “‘New circumstances or information’ are ‘significant’ and trigger the need for supplementation if

they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed).” *Id.*

48. BLM’s NEPA Handbook requires BLM to “prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS but prior to implementation of the Federal action” if BLM makes “substantial changes to the proposed action that are relevant to environmental concerns,” BLM adds “a new alternative that is outside the spectrum of alternatives already analyzed,” or “there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects.” BLM, *BLM National Environmental Policy Handbook H-1790-1*, 29 (2008) (“BLM NEPA Handbook”).

49. BLM’s NEPA Handbook states that “[s]upplementation is a process applied only to draft and final EISs, not EAs” and if BLM makes “changes to the proposed action; add[s] an alternative outside the spectrum of those already analyzed; or if new circumstances or information arise that alters the validity of an EA analysis prior to the implementation of the Federal action,” BLM must prepare a new EA.” BLM NEPA Handbook at 29.

50. BLM’s NEPA Handbook states that “[s]ubstantial changes” in the proposed action may include changes in the design, location, or timing of a proposed action that are relevant to environmental concerns (i.e., the changes would result in significant effects outside of the range of effects analyzed in the draft or final EIS).” BLM NEPA Handbook at 29.

51. BLM's NEPA Handbook states that "[n]ew circumstances or information' are 'significant' and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed)." BLM NEPA Handbook at 30.

52. A Determination of NEPA Adequacy (DNA) is a non-NEPA procedure that allows BLM to rely on existing environmental analyses to analyze effects associated with a proposed action without preparation of a new NEPA document, e.g., a new or supplemental EA or EIS. *See Friends of Animals v. U.S. BLM*, 232 F. Supp. 3d 53, 57 (D.D.C. 2017).

53. To issue a DNA, BLM must complete a worksheet by answering a series of questions such as whether the proposed action, including the direct, indirect, and cumulative effects, is similar to an alternative analyzed in existing NEPA documents, whether the range of alternatives is appropriate given current environmental concerns, interests, and resource values, and whether BLM can reasonably conclude there is no new information and new circumstances that would substantially change the analysis of the new proposed action. BLM NEPA Handbook at 23. If BLM answers "no" to any of the questions, it must prepare "a new EA or EIS." *Id.*

54. BLM's Wild Horses and Burros Management Handbook requires BLM to "make Gather Plan EAs and DNAs available to interested individuals, groups, and agencies for a 30-day review and comment period, except when an emergency situation exists." BLM, *H-4700-1 Wild Horses and Burros Management Handbook*, 49 (2010) ("WHB Handbook"). The WHB Handbook also requires BLM to make public the "NEPA document(s) identified in the DNA (e.g., the EA and Finding of No Significant Impact

(FONSI))” and states that BLM “should consider substantive comments and summarize how they were addressed in the NEPA document or DNA for the Gather Plan. This summary should be presented in the NEPA document, the DNA, or the decision document.” WHB Handbook at 49.

55. BLM’s Wild Horses and Burros Removal Manual mandates that unless there is an emergency, BLM must provide the public 30 days to review and comment on a NEPA document and on any DNA. BLM, *4720 – Removal (Public)*, 9 (2010) (“WHB Removal Manual”).

56. BLM’s NEPA Handbook requires BLM to provide public comment on proposed actions unless the preexisting NEPA document specifically described the individual action. BLM NEPA Handbook at 22-24.

57. BLM’s WHB Handbook also states that “[c]hanges in numbers of [wild horses and burros] since the previous gather that result in changes in forage utilization, use patterns, and/or ecological conditions and trends, or changing environmental conditions such as drought, wildfire, noxious weed infestations, and others, may require that a new NEPA analysis be conducted.” BLM WHB Handbook at 49.

B. The Wild Free-Roaming Horses and Burros Act

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

burros shall be protected from capture, branding, harassment, or death, and to accomplish this they are to be considered in the area where presently found as an integral part of the natural system of public lands.” *Id.*

59. The WHBA requires the Secretary,² and BLM as her delegate, to “protect and manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands.” 16 U.S.C. § 1333(a). Additionally, the WHBA requires management of wild horses and burros to be at “the minimal feasible level.” *Id.*

60. The WHBA only authorizes the removal of wild horses and burros from public lands in limited circumstances.

61. The WHBA mandates that BLM “shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management” when making the following determinations: (1) “whether and where an overpopulation exists and whether action should be taken to remove excess animals”; (2) determining what is the “appropriate management levels of wild free-roaming horses and burros on these areas of the public lands”; and (3) determining “whether appropriate

² The WHBA provides the Secretary of the U.S. Department of the Interior and the Secretary of the U.S. Department of Agriculture parallel authority to manage wild horses on lands under their jurisdictions. 16 U.S.C. § 1332(a). BLM acts on behalf of the Secretary of the Interior for land that is under the jurisdiction of the Department of the Interior, such as the Twin Peaks HMA.

management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels)." 16 U.S.C. § 1332(b)(1).

62. BLM cannot remove wild horses unless it first determines, after consultation and considering all currently available information, that (1) "an overpopulation [of wild horses and burros] exists on a given area of the public lands," and (2) "action is necessary to remove excess animals." 16 U.S.C. § 1333(b)(2); *see also Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87, 93-94 (D.D.C. 2009).

63. The WHBA defines the term "excess" as animals that "must be removed from an area in order to preserve and maintain a thriving ecological balance and multiple-use relationship in that area." 16 U.S.C. § 1332(f).

64. The National Academy of Sciences has repeatedly recommended that BLM increase transparency and consult with interested parties through a public process.

65. In 1982, the National Academy of Sciences concluded that "public preference," among other things, "must be considered in both defining excess" and selecting among various management strategies. National Research Council, *Wild and Free-Roaming Horses and Burros Final Report*, The National Academies Press, 8 (1982) (hereinafter, "1982 NAS Report").

66. The National Academy of Sciences further found that "[a]ttitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herd, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area."

1982 NAS Report at 8.

67. In 2013, the National Academy of Sciences again emphasized the importance of public participation and consulting with the public in management decisions. National Research Council, *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*, The National Academies Press (2013).(hereinafter, “2013 NAS Report”).

68. The 2013 NAS Report recommended an approach that “acknowledges that the public has a form of expert knowledge that complements and informs scientific analysis.” 2013 NAS Report at 251.

69. The 2013 NAS Report recommended that BLM “should engage with the public in ways that allow public input to influence agency decisions, develop an iterative process between public deliberation and scientific discovery, and codesign the participatory process with representatives of the public.” 2013 NAS report at 254.

70. The 2013 NAS Report found that “it is necessary that local communities that interact with the animals or are affected by management decisions be represented in some way in the decision-making process, along with nonlocals, including national lobbying groups.” 2013 NAS Report at 244.

71. The WHBA also mandates that BLM should “maintain a current inventory of wild free-roaming horses and burros” for the purposes of making such determinations. 16 U.S.C. § 1333(b)(1).

72. BLM’s WHB Handbook explains that: “Before issuing a decision to gather and remove animals, the authorized officer shall first determine whether excess [wild horses and burros] are present and require immediate removal. In making this determination, the authorized officer shall analyze grazing utilization and distribution, trend in range ecological condition, actual use, climate (weather) data, current population inventory, wild

horses and burros located outside the HMA in areas not designated for their long-term maintenance and other factors such as the results of land health assessments which demonstrate removal is needed to restore or maintain the range in a [thriving, natural ecological balance].” BLM, WHB Handbook at 19.

73. Neither the WHBA nor its implementing regulations define AML. According to BLM’s WHB Handbook, an AML is “[t]he number of adult horses or burros (expressed as a range with an upper and lower limit) to be managed within an HMA.” BLM WHB Handbook at 56. The AML Upper Limit is “[t]he maximum number of [wild horses and burros] that results in a thriving natural ecological balance (TNEB) and avoids a deterioration of the range.” BLM, WHB Handbook at 56.

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

75. BLM’s management activities affecting wild horses and burros shall also be undertaken with the goal of maintaining wild horses and burros on public lands. 43 C.F.R. § 1333(b)(2). The objectives of the WHBA regulations mandate that BLM manage wild horses and burros “as an integral part of the natural system of the public lands under the principle of multiple use;” to protect wild horses and burros “from unauthorized capture, branding, harassment or death;” and to ensure “humane care and treatment of wild horses and burros.” 43 C.F.R. § 4700.0-2.

76. BLM’s regulations provide that it can close public lands to grazing use by domesticated cattle or sheep “if necessary to provide habitat for wild horses or burros to

implement herd management actions, or to protect wild horses or burros from disease, harassment or injury.” 43 C.F.R. § 4710.5.

77. Congress intended the protection of wild horses and burros from unlawful death or harassment to be “paramount in management activities” and Congress expressly intended “to remove the possibility of monetary gain from exploitation of these animals.” 92nd Congress, Senate Report 92-242, June 25, 1971 (2151-52).

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

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

C. The Administrative Procedure Act

80. The Administrative Procedure Act (APA) governs the internal procedures of administrative agencies, including how they interact with the public. The APA defines an “agency” broadly to mean “each authority of the Government of the United States,” unless expressly excluded from the Act. 5 U.S.C. § 551(1).

81. BLM is not expressly excluded from the APA.

82. The APA authorizes a reviewing court to “hold unlawful or set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law;” “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2).

83. The APA authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

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

85. The Supreme Court and D.C. Circuit have established that agency action is arbitrary and capricious if the agency changes or departs from its policy without (1) displaying an “awareness that it is changing position,” (2) showing that “the new policy is permissible under the statute,” and (3) providing “good reasons” for the new policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *see also Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017).

FACTUAL ALLEGATIONS

A. Twin Peaks Herd Management Area

86. The Twin Peaks HMA contains a total of 789,852 acres, including 656,173 acres of public land on the California/Nevada border, with slightly more than half of the area within Lassen County, California and the remainder in Washoe County, Nevada.

87. The 1989 Herd Management Area Plan (“1989 HMAP”) established five home ranges within the Twin Peaks HMA, Twin Peaks North, Dry Valley Rim, Skedaddle, Observation North, and Observation South, and set appropriate management levels (AML) for each of the five home ranges that totaled 600-850 wild horses and 75-110 burros.

88. The five home ranges were delineated due to concern that allotment and pasture fencing within the HMA limited exchange of individuals between herds.

89. BLM adjusted AMLs for one home range in 1993 and another in 1998. In 2001, BLM revised the AML again, so that the total AML for the Twin Peaks HMA was 448-758 wild horses and 72-116 wild burros.

90. BLM began a process for a new HMAP, but never completed this process.

91. BLM has not revised or reevaluated the AML for the Twin Peaks HMA since 2001.

92. According to the 1989 HMAP, “[n]o home range will be gathered in consecutive years [h]orses and burros will not be indiscriminately gathered or completely removed from any of the home ranges [and factors such as] forage utilization levels, range condition, distribution patterns, livestock rates and wildlife protection will be evaluated when determining which home range will be gathered and how many horses will be removed.”

93. The 1989 HMAP further states that a “detailed Twin Peaks HMA capture and removal plan will be developed annually by the District”; a sex ratio of 1 to 1 will be maintained; and that “[v]iability will be measured based on the herd’s rate of annual increase;” and an annual rate of increase at or below 13% “will be considered a problem.”

94. Since the 1989 HMAP, BLM has not prepared an updated HMAP identifying and setting objectives for the Twin Peaks wild horses and burros and their habitat, a document required to guide short- and long-term management and monitoring objectives within Twin Peaks HMA.

95. BLM adjusted the AMLs and Animal Unit Months (AUMs) for the home ranges over the years and set the current AMLs for the home ranges as follows:

Home Range	BLM Document(s)/Date	Appropriate Management Level (Numbers)		Forage Allocation (AUMs)	
		Horses	Burros	Horses	Burros
Twin Peaks North	Multiple Use Decision/EA# CA-350-2000-16, 2001	155-288	22-42	1860-3456	132-252
Skedaddle	Multiple Use Decision/EA# CA-350-2000-16, 2001	58-108	10-15	696-1296	60-90
Dry Valley Rim	Multiple Use Decision/EA# CA-350-2000-16, 2001	39-72	15-22	468-864	90-132
Observation North	EA# CA-350-98-20, 1998; Land Health Evaluation for the Observation Allotment, 2008	150-216	5-8	1800-2592	30-48
Observation South	EA# CA-350-98-20, 1998; Land Health Evaluation for the Observation Allotment, 2008	46-74	20-29	552-888	120-174
Total		448-758	72-116	5376-9096	432-696

96. BLM has stated that livestock grazing is one of the “predominant land uses” within the Twin Peaks HMA.

97. There are nine grazing allotments located in the Twin Peaks HMA. These grazing allotments include: (1) Deep Cut; (2) Observation; (3) Shinn Peak; (4) Spanish Spring AMP; (5) Spanish Spring Ind.; (6) Twin Buttes; (7) Twin Peaks; (8) Winter Range CA; and (9) Winter Range NV.

98. The cattle and sheep operators in the Twin Peaks HMA are authorized to use a total of 26,644 AUMs of forage each year. While the total forage allocation for wild horses and burros in the Twin Peaks HMA ranges between 5,808 to 9,792 AUMs.

99. BLM permits a total of 10,000 sheep and 3,730 cattle to graze in the Twin Peaks HMA. BLM outdated AML is 448 to 758 wild horses and 72 to 116 wild burros within the Twin Peaks HMA.

100. The wild horse and burro home ranges in the Twin Peaks HMA directly correlate with the livestock grazing allotments.

101. The home ranges are essentially fenced-in pastures for wild horses and burros which impede intermingling with other herds within the Twin Peaks HMA and impact free-roaming behavior and restrict gene flow due to the sub-divided populations.

B. 2019 Decision, prior litigation, and 2022 roundup

102. On November 1, 2019, BLM issued an EA, FONSI, and Decision Record approving the continual removal of wild horses and burros from the Twin Peaks HMA for ten years (“2019 Decision”). The 2019 Decision authorized multiple roundups in the Twin Peaks HMA “over a period of 10 years.”

103. The comment period on the 2019 Preliminary EA ended on July 1, 2019.

104. The proposed action (Alternative 1) identified in the 2019 Preliminary EA was to continually roundup and remove wild horses and burros in the Twin Peaks HMA for ten years based on the AML established in 2001, utilize population fertility control treatments (including PZP and GonaCon), adjust the sex ratio of wild horses in the HMA, and manage a portion of the male population of wild horses as non-breeding.

105. The alternatives, other than the no action alternative, contained only slight variations regarding fertility control and core breeding populations. Alternative 2 would not include a non-reproducing portion of the population and Alternative 3 would not utilize fertility control or sex ratio adjustments.

106. All three action alternatives included multiple roundups and removals of wild horses and burros from the Twin Peaks HMA for ten years with no commitment for further public review or involvement.

107. BLM received approximately 5,440 comment submissions during the public comment period.

108. Friends of Animals and others commented that BLM failed to consider a reasonable range of alternatives.

109. The 2019 Decision authorized the removal of the majority of wild horses and burros in the Twin Peaks HMA.

110. The 2019 Decision authorized BLM to remove over eighty percent of the wild horses and burros currently residing in and around the Twin Peaks HMA and continually remove wild horses and burros over ten years to reach and maintain the low AML of 448 wild horses and 72 wild burros.

111. The 2013 NAS Report suggests that a population closer to 5,000 may be necessary to avoid inbreeding depression and other diseases. 2013 NAS Report at 173.

112. According to the 2019 Preliminary EA, released in May 2019, BLM estimated that the population in the Twin Peaks HMA was 3,506 wild horses and 632 wild burros.

113. After BLM conducted an aerial count of wild horses in 2019, it estimated that there were fewer wild horses and burros than originally estimated in the 2019 Preliminary EA—approximately 2,338 wild horses and 520 wild burros.

114. According to BLM, there was an error that resulted in BLM reporting that there were more wild horses and burros counted in a 2017 survey than were actually counted.

115. If this error was not noticed, it could have resulted in BLM erroneously removing hundreds of more wild horses and burros than BLM thought was necessary.

116. Friends of Animals subsequently sued BLM in federal court claiming BLM's 2019 Decision to reduce the size and slow the growth of the Twin Peaks HMA wild horse and burro herd over ten years violated the WHBA and NEPA. *See Friends of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022). In 2022, the D.C. District Court remanded the 2019 Decision back to BLM finding that the 2019 Decision “exceeds statutory authority insofar as it permits removal of excess horses and burros up to ten years from its promulgation.” *Id.* at 162. The court explained that “[a] phased, ten-year plan strikes the Court as far beyond the time permitted under the WHBA.” *Id.* at 170.

117. In a 2023 stipulated dismissal and settlement agreement, BLM committed to “issue a new, final, appealable decision before conducting any further helicopter gathers in the Twin Peaks HMA.”

118. Similarly, in 2018, Friends of Animals challenged four BLM decisions authorizing the continual removal of wild horses and burros from other HMAs for ten years. In March 2024, a federal court set aside each of the four ten-year plans “to the extent that they purport to authorize new gathers, after the Bureau has already achieved AML”

and remanded “the case to the Bureau to clarify the ten-year plans to ensure that future gathers conducted pursuant to those plans are not unreasonably delayed.” *Friends of Animals v. U.S. BLM*, No. 18-2029 (RDM), 2024 U.S. Dist. LEXIS 58642, at *5 (D.D.C. Mar. 30, 2024). The court found that the WHBA “does not permit the Bureau to authorize gathers over a ten-year period without regard to . . . new or evolving information and scientific input. *Id.* at *57-58.

C. Substantial changes and new information and circumstances

119. The public comment period for the 2019 EA ended nearly five years ago, on July 1, 2019.

120. The 2019 EA relied on data predating 2019 that is six years old and older.

121. A significant new study was published in 2021: Erik J. Lundgren et al., *Equids engineer desert water availability*, *Science*, 1 (April 30, 2021). The study demonstrates that equids, including those that are wild or introduced, “are able to buffer water availability, which may increase resilience to ongoing human-caused aridification.” *Id.* The study found that wild horses and burros “regularly dig wells of up to 2 m in depth.” *Id.* Isolated water features create “heightened antagonistic interactions among wildlife, including predation, disease transmission, competition, and herbivory.” *Id.* The study found that “[e]quid wells strongly reduced the isolation of water features, reducing average nearest neighbor distances between water features by an average of 65% (an 843-m reduction, SD = 798 m) and by as much as 99% (a 2.3-km reduction).” *Id.* The study found that equid wells increase the total amount of water available and “equid wells may relax the potential for strong antagonistic interactions and reduce the distances that animals must travel to reach water.” *Id.* The study also builds on data that “[i]n tropical and temperate ecosystems, megafauna

declines are linked to the formation of closed woodlands, increased wildfire, and reduced dispersal of large-seeded plants.” *Id.* The study “evaluated well digging and its associated ecosystem effects in a North American system where equids have established feral populations.” *Id.* The results of the study “suggest that equids and other well-digging megafauna have the potential to mitigate” changes to biodiversity and ecosystem function brought on from ground water mining, agriculture, and climate change. *Id.* at 4.

122. Another significant report was released in 2021 that found large herbivores can reduce fire risks: German Centre for Integrative Biodiversity Research (iDiv) Halle-Jena-Leipzig, *Large herbivore can reduce fire risks*, Science Direct (2021).

123. William E. Simpson II, Founder & Executive Director of Wild Horse Fire Brigade released a report regarding the impact of wild horses on wilderness landscape and wildfire. William E. Simpson II, *Impact Of Wild Horses On Wilderness Landscape And Wildfire — Preliminary Finding Report* (2019). The report found that over the course of all five years, “close observations, as evidenced by hundreds of photos and numerous films, have shown that family bands of wild horses self-regulate their use of water and grazing resources by regularly rotating through the landscape. They move from spring to spring, usually on a daily basis.” *Id.* at 3. The report documented that wild horses move through an area much faster than livestock which “allows the grasses and plants to recover quickly from the light grazing-browsing by the wild horses.” *Id.* at 4. Wild horses “rub and scratch on the trees and due to their robust size, the dead and dying limbs (aka: fire ladders) are broken-off, resulting in a tree that is limbed up as high as 6 feet above the ground (most cases 5 feet above ground). Added to this, wild horses will graze the grass and brush fuels under the trees they use for shelter. The combination of these two actions results in trees

that are made fire-resistant.” *Id.* at 7. Further, cows cause more range damage than horses because their hooves have pointed claws whereas a horses’ hooves are flat. *Id.* at 19-23.

124. BLM failed to consider these new studies in the 2024 Decision.

125. The Twin Peaks HMA is at risk of catastrophic fires.

126. Following the removal of 1,579 wild horses and 160 wild burros from the Twin Peaks HMA in 2010, in 2012 there was a massive wildfire in California (Rush Fire) that burned over 280,768 acres of BLM, state, and private lands within the Twin Peaks HMA.

127. Range conditions, wild horse and burro numbers, and the AML can change each year.

128. There has been a significant change in the number of wild horses and burros since the 2022 roundup. The 2019 EA estimated that there were 2,338 wild horses and 520 burros in the Twin Peaks HMA. BLM estimates that in 2024 there are 1,309 wild horses and 248 wild burros in the Twin Peaks HMA. BLM also treated 55 mares with fertility control and released them back to the range.

129. There are several issues with BLM’s 2022 post-roundup aerial survey. BLM did not make the 2022 post-roundup aerial survey available to the public.

130. It is unclear whether BLM took any photos when conducting the survey. Friends of Animals obtained the survey from BLM, but BLM did not provide any photos that were taken in conjunction with the survey.

131. The survey is over a large area with multiple HMAs where it is difficult to distinguish between them. Also, the distance between BLM’s flight paths can cause wild horses and burros to move and be double counted.

132. On June 11, 2024, Friends of Animals emailed BLM to ask for photos taken during the 2022 post-roundup aerial survey. After not hearing back from BLM, Friends of Animals sent a follow-up email on June 18, 2024 requesting the photos. As of the date of this complaint, BLM has not responded to Friends of Animals' email requesting photos.

133. The 2022 roundup resulted in low AML in at least two of the five home ranges in the Twin Peaks HMA.

134. In June of 2022, environmental scientist Jesica Johnston submitted a declaration in the previous Twin Peaks litigation regarding an aerial and ground survey she conducted on May 20-21, 2022. Ms. Johnston determined "there is no overpopulation of wild horses and burros in this region." The video Ms. Johnston recorded demonstrated "the vastness and diversity of [the Twin Peaks HMA] with a comparatively small population of wild horses and burros." Ms. Johnston observed wild horses and burros in good body condition. She also found that "[t]he ecosystem and wild horse and burro populations appear to be achieving a thriving natural ecological balance." On May 20, 2022, Ms. Johnston spent the day in the Twin Peaks HMA and "spent over 8 hours and drove approximately 105 miles within the boundaries of Twin Peaks and saw 35 wild horses, no burros, 225 cows and approximately 1,500 sheep." Based on her research and footage, Ms. Johnston determined that the 2022 roundup was not justified and would "decimate the wild horse and burro population in the Twin Peaks HMA and have irreversible impacts."

135. Ms. Johnston sent her research to BLM. BLM never analyzed or meaningfully responded to Ms. Johnston's research. BLM only sent an email to confirm they received the research and forwarded it to the district wild horse and burro specialist.

136. There have been significant changes in environmental conditions at the Twin Peaks HMA.

137. Annual precipitation in Lassen County, CA and Washoe County, NV has more than doubled from 2020 to 2023. The amount of precipitation in January 2024 to April 2024 significantly increased from the amount of precipitation in January to April in previous years.

138. The increased precipitation suggests that rangeland health conditions have improved since the 2019 Decision.

139. After BLM rounds up and removes wild horses and burros from public lands, BLM transports them to temporary holding facilities called off-range corrals (ORCs).

140. After the 2022 roundup, BLM sent some of the wild horses and burros that it removed from the range to the Litchfield ORC, located in California. The Litchfield ORC is owned and operated by BLM and authorized to hold 1,000 animals. It is unclear where the other wild horses and burros were sent after the 2022 Twin Peaks roundup because BLM never publicly disclosed or analyzed which ORCs it would send the animals to in the 2019 Decision.

141. BLM reported 31 deaths during the roundup. However, Freedom of Information Act (FOIA) records demonstrate that an additional 69 deaths occurred during the operation and within 30 days after the end of the operation.

142. ORC death records demonstrate that multiple animals died from injuries and illnesses directly related to the 2022 Twin Peaks roundup. For example, the death notes state that horses died from exhaustion from running through rough terrain in high temperatures of mid-90 to 100 degrees. Veterinarians found that multiple young horses

who died had severe hoof injuries from the roundup and died from stress related to the 2022 Twin Peaks roundup.

143. The ORC death records also reveal that ORCs present many harms that do not exist in the wild. Multiple animals die at ORCs from ramming into gates, fences, posts, and panels, breaking their necks inside the chute, attempting to escape the chute, and hanging themselves with their neck rope. Further, the small space at ORCs causes numerous deaths from fighting and trampling, and from disease and infection including pneumonia, pigeon fever, and strangles. Animals also often die from complications or infections from gelding procedures. Moreover, countless animals die from depression, failure to thrive, and losing the desire to live.

144. At the largest ORC, 9% of the population died in one year.

145. Public tours of ORCs have revealed many issues such as animals with odd repetitive injuries such as facial swelling, animals being housed in incomplete pens, basic safety issues that are neglected, and record keeping omissions.

146. On May 30, 2024, Friends of Animals sent BLM a letter via email and U.S. Certified mail discussing the issues and new information and circumstances addressed in this complaint. USPS tracking indicates that BLM received the letter and cited documents on June 3, 2024. On June 10, 2024, BLM confirmed receipt of the letter via email. As of the date of this complaint, BLM has never meaningfully responded to Friends of Animals' letter.

147. BLM failed to update its analysis following Friends of Animals' letter.

D. 2024 Decision

148. On April 18, 2024, BLM issued a DNA and Decision Record for the Twin Peaks Wild Horse and Burro Gather Plan ("2024 Decision").

149. BLM did not solicit comments on the 2024 Decision before it issued the Decision.

150. BLM did not consult with interested parties on the 2024 Decision before it issued the Decision.

151. BLM did not consult with individuals independent of the government with scientific expertise and special knowledge of wild horse and burro protection, wildlife management, and animal husbandry on the 2024 Decision before it issued the Decision.

152. The 2024 Decision proposes to modify the 2019 Decision to clarify that “BLM will attempt to immediately remove all excess animals to achieve AML with an initial gather (and follow-up gather(s) if necessary) as outlined in the November 1, 2019 Decision Record, and to conduct additional gathers after low [AML] is achieved to apply population control measures to slow the rate of population growth so degraded rangelands can recover.” Cite.

153. The stated purpose of the 2024 Decision “is to remove excess wild horses and burros from the Twin Peaks Herd Management Area (HMA) in order to manage population levels consistent with the established AMLs, and to slow the current growth rate of horses to allow for recovery of degraded rangeland.”

154. On the one hand, the 2024 Decision Record states that the 2024 Decision is “unchanged” from the 2019 Decision in that “over the 10-year period BLM would conduct phased gather of wild horses.”

155. On the other hand, BLM contends that it will remove wild horses and burros immediately over 10 years rather than in a phased fashion over a period of 10 years.

156. BLM admits that it will likely conduct follow-up roundups after removal of over 900 wild horses and burros in September.

157. The 2024 Decision authorizes BLM to continue to conduct follow-up roundups after the wild horse and burro population is within the AML range.

158. BLM does not specify what it means by “immediately” or indicate any timeline, other than 10 years, for how long it would take to implement the 2024 Decision.

159. BLM does not intend to prepare a new excess determination and roundup decision unless low AML is achieved during the 10 year decision period and BLM determines it is necessary to remove additional animals. BLM made no commitment to make its future analyses or decisions available for public comment.

160. BLM claimed that the actions proposed in the 2024 Decision are similar to the actions analyzed within the 2019 Decision because the action methods and disturbances associated with the roundup are the same in the 2024 Decision as in the 2019 EA.

161. BLM also claimed that it analyzed an appropriate range of alternatives, there was no need for additional alternatives, and that “alternatives considered but eliminated from detailed analysis in the Twin Peaks Gather Plan EA remain impractical or infeasible with respect to the present action.”

162. BLM alleged that “[t]here is no new information or circumstances that would alter the analysis of the impacts associated with the proposed action” and that it is necessary to round up animals to improve rangeland conditions and reach AML.

163. BLM also alleged that “[t]he direct, indirect, and cumulative effects would be the same as those analyzed within the” 2019 Decision and that the public involvement on

the 2019 EA adequately covers the 2024 DNA because “the proposed action remains substantially the same.”

164. On May 3, 2024, BLM issued an addendum to the 2024 Decision stating that prior to conducting follow-up roundups to achieve low AML, BLM “will review the most current population estimates, monitoring data, and whether there are any new circumstances or information that would substantially change the prior analysis or determine whether further environmental analysis or a new decision is necessary.”

165. Neither BLM’s 2019 EA or DNA consider the benefits of equid wells, the benefits of leaving the wild population alone or increasing AML, or the study published in 2021: Erik J. Lundgren et al., *Equids engineer desert water availability*, *Science*, 1 (April 30, 2021).

166. Neither BLM’s 2019 EA or 2024 DNA consider significant new information, or any information, about how wild horses and burros impact risk of wildlife.

167. The 2019 EA and 2024 DNA fail to consider the 2019 report by William E. Simpson II, regarding the impact of wild horses on wilderness landscape and wildfire.

168. The 2019 EA and 2024 DNA fail to consider the significant information that Ms. Johnston provided in 2022, including details of her aerial survey of the Twin Peaks HMA and findings that “[t]he ecosystem and wild horse and burro populations appear to be achieving a thriving natural ecological balance.”

169. BLM’s 2024 Decision is based on AMLs established in land use decisions that are over twenty-three years old.

170. BLM’s policy instructs BLM not to remove wild horses and burros based solely on the AML.

171. The 2024 Decision Record states that BLM used 15% to estimate the 2024 population increase in the Twin Peaks HMA “due to trend in Twin Peaks of lower than 20% annual increase.”

172. There is scientific evidence that there is only a 10% growth rate in the Twin Peaks HMA. See R.T. Fitch et al., *Report: Wild Horse Population Growth* (April 28, 2014).

173. The population estimates in the 2024 Decision do not include death rates and do not account for fertility control and sex skewing in 2022.

174. Based on BLM’s corrected population counts in the 2019 EA from 2017 and 2019, the population growth rate was only approximately 7%, significantly less than the 15% that forms the basis of the 2024 Decision.

175. According to the 2013 NAS Report, BLM’s management practices are facilitating high horse population growth rates, and in turn maximizing the number of animals who must be removed and processed through holding facilities. 2013 NAS Report at 94.

176. BLM’s 2024 Decision Record states that “the excess animals are contributing to the failure to achieve rangeland health standards, and that it is necessary to remove the excess animals to achieve a thriving natural ecological condition on the range.” The 2024 Decision Record also claims that as analyzed in the 2019 EA, “many of the riparian and wetland sites are currently rated as ‘Functioning At Risk’ or ‘Non Functioning’ and monitoring of lentic and lotic areas in 2023 confirms that the recovery of riparian areas remains an issue within the HMA.

177. It is unclear if BLM has prepared any rangeland health assessments or if BLM has monitored and updated the riparian and wetland data.

178. The riparian and wetland data that BLM cited in the 2019 EA is from 2014 to 2018.

179. It is unclear what rangeland health assessments or data BLM relies on in its 2024 Decision.

180. BLM did not include any rangeland health assessments or monitoring data in the 2024 Decision and BLM has not released any recent Twin Peaks HMA rangeland health assessments or monitoring data to the public.

181. BLM failed to include or provide an in-depth analysis of any rangeland health assessments, monitoring, or analysis regarding riparian and wetland sites that BLM supposedly monitored in 2023. It is unclear what was analyzed in the “monitoring” BLM refers to and it is unclear where and when that monitoring occurred.

182. BLM failed to explain why the Twin Peaks HMA is failing to meet rangeland health standards despite the excess rain in recent years and despite BLM removing thousands of wild horses and burros.

183. The 2024 Decision does not mention or analyze the increased precipitation since the 2019 Decision and the fact that annual precipitation in Lassen County, CA and Washoe County, NV has more than doubled from 2020 to 2023.

184. BLM failed to provide evidence that wild horses and burros are causing the degradation of the land. BLM failed to consider other causes of rangeland degradation such as livestock.

185. BLM has stated that livestock grazing is one of the “predominant land uses” within the Twin Peaks HMA. Cattle and sheep operators in the Twin Peaks HMA are

authorized to use a total of 26,644 AUMs of forage each year. BLM permits a total of 10,000 sheep and 3,730 cattle to graze in the Twin Peaks HMA.

186. In contrast, the total forage allocation for wild horses and burros in the Twin Peaks HMA ranges between 5,808 to 9,792 AUMs. BLM only allows 488 to 758 wild horses and 72 to 116 wild burros within the Twin Peaks HMA.

187. The 2024 Decision only mentions livestock once and fails to analyze the impact of livestock on the range.

188. There is no indication that BLM considered reducing livestock grazing to help riparian areas.

189. The home ranges in the Twin Peaks HMA are directly correlated with the livestock grazing allotments.

190. Home ranges are essentially fenced-in pastures for wild horses which impede intermingling with other herds within the Twin Peaks HMA and “impact free-roaming behavior and restrict gene flow due to the sub- divided populations.”

191. BLM did not analyze grazing and population inventories before scheduling an additional roundup.

192. On May 14, 2024, Friends of Animals sent a Freedom of Information Act (FOIA) request to BLM regarding the 2024 Decision and requesting the rangeland health assessments and monitoring data that BLM relied on in the 2024 Decision. As of the date of this complaint, BLM has not produced records in response to Friends of Animals’ FOIA request despite the statutory deadline passing on June 12, 2024.

193. On June 11, 2024, Friends of Animals emailed BLM and asked for the rangeland health assessments and monitoring data that BLM relied on in the 2024

Decision. After not hearing back from BLM, Friends of Animals sent a follow-up email on June 18, 2024, requesting the information. As of the date of this complaint, BLM never responded to Friends of Animals' email or provided Friends of Animals with the requested documents.

194. The 2024 Decision does not comply with the 1989 HMAP because the sex ratio is skewed due to fertility control, because BLM has indiscriminately removed wild horses and burros based on home ranges, and because BLM failed to evaluate "forage utilization levels, range condition, distribution patterns, livestock rates and wildlife protection" when determining which home range will be gathered and how many horses will be removed.

195. According to the applicable land use plans, wild horse and burro herds should be managed as a viable population of healthy animals.

196. The 2024 Decision does not manage for viable and healthy populations of wild horses and burros.

197. The 2024 Decision does not manage wild horses or burros to consist of healthy animals who exhibit diverse age structure, good conformation, and characteristics unique to the specific herds.

198. BLM failed to consider what qualifies as a self-sustaining, healthy population of wild horses and burros and how the 2024 Decision would impact the health and sustainability of wild horses and burros.

199. Neither the 2019 Decision nor the 2024 Decision disclose which ORC BLM intends to send the wild horses and burros to after the 2024 roundup. BLM also never

analyzed the impacts of sending wild horses and burros to ORCs in the 2019 Decision or the 2024 Decision.

200. BLM's 2024 Decision never analyzed new information indicating what roundups in the Twin Peaks HMA are inhumane, including the deaths and injuries during and following the 2022 roundup.

201. BLM's 2024 Decision also never analyzed or considered new information about the dangers of ORCs.

202. BLM's 2024 Decision failed to consider the beneficial impacts of keeping wild horses and burros on the range, such as reducing the risk of wildfires.

203. Starting on September 1, 2024, BLM intends to round up and permanently remove 143 wild burros from the Twin Peaks HMA.

204. Starting on September 7, 2024, BLM intends to round up 800 wild horses, permanently remove 728 wild horses from the Twin Peaks HMA, treat 30 wild horses with fertility control, and return 72 of the wild horses to the range.

CLAIMS

FIRST CAUSE OF ACTION

(VIOLATION OF NEPA AND APA: FAILURE TO CONDUCT AN ANALYSIS UNDER NEPA)

205. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

206. The 2024 Decision constitutes a major federal action that may significantly affect the quality of the human environment, and therefore requires preparation of an EA or EIS under NEPA.

207. BLM failed to prepare an EA or EIS analyzing the impacts of, or alternatives to, the 2024 Decision.

208. BLM did not make any effort to involve the public in the decision-making process or inform interested and affected people of proposed action or alternatives before issuing the 2024 Decision.

209. BLM failed to take the requisite “hard look” at the environmental impacts of the 2024 Decision and reasonable alternatives.

210. In issuing the 2024 Decision without any NEPA analysis or public involvement, BLM’s actions are arbitrary and capricious, an abuse of discretion, not in accordance with the law or required procedure, and constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706.

SECOND CAUSE OF ACTION

(VIOLATION OF NEPA AND APA: FAILURE TO PREPARE A SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT)

211. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

212. BLM’s 2024 Decision relies on the 2019 Decision which is outdated and was remanded to the agency for violations of the WHBA.

213. To the extent that BLM attempts to rely on the 2019 EA for NEPA compliance, it has a legal obligation under NEPA and its implementing regulations to supplement the EA because there are substantial changes to the proposed action and significant new circumstances or information bearing on the action that are relevant to environmental concerns or impacts, including a new decision following remand from the court, significant changes in wild horse and burro population size, significant changes in environmental

conditions, and new studies and information significant to BLM's decision to roundup wild horses and burros.

214. According to BLM's NEPA handbook, it cannot rely on a DNA and must prepare a new EA if new information and new circumstances would substantially change the analysis of the new proposed action.

215. BLM's decision to prepare a DNA and not prepare a new EA without adequate explanation conflicts with its own established guidance and is arbitrary and capricious, an abuse of discretion, and not in accordance with the law or required procedure. 5 U.S.C. § 706.

216. BLM's failure to issue a new NEPA analysis or supplement its 2019 NEPA analysis before issuing the 2024 Decision is arbitrary and capricious, an abuse of discretion, not in accordance with the law or required procedure, and constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706.

THIRD CAUSE OF ACTION

(VIOLATION OF NEPA & APA: FAILURE TO PROVIDE OPPORTUNITIES FOR PUBLIC PARTICIPATION AND UNEXPLAINED DEPARTURE FROM AGENCY GUIDELINES)

217. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

218. BLM's WHB Handbook mandates that BLM "make Gather Plan EAs and DNAs available to interested individuals, groups, and agencies for a 30-day review and comment period, except when an emergency situation exists."

219. Similarly, BLM's WHB Removal Manual mandates that unless there is an emergency, BLM must provide the public with 30 days to review and comment on a NEPA document, and any DNA.

220. BLM historically has provided a 30-day public comment period for DNAs regarding wild horse and burro roundups unless there was an emergency.

221. BLM's NEPA Handbook also states that a DNA should be open for public comment when the existing EA does not specifically describe the individual action.

222. The 2019 EA does not specifically describe the individual wild horse and burro roundups proposed in the 2024 Decision, the range conditions, or any other information about whether an overpopulation exists or whether action is necessary to remove excess animals.

223. BLM has not indicated in the 2024 Decision that an emergency situation exists.

224. BLM did not otherwise explain in the 2024 Decision why it was impracticable to solicit public comment.

225. BLM failed to involve the public in any NEPA procedures for the 2024 Decision or solicit comments on the DNA.

226. BLM failed to explain or acknowledge the departure from its past practices and from the policies set forth in its handbooks and manuals.

227. BLM's failure to provide a public comment period for the 2024 Decision without adequate explanation conflicts with its own established guidance and is arbitrary and capricious, an abuse of discretion, not in accordance with the law or required procedure, and constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706.

FOURTH CAUSE OF ACTION

(VIOLATION OF THE WHBA AND APA: FAILURE TO CONSULT WITH INDEPENDENT EXPERTS AND INTERESTED PARTIES PRIOR TO ROUNDUP DECISION)

228. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

229. The WHBA mandates that BLM consult with individuals independent of the government in determining whether and where overpopulation exists and whether action should be taken to remove excess animals. This includes individuals that have been recommended by the National Academy of Sciences, and other individuals with expertise and special knowledge of wild horse and burro protection, wildlife management, and animal husbandry as related to rangeland management.

230. The National Academy of Sciences has recommended that BLM increase public participation and consult with interested and affected parties, including local communities and national groups.

231. BLM's long-standing policy also mandates that it solicits input from the public and interested parties before determining to remove wild horses and burros.

232. Friends of Animals, its members, and other members of the public with scientific expertise and special knowledge of wild horse and burro protection, wildlife management, and animal husbandry would like the opportunity to consult with BLM on its determination that there is an overpopulation and what action should be taken. Friends of Animals members, including a qualified ecologist and experts in wild horse and burro management, have recently been to the Twin Peaks HMA and have seen no evidence that there is an overpopulation of wild horses or burros or that removal is necessary.

233. BLM's failure to open a comment period and consult with interested parties and independent experts before issuing the 2024 Decision to round up wild horses and burros in the Twin Peaks HMA violates the WHBA and is arbitrary and capricious, an abuse of discretion, and not in accordance with the law or required procedure. 5 U.S.C. § 706.

FIFTH CAUSE OF ACTION

(VIOLATION OF THE WHBA AND APA: BLM DOES NOT HAVE AUTHORITY TO ISSUE AN OPEN-ENDED DECISION AUTHORIZING CONTINUED ROUNDUPS AND REMOVALS FOR MULTIPLE YEARS, INCLUDING AFTER THE POPULATION IS WITHIN AML)

234. Friends of Animals herein incorporates all allegations contained in the preceding paragraphs.

235. The WHBA limits BLM's authority to remove wild horses. BLM can only remove horses after determining that: (1) "an overpopulation [of wild horses] exists on a given area of the public lands," and (2) "action is necessary to remove excess animals." This decision must be based on the current inventory of wild horses and burros, consultation with independent experts, and other currently available information. Such decisions are limited to specific wild horses and burros and must be implemented immediately.

236. Defendants violated the WHBA by failing to comply with applicable land use plans, and failing to make an appropriate determination that wild horses are excess and that removal is necessary prior to authorizing the permanent removal of an undisclosed number of wild horses and burros over multiple years, even after the population is within AML.

237. Defendants do not have authority to issue an open-ended decision authorizing continued roundups and removals for multiple years, including after the population is within AML.

238. BLM's 2024 Decision to authorize the continued roundup and removal of wild horses and burros in the Twin Peaks HMA over multiple years and even after the population is within the AML is arbitrary and capricious, an abuse of discretion, not in accordance with the law or required procedure, and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. § 706.

REQUEST FOR RELIEF

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

- A. Declare that Defendants' 2024 Decision violates the National Environmental Policy Act and the Administrative Procedure Act;
- B. Declare that the Defendants' 2024 Decision violates the Wild Free-Roaming Horses and Burros Act and the Administrative Procedure Act;
- C. Declare that Defendants violated the Administrative Procedure Act by departing from BLM's guidance without explanation;
- D. Enjoin any action authorized by the 2024 Decision at issue in this case unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;
- E. Vacate and remand the 2024 Decision back to Defendants;
- F. Award Plaintiff reasonable costs, litigation expenses, and attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and/or all other applicable authorities; and/or
- G. Grant such further relief as the Court deems just and equitable.

Dated: June 27, 2024

Respectfully submitted,

/s/ Andreia Marcuccio
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