

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE).
 5 U.S.C. § 706; 16 U.S.C. § 1331

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ JURY DEMAND: YES NO Check YES only if demanded in complaint

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.
 JUDGE ROSEMARY M. COLLIER DOCKET # 06-1609 (enc)

DATE 7/29/10 SIGNATURE OF ATTORNEY OF RECORD Bruce Wagman (enc)

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiff(s))
)
v.)
)

Defendant(s))

Civil Action No. 10 1645 RMC

CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE FOR ALL PURPOSES

In accordance with the provisions of 28 U.S.C. § 636(c)(3), the parties to the above-captioned civil matter by and with the advice of their counsel hereby voluntarily waive their rights to proceed before a District Judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial.

Attorney for the Plaintiff(s)

Date

Attorney for the Defendant(s)

Date

NOTICE: The foregoing Consent by Counsel shall be accepted upon the understanding that all counsel have secured the consent of their respective clients to the Consent and Referral to a United States Magistrate Judge for all purposes.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to a United States Magistrate Judge for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c)(3) and the foregoing consent of the parties.

United States District Judge

Date

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE.

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA**

*Nancy M. Mayer-Whittington
Clerk of Court*

**NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE**

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC §636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned to all purposes to a Magistrate Judge.

UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

INITIAL ELECTRONIC CASE FILING
ORDER

(Does not apply to pro se filers)

Subsequent filings in this case must be made electronically using the Court's Electronic Case Filing System (ECF) pursuant to Local Civil Rule 5.4.

ORDERED that counsel shall:

- Submit in paper, the original and copy of the complaint/notice of removal/petition for writ of habeas corpus and any accompanying papers (**not including summons and civil cover sheets**). Additionally, litigants are hereby required to provide those filings in PDF format on a floppy disk or CD-Rom compact disk. The disk should be clearly labeled with the case number (if known) and the name of the parties. If unable to deliver the filing on a disk at the time of the new case filing, counsel should e-mail the initiating document and accompanying papers to dcd_cmeef@dcd.uscourts.gov by the close of business the day the new case was filed. Failure to supply electronic copies of the new case in a timely manner, will result in the attorney's name being added to the attorney non-compliant list and shared with the Court's ECF Judge's Committee. Regardless of what option counsel chooses, the complaint/notice of removal/petition for writ of habeas corpus and accompanying papers must come to the Court as PDF documents. Each exhibit to the new case shall be in a separate PDF file. Failure to submit PDF versions of the initiating documents will delay the opening of the case in ECF.
- Register, if not previously registered, to become an electronic filer by completing and returning the enclosed ECF Registration form found on the Court's Website at www.dcd.uscourts.gov. The login and password are case specific and can be used for all cases.
- All subsequent filings **must** be made electronically.
- Have a PACER (Public Access to Court Electronic Records) account, in order to view dockets and documents. Call 800-676-6856 or visit www.pacer.psc.uscourts.gov for additional information.
- Schedule a training class at the Courthouse by going to the Court's ECF Internet Website www.dcd.uscourts.gov/ecf.html. Also, filing instructions and an interactive tutorial can be found at this Internet Website.
- Pursuant to Local Civil Rule 5.4(b)(2), a pro se litigant may file a motion requesting permission to file documents electronically. See the rule for specific directions and requirements.

COLLYER, J. RMC

UNITED STATES DISTRICT JUDGE

**United States District Court
For The District of Columbia**

**ELECTRONIC CASE FILES
ATTORNEY/PARTICIPANT REGISTRATION FORM**

LIVE SYSTEM

This form shall be used to register for an account on the Court's Electronic Case Files (ECF) system and to subscribe to the ECF email (Listserver) notification service. Registered attorneys and other participants will have privileges both to electronically submit documents, and to view and retrieve electronic docket sheets and documents for all cases assigned to the Electronic Case Files system. Listserver subscribers receive email messages whenever the Court wishes to electronically notify ECF registrants of pertinent ECF information.

The following information is required for registration:

If you are appointed pro bono or pro hac vice, please provide the case number:

First Name/Middle Initial/Last Name: _____

Last four digits of Social Security Number: _____

DC Bar ID#: _____

Firm Name: _____

Firm Address _____

Voice Phone Number: _____

FAX Phone Number: _____

Internet E-Mail Address: _____

By submitting this registration form, the undersigned agrees to abide by the following rules:

1. This system is for use only in cases permitted by the *U.S. District Court for the District of Columbia*. It may be used to file and view electronic documents, docket sheets, and notices. Please visit the Court's ECF Internet Website to schedule training.
2. Pursuant to Federal Rule of Civil Procedure 11, every pleading, motion, and other paper (except list, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all papers shall be signed by the party. An attorney's/participant's password issued by the court combined with the user's identification, serves as and constitutes the attorney's/participant's

signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately notify the court. This should include the resignation or reassignment of the person with authority to use the password. The Court will immediately delete that password from the electronic filing system and issue a new password.

3. An attorney's/participant's registration will not waive conventional service of a summons and complaint, subpoena, or other judicial process; submit the client to the jurisdiction of the Court; or operate as a consent to accept service of pleadings, documents, and orders in actions in which such attorney/participant has not entered an appearance. An attorney's/participant's registration will constitute a waiver in law only of conventional service of other non-process pleadings, documents, and orders in the case. The attorney/participant agrees to accept, on behalf of the client, service of notice of the electronic filing by hand, facsimile or authorized e-mail.
4. Upon receipt of your login and password, you are strongly encouraged to change your password, which may be done through the Utilities function, to a name easily recalled. You may be subjected to a fee, should the Clerk's Office have to create a new password for you, or alternatively, you may be required to appear in person to receive your new password.
5. Attorneys must be active members of the bar of this Court, or government attorneys who are employed or retained by the United States, or who have been permitted to proceed pro hac vice, must file pleadings electronically.
6. Whenever a filer's e-mail address changes, the user agrees to update their ECF profile to show the new e-mail address. The system is robust enough to permit counsel to change their own e-mail address within the ECF System. Effective December 9, 2008, pursuant the directions from the Court's Information Technology Committee, the Clerk's Office will no longer monitor bounced e-mails.

Please return this form to: U.S. District Court for the District of Columbia
Attn: Attorney Admissions
333 Constitution Avenue NW, Room 1825
Washington, DC 20001

Or FAX to: Peggy Trainum
U.S. District Court for the District of Columbia
(202) 354-3067

Applicant's Signature: _____

Full Last Name

Initial of
First Name

Last 4 Digits SS#

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

COLORADO WILD HORSE AND BURRO)
COALITION, INC; FRONT RANGE EQUINE)
RESCUE, INC., a Colorado non-profit)
corporation; HABITAT FOR HORSES, a Texas)
non-profit corporation; THE CLOUD)
FOUNDATION, a Colorado non-profit)
corporation; BARBARA FLORES; TONI)
MOORE; and DR. DON MOORE,)

Plaintiffs,)

v.)

KEN SALAZAR, in his official capacity as)
Secretary, U.S. Department of the Interior;)
ROBERT ABBEY, in his official capacity as)
Director, Bureau of Land Management;)
KENT E. WALTER, in his official capacity as)
Field Manager, Bureau of Land Management,)
White River Field Office,)

Defendants.)

Case: 1:10-cv-01645
Assigned To : Collyer, Rosemary M.
Assign. Date : 9/29/2010
Description: General Civil

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the federal government's ongoing illegal treatment of wild horses residing on public lands, and its intention to remove wild horses from the West Douglas Herd Area (the "Herd Area") in Colorado. On September 3, 2010, the White River Field Office of the Bureau of Land Management (BLM) issued its final decision to decimate the herd of wild horses (the "Herd") which has lived in partnership with the natural environment in the Herd Area for centuries. The BLM says it will begin capturing the horses on October 4, 2010, and remove every single wild horse from their home and historic range. Plaintiffs seek declaratory relief and

an immediate injunction of the planned removal pending a complete judicial review of BLM's conduct.

2. In 1971 Congress unequivocally declared "that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death. . . ." 16 U.S.C. § 1331. For forty years, the clear mandate of the Wild Free-Roaming Horses and Burros Act ("the Wild Horses Act") has been that federal agencies must protect these national icons, and allow them to remain on the land which they have called home when that law was originally drafted. That requirement remains today as a solemn declaration of national policy: Everything must be done to preserve the horses in their natural habitat and let these freest representatives of America remain where they have been for so long.

3. In the nineteenth century, more than two million wild horses roamed the West. Today, according to the BLM fewer than 37,000 remain on public lands. BLM is breaking the law, and it has injured Plaintiffs in ways that are both severe and permanent. BLM's obvious intention—evidenced by a series of repeated acts over a span of years—is to continue to carry out its strategy in multiple removals, in direct conflict with the Wild Horses Act.

4. Defendants are allowed to manage and remove wild horses, but they have been doing, are doing, and clearly intend to keep doing so in a course of action that violates the spirit and letter of the Act, the agency's own regulations, and other federal law. The numbers are not dispositive, but it is an undisputed fact that over the past three decades the agencies have carried out these plans and permanently removed over *100,000* wild horses and burros from public land. Many of the old, sick and lame are killed. Tens of thousands of healthy horses, once roaming the range, languish in inadequate long-term holding for the rest of their lives. Some others are adopted out to purchasers who may treat them well or sell them subsequently to commercial buyers.

5. The West Douglas Herd Area comprised 190,870 acres in 1994 and now, according to the BLM, comprises 123,387 acres in northwestern Colorado. The BLM claims

there are less than 100 wild horses in the Herd. Despite this tiny number of horses on this vast open range, Defendants have invoked their master plan of removal that will eliminate the Herd.

6. This Court has jurisdiction over this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 501 *et seq.*, the Wild Horses Act, 16 U.S.C. §§ 1331 *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* and other federal laws. Defendants are involved in the illegal removal, elimination and maintenance of America's wild and protected horses, and Defendants' violation of that law is subject to judicial review.

7. This action seeks temporary and permanent injunctive relief against the current planned removal of horses in the West Douglas Herd, a declaration that the BLM's ongoing pattern and practices with respect to wild horse removals are illegal, and an order that any horses illegally removed from the West Douglas area during the pendency of this action be maintained as wild, unaltered horses and returned to their natural state in their birthplace range.

JURISDICTION AND VENUE

8. This case concerns a federal question and, therefore, jurisdiction is proper under 28 U.S.C. section 1331. Venue is also proper under 28 U.S.C. section 1391(e). This Court may review defendants' actions and order appropriate relief under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* and other applicable federal statutes cited herein.

PLAINTIFFS

9. The Colorado Wild Horse and Burro Coalition, Inc. ("CWHBC") is a non-profit Colorado corporation, organized to educate the public and wild horse and burro adopters about wild horse issues and to protect wild horses and burros, primarily in Colorado, but also in other states. CWHBC brings this suit on behalf of its supporters, who are interested in and affected by Defendants' conduct regarding management of all the natural resources, and specifically the wild horses, in this area.

10. The CWHBC supporters recreate, photograph, and enjoy viewing wild horses on public lands within the West Douglas area in Colorado. They visit the area often, appreciate its natural beauty, enjoy its scenery and all of its wildlife, including wild horses. They are aware of

the historical significance of its wild horse herds and the archeological significance of these areas. CWHBC members have participated and plan on continuing to participate in public land reviews and decisions regarding the West Douglas Herd Area.

11. Habitat for Horses is a non-profit Texas corporation, first incorporated in 1998. Its four-fold mission includes (1) education for individuals on the proper care and maintenance of horses; (2) providing assistance to law enforcement in the investigation, work-up and prosecution of animal cruelty, by helping with seizures, care and education to owners; (3) providing education in the schools for children regarding horses; and (4) rescue of all breeds of horses. Habitat for Horses has a policy of not directly adopting wild horses seized from their natural ranges by the BLM. However, it regularly is called upon to rescue, transport, care for and house horses who are removed by BLM and then mistreated by their subsequent owners.

12. Since 1998 Habitat for Horses has consistently and repeatedly had to expend organizational funds that would otherwise be spent on fulfilling its mission, in order to rescue, transport and care for horses who were removed in roundups in which the BLM is in violation of the Wild Horses Act, the National Environmental Policy Act (NEPA), and other federal statutes.

13. But for the BLM's illegal removal of wild horses, which occurs as a result of the BLM's developed pattern and practice of illegal removals, Habitat for Horses would have been able to spend the money it has dedicated to the rescue of those illegally-removed horses on its primary missions and goals.

14. Habitat for Horses will surely continue its practice of rescuing horses who were illegally removed by the BLM and are then neglected or mistreated by their adopters. In fact, given the increasing difficulty with the management of the wild horses that are not adopted, the amount of money that Habitat for Horses will need to be diverting from its existing programs will increase in the future.

15. Front Range Equine Rescue ("FRER") is a Colorado non-profit corporation established in 1997, which is dedicated to stopping the abuse and neglect of both domestic and wild horses. FRER believes that ignorance is often the main cause for equine abuse rather than

outright cruelty. A primary goal of FRER is to educate new, potential, and existing horse owners on basic horse care topics such as nutrition, first aid, foot care, alternative therapies, and natural horsemanship training techniques. In addition, FRER has assisted thousands of horses, including wild horses, through direct rescue and its educational programs. While some horses are donated by their owners or are rescued when abandoned, many are rescued from livestock auctions to save them from slaughter. Once rescued, FRER then provides for the direct care and rehabilitation of these horses in need.

16. FRER represents its supporters' interests in protecting wild horses on the range and those who have been adopted and need to be rescued from improper adoptive homes. FRER does this by commenting on BLM actions to remove wild horses from their range and urging BLM and other responsible federal agencies to ensure that removals and any other federal actions taken with regard to wild horses are based on a legitimate need to undertake those actions and that the horses' safety and welfare will be assured during those actions. FRER has had extensive experience preparing wild horses for adoption to private homes. FRER has found that when older wild horses are removed from the range they have difficulty adjusting to domestication and, therefore, there is a less of an adoption demand for these horses.

17. FRER submitted comments opposing BLM's draft 2008 West Douglas Herd Area Wild Horse Removal and EA, and opposing the current planned removal of wild horses from the West Douglas Herd Area.

18. Because of BLM's policies and practices which affect wild horse removals across the country, FRER is forced to spend significant resources that would otherwise be used for FRER's other campaigns. FRER focuses primarily on domestic horses, but it diverts time, money, and efforts away from their other work in order to address the BLM's illegal conduct. Just recently, FRER rescued a wild mustang and yearling, and it saves and adopts wild horses from auctions and off of kill lots.

19. The Cloud Foundation is dedicated to preventing the extinction of the Pryor Mountain Wild Horse herd and other wild horse herds on public lands, especially isolated herds

with unique characteristics and historical significance. TCF expends significant organizational resources, that would otherwise be spent on different programs, investigating and addressing the problems caused by the GLM's illegal removals of wild horses. TCF submits comments on behalf of its supporters on various actions of BLM Field Offices which affect wild horses. TCF was organized by Ms. Ginger Kathrens, its Volunteer Executive Director. Ms. Kathrens first became involved with wild horse issues in 1994 when she filmed wild horses of the Pryor Mountains in Montana for Marty Stouffer's "Wild America" series. Ms. Kathrens has become a leading advocate for the preservation of wild horses on their native ranges. She is a nationally recognized authority on wild horse behavior and a frequent speaker about her study of and interactions with the wild stallion, Cloud, and the other wild horses of the Pryor Mountains, as well as the need to keep genetically viable herds of wild horses on our public lands. She has reached millions of people around the world through her documentaries and books about Cloud and his family. TCF sues on behalf of its supporters. TCF submitted a protest of BLM's 2005 West Douglas Herd Area Amendment and submitted comments opposing BLM's draft 2008 West Douglas Herd Area Wild Horse Removal and EA.

20. Toni Moore is the Secretary/Treasurer of CWHBC and the Special Projects Coordinator of The Cloud Foundation, Inc. ("TCF"). On behalf of the CWHBC and TCF, she participated in the only environmental review process afforded by BLM in connection with its removal of horses from the West Douglas Herd Area. When Ms. Moore commented on the proposed roundup challenged here, she raised concerns that this herd's historic range had been reduced from 443,979 acres to 148,153 acres, thereby drastically decreasing the Appropriate Management Level ("AML") for this population of wild horses. The BLM representatives refused to consider this issue, stating that this issue was "beyond the scope" of the Environmental Assessment (EA), which only addressed removing wild horses from the range. Legal issues concerning the administration of this herd and the public lands they have occupied historically threaten to escape review and correction, leading to further roundups and removals of these wild horses, all of which harm and threaten to harm Plaintiffs. The CWHBC submitted a

protest of BLM's 2005 West Douglas Herd Area Amendment and submitted comments opposing BLM's draft 2008 West Douglas Herd Area Wild Horse Removal and EA, and will continue to monitor BLM conduct in this area. Ms. Moore submitted comments on the proposed agency action challenged here.

21. Barbara Flores is a resident of Greeley, Colorado. She has been visiting the West Douglas Herd of horses since 1992. She has been involved in attending meetings and providing public comments in response to the BLM plans for removal of horses for several years, and provided public comments in response to the BLM's plan to eliminate the West Douglas Herd. She has four wild horses who she adopted and who were part of the BLM's program of removal of wild horses. Barbara Flores and CWHBC submitted comments on the proposed agency action challenged here.

22. Ms. Moore, Ms. Flores and CWHBC, participated in the environmental review process for the roundups of wild horses from the West Douglas herd. These individuals and organizations have been the primary advocates for and protectors of wild horses in this area. They have routinely and conscientiously commented on every proposed action by BLM affecting resources in the area, attended countless meetings where public input was sought and supposedly considered, kept in regular contact with local and federal agency officials, and instituted administrative and federal litigation, all for the purpose of maintaining wild horses in the Piceance-East Douglas Herd Management Area and the West Douglas Herd Area.

23. Dr. Don Moore is an equine and small animal veterinarian and has lived in or near the West Douglas area almost his entire life. Dr. Moore was a contract veterinarian for the BLM in the 1970s and 1980s during the roundup and removal of wild horses from Douglas Mountain, after passage of the Wild Horses Act. Dr. Moore has a personal interest in viewing and enjoying wild horses in the area. Having lived and worked in the area for decades, he is intimately familiar with its history, and the presence of wild horses there. He frequently visits the public lands to see and enjoy the wild horses that live there. Dr. Moore submitted comments on the proposed agency action challenged here.

24. Ms. Moore, Ms. Flores, Ms. Kathrens, and other supporters of the organizations they direct have witnessed other roundups of wild horses taken off the range and the horses' reactions to the loss of their freedom. They often have the memories of those events return to haunt them; they fear for the well being and safety of any wild horse BLM has captured and all wild horses currently living in the West Douglas Herd Area.

25. Defendants' actions and omissions, as set forth in greater detail herein, have inflicted and will continue to inflict current aesthetic and economic injury to Plaintiffs, through a series of ongoing policies enacted by the BLM and carried out across the country. These practices cause or threaten irreversible adverse effects to Plaintiffs and the wild horses of America.

26. If BLM is required to comply with its legal requirements under the Wild Horses Act, NEPA, and other federal statutes, Plaintiffs' legal injuries will be remedied.

DEFENDANTS

27. Ken Salazar is the Secretary of the Department of the Interior. Pursuant to the Wild Horses Act, he is responsible for the oversight of the BLM's management of wild horses and burros on the Nation's public lands, including the West Douglas Herd Area.

28. Robert Abbey is the Director of the BLM and is responsible for implementing decisions for wild horses in accordance with the Wild Horses Act.

29. Kent E. Walter is the Field Manager for the White River Field Office and is responsible for managing the wild horses in the West Douglas Herd Area in accordance with the Wild Horses Act and the regulations thereunder.

STATUTORY AND REGULATORY BACKGROUND

Wild Free-Roaming Horses and Burros Act and Related Regulations

30. In 1971, Congress declared 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 *et seq.* The Wild

Horses Act further provides, *inter alia*, that viable herds of wild horses should remain on the lands on which they were found at the time the Wild Horses Act was passed, “as an integral part of the natural system of the public lands.” *Id.* That is, barring compelling reasons to the contrary, wild horses are entitled to stay in their “herd area”—the “geographic area identified as having been used by a herd as its habitat in 1971.” 43 C.F.R. § 4700.0-5(d).

31. Congress delegated to the Secretary of Agriculture and the Secretary of the Interior jurisdiction over all wild free-roaming horses and burros “for the purpose of management and protection.” *Id.* § 1333(a).

32. Section 1333(a) provides that “[t]he Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation” *Id.*

33. Congress requires the agencies involved to preserve and safeguard the horses in a manner that causes the horses the least amount of interference. The Wild Horses Act provides that “[t]he Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands” and that “[a]ll management activities shall be at the minimal feasible level ... in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species.” *Id.*

34. Section 1333(b)(1) requires the BLM to maintain a current inventory of wild horses and burros so that it can

make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of public lands; and determine whether appropriate 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).

Id. § 1333(b)(1).

35. If BLM determines, based on reliable information, that there is an “overpopulation” of wild horses on public land, and only if the removal of “excess” animals is *necessary*, the BLM is entitled to remove them. *Id.* § 1332(b)(2). The agency can only take animals out of the herd who “*must* be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.” *Id.* § 1332(f) (emphasis added).

36. The BLM has issued regulations implementing the Wild Horses Act, which require that “[m]anagement activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans....” 43 C.F.R. § 4710.1. “Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.” 43 C.F.R. §4700.0-6(b).

37. BLM’s own regulations mirror and amplify the statutory requirement that it engage in the least amount of interference with the horses that is necessary. The regulations mandate that management of the horses *shall* “be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.” 43 C.F.R. § 4710.4.

38. On information and belief, more than 38,000 wild horses are currently held in government holding pens, and Defendant Secretary of the Interior Salazar predicts that 50,000 will be in holding in 2012.

39. On information and belief, BLM’s current pattern, practice and policy of removal is costing over sixty million tax dollars a year. A GAO report determined that BLM’s policy of removing and holding wild horses long-term is not sustainable. See BLM, Working Towards Sustainable Management of America’s Wild Horses and Burros 5 (Draft June 2010) available at https://www.blm.gov/epl-front-office/projects/lup/4900/13613/13856/Strategy_06_01_2010.pdf.

Information Quality Act (IQA)

40. Congress passed the IQA in 2001 to ensure and maximize “the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies....” Public Law 106-554 § 515.

41. The BLM, in turn, issued Information Quality Guidelines that mirror the act so that its information “is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased.” Bureau of Land Management, Information Quality Guidelines, 4, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf.

42. These guarantees afford an “added level of scrutiny” to information about agency action where, as with the removal of an entire herd of wild horses, that action is “expected to have a genuinely clear and substantial impact.” *Id.* Further,

[i]t is important that analytic results have a high degree of transparency regarding (1) the source of the data used, (2) the various assumptions employed, (3) the analytic methods applied, and (4) the statistical procedures employed.

Id. at 5.

National Environmental Policy Act (NEPA)

43. NEPA, 42 U.S.C. §§ 4321 *et seq.*, seeks to prevent environmental damage by imposing analysis and disclosure obligations on federal agencies to draw public attention to the proposed action’s environmental effects.

44. NEPA, the Council on Environmental Quality regulations, and the Department of Interior’s own regulations implementing NEPA require the BLM to insure that “high quality” information is utilized during the NEPA process and “that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

45. NEPA requires agencies considering new projects to take a “hard look” at all reasonable alternatives and the environmental impacts of each. NEPA requires that agencies

consider a reasonable range of alternatives for any action, including those with fewer adverse environmental impacts than the proposed action. It must also give a reasoned explanation for rejecting each alternative. The regulations implementing NEPA also require agencies to consider the cumulative impact of agency action. 40 C.F.R. § 1508.7.

46. Under NEPA any “major Federal actions significantly affecting the quality of the human environment” require the preparation of an environmental impact statement (EIS). *Id.* § 4332(2)(C). If the agency believes it is not engaging in a major federal action significantly affecting the quality of the human environment, it can prepare a Finding of No Significant Impact (FONSI) and an environmental assessment (EA).

47. A FONSI is only appropriate where environmental impacts are insignificant or, if there were significant impacts, the agency convincingly established changes in the proposed action that reduced the impacts to a minimum.

48. If an agency issues a FONSI, it still must take a “hard look” at the project.

49. An EA serves three purposes: 1) it assists in agency decision-making on whether to prepare an EIS or FONSI; 2) it independently ensures compliance with NEPA even when an EIS is not required; and 3) it facilitates the preparation of an EIS if one is required. 40 C.F.R. § 1508.9(a).

50. An EA is a “concise public document” that must include a discussion of the need for the proposed action, alternatives to the proposed action, environmental impacts of the proposed action and the alternatives and a listing of the persons and agencies consulted. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1508.9(a), 1508.9(b).

51. The BLM must analyze all potential impacts on the environment under a proposed action. The BLM’s regulations require that this analysis 1) be based on the best information available, and 2) not reflect subjective value judgments.

52. No activities regarding wild horses and burros are expressly exempted from NEPA analysis. Nevertheless, BLM’s Departmental Manual provides that certain activities are entitled to a “Categorical Exclusion” (CE) from NEPA requirements.

53. The Departmental Manual states that CEs are available for “extraordinary circumstances” and for the “Processing (transporting, sorting, providing veterinary care, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros [and a]pproval of the adoption of healthy, excess wild horses and burros.” 516 DM 11.9.

Federal Land Policy Management Act (FLPMA)

54. Congress passed the FLPMA, 43 U.S.C. §§ 1701, *et seq.*, in recognition of the millions of acres of public lands seriously damaged by decades of neglect and mismanagement.

55. FLPMA governs BLM’s management of the federal public lands, and requires BLM to develop land use plans for the public lands under its control. 43 U.S.C. § 1712. All resource management decisions made by BLM must conform to the approved land use plan. 43 C.F.R. § 1610.5-3(a). Thus, all resource management decisions “shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan.” 43 C.F.R. § 1601.0-5.

56. Prior to carrying out a proposed action that is not clearly consistent with the land use plan, BLM must amend the plan, complying with NEPA and allowing for public participation. 43 C.F.R. §§ 1610.5-3, 1610.5-5.

57. The BLM must manage public lands under concepts of “multiple use” and “sustained yield,” pursuant to FLPMA. FLPMA thus requires the BLM to manage the public lands for many purposes, including the many members of the public.

58. FLPMA recognizes that a land-use plan does not trump the statutory command of other laws, 43 U.S.C. § 1701(b), such as the Wild Horses Act, which requires the BLM to consider wild horses as an integral part of the public lands and mandates that the BLM provide wild horses specific protection.

FACTS

59. BLM states that the West Douglas Herd Area encompasses 123,387 acres of federal land managed by the BLM and 4,754 acres of private land in northwestern Colorado. It

is located within the White River Resource Area and managed by the BLM's White River Field Office.

60. The BLM has designated the West Douglas Herd Area a "herd area." This means that the BLM acknowledges that wild horses enjoyed life and nature in this area in 1971, when the Wild Horses Act was enacted.

61. In 1975, the BLM drafted the White River Resource Area Management Framework Plan; it provided guidelines for managing the wild horses and the commercial uses of the land in the area.

62. BLM has engaged in a pattern of decimating various herds, despite the Wild Horses Act's statutory direction to preserve and protect the horses. In 1980, the BLM's practice began in earnest in connection with the West Douglas Herd at issue in this action. At that time BLM recommended that *all* of the horses west of Douglas Creek (later designated the West Douglas Herd Area) be removed. At that point BLM's excuse for removing every animal in the herd was that other resource activities in this area (primarily energy exploration) were causing the horses to disperse into other areas.

63. Despite its decision, BLM demonstrated its understanding of the impropriety of this action when it interrupted its plan to clear the range of these horses. But in furtherance of its policies, in 1997 BLM again declared its intention to remove every single horse from the Herd Area. The Record of Decision for the White River Resource Area Management Plan (1997 WRRAMP) called for the total removal of wild horses in the West Douglas Herd Area by 2007. WRRAMP, p. 2-26.

64. BLM's 1997 WRRAMP stated that it would provide for a "healthy, viable breeding population" of wild horses in the Piceance East Douglas Herd Management Area but eventually eliminate wild horses from the West Douglas Herd Area.

65. In 2004, the BLM reasserted its intention to remove all wild horses from the West Douglas Herd Area. The basis for that planned removal was that gas and oil leases on the home

range of the West Douglas Herd trumped the horses' Congressionally-declared right to remain.

According to BLM,

All of the alternatives for retention of horses rely on "Oil and Gas lease stipulations" to maintain key habitat for horses. Currently 93 percent of the area is leased and there is no opportunity to place new stipulations on these leases until they expire.... Until such time as this oil and gas field is depleted/abandoned retention of horses is not reasonable.

2004 Amendment Decision Record, p. iii.

66. The 2005 West Douglas Herd Area Amendment led to another affirmation of the decision to remove all wild horses from the West Douglas Herd Area. On October 10, 2007, the BLM issued a Decision Record approving the proposed decision to remove all of the wild horses in the West Douglas Herd Area "at the earliest date." 2007 Decision Record.

67. The BLM confirmed its desire to empty the range of horses again, in 2008. However, that never occurred, supposedly due to a lack of funding.

68. The BLM then intended to remove 100 wild horses from the West Douglas Herd Area pursuant to the 2008 Gather Plan, commencing September 27, 2009. This did not occur either, because the BLM's Gather Plan was in violation of the law.

69. On August 5, 2009, this Court set aside the 2008 Gather Plan, as being "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." (Case No. 1:06-cv-01609-RMC, Docket 105, p. 17, citing 5 U.S.C. § 706(2)(C)).

70. In its Memorandum Opinion, this Court ruled that the BLM could not remove horses from the range and could not eliminate the West Douglas Herd without a determination that all of the horses removed were "excess." It also found the BLM had not previously done so. Instead, this Court found that the Wild Horses Act required the "BLM first determine that an overpopulation exists and that the wild free-roaming horses and burros slated for removal are 'excess animals.' BLM concededly has not made such a determination with respect to the horses in the West Douglas Herd Area." (Case No. 1:06-cv-01609-RMC, Docket 105, pp. 17-18).

71. On September 3, 2010, the BLM signed its 2010 Gather Plan, once again intending to wipe out the herd. Decision Record.

72. The 2010 Gather Plan is in direct violation of this Court's August 5, 2009 Order.

73. In the 2010 Gather Plan, the BLM again has neglected to determine an overpopulation exists before deciding to eliminate the herd. Instead, the BLM insists—directly contrary to this Court's findings last year—that “[t]hrough all of the analysis completed by the BLM on the West Douglas Herd Area, the BLM has consistently determined that the wild horses are excess animals that need to be removed” Environmental Assessment, p. 4.

74. The BLM also refuses to comply with its obligation to assess whether an overpopulation exists, claiming that it “previously addressed” its authority to wipe out a herd in two other documents and that “[t]he issue of zeroing out the herd has been determined in previous NEPA and is therefore outside the scope of this analysis.” Environmental Assessment, p. 7.

75. The two documents referred to in the 2010 Gather Plan as having previously determined the existence of an overpopulation and excess animals in the West Douglas Herd both predate this Court's finding in 2009 that the BLM had *not* determined the existence of an overpopulation and excess animals in the West Douglas Herd Area. Both were considered by the Court when it found the BLM had not determined the existence of an overpopulation or that all the horses in the West Douglas Area were excess.

76. The BLM's decision to destroy the West Douglas Herd violates this Court's prior order and the Wild Horses Act.

77. The BLM intends to abandon to long-term pastures all the wild horses it removes from the West Douglas Herd Area that it does not place through adoption or sell to qualified individuals.

78. In reaching its decision to remove all of these horses, BLM is relying on inaccurate, insufficient and inappropriate information to reach its conclusions.

79. The 2010 Gather Plan does cite two justifications for zeroing out the West Douglas Herd: a decline in ground cover and grasses, and the claim that “the limited summer range could only support a wild horse herd of up to 60 wild horses and [] a wild horse herd of that size is not genetically viable and could not sustain itself naturally.” Decision Record, pp. 3-4.

80. BLM intends to commence this illegal removal of horses on October 4, 2010. Therefore, immediate injunctive and/or declaratory relief is required to ensure that Defendants adhere to the requirements of law in administering the West Douglas Herd Area, and to prevent further and irreparable harm to the herd and to Plaintiffs resulting from Defendants’ unlawful actions.

81. Plaintiffs have no adequate remedy at law for the Defendants’ violations as alleged herein. Without immediate declaratory and injunctive relief ordering Defendants to comply with the Wild Horses Act, NEPA, IQA, FLPMA, and APA, Plaintiffs will suffer irreparable harm. Accordingly, Plaintiffs pray for judicial relief as set forth below.

CLAIMS FOR RELIEF

COUNT ONE

(Violations of the Wild Horses Act and APA, against all Defendants)

82. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

83. Defendants have failed to determine that an overpopulation exists in the West Douglas Herd, and therefore cannot remove any wild horses as “excess animals” under the Wild Horses Act.

84. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area fails to maintain a thriving natural ecological balance.

85. Zero wild horses cannot be in “balance” with the remaining ecology of the Herd Area at issue.

86. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area, a known habitat of wild horses during the passage of the Wild Horses Act in

1971, fails to “consider[the wild horses] in the area where presently found, as an integral part of the natural system of the public lands.” 16 U.S.C. § 1331.

87. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area fails to consider use by wild horses as one of the “multiple uses” in the herd area.

88. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area fails to manage the West Douglas Herd at the “minimal feasible level ... in order to protect the natural ecological balance of all wildlife species which inhabit such lands...” 16 U.S.C. § 1333(a).

89. Defendants’ policy of progressive removals in an attempt to eliminate the West Douglas Herd, which BLM claims reduced the genetic viability of the Herd, is in violation of the Wild Horses Act, which requires BLM to preserve wild horses in their range.

90. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area on the theory that a small herd population is genetically unviable exceeds their statutory authority under the Wild Horses Act, which demands the protection and consideration of wild horses where presently found, as a component of the public lands.

91. Defendants’ final decision to remove all of the wild horses from the West Douglas Herd Area on the theory that the wild horses are contributing to the deterioration of the rangelands exceeds their statutory authority under the Wild Horses Act, which permits the removal of excess animals to protect the rangeland from deterioration “associated with overpopulation.” 16 U.S.C. § 1333(b)(2). Any deterioration of the rangelands is associated with the massive and intrusive human development of the West Douglas Herd Area, not the wild horses there.

92. Defendants’ final decision to remove and relocate to long-term pastures all of the wild horses from the West Douglas Herd Area that it does not place through adoption or sell to qualified individuals, absent a determination of overpopulation, constitutes an illegal corralling of these horses and maintenance of them off the public lands.

93. Defendants' final decision to remove and relocate all of the wild horses from the West Douglas Herd Area is just the latest action in an ongoing pattern and practice in which the BLM repeatedly relies on improper data for decisions that demand more accurate scientific information, in violation of the Wild Horses Act.

94. Defendants' final decision to remove and relocate all of the wild horses from the West Douglas Herd Area is emblematic of a continuing practice of eliminating entire herds of horses, or emptying out herd areas and herd management areas, in violation of the Wild Horses Act, which practices will continue, unless declared illegal and restrained by this Court.

95. Defendants' final decision to remove and relocate all of the wild horses from the West Douglas Herd Area violates the Wild Horses Act because it is based on an ongoing series of illegal decisions about how to manage wild horses that are routinely and repeatedly applied in the BLM's decision-making process regarding wild horses.

96. Defendants' violation of the Wild Free-Roaming Horses and Burros Act is arbitrary, capricious, an abuse of discretion, in breach of their legal obligations and the law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens to cause serious prejudice and injury to Plaintiffs' rights and interests.

COUNT TWO

(Violations of NEPA and APA, against all Defendants)

97. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

98. Defendants' 2010 Gather Plan fails to take a hard look at the facts and reasonable alternatives regarding the horses at issue, in violation of NEPA.

99. Defendants' 2010 Gather Plan violates NEPA because it fails to consider a reasonable range of alternative actions, such as the introduction of wild horses to maintain the genetic viability of the West Douglas Herd under the BLM's definition of genetic viability or limiting the oil and gas operations in the West Douglas Herd Area, or removal of livestock.

100. Defendants' 2010 Gather Plan fails to analyze and give a reasoned explanation why the alternative of taking no action is inappropriate, in violation of NEPA.

101. Defendants have failed to consider the cumulative impact of agency action, which has caused major detriment to the environment, in violation of NEPA and other statutes.

102. Defendants' 2010 Gather Plan is based on a pattern and practice of decision-making that predates the 2010 Gather Plan and is part of an ongoing course of conduct by the BLM aimed at removing wild horses from their homes in violation of the Wild Horses Act, NEPA, IQA, FLPMA, and other statutes.

103. BLM's use of a Categorical Exclusion (CE) to circumvent NEPA's requirement to address the environmental effects of its processing, disposition and other activities with respect to the West Douglas wild horses it has removed and intends to remove from the West Douglas Herd Area is in violation of NEPA and the Administrative Procedure Act.

104. Defendants' violation of the National Environmental Policy Act is arbitrary, capricious, an abuse of discretion, in breach of their legal obligations and the law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens to cause serious prejudice and injury to Plaintiffs' rights and interests.

COUNT THREE

(Violations of IQA and APA, against all Defendants)

105. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

106. Defendants' 2010 Gather Plan and Decision Record rely on information of insufficient quality, objectivity, utility and integrity to meet the standards demanded by the IQA.

107. Defendants' 2010 Gather Plan and Decision Record is based on a pattern and practice of intentionally relying on information of insufficient quality, objectivity, utility and integrity to meet the standards demanded by the IQA, to reach a desired result of removing wild horses from the range, in violation of the Wild Horses Act and the Administrative Procedure Act.

108. Defendants' violation of the Information Quality Act is arbitrary, capricious, an abuse of discretion, in breach of their legal obligations and the law and/or constitutes agency

action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens to cause serious prejudice and injury to Plaintiffs' rights and interests.

COUNT FOUR

(Violations of FLPMA and APA, against all Defendants)

109. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

110. Defendants' final decision to remove all of the wild horses from the West Douglas Herd Area fails to consider use by wild horses as one of the "multiple uses" in the herd area, in violation of FLPMA.

111. Defendants' final decision to remove all of the wild horses from the West Douglas Herd Area violates the Wild Horses Act by considering the BLM's land use plans in derogation of the Wild Horses Act, in violation of FLPMA.

112. Defendants have engaged in a years-long practice of violating FLPMA in connection with decisions regarding the elimination of wild horses, and have utilized a departmental policy of removing the horses based on decisions that have been repeated over many instances involving tens of thousands of wild horses.

113. Defendants' violation of the Federal Land Policy Management Act is arbitrary, capricious, an abuse of discretion, in breach of their legal obligations and the law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens to cause serious prejudice and injury to Plaintiffs' rights and interests.

PRAYER FOR RELIEF

Plaintiffs respectfully request this Court enter judgment in favor of Plaintiffs and grant the following relief:

a. Issue a declaratory judgment that:

i. The BLM's 2010 Gather Plan and Decision Record regarding the West Douglas Herd Area violate the Wild Horses Act and the regulations thereunder, and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and without observance of procedure required by law, contrary to the APA.

ii. The BLM's 2005 West Douglas Herd Area Amendment to the White River Resource Management Plan violates the Wild Horses Act and the regulations thereunder, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and without observance of procedure required by law, contrary to the Administrative Procedure Act.

iii. The BLM's ongoing policy of eliminating herds of horses without due consideration of the extreme nature of this conduct violates the spirit and language of the Wild Horses Act and NEPA.

iv. The BLM's pattern and practice of reducing the numbers of wild horses in a herd area and then determining, based on BLM's pattern and practice, that the herd needs to be eliminated because it is not genetically viable, violates the spirit and language of the Wild Horses Act.

v. The BLM's final decision to place wild horses in long-term holding facilities outside the herd areas violates the Wild Horses Act and the regulations thereunder, and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and without observance of procedure required by law, contrary to the APA.

vi. The BLM's 2010 Gather Plan and Decision Record regarding the West Douglas Herd Area violate NEPA by failing to take a hard look and consider a reasonable range of alternatives.

vii. The BLM's 2010 Gather Plan and Decision Record regarding the West Douglas Herd Area violate NEPA by failing to provide a reasonable explanation why the "no action" alternative is inappropriate.

viii. The BLM's 2010 Gather Plan and Decision Record regarding the West

Douglas Herd Area violate FLPMA by failing to consider multiple uses of the West Douglas Herd Area.

- ix. The BLM's 2010 Gather Plan and Decision Record regarding the West Douglas Herd Area violate FLPMA by prioritizing compliance with land use plans over compliance with statutory requirements.
- b. Pursuant to the APA, issue an order:
- i. Setting aside the BLM's 2010 Gather Plan and Decision Record regarding the West Douglas Herd Area insofar as it directs the removal of all wild horses from the Herd Area, and directs removed wild horses be kept in long-term holding facilities.
 - ii. Setting aside the BLM's 2005 West Douglas Herd Area Amendment to the White River Resource Management Plan insofar as it directs or permits the removal of all wild horses from the West Douglas Herd Area.
 - iii. Directing the return of all wild horses removed from the West Douglas Herd Area in 2010.
 - iv. Directing the BLM to protect the wild horses in the West Douglas Herd Area and allow the number of wild horses in the West Douglas Herd Area to naturally return to the population numbers that existed previously so that the herd becomes genetically viable and sustainable for the long term.
- c. Enter such temporary, preliminary and/or permanent injunctive relief against the implementation of the 2010 Gather Plan and Decision Record.
- d. Award plaintiffs their costs and expenses (including reasonable attorney, expert witness, and consulting fees); and
- e. Award plaintiffs such other relief as the Court deems appropriate.

Respectfully submitted,

Dated: September 29, 2010

By: Valerie J. Stanley (V.L.G.)

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Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury for all applicable claims that can be determined by a jury.

Dated: September 29, 2010

By: Valerie J. Stanley (V.L.G.)

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Attorneys for Plaintiffs

SF9814357.1

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT

10 1645

Civil Action No. _____
(To be supplied by the Clerk)

NOTICE TO PARTIES:

Pursuant to Rule 40.5(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

I. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(es) below.]

- (a) relates to common property
- (b) involves common issues of fact
- (c) grows out of the same event or transaction
- (d) involves the validity or infringement of the same patent
- (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case:

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(ES). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

Colorado Wild Horse & Burro v. Ken Salazar, et al. C.A. No. 06-1609 (RMC)
Coalition, et al.

DATE

Signature of Plaintiff/Defendant (or counsel)

CWBC
v
Salazar

9/28/10

UNITED STATES DISTRICT COURT

for the

District of Columbia

COLORADO WILD HORSE AND BURRO COALITION, INC.; FRONT RANGE EQUINE RESCUE, INC., Colorado non-profit corporation; HABITAT FOR HORSES, a Texas non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation; BARBARA FLORES; TONI MOORE; and DR. DON MOORE,

Plaintiff

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT E. WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Ken Salazar
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Valerie J. Stanley, Esq.*
329 Prince George St.
Laurel, MD 20707
Telephone: (310) 549-3126
Facsimile: (888) 539-4736

[Redacted contact information for Valerie J. Stanley]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

[Handwritten signature of Jim Weiner]

ANGELA D. CAESAR, CLERK OF COURT

Date: 9/29/10 - 4:30 pm

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

District of Columbia

COLORADO WILD HORSE AND BURRO COALITION, INC.; FRONT RANGE EQUINE RESCUE, INC., Colorado non-profit corporation; HABITAT FOR HORSES, a Texas non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation; BARBARA FLORES; TONI MOORE; and DR. DON MOORE,

Plaintiff

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT E. WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Valerie J. Stanley, Esq.
329 Prince George St.
Laurel, MD 20707
Telephone: (310) 549-3126
Facsimile: (888) 539-4736

[Redacted contact information for Valerie J. Stanley]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Ashley Grant
Mail Clerk

September 29, 2010
3:25 pm

UNITED STATES DISTRICT COURT

for the

District of Columbia

COLORADO WILD HORSE AND BURRO COALITION, INC.; FRONT RANGE EQUINE RESCUE, INC., Colorado non-profit corporation; HABITAT FOR HORSES, a Texas non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation; BARBARA FLORES; TONI MOORE; and DR. DON MOORE, Plaintiff

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT E. WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office, Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Ronald C. Machen, Jr.
U.S. Attorney
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Valerie J. Stanley, Esq.
329 Prince George St.
Laurel, MD 20707
Telephone: (310) 549-3126
Facsimile: (888) 539-4736

[Redacted contact information for Valerie J. Stanley]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Ronald Machen
District Clerk
9-29-2010 3:50 PM

UNITED STATES DISTRICT COURT

for the

District of Columbia

COLORADO WILD HORSE AND BURRO COALITION, INC.; FRONT RANGE EQUINE RESCUE, INC., Colorado non-profit corporation; HABITAT FOR HORSES, a Texas non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation; BARBARA FLORES; TONI MOORE; and DR. DON MOORE,

Plaintiff

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT E. WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Robert Abbey
Bureau of Land Management
1849 C Street, NW
Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Valerie J. Stanley, Esq.
329 Prince George St.
Laurel, MD 20707
Telephone: (310) 549-3126
Facsimile: (888) 539-4736

[Redacted contact information]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Handwritten signature of Jim Weiner

ANGELA D. CAESAR, CLERK OF COURT

Date: 5/29/2010 4:30 pm

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
for the
District of Columbia

COLORADO WILD HORSE AND BURRO COALITION, INC.; FRONT RANGE EQUINE RESCUE, INC., Colorado non-profit corporation; HABITAT FOR HORSES, a Texas non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation; BARBARA FLORES; TONI MOORE; and DR. DON MOORE.

Plaintiff

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT E. WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Kent E. Walter
Bureau of Land Management
White River Field Office
220 East Market Street
Meeker, CO 81641

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Valerie J. Stanley, Esq.
329 Prince George St.
Laurel, MD 20707
Telephone: (310) 549-3126
Facsimile: (888) 539-4736

[Redacted contact information for Valerie J. Stanley]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk