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 8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE DISTRICT OF NEVADA**

10 America's Wild Horse Advocates, Wild
 Horses 4 Ever,
 11 Plaintiffs,
 12 vs.
 13 U.S Department of the Interior Nevada Bureau
 of Land Management and DOES I through X,
 14
 15 Defendants.

Case No.:

Department:

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

17 Plaintiff, America's Wild Horse Advocates ("AWHA") and Wild Horses 4 Ever ("WHF"),
 18 Nevada Not for Profit Corporations, by and through their Attorneys, John E. Cereso, Esq. and
 19 Louis C. Schneider, Esq. of the Nevada Law Group, Ltd., brings this action against the United
 20 States Department of the Interior Nevada Bureau of Land Management ("NVBLM"), a Federal
 21 Agency, pursuant to 16 U.S.C. § 1333 and alleges as follows:

22 **Parties**

- 23
- 24 1. AWHA and WHF are Not for Profit Corporations chartered by the State of Nevada which
 - 25 seek to protect the wild horse population from abuse, neglect and mismanagement.
 - 26 2. NVBLM acts on behalf of the federal government and is charged with the care, custody
 - 27 and control of wild horse populations on public lands in the State of Nevada under 16
 - 28 U.S.C. § 1333.

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3. Defendant(s) DOE(s) is an agency of the United States and/or State of Nevada, established by statute and charged with responsibility for, inter alia, the administration and management of wild horse and burro populations in designated Herd Management Areas (hereinafter "HMA's") pursuant to 16 U.S.C. § 1331, 43 C.F.R. § 4700 and 42 U.S.C. §§ 4321 Et seq.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1333; and 42 U.S.C. §§ 4321 Et seq. Venue is proper in this district pursuant to 16 U.S.C. § 1333 as this is the district in which the field office of the NVBLM proposes to remove excess Wild Horses and Burros.

Complaint

5. Defendants are planning to remove Wild Horses from the Spring Mountain and Lake Mead Complexes as early as January 2nd, 2007 (hereinafter referred to as the "removal").
6. The removal of the wild horses from the complexes violates the purpose and intent of

"The Wild Horses and Burros Protection Act of 1971, 16 U.S.C. § 1331, which, provides:

"Congress finds and declares 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 lives of the American people; that these horses and burros are fast disappearing from the American Scene. **It is the policy of Congress 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 were presently found, as an integral part of the natural system of the public lands.**" (Emphasis added)

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- 1 7. Defendant's ordered an Environmental Assessment Report ("EAR"), published on
2 December 22nd, 2006, known as EA-NV-052-2007-50 and are basing, in full or in part,
3 the planned removal on this report.
- 4 8. The EAR is flawed, inaccurate, and lacks a solid grounding in legitimate rangeland
5 science.
- 6 9. The removal will harm the genetic viability and diversity of the wild horses in question in
7 an irreparable and permanent manner.
- 8 10. AWhA and WHF were denied a fair, reasonable, and meaningful opportunity to be heard
9 during the open meetings held by NVBLM on November 14, 2006 and November 16,
10 2006.
- 11 11. The wild horse herds which are the subject of the removal are not in excess and do not
12 warrant an emergency action to remove them.
- 13 12. The actions taken by NVBLM over the past several years have caused significant and
14 untold damage to the wild horse populations of the State of Nevada and show a regular
15 and recurring pattern of actions which are inconsistent with the intent of Congress and the
16 preservation of wild horses.
- 17 13. NVBLM has violated the National Environmental Policy Act ("NEPA") by utilizing an
18 EAR which is flawed and not based on legitimate range science.
- 19 14. NVBLM has violated the Wild Free-Roaming Horses and Burros Act ("Wild Horses
20 Act") by failing to protect and preserve wild horses as required under the act.
- 21 15. NVBLM has violated the Administrative Procedures Act ("APA") and the Nevada Open
22 Meetings Laws by failing to permit open and meaningful public comment on this issue.

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1 **WHEREFORE**, Plaintiffs, AWhA and WHF, prays this Court issue orders as follows:

- 2
- 3 1. Taking jurisdiction of this cause;
- 4 2. Enjoining Defendants from exercising any removal of any wild horses within the State of
- 5 Nevada until proper range science studies are completed and this Court is satisfied that
- 6 Defendants actions will not cause further harm to the wild horse population of Nevada;
- 7 3. For such other relief as the Court may deem just and proper in the premises.

8 Dated this 24 day of December, 2006.

9 Submitted by:

10 **NEVADA LAW GROUP, LTD.**

11 

12 **JOHN E. CERESO, ESQ.**

Nevada Bar Number: 8777

13 **LOUIS C. SCHNEIDER, ESQ.**

Nevada Bar Number: 9683

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17 Attorney for Plaintiff

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10 America's Wild Horse Advocates, Wild
 11 Horses 4 Ever,
 Plaintiffs,

12 vs.

13 U.S Department of the Interior Nevada Bureau
 14 of Land Management and DOES I through X,

15 Defendants.

Case No.:

Department:

**PLAINTIFF'S EMERGENCY MOTION
 FOR TEMPORARY RESTRAINING
 ORDER AND PRELIMINARY
 INJUNCTION**

17 Plaintiff, America's Wild Horse Advocates ("AWHA"), A Nevada Not for Profit Corporation,
 18 and Wild Horses 4 Ever ("WHF"), a Nevada Not for Profit Corporation, by and through their
 19 Attorneys, John E. Cereso, Esq. and Louis C. Schneider, Esq. of the Nevada Law Group, Ltd.,
 20 brings this EMERGENCY MOTION FOR TEMPOARY RESTRAINING ORDER AND
 21 PRELIMINARY INJUNCTION against the United States Department of the Interior Nevada
 22 Bureau of Land Management ("NVBLM"), a Federal Agency, to prevent the removal of wild
 23 horses by NVBLM which is slated for January 2nd, 2007.

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FACTUAL BACKGROUND

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 2 Plaintiffs, AWAH¹ and WHF, are not-for-profit corporations of the State of Nevada
 3 which seek to protect the wild horse population from abuse, neglect and mismanagement.
 4 Exhibit "A", ¶ 2. Defendant NVBLM acts on behalf of the federal government and is charged
 5 with the care, custody and control of wild horse populations on public lands in the State of
 6 Nevada under 16 U.S.C. § 1333. *Id.* Defendant(s) DOE(s) are agencies of the United States
 7 and/or the State of Nevada with responsibility for the administration and management of wild
 8 horse and burro populations in designated Herd Management Areas ("HMA's") pursuant to 16
 9 U.S.C. § 1331, 43 C.F.R. § 4700 and 42 U.S.C. §§ 4321 Et Seq. *Id.*

10 Defendants are planning to remove wild horses from the Spring Mountain and Lake
 11 Mead Complexes as of January 2, 2007 (the "Removal") claiming a need to complete the
 12 removal based in whole or in part on an Environmental Assessment Report ("EAR") known as
 13 EA-NV-052-2007-50. *Id.* at ¶ 3. This EAR is flawed, inaccurate, and lacks a solid grounding in
 14 legitimate rangeland science. *Id.* The Removal will harm the genetic viability and diversity of
 15 the wild horse populations in question in an irreparable and permanent manor. *Id.*

16 Plaintiffs were denied a fair and reasonable opportunity to be heard in a meaningful way
 17 during the open meetings held by NVBLM on November 14, 2006 and November 16, 2006. *Id.* at
 18 ¶ 4.

19 The wild horses which are the subject of the Removal are not in excess and do not
 20 warrant action to remove them, rather, the actions taken by NVBLM over the past several years
 21 have caused significant and untold damage to the wild horse populations of the State of Nevada
 22 and show a regular and recurring pattern of actions which are inconsistent with the intent of
 23 Congress and the preservation of wild horses. *Id.* at ¶ 5.

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¹ A copy of the Affidavit of Billie Young, President of AWAH, is attached hereto as "Exhibit A" and incorporated fully herein.

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ARGUMENT

A. The Court should grant Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.

"To obtain a preliminary injunction, a party must make a clear showing of either (1) a combination of probable success on the merits and a possibility of irreparable injury, or (2) that its claims raise serious questions as to the merits and the balance of hardships tips in its favor."

Connecticut General Life Insurance Co. v. New Images, 321 F. 3d 878, 881 (9th Cir. 2003).

"These formulations are not different tests but represent two points on a sliding scale in which the degree of irreparable harm increases as the probability of success on the merits decreases."

Faith Center Church Evangelistic Ministries v. Glover, 462 F. 3d 1194 (9th Cir. 2006) (quoting Associated Gen. Contractors of Cal. v. Coal. for Econ. Equity, 950 F.2d 1401, 1410 (9th Cir.

1991). Further, "[i]n cases where the public interest is involved, the district court must also examine whether the public interest favors the plaintiff." Sammartano v. First Judicial District Court, 303 F.3d 959, 965 (9th Cir. 2002) (quoting Fund for Animals v. Lujan, 962 F.2d 1391, 1400 (9th Cir. 1992)).

Plaintiffs, AWA and WHF, are not-for-profit corporations of the State of Nevada which seek to protect the wild horse population from abuse, neglect and mismanagement. Defendant NVBLM acts on behalf of the federal government and is charged with the care, custody and control of wild horse populations on public lands in the State of Nevada under 16 U.S.C. § 1333. Defendant(s) DOE(s) are agencies of the United States and/or the State of Nevada with responsibility for the administration and management of wild horse and burro populations in designated Herd Management Areas ("HMA's") pursuant to 16 U.S.C. § 1331, 43 C.F.R. § 4700 and 42 U.S.C. §§ 4321 Et Seq.

Defendants are planning to remove wild horses from the Spring Mountain and Lake Mead Complexes as of January 2, 2007 (the "Removal") claiming a need to complete the removal based in whole or in part on an Environmental Assessment Report ("EAR") known as EA-NV-052-2007-50. This EAR is flawed, inaccurate, and lacks a solid grounding in legitimate

1 rangeland science. The Removal will harm the genetic viability and diversity of the wild horse
2 populations in question in an irreparable and permanent manor.

3 Plaintiff's were denied a fair and reasonable opportunity to be heard in a meaningful way
4 during the open meetings held by NVBLM on November 14, 2006 and November 16, 2006.

5 The wild horses which are the subject of the Removal are not in excess and do not
6 warrant action to remove them, rather, the actions taken by NVBLM over the past several years
7 have caused significant and untold damage to the wild horse populations of the State of Nevada
8 and show a regular and recurring pattern of actions which are inconsistent with the intent of
9 Congress and the preservation of wild horses.

10 The use of **legitimate range science** will show that the NVBLM management of the wild
11 horses, as well as the removal scheduled for January 2nd, 2007, is inconsistent with the
12 preservation of these magnificent creatures. Use of such legitimate science would render a
13 strong likelihood of success on the merits, and the failure to grant this injunction would mean
14 irreparable injury to the wild horses in question. The granting of the injunction will not cause
15 any short term harm, even if, *arguendo*, Plaintiff's case is decided against them.

16 Due to the timing of the release of the EAR of December 22nd, 2006, as well as the
17 calendar start date of January 2nd, 2007, and the inability to properly investigate and brief the
18 numerous scientific issues involved in the short time frame allotted, Plaintiff's feel that this
19 Emergency Motion and TRO is the only option available to prevent further harm to the wild
20 horse population which would be caused by the Removal as scheduled. A short delay until a full
21 hearing can be convened where these issues are properly brought before the court causes
22 minimal to no harm to Defendants. The Court should grant Plaintiffs emergency motion.

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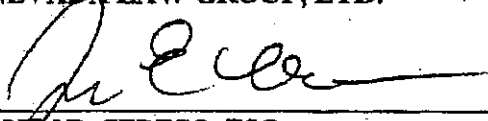
1 **WHEREFORE**, Plaintiffs, AWA and WHF, prays this Court issue orders as follows:

- 2 1. Enjoining Defendants from exercising any removal of any wild horses as covered in the
- 3 EAR noted above until proper range science studies are completed and this Court is
- 4 satisfied that Defendants actions will not cause further harm to the wild horse population
- 5 of Nevada;
- 6 2. For such other relief as the Court may deem just and proper in the premises.

7 Dated this 24 day of December, 2006.

8 Submitted by:

9 **NEVADA LAW GROUP, LTD.**

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 12 Nevada Bar Number: 8777
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 19 Attorney for Plaintiff

Exhibit "A"

EXHIBIT

"A"

Exhibit "A"

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AFFIDAVIT OF BILLIE YOUNG

STATE OF NEVADA)
 ss.
COUNTY OF CLARK)

Billie Young, being first duly sworn on oath, deposes and states as follows:

1. Affiant is the President of America's Wild Horse Advocates, one of the Defendants in the foregoing action.

2. Plaintiffs, AWHIA and WHF, are not-for-profit corporations of the State of Nevada which seek to protect the wild horse population from abuse, neglect and mismanagement. Defendant NVBLM acts on behalf of the federal government and is charged with the care, custody and control of wild horse populations on public lands in the State of Nevada under 16 U.S.C. § 1333. Defendant(s) DOE(s) are agencies of the United States and/or the State of Nevada with responsibility for the administration and management of wild horse and burro populations in designated Herd Management Areas ("HMA's") pursuant to 16 U.S.C. § 1331, 43 C.F.R. § 4700 and 42 U.S.C. §§ 4321 Et Seq.

3. Defendants are planning to remove wild horses from the Spring Mountain and Lake Mead Complexes as of January 2, 2007 (the "Removal") claiming a need to complete the removal based in whole or in part on an Environmental Assessment Report ("EAR") known as EA-NV-052-2007-50. This EAR is flawed, inaccurate, and lacks a solid grounding in legitimate rangeland science. The Removal will harm the genetic viability and diversity of the wild horse populations in question in an irreparable and permanent manor.

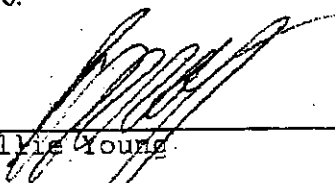
4. Plaintiff's were denied a fair and reasonable opportunity to be heard in a meaningful way during the open meetings held by NVBLM on November 14, 2006 and November 16, 2006.

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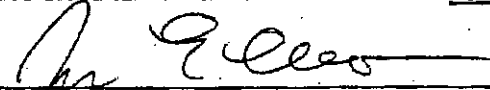
1 5. The wild horses which are the subject of the Removal are not in excess and do not
2 warrant action to remove them, rather, the actions taken by NVBLM over the past several years
3 have caused significant and untold damage to the wild horse populations of the State of Nevada
4 and show a regular and recurring pattern of actions which are inconsistent with the intent of
5 Congress and the preservation of wild horses.

6 FURTHER AFFLIANT SAYETH NAUGHT.

7
8 Dated this 24 day of December, 2006.

9
10 
11 _____
12 Billie Young

13 Subscribed and sworn to before me this 24 day of December, 2006.

14 
15 _____
16 Notary Public in and for said County and State

