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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 **DEVILS' GARDEN PRESERVATION**)
18 **GROUP**, an unincorporated association;)
19 **WILSON RANCHES**, a California general)
partnership; and **GREEN VALLEY CORP.**,)
20 a California corporation dba MS Ranch,)

21 Plaintiffs,)

22 vs.)

23 **AMANDA McADAMS**, in her official)
capacity as Forest Supervisor, Modoc)
24 National Forest; and **U.S. FOREST**)
SERVICE, an agency within the U.S.)
25 Department of Agriculture,)

26 Defendants)
27
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Case No:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This case arises out of defendants’ failure to protect the ecological balance on the
3 Modoc National Forest by failing to remove excess wild horses pursuant to the Wild Free-
4 Roaming Horses and Burros Act of 1971 (“WHA”). Failure to follow the law has led to
5 significant overpopulation of wild horses resulting in damage to ecological values and
6 impairment of multiple uses. Defendant United States Forest Service (“USFS” or Forest
7 Service”) is an agency within the United States Department of Agriculture. Defendant Amanda
8 McAdams is the Forest Supervisor for the Modoc National Forest. Defendants have already
9 determined that a significant overpopulation of wild horses exists within the Devils’ Garden
10 Plateau Wild Horse Territory (“DGWHT”), and that removing “excess animals” within the
11 meaning of the WHA is needed to restore and maintain a thriving ecological balance and meet
12 multiple-use objectives. However, defendants have failed to comply with their removal
13 obligations arising from an excessive wild horse population. Instead, they have decided to
14 entirely eliminate livestock grazing from the two grazing allotments with the largest
15 concentration of wild horses.
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18 2. Following the 2016 foaling season, an estimated 2,800 wild horses overpopulate
19 the Modoc National Forest – substantially above the upper limit of the Appropriate Management
20 Level (“AML”) of 402 wild horses. The excess animals are severely damaging the rangeland
21 resources. Plaintiffs are an association of landowners and individual landowners with federal
22 grazing permits on allotments within the DGWHT. The overpopulation is causing damage to
23 plaintiffs’ livestock operations, livelihoods, and way of life. Plaintiffs have filed this action for a
24 declaration that defendants are arbitrary and capricious for failing to follow the DGWHT plan as
25 required by the National Forest Management Act, §§ 1600-1687 (“NFMA”) and for deciding to
26 eliminate grazing from plaintiffs’ grazing allotments. Plaintiffs also seek to compel agency
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1 action to remove excess animals from the Modoc National Forest and restore ecological balance
2 and support multiple use as required by the WHA.

3
4 **JURISDICTION AND VENUE**

5 3. This court has jurisdiction pursuant to 5 U.S.C. § 702 (judicial review of federal
6 agency action and failure to act under the Administrative Procedure Act) and 28 U.S.C. § 1331
7 (federal question jurisdiction). Jurisdiction is also proper under 22 U.S.C. § 2201, because
8 plaintiffs seek to declare their rights and legal relations. Defendants have waived sovereign
9 immunity pursuant to 5 U.S.C. § 702. An actual, justiciable controversy exists between plaintiffs
10 and defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5
11 U.S.C. §§ 701-706.

12
13 4. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b)(2), (e)(1).
14 Defendants are an employee and agency of the United States government. Defendant McAdams
15 resides in this judicial district, the acts and omissions giving rise to the claims occurred in this
16 judicial district, and the property that is the subject of this action is situated in this district.

17
18 **PARTIES**

19 5. Plaintiff Devil's Garden Preservation Group ("DGPG") was founded to promote
20 its members' interests in the protection and preservation of the Devil's Garden Plateau on the
21 Modoc National Forest ("Modoc NF"). DGPG is an association of ranchers and others who live
22 in and around the Devil's Garden Plateau ("Plateau") and derive both a living and a cultural
23 identity from the area. DGPG's members enjoy the natural beauty of the Plateau, appreciate the
24 abundant plant and animal life, enjoy viewing wild horses in numbers compatible with healthy
25 management of the range resource, and have an interest in ensuring their continued enjoyment
26 and economic ability to live and work in the area. DGPG's members live near and work within
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1 the Devils' Garden Plateau Wild Horse Territory, and their ranching and ability to graze on their
2 allotments within the DGWHT are harmed by the overpopulation of wild horses. Defendants'
3 failure to control excess animals within the DGWHT causes the loss or diminution of vegetation,
4 decreases water quantity and quality, and increases the risk of wildfire on the Modoc NF and
5 adjacent private lands.

6
7 6. Plaintiff Wilson Ranches is a family-owned cattle ranch located in the Plateau area
8 and headquartered in Alturas, California. Wilson Ranches is a general partnership owned by Bill
9 and Carolyn Wilson. The ranch has been in operation in California for nine generations. Fifteen
10 years ago, Wilson Ranches purchased a grazing permit in the Pine Springs Allotment for
11 \$150,000. The permit was to secure additional forage for Wilson Ranches' herd. About 90% of
12 the Pine Springs Allotments is within the DGWHT. Pine Springs Allotment was a 600-head
13 permit at the time of purchase. Monitoring by defendants has revealed that the population of wild
14 horses on the allotment is estimated to be 750% above the current upper limit of the AML. An
15 estimated 261 wild horses forage in the allotment above the AML of 35, with the highest
16 concentration and heaviest use in the northern 3/4th of the allotment. Wilson Ranches has been
17 adversely affected by defendants' failure to follow the TMP and failure to act to remove horses to
18 achieve the AML. Wilson Ranches has consistently participated in grazing and wild horse
19 management issues with the Modoc NF.

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22 7. Wilson Ranches advised defendants in October 2010 about problems associated
23 with excessive horses within the territory, their negative impacts on the range, and the Modoc
24 NF's arbitrary decision to reduce livestock numbers. Wilson Ranches commented on the draft
25 Environmental Assessment for the Territory Management Plan ("TMP") in June 2013, pointing
26 out that wild horses greatly exceeded the AML. In January 2014 Wilson Ranches further
27 objected to the limit on cattle that could turn out on Modoc NF allotments due to excess wild
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1 horses. At present, defendants have reduced the numbers of livestock Wilson Ranches is
2 permitted to graze on the allotment from approximately 600 head to only 300, one-half of its
3 original amount. When defendants force Wilson Ranches to remove livestock, the livestock must
4 be fed elsewhere or sold prematurely, causing significant economic loa.

5
6 8. Since 2014 the Forest Service has cut Wilson Ranches' cattle allotment numbers in
7 half due to wild horse overpopulation. Wilson Ranches was recently notified of the decision that
8 next year in 2018, the Forest Service will shut down its allotment because of wild horses,
9 preventing Wilson Ranches from utilizing the allotment at all. The Forest Service decided to
10 reduce Wilson Ranches' Pine Springs Allotment cattle numbers to zero.

11 9. Plaintiff MS Ranch is a livestock ranch headquartered in Alturas, California. MS
12 Ranch was bought by Green Valley Corporation in 2005 from the original owner, Robert
13 Schuler. Green Valley Corporation continues to operate the ranch under the dba MS Ranch. The
14 acquisition included the grazing permit for the Emigrant Springs Allotment. Approximately 95%
15 of the allotment, including 7,632 acres of Bureau of Land Management ("BLM") administered
16 land, is within the DGWHT. MS ranch is managed by Mr. Jess Dancer. In 2013, the Modoc NF
17 established an AML range of between 24 to 61 wild horses for the allotment, but monitoring
18 showed an overpopulation of 223 wild horses. The grazing permit for the Emigrant Springs
19 Allotment at the time it was acquired allowed grazing of 330 head of livestock on Forest Service
20 managed lands and 49 head of livestock on BLM lands, for a total of 379 head of livestock.
21 Livestock are rotated to MS Ranch's meadows in the fall where they are fed on hay from fields
22 that were irrigated and hayed during the summer.

23 10. MS Ranch has long participated in grazing and wild horse management issues with
24 the Modoc NF. MS Ranch has objected as recently as 2016 regarding defendants' decisions to
25 reduce livestock numbers on the Emigrant Springs Allotment due to excess wild horses and range
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1 degradation caused by horses. MS Ranch has attended Modoc NF planning meetings, as well as
2 meetings to address the ongoing problem of wild horse overpopulation at the federal, state, and
3 local level.

4 11. The Modoc NF has reduced the number of livestock MS Ranch is permitted to
5 graze on its allotment over the past several years due to wild horse overpopulation. In February
6 2016, a Modoc NF survey of the Emigrant Springs Allotment showed a minimum of 511 horses,
7 which is more than 800% higher than the AML upper limit of 61. The Pine Springs area just to
8 the north of Emigrant Springs has a maximum AML of 72 horses, but the February 2016 count
9 showed 370 horses in the area, which is 600% above the AML. As a result, in 2016 the Modoc
10 NF reduced MS Ranch's permitted livestock on the Emigrant Springs allotment by 43 percent. A
11 portion of the Emigrant Springs Allotment is on BLM land, which suffered comparable
12 reductions.
13

14 12. MS Ranch has also suffered damages to the range and structural improvements
15 within its allotment. Wild horse overpopulation has degraded water sources, reduced forage, and
16 caused growth of noxious and non-noxious weeds and thistles (including toxic plants), which
17 displace the normal forage, degrades riparian areas, and displaces native and endangered species.
18 During 2012 and 2013, wild horse overpopulation also destroyed fences and other improvements
19 MS Ranch is required to replace. During 2014, disturbances within a fenced-in riparian area in
20 the Emigrant Springs Allotment remained a large problem due to wild horse activity. Instead of
21 jumping the fence as the horses had done previously, in the process of breaching the fences
22 protecting the riparian area, the horses plowed through them and dragged away a quarter mile of
23 fence.
24

25 13. MS Ranch was also recently notified that next year in 2018, the Forest Service will
26 shut down its allotment because of wild horse overpopulations, preventing MS Ranch from
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1 utilizing the allotment at all. The Forest Service has decided to reduce MS Ranch's cattle
2 numbers for the Emigrant Springs Allotment to zero.

3 14. Defendant Amanda McAdams is the Forest Supervisor for the Modoc National
4 Forest. Ms. McAdams is sued in her official capacity. Ms. McAdams is responsible to ensure
5 that the national forest she supervises complies with all applicable laws.
6

7 15. Defendant United States Forest Service is an agency within the United States
8 Department of Agriculture. The Forest Service is responsible for ensuring that wild horse
9 management occurring on the Modoc Forest Service is consistent with all applicable laws.
10

11 **FACTS AND LEGAL AUTHORITIES**

12 16. Plaintiffs run livestock operations in Northeast California. Their operations
13 involve private property and depend on additional federal rangeland allotments on the Modoc NF
14 to raise the cattle over the year. Plaintiffs' private grazing lands, federal allotments, and livestock
15 operations are being severely degraded by the Forest Service's failure to perform its duties
16 regarding the management of wild horses, specifically its duty to remove excess animals.
17

18 17. The WHA requires the Forest Service and BLM to manage horses on public lands
19 in a manner designed to achieve and maintain a thriving natural ecological balance. 16 U.S.C. §
20 1333(a). Under the WHA, "wild free-roaming horses" on land administered by the Forest
21 Service are under the Secretary of Agriculture's jurisdiction for the purpose of management. 16
22 U.S.C. §§ 1332(a), 1333(a).

23 18. The Forest Service is required to establish wild horse territories, and designate
24 areas within the territories as specific wild horse range to meet the purposes of the WHA and the
25 Multiple Use Sustained-Yield Act of 1960. 36 C.F.R. § 222.61(a)(3).
26

27 19. The Secretary and Forest Service have duties under the WHA to maintain a current
28 inventory of wild free-roaming horses in areas on public lands and to remove excess animals. 16

1 U.S.C. § 1333(b)(1), (b)(2). The Secretary and Forest Service shall determine whether and where
2 an overpopulation of excess animals exist, what methods and means to use for removing excess
3 animals, and keep the population of wild horses within appropriate management levels. *Id.*

4 20. Congress reaffirmed its policy of removal of horses from the range in the Public
5 Rangelands Improvement Act of 1978 (“PRIA”), Pub. L. 95-514 (amending the WHA and other
6 rangeland management statutes applicable to Forest Service and Bureau of Land Management
7 rangelands). In particular, Congress declared removal to be its policy where wild horses “pose a
8 threat to themselves and their habitat and to other rangeland values.” 43 U.S.C. § 1901(b)(4).
9 Instances where wild horse overpopulation requires removal include where horses “exceed the
10 carrying capacity of the range,” or threaten rangeland values including “fish, wildlife, recreation,
11 water and soil conservation, [and] domestic livestock grazing.” *Id.* § 1901(a)(6).
12

13 21. Under the WHA, if the Secretary determines “that an overpopulation exists on a
14 given area of the public lands and that action is necessary to remove excess animals, he *shall*
15 *immediately* remove excess animals from the range so as to achieve appropriate management
16 levels. Such action shall be taken . . . until all excess animals have been removed so as to restore
17 a thriving natural ecological balance to the range, and protect the range from the deterioration
18 associated with overpopulation.” 16 U.S.C. § 1333(b)(2) (emphasis added); 36 C.F.R. §§
19 222.61(a)(5)-(6) (The USFS shall “determine whether and where excess animals exists,”
20 “determine appropriate management levels, whether action should be taken to remove excess
21 animals and what actions are appropriate to achieve the removal . . .”).
22

23 22. Management of wild horses must accord with multiple-use objectives, including
24 “regulating their population and accompanying need for forage and habitat in correlation with
25 uses recognized under the Multiple-Use Sustained Yield Act of 1960.” 36 C.F.R. § 222.61(a)(1).
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1 Other resource uses within the DGWHT include timber harvest, livestock grazing, wood cutting,
2 hunting, fishing, camping, and day use.

3 23. The DGWHT is located beginning just north of Alturas, California. The area
4 consists of about 258,000 acres of federally administered public land and is located entirely
5 within Modoc County. The DGWHT is administered by the Devil’s Garden and Doublehead
6 Ranger Districts. Three percent of the DGWHT, or 7,632 acres, include public lands
7 administered by BLM. The area is relatively flat.

9 24. The Modoc NF and BLM manage wild horses within the DGWHT under a
10 Memorandum of Understanding (“MOU”). The MOU designates the Modoc NF as the lead
11 agency for administration of the wild horse program in the territory, including BLM public lands
12 within the territory.

14 25. The 1991 Modoc National Forest Land and Resource Management Plan (“Modoc
15 Forest Plan”) established an AML of 275-335 wild horses and set the following range standard:
16 “Manage the wild free-roaming horse herds to achieve a Forest population between 275 and 335
17 (on the average, 305 animals).” (page 4-19). The Modoc Forest Plan also includes range
18 standards to “[m]aintain or enhance satisfactory ecological condition” and, “[t]hrough allotment
19 management planning, manage rangeland vegetation to provide for healthy ecosystems; and to
20 make forage available for livestock, wild horse herds, and wildlife species.” (page 4-18).

22 26. Since the Modoc Forest Plan was approved in 1991, wild horses have been
23 gathered sporadically in an attempt to manage population size, but those efforts have been
24 insufficient to bring populations within AML. Since approving the Modoc Forest Plan in 1991,
25 defendants have never achieved the AML on the Modoc NF, nor taken sufficient action to do so.
26 These failures violate the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1333(b), and
27 the National Forest Management Act, 16 U.S.C. §1604(i).
28

1 27. In accordance with Forest Service policy and procedures, the AML is set as a
2 population range with an upper and lower limit. 16 U.S.C. § 1333(b); 36 C.F.R. §§ 222.61(a)(5);
3 Forest Service Manual (FSM) 2261.1 and Memorandum of Understanding on Wild Free-
4 Roaming Horses and Burros (FSM 1531.11a) (requiring USFS to coordinate management
5 activities for wild horse populations with the BLM to reflect similar management objectives); *see*
6 *also* BLM, Wild Horses and Burros Management Handbook, 4710-1 (2010) (“BLM Handbook”).
7 The upper limit is, by definition, the maximum number of wild horses which results in a thriving
8 natural ecological balance and maintains or improves conditions of the range. 16 U.S.C. §
9 1333(a); BLM Handbook, H-4700-1 at 67; TMP at 4, 7. The AML lower limit is a number that
10 allows the population to grow to the upper limit over an extended period of time (four or more
11 years), without interim gathers to remove excess wild horses. *Id.*

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13
14 28. Habitat for wild horses is composed of forage, water, cover, and space. To prevent
15 range damage or adverse impacts to animal health, “the upper limit of AML should be established
16 in consideration of the most limiting forage (or water) production years.” BLM Handbook, H-
17 4700-1 at 68. The limits are set at a level to establish and maintain an AML that will lead to the
18 management of wild horses in a thriving natural ecological balance in relationship to desired
19 multiple-use objectives over the long-term. *Id.*; *see also* 36 C.F.R. §§ 222.61(a)(1), (3).

20
21 29. Wild horse overpopulation within the DGWHT has become an extraordinary
22 problem. Significant negative impacts on ecosystem health have resulted due to wild horse
23 overpopulation both inside and outside the DGWHT: degraded riparian areas; loss of one or
24 more endemic plant species on many upland ranges; and conversion to annual grasses and
25 invasive plants on many upper range sites.

26 30. For example, when perennial forage grasses are overutilized by wild horses,
27 invasive annual grasses like wiregrass, medusahead, cheatgrass, and foxtail begin to outcompete
28

1 perennial grasses. As these invasives become established, the ecological balance is harmed and
 2 less forage is available for livestock, wild horses, and wildlife—placing additional pressure on
 3 range resources. The largest extent of cheatgrass and medusahead occurs in the Emigrant Spring
 4 and the Pine Springs areas. Devil’s Garden Plateau Wild Horse Territory Evaluation at 4, 24, 40-
 5 41 (2013) (noting invasive annual species are dominant on 11,000 acres, or 25% of the Emigrant
 6 Spring Allotment, and present in varying amounts on 4,166 acres, or about 9.4%, of the Pine
 7 Springs Allotment). While severe overutilization by livestock can create similar conditions,
 8 Forest Service permit terms require permittees to use several methods—such as pasture rotations,
 9 resting, and salting to draw livestock to or from certain areas—to achieve strictly monitored
 10 utilization rates and prevent those conditions from developing.

11
 12 31. These invading annuals, especially wiregrass and medusahead, are destroying the
 13 productivity of the rangeland for livestock, wildlife and wild horses. This permanent conversion
 14 is continuing and accelerating as wild horse populations continue to rise.

15
 16 32. The wild horse overpopulation damage has become so severe that the University
 17 of California Cooperative Extension has been studying and documenting the adverse effects on
 18 soil, water, and wildlife. <http://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=22730>

19
 20 33. All or a portion of eight grazing allotments managed by the Devil’s Garden and
 21 Doublehead Ranger Districts are within the DGWHT. The allotments, acreage within the
 22 DGWHT, and land ownership of the allotments are as follows:

<u>Allotment</u>	<u>Acres</u>	<u>Total Acres</u>	<u>% in DGWHT</u>	<u>Land</u>
Carr	44,180	108,437	40.7%	USFS
East Grizzlie	712	35,055	2.0%	USFS
Emigrant Springs	43,793	46,131	94.9%	USFS & BLM
Mowitz	22,516	69,282	32.5%	USFS
Pine Springs	40,278	44,538	90.4%	USFS
Potters	4,812	26,311	18.3%	USFS
Surveyors Valley	25,754	26,403	97.5%	USFS
Timbered Mountain	50,475	63,092	80.0%	USFS

1 34. Through these eight allotments, the Modoc NF has issued grazing permits for
2 26,880 Animal Unit Months (AUMs) of forage consumption by domestic livestock. During
3 2006-2012, however, livestock use authorized under grazing permits has averaged only about
4 18,548 AUMs of the total permitted. More recently, authorized livestock use has been reduced to
5 less than 50% of the total of the permitted number on the Pine Springs and Emigrant Springs
6 allotments, which represents about one-third of the entire DGWHT. Livestock grazing will be
7 completely eliminated in those allotments in 2018 without any resumption in the foreseeable
8 future. In contrast, under the 1991 Modoc Forest Plan, wild horses were allocated 4,400 AUMs
9 of forage for their use. TMP at 4. Under the 2013 TMP, the upper AML of 402 wild horses are
10 allocated 5,789 AUMs. *Id.* at 6.

11 35. “Forage for wild horses (expressed in AUMs) is allocated based on the AML
12 upper limit. [P]er Forest Service Policy, an adult wild horse has an animal unit factor of 1.2 and
13 14.4 AUMs of forage is needed to support one adult wild horse for one year.” USFS, Devil’s
14 Garden Plateau Wild Horse Territory, Evaluation of Monitoring Data at 1 n.2 (2013).

15 36. In January 2013, the Forest Service prepared an AML monitoring document
16 entitled, Devil’s Garden Plateau Wild Horse Territory: *Evaluation of Monitoring Data for the*
17 *Purpose of Determining an Appropriate Management Level*, Pacific Southwest Region Devil’s
18 Garden and Doublehead Ranger Districts, Modoc National Forest (Jan. 2013) (“2013 AML
19 Evaluation”).

20 37. The 2013 AML Evaluation analyzed the AML for wild horses within grazing
21 allotments and determined that existing AMLs needed adjustment based on an analysis of the
22 current available data to address ongoing significant problems with wild horse overpopulation.

23 38. The new AMLs proposed in the 2013 AML Evaluation were approved as part of a
24 plan revision to the Devil’s Garden Plateau Wild Horse Territory Management Plan (TMP) for
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1 the DGWHT. The revised TMP was completed in August 2013 and set a new AML range of
 2 206-402 total horses. Revision of the TMP is not an academic exercise. Forest Service
 3 regulations require that the “Forest Service *shall . . .* develop and *implement* a management plan
 4 for the wild horse territory.” 36 C.F.R. § 222.62(a)(4) (emphases added).

5
 6 39. In revising the TMP in August 2013, the Modoc NF adopted new AMLs (Table 1),
 7 which includes lower and upper limits for wild horses, specific to each grazing allotment:

8 <u>Allotment</u>	<u>Acres</u>	<u>AML lower limit (# horses)</u>	<u>AML upper limit (# horses)</u>
9 Carr	44,180	32	78
10 Surveyors Valley	25,754	23	55
Mowitz	22,516	30	30
11 Potters	4,812	20	20
Pine Springs	40,278	29	72
12 Emigrant Springs (includes BLM land)	43,793	20	61
13 Timbered Mountain	50,470	48	86
14 East Grizzlie	712	0	0
15 Total for the DGWHT	232,520	206	402

16 40. The new AMLs were “determined through in-depth analysis and evaluation of the
 17 current available monitoring data and other information” that assessed the level above which
 18 horses would be considered excess and exceed a thriving natural ecological balance to the range.
 19 2013 AML Evaluation at 6. The AMLs were “completed in compliance with direction provided
 20 by Forest Service regulations and policy, the 1991 Forest Plan, procedures found in BLM
 21 Handbook H-4700-1 (Wild Horses and Burros Management Handbook), and in compliance with
 22 the 1971 [WHA].” *Id.* at 6-7.

23
 24 41. A challenge to the boundaries of the Devil’s Garden Wild Horse Territory was
 25 recently addressed in *American Wild Horse Preservation Campaign v. Perdue*, No. 15-5332,
 26 2017 WL 3318750 (D.C. Cir. Aug. 4, 2017). The Court of Appeals held that the Forest Service
 27 did not “adequately explain its change in course regarding the size of the Devils Garden Wild
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1 Horse Territory and its management of wild horses within the Middle Section." *Id.* at *13. The
2 2013 Wild Horse Territory Plan did not include the so-called "Middle Section." The decision
3 in *American Wild Horse* held that the total extent of the DGWHT was about 258,000 acres as
4 stated in the 1991 Forest Plan, rather than a slightly smaller size that excluded an area of 23,631
5 acres under the 2013 TMP.

6
7 42. In *American Wild Horse*, the court noted that when the Middle Section was
8 included within the wild horse territory under the 1991 Forest Plan, the AML was 275-335 wild
9 horses. *Id.* at *3. The AML upper limit under the 2013 wild horse territory plan is 402 wild
10 horses. Therefore, under either AML, there is an overpopulation of wild horses that far exceeds
11 any plan level and the level that maintains thriving natural ecological balance.

12
13 43. In adopting new AMLs as part of the 2013 TMP revision, the Forest Service set
14 the following population requirements: (1) manage the wild horse population at the levels shown
15 in Table 1; (2) manage for an overall age distribution as is normally found in a herd over time;
16 and (3) manage to achieve a 50:50 ratio between males and females. The revised TMP provides
17 that "[a]fter AML is achieved, methods to slow population growth" such as fertility control would
18 be used. TMP Environmental Assessment at 23, 27; TMP at 7, 12.

19
20 44. In February 2016, Forest Service personnel completed an aerial survey of the wild
21 horse population in and around the DGWHT. The results show the wild horse population greatly
22 exceeds the AML of 206-402 adult wild horses.

23
24 45. The wild horse population reached 2,246 adult horses, which meant the wild horse
25 population had nearly doubled since February 2013 when the last inventory was completed.
26 Following the 2016 foaling season, wild horse population size reached 2,800 animals, which is
27 expected to grow to 3,200 wild horses by early 2018. According to calculations by Modoc
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1 County Farm Bureau, the population size may reach 18,000 in ten years without gathers to
2 remove excess wild horses.

3 46. Currently, wild horses on the Modoc NF are consuming more forage than is
4 allocated in the wild horse territory for livestock, wildlife, and wild horses combined.

5 47. As a result of wild horse overpopulation, during 2017, the Modoc NF reduced
6 AUMs on allotments by 35%, with some reduced to 50%. Next year during the 2018 grazing
7 season, AUMs are planned to be reduced by 45%, and the Wilson Ranches and MS Ranch
8 allotments will be cut to zero AUMs “[d]ue to the excess wild horse numbers.”

9 48. Defendants have no plans scheduled in the foreseeable future to reduce wild horse
10 numbers to within the AML on the Wilson Ranches and MS Ranch allotments such that livestock
11 grazing can resume on the allotments. In effect, defendants have abandoned the Modoc Forest
12 Plan, which designates the Emigrant Springs and Pine Springs areas for livestock grazing, by
13 failing to follow the TMP to manage wild horses within the AML.

14 49. Upon information and belief, in October 2017, defendants released approximately
15 60 wild horses gathered from private lands in 2016 back on the Modoc NF, and specifically
16 released wild horses on MS Ranch’s Emigrant Springs Allotment, where the Forest Service has
17 arbitrarily decided that livestock grazing can no longer occur in contravention of its own
18 management plans.

19 50. Wild horse overpopulation has also created a decline in herd health and major
20 safety issues. Wild horses are consuming 40% more forage than they are allocated on the entire
21 forest, leaving less nutrition for the overpopulated herd, and less AUMs for permitted livestock
22 within allotments.

23 51. Wild horse overpopulation has also created major safety issues. Wild horses are
24 now crossing over the border into Oregon and wandering off the Modoc NF onto State Highway
25

1 139, nine miles south of the Territory, and creating a safety hazard to the public. Wild horses
2 have also been reported leaving the Modoc NF and wandering into Alturas-area residential
3 developments, creating a further safety hazard to homeowners, children, domestic pets, and the
4 public.

5
6 52. Agriculture is extremely important to the economy of Modoc County. Cattle
7 ranching and its associated products (hay, pasture, and forage) is the largest segment of
8 agriculture. According to the 2010 Modoc County Agricultural Commissioner's report, livestock
9 sales were 33.3% of the total \$112.1 million in farm cash receipts. Ranchers within the County
10 rely on public lands grazing for about six months of the year. Grazing allotments on the Modoc
11 NF are crucial for their operations and livelihoods.

12
13 53. The 2013 AML Evaluation inventoried wild horse overpopulations within the
14 grazing allotments as of 2012 and made the following "excessive animal determinations": (1)
15 Within the Carr Allotment (with a current AML of 32-78 wild horses), the presence of an
16 estimated 116 wild horses year-round. 2013 AML Evaluation at 12; (2) Within the Emigrant
17 Springs Allotment (AML 20-61), a population of about 223 wild horses on the National Forest
18 portion of the allotment. *Id.* at 6, 24; (3) Within the Pine Springs Allotment (AML 29-72), an
19 estimated 261 wild horses. *Id.* at 40; (4) Within the Surveyors Valley Allotment (AML 23-55),
20 an estimated 55 wild horses, which fails to provide any margin for the average 25% annual
21 population growth rate. *Id.* at 55, 59; and (5) Within the Timbered Mountain Allotment (AML
22 48-86), an estimated 138 wild horses, with extreme concentration within Black Rock Pasture. As
23 a result, the livestock operator has been unable to use this pasture for years due to excessive use
24 by horses. *Id.* at 63, 68.
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1 54. In managing the Modoc NF and DGWHT, defendants have failed to comply with
2 Forest Plan management requirements including those in the TMP, resulting in extraordinary wild
3 horse overpopulation reaching as much as 14 times above the AML limit in certain areas.

4 55. Wild horse numbers on the Modoc National Forest will continue to increase every
5 year at staggering rates. The current wild horse population estimate, which takes into account the
6 2016 foaling season that occurred since the latest official count, is in excess of 2,800 horses. That
7 number is nearly 700% of the upper AML limit of 402. A second foaling season has already
8 occurred in 2017, meaning additional horses are already on the range. Those additional horses
9 will be included in the official estimate starting in January 2018 and will likely increase the
10 population to 3,200 horses or more. A population of 3,200 horses would constitute nearly 800%
11 of the upper AML limit of 402.

12 56. The forage consumed by 2,800 wild horses permanently on the range every month
13 of the year, equaling about 1.2 AUMs per horse, is 40,320 AUMs. This is vastly more forage
14 than the 4,400 AUMs allocated to wild horses in the Modoc Forest Plan.

15 57. The amount of forage allocated to livestock in the Emigrant Springs and Pine
16 Springs allotments totals 6,500 AUMs. By eliminating cattle grazing on the Emigrant Springs
17 and Pine Springs allotments, the Forest Service has increased the AUM forage allocation to wild
18 horses contrary to the Modoc Forest Plan and has failed to amend the Forest Plan to reflect the
19 increased forage allocation to wild horses.

20 58. The large-scale damage to rangeland resources has significantly harmed plaintiffs'
21 livestock operations and way of life. Many plaintiffs have maintained their livelihoods via
22 ranching operations for multiple generations. Due to economic limitations and the fact that the
23 wild horses are federally-protected, plaintiffs can do nothing to prevent damages to their adjacent
24 private lands and the grazing allotments on public rangelands.

1 59. Plaintiffs have engaged with the Forest Service and defendants repeatedly and
2 requested that the Forest Service remove the excess animals from the range and from their private
3 properties in order to comply with the TMP and achieve AML. However, the Forest Services has
4 failed and refused to do so since the TMP was amended in 2013 except for conducting a single
5 gather from private lands.
6

7 60. Plaintiffs Wilson Ranches and MS Ranch have had their livestock numbers and
8 AUMs progressively reduced because of defendants' failure to manage wild horses lawfully
9 pursuant to the TMP as required by the WHA and NFMA.

10 61. Defendants' failures to properly follow the law have also harmed wild horses
11 within the DGWHT. Overpopulation seriously degrades the range resource, and horses are
12 frequently observed in malnourished, unhealthy condition. Individual wild horses have also been
13 observed as reduced in size due to the lack of nutrition. Horses have been seen in areas without
14 water or in areas with water sources inadequate to sustain the horses. Plaintiffs' have a
15 significant interest in the ecological health of the DGWHT, because they want to live and work in
16 a forest that manages wild horses toward achieving a thriving natural ecological balance.
17 Defendants' failure to comply with the WHA and NFMA directly damages the rangelands located
18 within and adjacent to the DGWHT.
19

20 62. On or about July 5, 2017, counsel for plaintiffs met with USFS staff for the Modoc
21 NF and advised that a lawsuit challenging lack of compliance with the TMP was likely. Upon
22 information and belief, one or more government employees has deliberately destroyed records
23 related to wild horse management strategies to prevent their discovery. Such instructions and
24 efforts to destroy records was done with knowledge of plaintiffs' claims. Plaintiffs intend to
25 engage in discovery to learn how any spoliation may have occurred and the extent thereof.
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1 Plaintiffs reserve the right to amend the Complaint to assert a claim for spoliation, and/or to file a
2 motion for spoliation sanctions against federal defendants.

3 **FIRST CLAIM FOR RELIEF**

4 **(Failure to Remove Excess Wild Horses – Violation of Wild Free-Roaming Horses and**

5 **Burros Act, 16 U.S.C. § 1333(b))**

6 **(Administrative Procedure Act, 5 U.S.C. § 706)**

7
8 63. Plaintiffs reallege each and every allegation set forth above.

9
10 64. The Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. provides that a “person
11 suffering legal wrong because of agency action, or adversely affected or aggrieved by agency
12 action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. §
13 702. “[F]inal agency action for which there is no other adequate remedy in a court” is subject to
14 judicial review. 5 U.S.C. § 704. The APA defines “agency action” as “includ[ing] the whole or a
15 part of an agency rule, order . . . or the equivalent or denial thereof, or failure to act.” 5 U.S.C. §
16 551(13).

17
18 65. The APA provides that the reviewing court “shall (1) compel agency action
19 unlawfully withheld or unreasonably delayed” and “shall (2) hold unlawful and set aside agency
20 action . . . found to be (A) arbitrary, capricious, an abuse of discretion or otherwise not in
21 accordance with law.” 5 U.S.C. § 706.

22
23 66. Under the WHA, the Secretary and Forest Service “shall manage wild free-
24 roaming horses . . . in a manner that is designed to achieve and maintain a thriving natural
25 ecological balance on the public lands.” 16 U.S.C. § 1333(a).

26
27 67. The Forest Service must inventory the number of wild horses and “[t]he purpose of
28 such inventory shall be to: make determinations as to whether and where an overpopulation
exists and whether action should be taken to remove excess animals; determine appropriate

1 management levels of wild free-roaming horses and burros on these areas of the public lands; and
2 determine whether appropriate management levels should be achieved by the removal or
3 destruction of excess animals, or other options (such as sterilization, or natural controls on
4 population levels).” 16 U.S.C. § 1333(b)(1).

5
6 68. Defendants have a mandatory duty and “shall immediately remove excess animals
7 from the range so as to achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2).

8 69. “Excess animals” means wild free-roaming horses . . . which must be removed
9 from an area in order to preserve and maintain a thriving natural ecological balance and multiple-
10 use relationship in that area.” 16 U.S.C. § 1332(f)(2).

11 70. The Modoc NF has determined that excess animals exist on the Carr Allotment,
12 the Emigrant Springs Allotment, the Pine Springs Allotment, the Surveyors Valley Allotment,
13 and the Timbered Mountain Allotment.

14
15 71. The Modoc NF has a legal duty to immediately remove the excess animals from
16 the Carr Allotment, the Emigrant Springs Allotment, the Pine Springs Allotment, the Surveyors
17 Valley Allotment, and the Timbered Mountain Allotment.

18 72. Defendants have failed and refused to immediately remove the excess wild horses
19 and have indicated no plans to do so within a period sufficient to halt ongoing ecological harm
20 and impairment of multiple uses.

21
22 73. Defendants’ failure and refusal to immediately remove excess wild horses is
23 unlawful and is arbitrary and capricious under the Wild Free-Roaming Horses and Burros Act and
24 the APA. 5 U.S.C. § 706(2)(A) (reviewing court shall hold unlawful agency action that is
25 arbitrary and capricious). Defendants should be compelled to perform their duties under the law.
26 5 U.S.C. § 706(1) (reviewing court “shall compel agency action unlawfully withheld or
27 unreasonably delayed”).
28

SECOND CLAIM FOR RELIEF

**(Failure to Remove Excess Wild Horses – Violation of Territory Management Plan under
the National Forest Management Act 16 U.S.C. § 1604(i))**

(Administrative Procedure Act, 5 U.S.C. § 706)

74. Plaintiffs reallege each and every allegation set forth above.

75. The TMP requires the Modoc NF to take specific, necessary action to achieve populations of wild horses within the established AML range in order to protect the range from deterioration associated with overpopulation.

76. The National Forest Management Act requires that all “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of the National Forest System land shall be consistent with the land management plans.” 16 U.S.C. § 1604(i).

77. The TMP is an amendment to the 1991 Modoc Forest Plan (land management plan) and the Forest Service must comply with the terms of the TMP under 16 U.S.C. § 1604(i).

78. Defendants are not managing and acting consistent with the Forest Plan and TMP by:

- a. Failing to take necessary action to manage wild horse populations within the established AML range (206-402 adults) to protect the range from deterioration associated with overpopulation. TMP at 14;
- b. Failing to schedule gathers to remove excess wild horses when the total population exceeds the AML to the point that grazing of the allotment is significantly curtailed or eliminated. *Id.*;
- c. Failing to schedule removals to attain AML by 2016. *Id.* at 17;
- d. Failing to conduct annual gathers until AML is achieved, then every 4-5 years thereafter. *Id.*

1 e. Defacto amending the Forest Plan by eliminating livestock grazing on the
2 Emigrant Springs and Pine Springs Allotments.

3 f. Failing to ever act to achieve AML since the 1991 Forest Plan was
4 adopted.

5
6 79. Instead of following the TMP as required by NFMA, since 2013, defendants only
7 conducted a small gather limited to private land during 2016. In the meantime, the wild horse
8 population within the DGWHT including private and federal land increased from 500% to 800%
9 above the AML, depending on the allotment.

10 80. Defendants' failure and refusal to follow the TMP and maintain wild horses within
11 AML is unlawful and is arbitrary and capricious. Defendants must comply with the 1991 Forest
12 Plan, as amended by the TMP, under 16 U.S.C. § 1604(i), and their actions, inconsistent with
13 these duties, are unlawful, arbitrary and capricious. 5 U.S.C. § 706(2)(A). Defendants should be
14 compelled to perform their duties under the law. 5 U.S.C. § 706(1). Defendants should also be
15 compelled to perform their duties under the 1991 Forest Plan, as amended by the TMP, as their
16 failure to do so is agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. §706(1).
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19 **THIRD CLAIM FOR RELIEF**

20 **(Elimination of Grazing from the Pine Springs and Emigrant Springs Allotments**
21 **and Reallocation of Forage to Wild Horses in Violation of the Forest Plan**
22 **under the National Forest Management Act, 16 U.S.C. §1604(f)(4) and (i))**
23 **(Administrative Procedure Act, 5 U.S.C. § 706(2)(A))**

24 81. Plaintiffs reallege each and every allegation set forth above.

25
26 82. The National Forest Management Act requires that all “[r]esource plans and
27 permits, contracts, and other instruments for the use and occupancy of the National Forest System
28 land shall be consistent with the land management plans.” 16 U.S.C. § 1604(i).

1 83. The National Forest Management Act also requires that if the Forest Service wants
2 to change the forest plan after final adoption, it must amend the forest plan and provide for public
3 notice. 16 U.S.C. § 1604(f)(4).

4 84. The Modoc Forest Plan allocated forage between livestock, wildlife, and wild
5 horses.

6 85. The amount of forage allocated to wild horses by the Forest Plan is 4,400 AUMs.

7 86. The Forest Plan allocated the area within the boundaries of the Emigrant Springs
8 and Pine Springs allotments to livestock grazing.

9 87. The Forest Service has completely eliminated livestock grazing from the Emigrant
10 Springs and Pine Springs grazing allotments with a permitted use of 6,500 AUMs and reallocated
11 the forage used by livestock on those allotments to wild horses for the foreseeable future.

12 88. Other grazing allotments on the Modoc National Forest within the DGWHT had
13 their livestock forage use significantly curtailed by the Forest Service because of the
14 overpopulation of wild horses.

15 89. The reallocation of forage from livestock to wild horses is not consistent with the
16 Modoc Forest Plan which established a forage allocation for wild horses of 4,400 AUMs. Thus,
17 the reallocation of forage violates 16 U.S.C. § 1604(i).

18 90. The reallocation of forage from livestock to wild horses was made without a plan
19 amendment and public notice as required by 16 U.S.C. § 1604(f)(4).

20 91. The elimination of grazing from the Emigrant Springs and Pine Springs grazing
21 allotments and reallocation of forage from livestock to wild horses is contrary to the Modoc
22 Forest Plan and without a Forest Plan amendment is arbitrary, capricious, an abuse of discretion
23 in violation of the APA, 5 U.S.C. § 706(2)(A).
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REQUESTS FOR RELIEF

1
2 Plaintiffs respectfully request that the Court enter judgment against Defendants and grant
3 the following relief:

4 1. For a declaratory judgment that the Forest Service is violating the Wild Free-
5 Roaming Horses and Burros Act of 1971 for failing to immediately remove excess wild horses on
6 the Carr Allotment, Emigrant Springs Allotment, Pine Springs Allotment, Surveyors Valley
7 Allotment, and Timbered Mountain Allotment in violation of the Administrative Procedure Act,
8 and an order compelling defendants to immediately remove excess animals;

9
10 2. For a declaratory judgment that the Forest Service is violating the Territory
11 Management Plan by failing to manage wild horse populations within the established AML range
12 to protect the range from deterioration associated with overpopulation in violation of the National
13 Forest Management Act and the Administrative Procedure Act;

14
15 3. A declaratory judgment that the decision to completely eliminate livestock grazing
16 from the Pine Springs and Emigrant Springs allotments which comprise one-third of the
17 DGWHT, violates the National Forest Management Act and the Administrative Procedure Act;

18 4. An order setting aside and vacating the decision to eliminate grazing from the Pine
19 Springs and Emigrant Springs allotments;

20 5. For injunctive relief to compel compliance with the requested relief;

21 6. An order compelling defendants to comply with the Territory Management Plan
22 and immediately remove excess animals;

23 7. For plaintiffs' reasonable costs, litigation expenses, and attorneys' fees pursuant to
24 the Equal Access to Justice Act, 28 U.S.C. § 2412; and

25 8. For such other relief as the Court deems just or equitable.
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Respectfully submitted this 19th day of October, 2017.

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