



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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March 19, 2009

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Assistant Regional Solicitor
United States Department of Interior
Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, E-1712
Sacramento, CA 95825

Re: Nevada Commission for the Preservation of Wild Horses

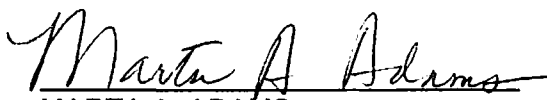
Dear Ms. Zahedi:

At a January 30, 2009 meeting in Reno, you and representatives of the Bureau of Land Management (BLM) met with State of Nevada, Commission for the Preservation of Wild Horses (Commission) representatives to discuss the serious management deficiencies in BLM's wild horse program in Nevada. As discussed at the meeting, the Commission has grave concerns about BLM's failure to dedicate sufficient resources to meet the requirements of the Wild Free-roaming Horse and Burro Act, and as a result, has not achieved appropriate management levels of horse herds in Nevada. To address the increasingly severe plight of the wild horses, the Commission has asked that our office pursue appropriate legal action to compel BLM to meet its legal obligations.

Per our discussion, we include with this letter a Draft Complaint setting forth the Commission's case. We look forward to your prompt attention to this pressing matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: 
MARTA A. ADAMS
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MAA/CG

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF NEVADA**
11

12 STATE OF NEVADA ex rel. COMMISSION)
FOR THE PRESERVATION OF WILD HORSES,)

13 Plaintiff,)

14 vs.)

15 UNITED STATES OF AMERICA, DEPARTMENT)
OF THE INTERIOR, KEN SALAZAR, Secretary of)
16 the Interior, BUREAU OF LAND MANAGEMENT,)
17 and KEN POOL, Acting Director of Bureau of Land)
18 Management,)

19 Defendants.)
20)

CASE NO:

COMPLAINT

21 Plaintiff, STATE OF NEVADA, through its COMMISSION FOR THE PRESERVATION
22 OF WILD HORSES (the COMMISSION), by and through the Office of the Attorney General, for
23 its complaint herein, alleges as follows.

24 **INTRODUCTION**

25 1. Plaintiff Commission files this action to effectuate its statutory responsibility to
26 preserve viable herds of wild horses on public lands designated by the Secretary of the
27 Interior as sanctuaries for the protection of wild horses and burros pursuant to 16 U.S.C. §
28 1333(a), at levels known to achieve a thriving natural ecological balance, within the limitations

1 of the natural resources of those lands and the use of those lands for multiple purposes, and
2 to identify programs for the maintenance of those herds. Nev. Rev. Stat. 504.470.

3 2. Defendants UNITED STATES OF AMERICA, DEPARTMENT OF THE
4 INTERIOR, KEN SALAZAR, Secretary of the Interior, BUREAU OF LAND MANAGEMENT
5 (BLM), and KEN POOL, Acting Director of BLM (collectively the U.S.), are required by the
6 Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340, consistent with the
7 requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701-
8 1782 (FLPMA), must protect and manage wild horses on public lands at levels known to
9 achieve a thriving natural ecological balance, within the limitations of the natural resources of
10 those lands and the use of those lands for multiple purposes.

11 3. The U.S. has permitted the number of wild horses in Nevada to exceed the
12 appropriate number established for Nevada by the U.S. The estimated (by BLM) current wild
13 horse population in Nevada is 18,000 horses, approximately 50% above the statewide
14 appropriate management level, and more than the total wild horse population in all other
15 states combined. Defendants have allowed the continual inappropriate numbers of wild
16 horses to remain despite repeated written requests from the State of Nevada for BLM to take
17 the appropriate actions to properly manage the wild horse herds.

18 4. The wild horse numbers in excess of the statewide appropriate management
19 level is due principally to inappropriate allocation of appropriated funds to support the BLM's
20 wild horse program, with far fewer dollars spent for management of wild horses in Nevada
21 than is proportionate to the number of Nevada horses compared to the nation's total wild
22 horse population.

23 JURISDICTION AND VENUE

24 5. This action arises under the Wild Free-Roaming Horses and Burros Act, 16
25 U.S.C. §§ 1331-1340 (the Act), and the Administrative Procedure Act (APA), 5 U.S.C. §§ 7101-
26 706. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
27 (federal question), 28 U.S.C. § 1346(a)(2) (United States as defendant), 28 U.S.C. § 1361
28

1 (mandamus, 28 U.S.C. §§ 2201-2202 (declaratory judgments), and 5 U.S.C. §§ 702-706 (APA
2 right of review).

3 6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(e)(1) and
4 (e)(2), as a substantial part of the events or omissions giving rise to this civil action occurred in
5 this judicial district.

6 DESCRIPTION OF THE PARTIES AND THEIR INTERESTS

7 7. The Commission is an agency of the State of Nevada, established and authorized
8 by the legislature. Nev. Rev. Stat. 504.430 to 504.490. The Commission is adversely
9 affected by the failure of Defendants to perform their non-discretionary duties as required by the
10 law.

11 8. Defendant United States Department of the Interior is a duly established federal
12 agency and is responsible for the administration of the Act. The principal place of business of
13 Defendant United States Department of the Interior is located at 1849 C Street NW,
14 Washington, D.C. 20240.

15 9. Defendant Bureau of Land Management (BLM) is a federal agency within the
16 United States Department of the Interior. Defendant BLM administers the Act on behalf of the
17 United States Department of the Interior. The principal place of business of Defendant BLM is
18 located at 1620 L Street NW, Washington, D.C., 20036.

19 FACTS GIVING RISE TO THIS ACTION

20 10. All unbranded and unclaimed horses that use public lands as all or part of their
21 habitat are classified as wild horses under federal law. In Nevada, wild horse habitats are
22 found throughout the State in all six BLM districts.

23 11. In 1971, Congress enacted the Act to protect, manage and control wild horses
24 and burros on public lands in the United States. In the Act, Congress vested the Secretary of
25 the Interior with jurisdiction over wild horses and directed the Secretary to manage wild horses
26 in a manner that is designed to achieve and maintain a thriving natural ecological balance on
27 the public lands. The Act requires the Secretary of the Interior to carry out all management
28

1 activities in a manner that protects the natural ecological balance of all wildlife species which
2 inhabit the public lands.

3 12. The Act also requires the Secretary of the Interior to maintain a current inventory
4 of actual numbers of wild horses on the public lands. The Act requires that the Secretary shall
5 use this inventory to determine appropriate management levels (AMLs) of wild horses on given
6 areas of the public lands, and to determine whether AMLs should be achieved by removal or
7 other action. If the Secretary determines that an excess number of wild horses exist on a given
8 area of public lands, he must remove excess wild horses or take other action so as to achieve
9 the AML for the given area of land, to restore a thriving natural ecological balance to the range
10 and protect the range from deterioration.

11 13. FLPMA requires that the Secretary of the Interior shall manage the public lands
12 within his jurisdiction in a manner that will protect the ecological and water resource values and
13 will provide food and habitat for fish, wildlife, and domestic animals.

14 14. The Secretary of the Interior administers the Act in Nevada through the BLM
15 Nevada State Office (NSO). To maintain and manage the wild horses in Nevada, the NSO has
16 established 102 herd management areas (HMAs). The BLM NSO administers the 102 HMAs
17 through field offices located in Ely, Elko, Winnemucca, Carson City, Las Vegas, and Battle
18 Mountain.

19 15. Even though the Act was enacted by Congress over 30 years ago, the BLM NSO
20 has not achieved the statewide AML established at approximately 13,000 horses.

21 16. Even though Nevada is home to more than 50% of all wild horses in the nation, in
22 federal fiscal year 2009, BLM only allocated to Nevada a disproportionately small share of the
23 funding provided to BLM by Congress for wild horse management.

24 17. To the extent that allocation of wild horse program funding is a discretionary
25 function within the BLM, that discretion has been arbitrarily exercised because it is
26 demonstrably ineffective for BLM's compliance with the mandatory requirements of the Act and
27 FLPMA as set forth above in the preceding paragraphs.
28

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1 18. Based upon information and belief, BLM's census information for wild horse
2 populations in Nevada is incorrect and actual numbers are even greater than reported because
3 surveys are not performed as required.

4 FIRST CLAIM FOR RELIEF

5 REQUEST FOR INJUNCTIVE RELIEF PURSUANT TO SECTION 706(1)
6 OF THE ADMINISTRATIVE PROCEDURES ACT

7 19. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
8 through 18 as if fully set forth herein.

9 20. In accordance with 5 U.S.C. § 706(1), a reviewing court shall compel agency
10 action unlawfully withheld or unreasonably delayed.

11 21. The Act requires BLM to conduct regular wild horse censusing, monitor effects
12 of wild horses and other users on the range resources, and when an overpopulation of wild
13 horses exists on a given area of public lands, to remove excess wild horses from the range so
14 as to achieve appropriate management levels to restore a thriving ecological balance to the
15 range, and protect the range from the deterioration associated with overuse. These
16 requirements are non-discretionary duties.

17 22. The wild horse populations in excess of the BLM's statewide AML are contrary
18 to the Commission's interests. By failing to conduct regular censusing of wild horses, failing
19 to monitor effects of wild horses and other users on the range resources, and permitting the
20 population of wild horses in Nevada to exceed the established AMLs, defendants have
21 unlawfully withheld agency action required by 16 U.S.C. § 1333(b)(2) and other law.

22 SECOND CLAIM FOR RELIEF

23 MANDAMUS

24 23. Plaintiff incorporates by reference, as though fully set forth, each and every one of
25 the allegations in paragraphs 1 through 22.

26 24. In accordance with 28 U.S.C. § 1361, a reviewing court, in its discretion, may
27 issue a writ of mandamus if the court determines that the government official has failed to
28 discharge a duty that Congress intended for the official to perform.

1 25. The Act requires BLM to conduct regular wild horse censusing, monitor effects
2 of wild horses and other users on the range resources, and when an overpopulation of wild
3 horses exists on a given area of public lands, to remove excess wild horses from the range so
4 as to achieve appropriate management levels to restore a thriving ecological balance to the
5 range, and protect the range from the deterioration associated with overuse. These
6 requirements are non-discretionary duties.

7 26. By failing to conduct regular censusing of wild horses, failing to monitor effects
8 of wild horses and other users on the range resources, and permitting the population of wild
9 horses in Nevada to exceed the established AMLs, defendants have unlawfully withheld
10 agency action required by 16 U.S.C. § 1333(b)(2) and other law.

11 THIRD CLAIM FOR RELIEF

12 DECLARATORY JUDGMENT

13 27. Nevada incorporates herein, as though fully set forth, each and every one of its
14 allegations in paragraphs 1 through 26.

15 28. In accordance with 28 U.S.C. § 2201, a case of actual controversy exists
16 between the Commission and the U.S. Further, as stated and alleged above, the U.S. has
17 failed to fulfill the duties which the law establishes with respect to the management of wild
18 horses in Nevada. The Commission is therefore entitled to a declaration of its legal rights
19 respecting the same.

20 PRAYER FOR RELIEF

21 WHEREFORE, the Commission respectfully prays that this Court enter judgment in its
22 favor and against the U.S. as follows:

23 1. Pursuant to 5 U.S.C. § 706(1), issue an order compelling the U.S. to immediately
24 allocate agency funding to Nevada's BLM field offices in proportion to the number of excess
25 horses which the Nevada districts contain as compared to the national total; therewith to
26 conduct necessary censusing of wild horses and evaluate effects of wild horses and other users
27 on the range resources; and if necessary reduce wild horse numbers commensurately;

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1 2. Pursuant to 28 U.S.C. § 1361, issue a writ of mandamus ordering the U.S. to
2 immediately allocate agency funding to Nevada's BLM field offices in proportion to the number
3 of excess horses which the Nevada districts contain as compared to the national total; therewith
4 to conduct necessary censusing of wild horses and evaluate effects of wild horses and other
5 users on the range resources; and if necessary reduce wild horse numbers commensurately;

6 3. Pursuant to 28 U.S.C. § 2201, declare that Defendants have violated 16 U.S.C.
7 § 1333(b)(2) by not funding Nevada's BLM field offices in proportion to the number of excess
8 horses which the Nevada districts contain as compared to the national total; conducting
9 necessary censusing of wild horses and evaluating effects of wild horses and other users on the
10 range resources; and by not achieving and maintaining AML for the State of Nevada;

11 4. Pursuant to 28 U.S.C. § 2202, issue an injunction ordering the U.S. to
12 immediately allocate agency funding to Nevada's BLM field offices in proportion to the number
13 of excess horses which the Nevada districts contain as compared to the national total; therewith
14 to conduct necessary censusing of wild horses and evaluate effects of wild horses and other
15 users on the range resources; and if necessary reduce wild horse numbers commensurately;

16 5. Pursuant to 28 U.S.C. § 2202, award the State of Nevada its attorneys fees and
17 costs incurred in bringing this action; and

18 6. Such other and further relief as may be warranted.

19 DATED this _____ day of March, 2009.

20 Respectfully submitted,

21 CATHERINE CORTEZ MASTO
22 Attorney General

23
24 By:

25 C. Wayne Howle
26 Solicitor General
27 100 North Carson Street
28 Carson City, Nevada 89701
Tel: (775) 684-1227

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and on this _____ day of March, 2009, I served a copy of **COMPLAINT** by U.S. Mail to be delivered to:

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100 N. Carson Street
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