

4-15-93 002/016  
4/15/93

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MICHAEL BLAKE, X9 Ranch, Vail  
Arizona 85641; TIMOTHY WILSON, 505:  
Brown Street, Reno, Nevada 89509 :  
PUBLIC LANDS RESOURCE COUNCIL :  
243 California Avenue, Suite 4 :  
Reno, Nevada 89509, :

Civil Action  
Case No. 93-0726

Plaintiffs,

v.

BRUCE BABBITT, Secretary of  
the Interior, 1849 C Street NW,  
Washington, D.C. 20240; CARSON  
CULP, Acting Director of the  
Bureau of Land Management,  
1849 C Street NW, Washington,  
D.C. 20240; in their official  
capacities,

Defendants.

NOTICE AND ACKNOWLEDGEMENT OF  
RECEIPT OF SUMMONS AND COMPLAINT

NOTICE

To: Carson Culp  
Acting Director of the Bureau of Land Management  
1849 C Street NW  
Washington, D.C. 20240

The enclosed summons and complaint are served pursuant to  
Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

You must complete the acknowledgement part of this form and  
return one copy of the completed form to the sender within 20 days.

You must sign the acknowledgement. If you are served on  
behalf of a corporation, unincorporated association (including a

partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 60 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on April 13, 1993.

Anna E. Chaston  
Signature

April 13, 1993  
Date of Signature

**ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS  
AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of  
the summons and of the complaint in the above-captioned matter at  
(Address) \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Relationship to Entity/Authority  
to Receive Service of Process

\_\_\_\_\_  
Date of Signature



# United States District Court

DISTRICT OF Columbia

Michael Blake, Timothy  
Wilson, Public Lands Resource  
Council,

## SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: 92 0726

Bruce Babbitt, Secretary of the  
Interior, Carson Culp,  
Acting Director of the Bureau  
of Land Management,

LAMBERTH, J. 92

TO: (Name and Address of Defendant)

Carson Culp, Acting Director of the  
Bureau of Land Management  
1849 C Street, N.W.  
Washington, D.C. 20040

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Richard Chused  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Washington, D.C. 20001

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON

APR - 8 1993

CLERK

DATE

*Nancy Beavers*

BY DEPUTY CLERK

APR - 8 1993

LAMBERTH, J. RCL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MICHAEL BLAKE, X9 Ranch, Vail  
Arizona 85641; TIMOTHY WILSON, 505:  
Brown Street, Reno, Nevada 89509 :  
PUBLIC LANDS RESOURCE COUNCIL :  
243 California Avenue, Suite 4 :  
Reno, Nevada 89509, :

Plaintiffs,

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BRUCE BABBITT, Secretary of  
the Interior, 1849 C Street NW,  
Washington, D.C. 20240; CARSON  
CULP, Acting Director of the  
Bureau of Land Management,  
1849 C Street NW, Washington,  
D.C. 20240; in their official  
capacities,

Defendants.

93 0726

Civil Action  
Case No. \_\_\_\_\_

COMPLAINT - seeking injunctive, declaratory and other relief:

Plaintiffs Michael Blake, residing at X9 Ranch, Vail, Arizona  
85641; Timothy Wilson, residing at 505 Brown Street, Reno, Nevada  
89509; and Public Lands Resource Council, 243 California Avenue,  
Suite 4, Reno, Nevada 89509 respectfully submit:



### JURISDICTION AND VENUE

This action arises under the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question).

This Court has the authority to review the actions of the defendants complained of herein, and to grant the relief requested, pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 553 and 702. The relief sought is authorized under 28 U.S.C. § 2201 (Declaratory Judgment) and 28 U.S.C. § 2202 (Injunctive Relief). Venue is proper in this Court under 28 U.S.C. § 1391(e).

### PARTIES

#### Plaintiffs

1. Plaintiff Michael Blake is an award-winning author and winner of an Academy Award for his screenplay "Dances With Wolves," based on his book of the same name. Michael Blake has written and lectured widely concerning the preservation of America's wildlife, in particular wild horses. Mr. Blake became interested in the Bureau of Land Management's programs for managing of wild horses in the spring of 1991. He has travelled extensively in Nevada to observe wild horses and intends to make such visits in the future. He has conducted extensive research into the history of the controversy concerning wild horses on public lands, and into present horse management programs. He is writing a screenplay on the subject of wild horses in Nevada, specifically the illegal

killing of approximately 600 horses near Austin, Nevada in 1988.

2. Plaintiff Michael Blake had meetings with Bureau of Land Management officials in Nevada, including the State Director, Bill R. Templaton. Mr. Blake actively promoted the Bureau of Land Management's wild horse adoption program and himself adopted two wild horses. As he became more familiar with the Bureau of Land Management's policies and procedures, he realized that wild horse removals and adoption programs were not an effective way to manage wild horses. In July 1992, Mr. Blake called for an independent count of Nevada's wild horses, and a moratorium on horse round-ups pending development of accurate horse population statistics. Mr. Blake provided funding for an aerial census of Nevada's wild horses conducted by plaintiff Public Lands Resource Council, and flew on a number of census flights.

3. Plaintiff Michael Blake has submitted comments to the Bureau of Land Management opposing proposed round-ups of wild horses in Nevada that were distributed to interested parties by the Bureau of Land Management. As a party aggrieved by the decisions of the Bureau of Land Management to implement such wild horse round-ups, he has appealed these agency actions to the Interior Board of Land Appeals.

4. Plaintiff Timothy Wilson is a lifelong resident of Nevada. He is a location manager for motion pictures filmed in the western United States. He is a contractor for the State of Nevada Department of Economic Development, Motion Picture and Television Division. He frequently is called upon to feature wild horses in



Division. He frequently is called upon



the productions that he manages. The presence of wild horses is, therefore, a determining factor for Mr. Wilson's ability to find a suitable location for such projects in Nevada. Mr. Wilson flew on a number of plaintiff Public Lands Resource Council's wild horse census flights. He is familiar with the condition of wild horses in Nevada and with the Bureau of Land Management's policies and procedures for managing wild horses on public lands in Nevada.

5. Plaintiff Timothy Wilson has submitted comments to the Bureau of Land Management opposing proposed round-ups of wild horses in Nevada that were distributed to interested parties by the Bureau of Land Management. As a party aggrieved by the decisions of the Bureau of Land Management to implement such wild horse round-ups, he has appealed these agency actions to the Interior Board of Land Appeals.

6. Plaintiff Public Lands Resource Council ("PLRC") is an association whose members include residents of Nevada. PLRC is dedicated to and one of its purposes is the promotion of the welfare and protection of wild horses, specifically the survival of America's remaining wild horses on public land. In 1992, PLRC conducted an aerial survey of Nevada's wild horses, following the grid system established by the Bureau of Land Management. The PLRC census concluded that the number of wild horses on public lands in Nevada is significantly lower than the number estimated by the Bureau of Land Management to be present. PLRC counted approximately 8,000 horses in contrast to the approximately 33,000 alleged to be present by the Bureau of Land Management.

7. PLRC's goals are shared by the individually named plaintiffs, Michael Blake and Timothy Wilson, both of whom are members of PLRC. Mr. Blake contributed financially to the aerial survey of Nevada's wild horses. Mr. Blake and Mr. Wilson both acted as spokespersons for PLRC when publicizing PLRC's concerns about the true number of wild horses remaining in Nevada.

8. Among the members of plaintiff PLRC are residents of Nevada and nearby states who have in the past, and have the right in the future, to be users and enjoyers of the lands, wildlife, and horses affected by the regulation being challenged in this action.

9. Plaintiff PLRC has submitted comments to the Bureau of Land Management opposing proposed round-ups of wild horses in Nevada that were distributed to interested parties by the Bureau of Land Management. As a party aggrieved by the decisions of the Bureau of Land Management to implement such wild horse round-ups, it has appealed these agency actions to the Interior Board of Land Appeals.

#### Defendants

10. Defendant Bruce Babbitt is the Secretary of the Interior. Secretary Babbitt is charged with the management of federally owned public lands, specifically the protection and management of wild free-roaming horses and burros on public lands.

11. Defendant Carson Culp is the Acting Director of the Bureau of Land Management, which is charged with the administration of federal law and policy concerning public lands, specifically the



protection and management of wild horses and burros on public lands.

#### FACTUAL BACKGROUND

12. Defendant Secretary of the Interior ("Secretary") is charged with the management of federally owned public lands, specifically the protection and management of wild free-roaming horses and burros on public lands pursuant to the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331 et seq. This Act states 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 ... as an integral part of the natural system of the public lands." *Id.* Wild horses are to be managed "in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." 16 U.S.C. § 1333(a). The Act further requires the Secretary to ensure that "[a]ll management activities shall be at the minimal feasible level." *Id.* The Secretary is required to maintain "a current inventory of wild-free-roaming horses and burros" and may only remove wild horses from the range if it is determined that there is an excess of wild horses in a given area of the public lands. 16 U.S.C. § 1333(b)(2).

13. The Bureau of Land Management ("BLM") administers programs for the protection and management programs for wild horses in Nevada pursuant to the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331 et seq. As part of its program of management, the

BLM engages in removals from public lands of wild horses deemed to be in excess of the number considered by BLM to be the appropriate management level in a designated herd management area.

14. Interested parties, i.e., those who would be affected by a decision to remove wild horses, are given notice by the BLM of pending removal plans and an opportunity to comment thereon.

15. Comments of interested parties are addressed by the BLM and a final decision is issued regarding the proposed removal.

16. Interested parties are able to challenge, at the administrative level, BLM decisions to remove wild horses, by filing a notice of appeal with the Interior Board of Land Appeals.

17. Prior to August 5, 1992, the filing of such notice, pursuant to BLM regulation 43 C.F.R. § 4.21(e), would automatically stay the removal decision pending disposition of the appeal. The authority to effect immediate removals of wild horses was reserved for the Secretary, pursuant to 16 U.S.C. § 1333(b)(2), which states "that if an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." A removal decision signed by the Secretary is a final agency action, which is not appealed to the Interior Board of Land Appeals, and which is not automatically stayed if an aggrieved party appeals the agency's decision in federal court.

18. In 1992, BLM amended its regulations governing administrative appeals of wild horse removal decisions. Pursuant



to the amended regulation, 43 C.F.R. § 4770.3(c), effective August 5, 1992, "[An] authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands . . . . Full force and effect decisions shall take effect on the date specified, regardless of an appeal."

19. The practical consequence of 43 C.F.R. § 4770.3(c) is to permit "authorized officers" of the BLM to effect "immediate" removals of wild horses.

20. As enacted, 43 C.F.R. § 4770.3(c) is in contravention of provisions of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331 et seq., as section 1333(b)(2) of this Act expressly provides that only the Secretary of the Interior may immediately remove wild horses.

21. As enacted, 43 C.F.R. § 4770.3(c) creates a bias in favor of removing wild horses rather than livestock when removals are necessary to protect resources.

22. This bias in favor of removing wild horses is contrary to the protected status accorded wild horses by the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331 et seq.

23. As enacted, 43 C.F.R. § 4770.3(c) violates the Administrative Procedure Act, 5 U.S.C. § 553 and 702, as this regulation is in excess of, and contrary to the authority granted by Congress relating to the management of wild horses.

24. On January 6, 1993, the Bureau distributed to interested parties a notice of a proposed round-up of horses in the Buffalo Hills and Granite Range Herd Management Area.

25. On Wednesday, February 3, 1993, plaintiffs' representative telephoned Bud Cribley, the Bureau of Land Management's Area Manager in the Sonoma-Gerlach Resource Area of the Winnemucca District of Nevada, to ascertain if a final decision to remove horses in that area had been made. Mr. Cribley stated that he had signed the recommendation for the final removal plan, and that Ron Wenker, the District Manager, would sign the decision on February 9, 1993, which decision would be placed into full force and effect.

26. On February 9, 1993, Mr. Wenker signed the decision to remove horses, and placed that decision in full force and effect under 43 C.F.R. § 4770.3(c). Mr. Cribley confirmed by telephone to plaintiffs' representative that the removal of horses began on February 9, 1993.

27. The final removal decision was mailed to interested parties. The copy mailed to plaintiffs' representative was postmarked February 9, 1993. This was received by certified mail some eleven days later on February 20, 1993. The removal of horses from the Granite Range was completed on February 20, 1993. Thus, the Bureau of Land Management had completed the removal from the Granite Range Allotment before interested parties even received notification of approval of the removal plan from which they could appeal.

28. On January 25, 1993, Ron Wenker, the District Manager of the Bureau of Land Management's Winnemucca District Office, approved an Emergency Wild Horse Gather Plan to remove horses



immediately from the Fox and Lake Range Herd Management Area. The Plan was not circulated to plaintiffs or other interested parties, and the decision to remove wild horses was placed in full force and effect although it was not signed by the Secretary.

COUNT ONE

Injunctive Relief

29. Paragraphs 1 through 28 are hereby incorporated as if fully set forth herein.

30. As a consequence of 43 C.F.R. § 4770.3(c), plaintiffs and others similarly situated have suffered and will suffer great and irreparable injury, particularly, among other injuries: mismanagement of wild horses because of removal decisions made by local officials with stronger ties to local areas and political interests and more subject to local prejudices than the Secretary of the Interior; the inability to obtain administrative review prior to the removal of horses; the disruption of wild horse social units, foraging habits, and breeding patterns; increased potential for wild horse management decisions that exceed the statutorily required "minimal feasible level."

31. Plaintiffs have no adequate or speedy remedy at law for the above-mentioned conduct of the BLM, and this action for injunctive relief is plaintiffs' only means for securing relief.

32. WHEREFORE plaintiffs request that this court:

(a) Issue a permanent injunction perpetually enjoining and restraining defendants, the Secretary of the Interior, the Bureau

Dated: April 7, 1993

Respectfully Submitted,

*Richard Chused*

Richard Chused  
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Attorney of Record for  
Plaintiffs

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of Land Management and its officers and agents, and all those in active concert or participation with the BLM, from enforcing 43 C.F.R. § 4770.3(c), as enacted;

(b) Award to plaintiffs their costs in this action, as well as reasonable attorney fees; and

(d) Award plaintiffs such other and further relief as this court may deem proper.

#### COUNT TWO

##### Declaratory Judgment

33. Paragraphs 1 through 32 are hereby incorporated by reference as fully set forth herein.

34. WHEREFORE, plaintiffs request that this court:

(a) Issue a declaratory judgment declaring that 43 C.F.R. § 4770.3(c) is in contravention of the Wild Free-Roaming Horse and Burro Act and the Administrative Procedure Act and is therefore null and void;

(b) Award to plaintiffs their costs in this action, as well as reasonable attorney fees; and

(c) Award plaintiffs such other and further relief as this court may deem proper.