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Via Facsimile & U.S. Mail

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*Re: Potential Legal Violations Associated with Removal, Transfer, and Gelding of
Wild Horses and Burros Residing in Anza-Borrego Desert State Park*

Dear Secretary Nichols, Acting Director Coleman, and Park Supervisor Van Cleve:

This firm represents the California State Horsemen's Association and the Backcountry Horsemen of California (collectively, "Horsemen") in matters relating to equestrian resources and recreation in Southern California. It has come to our attention that the California Department of Parks and Recreation ("DPR") has recently taken action to remove wild horses from the Anza-Borrego Desert State Park ("ABDSB"), and to have the stallions gelded. **We believe this action, and any contracts related thereto, are illegal and should be rescinded immediately.** Potential legal violations include the following:

- Failure of DPR to conduct a proper environmental review of the proposed action as required under the California Environmental Quality Act ("CEQA") (Pub.Res.Code §§21000, *et seq.*);

- Violation of the DPR's Coyote Canyon Public Use Plan ("PUP"), which identifies the wild horses in question as protected under the Federal Wild Free-Roaming Horse and Burro Act (the "Federal Act") (16 U.S.C. §§1331-1340);
- Violation of the Federal Act itself, which prohibits the removal, harassment, or sale of wild horses (16 U.S.C. §§1331-1340);
- Violation of State bidding and contracting regulations

A. CEQA

Under CEQA, all state and local agencies in California, including DPR, must conduct a public environmental review process for any action that may have a negative impact on the environment. The removal and gelding of *any* portion of the ABDSP wild horse population qualifies as an agency action that will affect environmental resources. As a result, DPR must perform an environmental review of the action *prior* to implementation. Further, that environmental review process must be public. This procedure, however, was not followed. In fact, it appears that DPR acted clandestinely to remove the horses, and is now pressing to have them gelded as quickly as possible – all without CEQA review or public input. This is a clear violation of state law. As a result, the action and any contract related to it are null and void.

B. The Coyote Canyon PUP

The Coyote Canyon PUP is the governing land use document for the Coyote Canyon portion of ABDSP. At page 3, the PUP provides as follows:

"The herd of 25-40 wild horses in upper Coyote Canyon is causing observed impacts on natural and cultural resources. These animals are protected under the federal Wild Horse and Burro Protection Act thereby limiting our management activities."

Thus, DPR's own PUP recognizes that the wild horses in Coyote Canyon are protected from removal and harassment. The current action to remove and geld the wild horses from Coyote Canyon violates both the PUP and the Federal Act.

C. The Federal Wild Free-Roaming Horse and Burro Protection Act

Even if DPR were somehow relieved of the prohibitions imposed by the Federal Act with respect to wild horses that are *confined* to ABDSP (which it is not), DPR is certainly not exempt from the Act with respect to wild horses that roam freely between ABDSP and adjacent federal lands. Once any wild horse enters federal land, it is protected under the Federal Act. That the horse may intermittently return to ABDSP is immaterial. It is clear that the removal and gelding of the subject wild horses violates the Federal Act and its implementing regulations. Indeed,

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DPR's actions are in conflict with virtually every policy set forth in those regulations. *See*, 43 CFR §4700.06(a)-(e).

We also note that DPR may have placed the contractor who removed the horses in a legally difficult position, as the Federal Act expressly prohibits any person from removing, harassing, killing, or selling a wild horse or burro. The fine for violating these prohibitions is \$2,000 per act, or imprisonment for up to one year, or both.

D. State Bidding and Contracting Laws

As a state agency, DPR must comply with California's laws regarding public contracts and bidding specifications. We are not aware of any evidence that DPR, in letting the contract for the removal and gelding of ABDSP's wild horses, followed these laws. In fact, it appears that DPR may have skirted the public bidding and contracting regulations altogether. If this is true, the contract is void, illegal, and unenforceable.

E. CONCLUSION

We request that DPR halt immediately all actions with respect to the removal and gelding of the subject wild horses until the legal issues described above (and any others) can be resolved. We also demand immediate assurance that the horses removed from ABDSP received a Coggins Test for equine infectious anemia ("IEA"). It would be truly embarrassing if DPR, through this action, facilitated an IEA outbreak out of state.

Very truly yours,

David P. Hubbard

Cc: Senator Bill Morrow
Kathleen Hayden, Backcountry Horsemen of California
Barbara Ferguson, California State Horsemen's Association
Mark Jorgenson, DPR
Tom Pogacnik, BLM Wild Horse and Burro Manager, CA