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California State Horsemen's Association, Plaintiffs/Petitioners
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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO COUNTY**

10 BACKCOUNTRY HORSEMEN OF
CALIFORNIA, a non-profit California
11 corporation;
CALIFORNIA STATE HORSEMEN'S
12 ASSOCIATION, a non-profit California
13 corporation,

14 Plaintiffs/Petitioners,

15 vs.

16 CALIFORNIA RESOURCES AGENCY;
MARY NICHOLS, an individual in her official
17 capacity as Secretary of California Resources
Agency;
18 CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION;
19 RUTH COLEMAN, an individual in her official
capacity as Acting Director of the California
20 Department of Parks and Recreation;
DAVID H. VAN CLEVE, an individual in his
21 official capacity as Superintendent of the
Colorado Desert District of the California
22 Department of Parks and Recreation;
MARK JORGENSEN, an individual in his
23 official capacity as Superintendent of the Anza-
Borrego Desert State Park; and
24 DOES 1 through 100, inclusively.

25 Defendants/Respondents.

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CASE NO:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTION AND
FOR DECLARATORY RELIEF [CODE OF
CIVIL PROCEDURE §§526(a), 1060, 1085,
1094.5; PUBLIC RESOURCES CODE
§§21167 and 21168.5]**

[CEQA ACTION]

1 DAVID CATOOR AND
2 SUSAN CATOOR, individuals;
3 CATOOR LIVESTOCK, a Utah corporation;
4 and
5 DOES 1 to 100, inclusive,

Real Parties In Interest.

6 Petitioners and Plaintiffs Backcountry Horsemen of California and California State
7 Horsemen's Association (collectively, "Petitioners") allege as follows:

8 **GENERAL ALLEGATIONS**

9 1. This action is brought pursuant to Code of Civil Procedure §§526(a) 1060, 1085, and
10 1094.5, and pursuant to Public Resources Code §§21000, *et seq.*, also known as the California
11 Environmental Quality Act ("CEQA"). Through this action, the Petitioners challenge the decision
12 of the defendants/respondents, California Resources Agency, Mary Nichols, California Department
13 of Parks and Recreation, Ruth Coleman, and David Van Cleve (collectively, "Respondents") to hire
14 a contractor to (1) capture and remove wild horses from the Anza-Borrego Desert State Park
15 ("ABDSP"), and (2) castrate the stallions of the herd.

17 2. Despite the clear environmental effects of this action, the respondents failed to subject
18 the action to any prior environmental review as required under CEQA. This is a violation of state
19 law that can only be corrected by judicial intervention in the form of a writ of mandate. It also
20 appears that the contract to capture, remove, and castrate the wild horses was awarded in violation
21 of the State of California's public bidding laws. Should Petitioners obtain evidence establishing
22 such a violation, this Petition/Complaint will be amended to assert claims under the state open
23 bidding laws.
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THE PARTIES

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2 3. Petitioners are non-profit organizations whose members are committed to equestrian
3 recreation and equestrian resources. Petitioners object to respondents' decision to remove the wild
4 horses from ABDSP, and to the illegal process by which that decision was made and implemented.

5 4. Petitioners and their members use the ABDSP extensively, and enjoy sharing the Park
6 with the herd of wild horses that respondents intend to destroy.

7 5. Petitioners have met all conditions precedent to the filing of this action and have
8 properly exhausted all administrative remedies.

9
10 6. Respondent/Defendant California Resources Agency (the "Resources Agency") is now,
11 and at all times relevant to this action was, an agency of the State of California. The Resources
12 Agency has administrative authority over the natural resources of the State of California, including
13 the wild horses in ABDSP.

14 7. Respondent/Defendant Mary Nichols is the Secretary of the Resources Agency.

15
16 8. Respondent/Defendant Department of Parks and Recreation ("DPR") is a state
17 department within the Resources Agency. DPR has direct authority over the resources and
18 activities at ABDSP, including the wild horses located in ABDSP and any actions affecting them.

19 9. Respondent/Defendant Ruth Coleman is the Acting Director of DPR.

20 10. Respondent/Defendant David Van Cleve is the Supervisor of the Colorado Desert
21 Division of the California State Park System, which includes ABDSP. Petitioners are informed and
22 believe, and on that basis allege, that Mr. Van Cleve directly ordered the capture, removal, and
23 castration of the subject wild horses.

24
25 11. Defendant Mark Jorgensen ("Jorgensen") is ABDSP's superintendent. As such, he has
26 the day-to-day responsibility of managing the Park's resources.

27 12. Real Parties in Interest David and Susan Catoor and Catoor Livestock (collectively
28 "Real Parties") are the contractors hired by Respondents to capture and remove the wild horses

1 from ABDSP, and to castrate the stallions once in captivity. Petitioners believe Real Parties
2 accepted the contract in good faith and without knowing that it had been awarded illegally.
3 Petitioners further believe that the Real Parties have treated the captive horses humanely and have
4 done nothing to harm them thus far. However, the Real Parties' contract with DPR requires that
5 they castrate the stallions within the next couple of weeks. Real Parties are based in Nephi, Utah
6 but conduct business throughout the Southwestern United States, including California. This court
7 may exercise jurisdiction over Real Parties on grounds that the contract and actions challenged in
8 this lawsuit all took place and/or relate to activities in California.
9

10 13. The names and capacities, whether individual, corporate, associate or otherwise of the
11 Real Parties In Interest and Defendants named in this Complaint as Does 1 through Does 100,
12 inclusive are unknown to the Petitioners, who therefore pursues these Real Parties In Interest and
13 Defendants by such fictitious names. Petitioners will amend this Petition and Complaint to show
14 their true names and capacities when they have been ascertained.
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16 14. Petitioners are informed and believe, and on that basis allege, that Real Party in Interest
17 and Defendant, and each of them, are now and have been at all times relevant to this action, the
18 agents, servants and employees of each of the other Real Party in Interest and Defendant, and as
19 such are, and at all times relevant to this action have been, acting within the course and scope of
20 their Employment and agency.
21

22 15. Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of
23 law. Therefore, the Petitioners seek judicial intervention to prevent the planned castration of the
24 wild stallions and to have the removed horses returned to their home in ABDSP.
25

26 16. Pursuant to Public Resources Code section 21167.5, The Petitioners have served the
27 Respondents and Real Parties with a letter notifying them of the commencement of this action
28 under CEQA. True and correct copies of the notification letter and the proof of service are attached
to this Petition as Exhibit "A."

FACTUAL ALLEGATIONS

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2 17. ABDSP covers more than 600,000 acres and was designated a National Natural
3 Landmark in 1974. ABDSP is located on the eastern side of San Diego County, with portions
4 extending east into Imperial County and north into Riverside County. Within ABDSP lies Coyote
5 Canyon, which derives its name from the people who once lived within the canyon walls. Located
6 within Coyote Canyon is a herd of approximately 35 wild horses, the origins of which have been
7 lost to history, but which have lived in and near the canyon for over 90 years. It is the only wild
8 horse herd in Southern California. The herd, with its historical connection to Coyote Canyon, has
9 provided the impetus for much of Petitioners' volunteer work in the Park. Viewing the wild horses
10 contributes to the enjoyment of both their equestrian and non-equestrian activities at ABDSP.
11

12 18. The wild horses at ABDSP routinely roam into federal lands that are immediately
13 adjacent to Coyote Canyon. Under the Federal Wild Free-Roaming Horse and Burro Protection Act
14 (the "Federal Act"), wild horses on federal lands are protected against the very kinds of actions that
15 Respondents have taken. Specifically, the Congressional policies of the Federal Act provide "that
16 wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the
17 West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the
18 American people." Congress, in adopting the Federal Act, declared that "wild free-roaming horses
19 and burros shall be protected from capture, branding, harassment, or death ..." and that they are "an
20 integral part of the natural system of public lands."
21

22 19. On or about March 11, 2003, the Petitioners met with DPR in Borrego Springs and
23 offered to work with DPR toward a viable solution to the wild horse issue in Coyote Canyon.
24 Petitioners made this offer as an alternative to DPR's plan to capture and remove the herd from
25 ABDSP. This offer was rejected.
26

27 20. On March 14, 2003, Petitioners learned that Respondents had retained Real Parties to
28 capture, remove and castrate wild horses that reside in and/or travel through ABDSP and

1 surrounding properties, including federal lands. Petitioners believe, and on this basis allege, that
2 this contract was awarded without a request for proposals (“RFP”) and without benefit of a public,
3 open, and competitive bid process. At about this same time, the Petitioners were informed, and on
4 that basis allege, that (1) the Real Parties had rounded up the wild horses in question and removed
5 them from the ABDSP, and (2) Respondents had demanded that Real Parties castrate the stallions at
6 the earliest opportunity.

7
8 21. On March 17, 2003, Petitioners called Respondent Van Cleve to request that he stop the
9 removal of the herd and to consider partnering with Petitioners for management of the herd. Van
10 Cleve declined to consider this alternative. The following day, March 18, Respondents proceeded
11 to remove the wild horse herd.

12 22. On March 27, 2003, legal counsel for the Petitioners faxed a letter to Respondents,
13 objecting to the removal and planned castration of the horses. In the letter, the Petitioners notified
14 Respondents that their decision to remove and castrate the horses violated (1) CEQA, (2) the
15 Coyote Canyon Public Use Plan, (3) the Federal Wild Free-Roaming Horse and Burro Protection
16 Act, and (4) state open bidding laws. On this basis, the Petitioners demanded that respondents halt
17 all work connected with the wild horse removal and castration project until the legal issues
18 surrounding it could be resolved. The Petitioners are informed and believe, and on that basis allege,
19 that respondents have not stopped all work related to the wild horse removal and castration project,
20 that all legal violations remain uncorrected, and that the horses themselves are in imminent danger
21 of permanent physical harm.
22

23 23. Without addressing the issues raised by the Petitioners, Respondents have implemented
24 and continued its program of rounding up the wild horses and transporting them out of ABDSP.
25

26 24. Apart from the devastating effects on the wild horses themselves, Respondents’ removal
27 of the horses from ABDSP changes the physical, natural and social environment of the Park,
28 diminishing the wildlife experience of those who visit the Park.

1 25. In direct violation of CEQA, Respondents have not analyzed the environmental effects
2 of removing the wild horses; nor have they disclosed those impacts to the public or provided a
3 mechanism by which the public could comment on the proposed removal and castration of the
4 horses.

5 26. The Respondents have failed, and continue to fail, to consider any other reasonable
6 alternative to removal of the wild horses from ABDSP, including, but not limited to, a partnership
7 with the federal Bureau of Land Management (“BLM”) to manage the wild horse herd within the
8 Park. Respondents also have failed to develop mitigation measures that would avoid or reduce to
9 insignificance the impacts of the horse removal and castration project.
10

11 27. The Respondents have failed, and continue to fail, to recognize and evaluate the
12 historical significance of the wild horses in ABDSP, all contrary to Defendant DPR’s published
13 Management Directives.

14 **FIRST CAUSE OF ACTION**

15 (Writ of Mandate to Correct Respondents’ Failure to Comply with CEQA)

16 28. The Petitioners hereby incorporates by this reference the allegations of paragraphs 1
17 through 27 of this Petition and Complaint as though fully set forth herein.
18

19 29. Under CEQA and its implementing Guidelines, no state agency may take any action that
20 may have a negative effect on the environment without first subjecting the proposed action to a
21 rigorous environmental evaluation. CEQA also requires that this evaluation be conducted within
22 the full view of the public. Not only must the agency prepare a document (*i.e.*, a Negative
23 Declaration or Environmental Impact Report) that discloses the potential impacts of the proposed
24 action, it must circulate that document to the public for review and then respond to comments
25 submitted by members of the public regarding the proposed action and/or the environmental
26 document.
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28 ///

1 30. With respect to any action that may have a significant impact on the environment,
2 CEQA also requires the lead agency (such as DPR here) to develop mitigation measures and a
3 reasonable range of alternatives so that the action's impacts can be avoided or reduced to
4 insignificant levels.

5 31. Only after it determines that the environmental documentation is complete and
6 technically adequate may the agency adopt that documentation and approve the proposed action or
7 project. The decision to adopt the environmental document and approve the action/project must be
8 set forth in "findings" that are themselves supported by substantial evidence in the administrative
9 record.
10

11 32. In this case, none of the Respondents conducted a CEQA-compliant review of the wild
12 horse removal and castration project. No Environmental Impact Report ("EIR") or Negative
13 Declaration or any other environmental document was prepared for the project; no public notices
14 were issued; no public hearings were held. Instead, Respondents took action to remove and geld
15 the horses by fiat, without environmental review or public input, without developing mitigation
16 measures, without considering reasonable alternatives, and without making findings that (1)
17 describe the rationale for the action and (2) connect that rationale to substantial evidence in the
18 administrative record. This is a clear and complete violation of CEQA.
19

20 33. Pursuant to CEQA and Code of Civil Procedure section 1094.5, this Court has the right,
21 duty and power to correct Respondents' error by issuing a writ of mandate commanding
22 Respondents to reverse their decision to remove the wild horse herd from ABDSP until a full
23 CEQA review is completed.
24

25 **SECOND CAUSE OF ACTION**

26 (Declaratory Relief Against All Respondents/Defendants)

27 34. The Petitioners hereby incorporate by this reference the allegations of paragraph 1
28 through 33 of this Petition and Complaint as though fully set forth herein.

1 35. An actual controversy has arisen between the Petitioners and Respondents/Defendants
2 concerning their respective rights and duties. The Petitioners contend that the
3 Respondents/Defendants have no right to proceed with the wild horse removal and castration
4 project. The Petitioners are informed and believe, and on that basis allege, that
5 Respondents/Defendants dispute Petitioners' contentions and maintain that the approval of the
6 Project was valid, entitling Respondents/Defendants and Real Parties to proceed with the project.

7
8 36. The Petitioners desire to have a judicial determination concerning the rights and duties
9 of the parties in the controversy alleged. Such a determination is necessary and appropriate at this
10 time so that the parties may plan and determine their actions accordingly.

11 **THIRD CAUSE OF ACTION**

12 (For Injunction Against All Respondents/Defendants)

13 37. The Petitioners hereby incorporate by this reference the allegations of paragraphs 1 to 34
14 of this Petition and Complaint as though fully set forth herein.

15 38. Unless enjoined and restrained, Respondents/Defendants will continue to implement the
16 wild horse removal and castration project. The Petitioners have no adequate remedy at law. The
17 damages that the Petitioners will sustain should the project proceed are impossible to determine.
18 Moreover, if the project is allowed to advance, Petitioners' claims for relief may become moot.
19 Finally, the actions of Respondents/Defendants will likely result in a multiplicity of lawsuits.

20 39. The Petitioners seek equitable relief because the removal of the wild horses from the
21 Park is a significant act that will change the physical, natural and social environment of the Park
22 and will have both a direct and indirect impact on Petitioners' members' enjoyment of the
23 recreational, historical, and ecological values of ABDSP, and as such there is no legal remedy that
24 would adequately address the harm to the Petitioners.
25

26 40. There is no monetary compensation that would afford adequate relief for the harm done
27 to the Petitioners by the removal of the wild horses from ABDSP.
28

1 41. There are other reasonable alternatives to removal of the wild horses from ABDSP,
2 including, but not limited to, improving the wild horse herd's genetic pool by the introducing horses
3 from other wild horse herds into the Coyote Canyon herd. Other alternatives include: (1)
4 supplementing the horses' diet during drought periods; (2) partnering with skilled horse managers
5 and volunteers from among Petitioners' membership; (3) developing a management plan with the
6 help of the BLM, which has established expertise in managing wild horse herds. Instead,
7 Respondents have chosen to "manage" the herd by removing it and destroying it.

8
9 42. Removal of the wild horses from ABDSP will cause irreparable harm to the Petitioners
10 and their members because they will have lost forever the opportunity to view and enjoy the wild
11 horses in a Southern California wilderness environment. Moreover, the Petitioners will be caused
12 irreparable harm because the removal of the wild horses from ABDSP will break a historical link
13 between members of the Petitioners and the pioneer spirit of the West.

14 43. The threat of the irreparable harm is immediate and actual because the Respondents
15 have already rounded up the wild horses using helicopters and have exported them out of
16 California, where the stallions will be gelded. The mares, too, have been harmed, as they have been
17 moved during foaling season. As a result, some of the mares may abort their foals due to stress.

18
19 44. Failure to grant the Petitioners the relief sought will cause them greater harm than the
20 Respondents are likely to suffer if such relief is granted because the wild horse herd has been in the
21 Coyote Canyon for at least 90 years and it is only through the Respondents' acts and omission that
22 the herd has been left to deteriorate to such a condition that removal of the wild horses from the
23 Park could be considered as an alternative to proper wild horse management.

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25 WHEREFORE, the Plaintiffs pray for:

26 1. An injunction mandating that Respondents, their employees, agents, and all others
27 through whom Respondents may act:

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A. Halt any and all efforts to castrate the stallions of the wild horse herd or take any other action that might affect the physical condition of the horses, both male and female; and

B. Immediately return the entire wild horse herd to ABDSP so that the members of the herd may continue their natural behaviors in their chosen environment.

2. An order mandating that Respondents conduct a CEQA-compliant environmental review of any current or proposed action to remove wild horses from ABDSP or to otherwise change the natural behaviors of these animals.

3. Issue and order awarding Plaintiffs their attorneys' fees and costs; and

4. Issue an order granting Plaintiffs such further relief as may be appropriate.

Dated: April 23, 2003
PEAK, LLP

LOUNSBERY FERGUSON ALTONA &

By: _____
DAVID P. HUBBARD, ESQ.
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Backcountry Horsemen of California and
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