

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT**

**STATE OF NEW MEXICO ex rel.,**

**WILD HORSE OBSERVERS  
ASSOCIATION, INC.,**

**Civil Case No. D-101-CV-2023-02761**

Case assigned to Mathew, Francis J.

**Plaintiff/Petitioner,**

**v.**

**ANDRE BIANE, JAMES CARROLL,  
DAVID GONZALES,  
NEW MEXICO LIVESTOCK BOARD,  
NEW MEXICO LIVESTOCK BOARD REGIONAL  
SUPERVISOR BENJAMIN GONZALES,  
BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF SANDOVAL, AND  
SANDOVAL COUNTY SHERIFF JESSIE  
JAMES CASAUS,**

**Defendants//Respondents.**

**VERIFIED PETITION FOR WRITS OF MANDAMUS,  
VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION,  
EQUITABLE DISGORGEMENT and DAMAGES**

This is a case brought by Plaintiff/Petitioner Wild Horse Observers Association, Inc. (“WHOA”) alleging: 1) a conspiracy initiated by Defendants Andre Biane and Jerry Carroll, and including Defendant New Mexico Livestock Board (“NMLB”) Regional Supervisor Benjamin Gonzales to capture and relocate out of state the wild horses of Sandoval County that are protected by the New Mexico Wild Horses act, N.M.S.A., Section 77-18-5, 2) the failure of Defendant NMLB and Defendant NMLB Regional Supervisor Benjamin Gonzales to comply with their mandatory duty under N.M.S.A., Section 77-18-5 to notify private Defendants Biane and Carroll to release the wild horses captured on private property by Carroll back to the lands which they inhabit, 3) the failure of Sandoval County Defendants Board of County Commissioners and

County Sheriff Jessie James Casaus to record the incident reported to Sandoval County, contrary to Sandoval County Ordinance 4.4 requiring the logging of all animals impounded by private citizens; 4) the failure of the Sandoval County Defendants to advise the public, including Jerry Carroll, that the New Mexico Wild Horses law requires captured wild horses to be released to the public lands they inhabit, 5) the failure of Defendants Jerry Carroll and David Gonzales to follow New Mexico Livestock Code, including NMSA 77-9-21 and 77-9-41, by possessing, transporting out of the NMLB District or out of state, and possibly selling wild horses for which the state of New Mexico is conservator and which are not owned by any person, without the proper state permit authority, and 6) the failure of Defendant NMLB to follow New Mexico Livestock law by allowing Defendants Carroll and David Gonzales to possess, transport out of the NMLB District or out of state, and possibly sell wild horses for which the state is conservator and that are the not owned by any person and without the proper state permit authority.

### **Introduction**

1. This is a civil action for a Writ of Mandamus to require Defendant New Mexico Livestock Board and Defendant NMLB Regional Supervisor Benjamin Gonzales, to follow their mandatory non-discretionary duty to follow the law concerning the release of wild horses that are impounded by private actors, pursuant to Section 77-18-5 N.M.S.A and as enunciated by the New Mexico Court of Appeals in *Wild Horse Observers Association, Inc., v. New Mexico Livestock Bd.*, 2022-NMCA-061 ¶¶ 23-25.

2. In addition, Plaintiff/Petitioner seeks a Writ of Mandamus to require Defendant Board of County Commissioners of the County of Sandoval and its agents, Defendant Sandoval County Sheriff and Sandoval County Animal Control Officers, to comply with their mandatory,

non-discretionary duty to record the impoundments of all animals, including wild horses, pursuant to Sandoval County Ordinance 4.4.

3. In addition, Plaintiff/Petitioner seeks declaratory and injunctive relief under the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 to 15 (1975), to order Defendant NMLB and Defendant NMLB Regional Supervisor Benjamin Gonzales, to comply with the New Mexico Wild Horses statute, NMSA 77-18-5, as enunciated by the New Mexico Court of Appeals, and also, not to issue travel permits or otherwise allow capture, transport, or sale of wild horses outside the requirements of the NM Wild Horses statute, the Livestock Code, NMSA, §§ 77-9-41 to -42, as per *WHOA v. NM Livestock Bd. 1*, and the animal cruelty statute, NMSA § 30-18-1, as per *WHOA v. NM Livestock Bd. 1*.

4. In addition, Plaintiff/Petitioner seeks declaratory and injunctive relief under the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 to 15 (1975) against Defendant Board of County Commissioners of the County of Sandoval, its agents, and Defendant Sandoval County Sheriff, requiring these Defendants to keep a record of all animals, including wild horses, impounded in Sandoval County and to advise the public that the New Mexico Wild Horses law requires captured wild horses to be released to the public lands they inhabit.

5. Finally, Plaintiff WHOA brings claims against the individual Defendants Andre Baine, Jerry Carroll, David Gonzales for conspiracy to unlawfully impound and remove the wild horses of Sandoval County in violation of the NM Wild Horses statute, the NM horse transport laws, and the general animal cruelty law, thereby unjustly enriching themselves at the cost to the public who are the beneficial owners of all wild horses in New Mexico. WHOA requests equitable disgorgement and damages against the individual Defendants.

## Jurisdiction and Venue

6. This Court has jurisdiction over this action pursuant to N.M. Const., art. VI, § 13<sup>1</sup> and NMSA Sections 38-3-1.1, 44-2-3, 44-2-4, 44-6-2 and 44-6-13. Defendant NMLB is an agency or department of the State of New Mexico, and Defendant NMLB Regional Supervisor, Benjamin Gonzales is an official thereof. This cause of action arises under the laws of New Mexico. Judicial review is appropriate as Plaintiff WHOA is suffering a legal wrong, an actual, live controversy exists between the parties, and Plaintiff is challenging governmental and private actions taken in violation of state statutes, New Mexico appellate decisions, and the New Mexico Constitution.

7. Declaratory relief is appropriate under NMSA Section 44-6-2. Injunctive relief is appropriate as supplemental relief under NMSA Section 44-6-9. ("Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper").

8. N.M. Const. art. VI, § 13 grants District Courts the power to issue writs of mandamus and injunction: "district courts... shall have power to issue writs of habeas corpus, **mandamus**, **injunction**, quo warranto, certiorari, prohibition, and **all other writs....**" See also § 44-2-3, N.M.S.A. 1978 which gives the district court "exclusive original jurisdiction in all cases of mandamus, except where such writ is to be directed to a district court or a judge thereof in his official capacity, in which case the Supreme Court has exclusive original jurisdiction...."

9. Venue is appropriate under 38-3-1G as Santa Fe is the state capitol.

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<sup>1</sup> "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law, and appellate jurisdiction of cases originating in inferior courts and tribunals in their respective districts as provided by law, and supervisory control over the same. The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, **mandamus**, **injunction**, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise, in the exercise of their jurisdiction;..."

### **Parties and Standing**

10. Plaintiff/Petitioner Wild Horse Observers Association, Inc., (“WHOA”) is a non-profit, 501(c)(3) New Mexico corporation formed to protect and preserve the remaining wild horses and their habitats in the areas of Sandoval County, the state of New Mexico, and all the United States. WHOA has been found to have standing in Bernalillo County and Lincoln County, New Mexico to bring actions to protect the wild horses of New Mexico.

11. The approximately 300 members of WHOA, observe, study, photograph, and aesthetically enjoy the wild horses of New Mexico, including the wild horses that inhabit and roam throughout the Sandoval County area. Members of WHOA live and recreate in and around the natural areas that the wild horses inhabit, and they enjoy the experience of viewing and being around horses and their family bands. Additionally, members of WHOA own property in the Sandoval County area where their real estate value derives in part from the presence of wild horses living in the open spaces around their property.

12. The aesthetic, recreational, scientific, educational, and economic interests of Plaintiff/Petitioner WHOA and its members have been and will continue to be adversely affected and irreparably injured if Defendants NMLB and Board of County Commissioners of the County of Sandoval continue to act out of compliance with state and county laws, and affirmatively and continuously remove, aid and intentionally acquiesce in allowing others to remove, transport, and dispose of the wild horses that roam throughout the public lands of Sandoval County and all of New Mexico.

13. Absent legal compulsion through a Writ of Mandamus and/or an Injunction, the ongoing impoundments, removal, and sale of the wild horses of Sandoval County will irreparably harm the interests of WHOA and its members and the general public by harming individual horses,

destroying the family structures of the horses, degrading their genetic stock, and diminishing the aesthetic and recreational value of wild horses in and around the Sandoval County area including the public spaces in Sandoval County as well as the state of New Mexico.

14. These are actual, concrete, particularized injuries caused by Defendants' failure to comply with New Mexico case and statutory law. These injuries can be redressed through Mandamus to the public entities and by the declaratory and injunctive relief, equitable relief, and damages sought by Plaintiff.

15. Defendant Andre Biane resides in Sandoval County.

16. Defendant Jerry Carroll resides in Sandoval County.

17. Defendant David Gonzales resides in Sandoval County.

18. Defendant NMLB is a state administrative agency organized under the laws of New Mexico. The New Mexico Livestock Board is composed primarily of board members who raise and own cattle, appointed by the Governor, and the NMLB is responsible for governing the livestock industry of the state "in the manner required by law." Section 77-2-3 (A-B) N.M.S.A. Every elected and appointed Defendant Board member has the duty to support the laws of this state. NM Const. art. XX Section 1.

19. Defendant NMLB employed and supervised Defendant NMLB Regional Supervisor Benjamin Gonzales and is responsible for his actions and inactions under the theory of respondeat superior. All alleged wrongful acts committed by defendant Benjamin Gonzales were while acting within the scope of his official authority or capacity as an NMLB Regional Supervisor.

20. Defendant Benjamin Gonzales is employed as a law enforcement officer of Defendant NMLB and is sued in his official capacity. He resides in Sandoval County.

21. Defendant Board of County Commissioners of the County of Sandoval is the properly named Defendant for all actions against a county. See 4-46-1 N.M.S.A. 1978. The Board has supervisory authority over the county sheriff and the Animal Control officers with regard to the enforcement of Sandoval County ordinances. Every elected and appointed Defendant Board member has the duty to support the laws of this state. NM Const. art. XX Section 1.

22. Defendant Sandoval County Sheriff Jesse James Casaus is the elected Sheriff of Sandoval County. Pursuant to Sandoval County Ordinance Code, Section 4-3, the Sheriff has supervisory control over the animal control officers of Sandoval County.<sup>2</sup> Pursuant to NMSA 1978 Section 4-37-4, the duties of a county sheriff include the duty to “enforce the provisions of all county ordinances.”

Enforcement officers in counties; duties.

A. It is the duty of every county sheriff, deputy sheriff, constable and other county law enforcement officer to:

- (1) **enforce the provisions of all county ordinances;**
- (2) diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
- (3) cooperate with the district attorney or other prosecutor in all reasonable ways.

B. Any county law enforcement officer that fails to perform his duty in any material respect is subject to removal from office and payment of all costs of prosecution.

In addition, Defendant Sandoval County Sheriff Casaus has the duty to support the laws of this state. NM Const. art. XX Section 1.

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<sup>2</sup> Sec. 4-3. - Authority of sheriff and animal control officers.

The county sheriff's officers and the animal control officers shall have the authority to issue citations for violation of this chapter and to perform such other duties as are prescribed herein. The animal control officers shall carry identification certifying him as being an animal control officer. **The animal control officers shall be under the supervision of the county sheriff's department.**

### New Mexico Wild Horses Act

23. Wild horses are natural assets of the citizens of the State of New Mexico. According to the Attorney General of the State of New Mexico, in N.M. Att'y Gen. Op. 94-06 (1994), the state is the “conservator of wild animals for the benefit of the people...”

24. In 2007, the NM Legislature passed N.M.S.A. § 77-18-5, entitled “Wild Horses; conformation, history and deoxyribonucleic acid testing; Spanish colonial horses; birth control.”

25. Pursuant to the New Mexico Wild Horses act, NMSA Section 77-18-5(C)(emphasis supplied), “If the mammal division of the museum of southwestern biology at the university of New Mexico determines that a wild horse herd exceeds the number of horses that is necessary” for both “preserving the genetic stock of the herd and for preserving and maintaining the range” then **the Division** may cause control of the wild horse population through the “use of birth control,” “relocation to other public land or to a public or private wild horse preserve,” adoption “by a qualified person for private maintenance” if not Spanish colonial or euthanization for crippled or unhealthy wild horses.

26. In *Wild Horse Observers Association, Inc., v. New Mexico Livestock Bd.*, 2016-NMCA-001 ¶¶ 16, 27, 363 P.3d 1222 (“*WHOA v. NMLB I*”), concerning the wild horses of Placitas in Sandoval County, the New Mexico Court of Appeals held that undomesticated, unowned, free-roaming horses cannot be characterized as “livestock” or “estrays,” but rather, are covered under the New Mexico Wild Horses act, N.M.S.A., Section 77-18-5.

27. In finding that the Placitas horses before the Court were covered under NMSA 77-18-5, *WHOA v. NMLB I*, the NM Court of Appeals also specified that both the NM horse transport laws and the general animal cruelty statute apply to wild horses held in captivity:

[\*17] First, the Board and Intervenors argue that wild horses would be exempt from transportation laws pertaining to livestock, specifically laws requiring permits to



transport livestock. However, the statutes governing horse transportation refer specifically to "any horses" and "each horse" rather than "livestock," so it appears that wild horses would be subject to those provisions although they are not livestock. **See §§ 77-9-41 to -42 (providing for the unlawful transport of "any horses" and requiring an owner's transportation permit "for each horse").** Second, the Board and Intervenors argue that wild horses will be exempt from cruelty statutes that refer specifically to "livestock." *See* § 77-18-2. Although wild horses may not be protected by cruelty to livestock statutes, **they would be covered by general animal cruelty statutes if they are in captivity.** *See State v. Cleve*, 1999-NMSC-017, ¶ 12, 127 N.M. 240, 980 P.2d 23 (interpreting [\*\*\*13] NMSA 1978, Section 30-18-1 (1999, amended 2007) to apply to domesticated animals and wild animals in captivity).

*Wild Horse Observers Ass'n v. N.M. Livestock Bd.*, 2016-NMCA-001, ¶ 17, 363 P.3d at 1227

(emphasis supplied).

28. In *Wild Horse Observers Association, Inc., v. New Mexico Livestock Bd.*, 2022-NMCA-061No. A-1-CA-37810 ¶¶ 23-25 (“*WHOA v. NMLB IP*”), the New Mexico Court of Appeals held that “removal of wild horses that such landowners deem to be a nuisance” is a violation of N.M.S.A., Section 77-18-5 and that **the NMLB has a duty** to return the horses captured on private property “to the public land they inhabit.” The New Mexico Court of Appeals reasoned (emphasis supplied):

16 U.S.C. § 1334 demonstrates that wild free-roaming horses maintain their wild status when they stray from public lands. 16 U.S.C. § 1334 provides in part:

If wild free-roaming horses stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary [of the Interior], who shall arrange to have the animals removed. In no event shall such wild free-roaming horses be destroyed except by the agents of the Secretary.

Read in connection with Section 77-18-5(C)—**which authorizes a wild horse's removal from public lands in only justified and limited circumstances, such as population control—it is clear that the goal of both Congress and our Legislature is to leave wild horses in their natural habitat unless there is a valid reason to remove them. When there is such a valid reason, the requirements of Section 77-18-5(B) are triggered.**

{24} Therefore, to remove the word “public” from Section 77-18-5(B), and categorically require the Board to conduct conformation, history, and DNA

testing of all wild horses it captures—even those captured on private land without legal justification—would allow the Board to remove wild horses with Spanish colonial ancestry from their natural habitat. **Thus, private landowners such as McCoy, would achieve through violation of Section 77-18-5(B), exactly the result desired: removal of wild horses that such landowners deem to be a nuisance.**

{25} For these reasons, we hold that the district court did not err in determining that the subject horses are wild horses under Section 77-18-5(A)(4) and that the Board therefore, ran afoul of the Livestock Code by treating the subject horses as estrays. However, we hold that the district court erred in determining that the Board failed to follow its statutory duties under Section 77-18-5(B). Rather, in our view, **when the Board is asked to address wild horses captured on private land, it has no authority to test the conformation, history, and DNA of such horses, any more than it does to take possession of and remove the wild horses from their public habitat in circumstances that do not otherwise justify such action. Rather, in such circumstances as the Board here faced, its duty was to return the subject horses to the public land they inhabit.**

29. In *WHOA v. NMLB II*, the Court of Appeals also reiterated the duty of a private landowner “to build a fence sufficient to prevent wild horses from entry onto his or her private property” since New Mexico is a fence-out state:

{19} Moreover, Section 77-16-1, which provides “[e]very gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals, shall make a sufficient fence about his land,” **places the onus on landowners who wish to keep out wild animals to build a fence sufficient to accomplish that aim. Thus, in the case at hand, the duty was not on the subject horses to avoid entering McCoy's private property. Rather, under Section 77-16-1, if McCoy does not want the subject horses to trespass on her property, she “shall make a sufficient fence,” which is not intended to be used to corral the subject horses on private property, but instead to keep them from it.** Because it is a landowner's duty to build a fence sufficient to prevent wild horses from entry onto his or her private property, we cannot conclude that a wild horse loses its “wild” status, and thus becomes estray, when it steps over an unenclosed private property boundary, and sets hoof on private land.

Emphasis supplied.

**San Pedro Creek Estates**

30. San Pedro Creek Estates (“SPCE”) is located in the green foothills on the east side of the Sandia Mountains that borders the open spaces on which many New Mexico wild horses roam. In SPCE, there are about 375 home lots of a minimum of ten acres each and additional private open space, all within the wildlife corridor of Sandia Mountain on which wild horses roam.

31. SPCE is governed by a Homeowners Association.

32. Defendant Andre Biane is the current President of the Board of Directors of the SPCE Homeowners Association.

33. Defendant Jerry Carroll is a member of the SPCE Homeowners Association, and he owns and rides horses.

34. The residence of Defendant Jerry Carrol is within SPCE and is contiguous to and near public lands, as follows:

- contiguous to Sandoval County Lands at the La Madera Fire Hall,
- contiguous with Faith Dr., a Sandoval County Rd,
- 830 feet from USDA Forest Service Sandia Mountain,
- 2,370 ft from City of Albuquerque Open Space,
- 4,300 ft from Bureau of Land Management lands, and
- 1 mile from NM State lands.

35. SPCE Homeowners Association employs Defendant David Gonzales for purposes of security, repair of fences and other items, including perceived problems with wild horses, hauling items and other jobs.

**Conspiracy of Individual Defendants to Capture and Relocate Wild Horses;**  
**Failure of Defendants NMLB to Release and Advise Carroll to Release Wild Horses;**  
**Improper Transportation Permission for Wild Horses Granted by NMLB;**  
**Failure of Sandoval County Defendants to Record Impounding and to**  
**Advise the Public that Wild Horses Cannot be Captured and Impounded**

36. Defendant Andre Biane made a plan to erect a temporary, rented corral that would be situated on the property of a SPCE resident with food and water in it to lure the wild horses into

the corral. The plan was to “shut the door” of the corral once the horses were in it, thereby trapping the horses and then removing them from the SPCE area and the public lands they inhabit.

37. The plan was to take captured wild horses to a “horse broker” who might distribute them to other states, slaughter them or put them down in “humane ways.”

38. Defendant David Gonzales said that “the plan was to erect temporary fencing along San Pedro Creek to funnel the wild horses into a temporary, rented corral that would be situated on a resident’s property,” that “the horses were going to Belen and that there were catch and remove programs to remove wild horses and take them.”

39. On March 30, 2023, four wild horses, including a baby horse (foal), entered a corral on the Sandoval County property of Defendant Carroll.

40. Defendant Carroll knew the horses were wild.

41. Upon the horses entering his corral, Defendant Carroll closed his gates, thereby trapping the wild horses on his private property.

42. Defendant Carroll claims that he telephoned the New Mexico Livestock Board but there was no answer.

43. Defendant Carroll then telephoned Defendant Sandoval County Animal Control, under the control of Defendant Sandoval County Sheriff Casaus, and spoke to a person named Jarred.

44. Defendant Carroll told Jarred at Defendant Sandoval County offices that he had four wild horses in his corral, that he had closed the gate on them, and that the horses were agitated due to being locked in.

45. Defendant Carroll told Jarred at Defendant Sandoval County offices that he knew the horses were wild and that he intentionally locked them up:

I got four wild horses that wandered into my round pen. I got them locked up but they are not going to stay in there long. I wonder if there's something we can do about that?

... Four wild horses. They wandered into my round pen, and I closed the gate on them.

... They've been here about ten minutes now. But they are definitely agitated for being in here locked up.

46. Jarred at Defendant Sandoval County offices told Defendant Carroll that Sandoval County would call the New Mexico Livestock Board.

47. Defendant Sandoval County Sheriff Casaus apparently had no policies to notify private persons that "wild horses" captured on private property must be released to the public land they inhabit. Accordingly, Sandoval County Animal Control, under the control and supervision of Defendant Sandoval County Sheriff Casaus, failed to tell Defendant Carroll to release the wild horses by opening his gates.

48. Additionally, Sandoval County Animal Control failed to document the impoundment of the wild horses as required under Sandoval County Ordinance 4.4 which reads as follows (emphasis supplied):

Sec. 4-4. - Impounding estrays; records to be kept; redemption fees; notice required; owner's impoundment.

- (a) No person shall, without the knowledge or consent of the owner, hold or retain possession of **any animal** of which he is not the owner, for more than 24 hours without first reporting the possession of such animal to the county animal control officer, giving his name and address, and a true and complete statement of the circumstances under which he took the animal, a description of the animal and the precise location where such animal is confined.
- (b) It shall be the responsibility of an animal owner redeeming an animal legally impounded under the provisions of this chapter to reimburse the animal control facility for animal boarding or other costs. The county manager shall prescribe the amount of the impoundment fee approximately based upon actual cost.
- (c) **The animal control officer shall maintain a record of all animals impounded. The record shall contain at least the following information:**
  - (1) **A complete description of the animal;**
  - (2) **The date and manner of its acquisition;**
  - (3) **The date, manner and place of impoundment.**

(Ord. No. 05-06-16.10, § III, 6-16-2005)

Sec. 4.1 defines animal as follows:

Animal means any vertebrate members of the animal kingdom excluding humans.

49. Later that day, March 30, 2023, at a wedding, Defendant Carroll showed photos from his phone of the horses in his pen and told a group of persons, in the presence of Defendant Andre Biane, the President of SPCE Homeowners Association, that he had four wild horses in his round pen that he had successfully corralled, and that the Livestock Board had determined that they were not domesticated.

50. Defendant NMLB Regional Supervisor Benjamin Gonzales went to Defendant Carroll's property, inspected and photographed the captured horses, and determined the captured horses were not livestock and that therefore, "the NMLB had no jurisdiction over them."

51. In violation of New Mexico law, N.M.S.A., Section 77-18-5, Defendant New Mexico Livestock Board Officer Benjamin Gonzales told Defendant Carroll that since the horses did not belong to anyone, Carroll could do with the horses as he wanted.

52. On March 31, 2023, Defendant David Gonzales removed the four wild horses from the property of Defendant Carroll and hauled them off.

53. On information and belief, Defendants NMLB and NMLB Regional Supervisor Benjamin Gonzales in violation of NMSA §§ 77-9-41 to -42 (as per *WHOA v. NM Livestock Bd. I*), and in violation of the NM Wild Horses law, NMSA § 77-18-5 (as per *WHOA v. NM Livestock Bd. II*), either issued a horse transport permit to Defendant Carroll or Defendant David Gonzales, or otherwise allowed one or both of them, to take possession of and transport the wild horses over which they had no ownership.

54. Defendants NMLB and NMLB Regional Supervisor Benjamin Gonzales also acted in violation of NMSA 77-9-21 which prohibits a person from having possession of, selling or disposing of livestock<sup>3</sup> without having a written bill of sale:

A. No person shall buy, receive, sell, dispose of or have in his possession any livestock in this state unless the person selling or disposing of such livestock gives and the person buying or receiving such livestock takes a written bill of sale giving the number, kind, marks and brand of each animal sold which meets the requirements of Section 77-9-22 NMSA 1978.

B. The possession of livestock without having a written bill of sale meeting the requirements of Section 77-9-22 NMSA 1978 is prima facie evidence of illegal possession against any person charged with theft, unlawful possession, handling, driving or killing any livestock.

55. As a law enforcement officer, Defendant NMLB Regional Manager Benjamin Gonzales, conspired with and aided and abetted Defendants Carroll and David Gonzales to illegally possess and transport wild horses and to violate the general animal cruelty statute, NMSA § 30-18-1.

56. New Mexico law requires both an inspection of horses for disease and other factors and also the issuance of a permit for the transport of horses. However, an IPRA request to Defendant NMLB has failed to show any transport permit issued to either Defendants Carroll or David Gonzales, or the location to which the wild horses were transported from Defendant Carroll's property by Defendant David Gonzales. On information and belief, at least one of the horses was transported across state lines to Colorado to be sold at auction.

57. On information and belief, Defendant Benjamin Gonzales or another employee of Defendant NMLB either issued a horse transport permit to Defendants David Gonzales or Carroll, or otherwise related that no permit was needed, thereby violating both the New Mexico horse transport law and the New Mexico Wild Horses act.

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<sup>3</sup> Under NMAC 21.32.10.7, the definition of "livestock or animal" includes "horses," without regard to ownership.



58. Defendant New Mexico Livestock Board, through its law enforcement officer and Regional Supervisor, Defendant Benjamin Gonzales, failed in its duty to tell Defendant Carroll to open the gates of his corral and allow the horses to get back to the public lands they inhabit.

59. On April 27, 2023, Defendant Carroll admitted following a “process”: “I followed the process. I called Animal Control, and they referred me to the Livestock Board.”

60. On April 27, 2023, Defendant David Gonzales admitted that he took the four horses captured by Defendant Carroll to Belen. Gonzales also said that someone at the New Mexico Livestock Board “told us they were feral and we could do what we wanted with them.”

61. After the capture and removal of the four wild horses captured on the property of Defendant Carroll, the SPCE Homeowners Association held a Board meeting on April 19, 2023. At the meeting, Defendant Andre Biane stated that “they” had been successful in relocating some wild horses which were taken to “a nice man in Belen.” On information and belief, the wild horses were taken to an auction house in Belen where they were sold, with a portion of the proceeds from the sale going to Defendant David Gonzales or Defendant Carroll.

62. At the April 19, 2023 SPCE Homeowner’s Association meeting, Defendant Biane presented a plan to the Board to corral additional wild horses, using a temporary pen on someone’s property or potentially use another resident’s existing pen.

63. At the April 19 meeting, the SPCE Homeowner’s Association unanimously passed a motion referring to Defendant David Gonzales, “to spend up to \$2000 to have David Gonzales relocate the horses from the Via Entrada entrance area.”

64. Many residents of SPCE organized and voiced their opposition to capturing and relocating the wild horses.



65. On April 28, 2023, SPCE Homeowner's Association Board appeared to retract its wild horse capture and removal authorization and announced, "no relocating activities sponsored by the HOA Board will occur."

66. On May 20, 2023, Defendant SPCE Homeowner's Association Board President Defendant Biane requested of Defendant David Gonzales that he retract an invoice related to horses that couldn't be paid. Defendant David Gonzales told Biane to tear up the invoice he had already submitted.

67. On information and belief, Defendants Biane, Carroll, David Gonzales, and NMLB Regional Manager Benjamin Gonzales are planning to capture and relocate or sell additional wild horses from the Sandoval County area.

**First Claim for Relief: Writs of Mandamus  
To Defendant NMLB and to Sandoval County Defendants**

68. Plaintiff/Petitioner incorporates by reference the allegations in the above paragraphs.

69. Plaintiff/Petitioner requests that this Court issue its Writ of Mandamus pursuant to NMSA 44-2-4 to compel Defendants NMLB and NMLB Regional Supervisor Benjamin Gonzales to: comply with New Mexico law, specifically, the Wild Horse act and the NM Court of Appeals decision cited above in paragraphs 27 and 28, and instruct private landowners holding wild horses (as determined by NMLB) to release those horses back to the wild or, in the alternative, the NMLB must itself immediately release the wild horses back to the public lands they inhabit.

70. As grounds therefore, Plaintiff/Petitioner states that it has no plain, speedy and adequate remedy at law within the meaning of 44-2-5 N.M.S.A. 1978, because Defendant NMLB and Defendant Benjamin Gonzales failed to either inform private landowners that they have no right to restrain and/or dispose of wild horses or they issued bills of sale and

transportation permits in violation of law, and in fact, affirmatively informed private individuals in opposition to the Wild Horse law that they could do whatever they wanted with wild horses. According to NMSA 44-2-7, “When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases the alternative writ shall be first issued.”

Hence, a Preemptory Writ of Mandamus should issue.

71. Plaintiff/Petitioner additionally requests that this Court issue its Writ of Mandamus pursuant to NMSA 44-2-4 to compel Defendant Board of County Commissioners of the County of Sandoval and Defendant Sandoval County Sheriff to comply with the County Ordinances, specifically, to keep a record of all impounded animals, including horses, pursuant to County Ordinance 4.4.

72. As grounds therefore, Plaintiff/Petitioner state that it has no plain, speedy and adequate remedy at law within the meaning of 44-2-5 N.M.S.A. 1978, because Defendant County does not keep records of calls concerning the impoundment of wild horses and because neither the County, its Sheriff, nor its Animal Control, nor Defendant NMLB informs private individuals to release wild horses that the private person is impounding and in fact, affirmatively told private individuals in opposition to the law that they could do whatever they wanted with wild horses.

73. Furthermore, by the time that WHOA discovers that a wild horse has been impounded by either a private or public entity, the horse is whisked away to places unknown and with no information as required by Sandoval County Ordinance 4.4, to wit: “A complete description of the animal; (2) The date and manner of its acquisition; (3) The date, manner and place of impoundment.”

WHEREFORE PREMISES CONSIDERED, Petitioner WHOA prays that this Court issue its two Writs of Mandamus as described above.

**Second Claim for Relief: Declaratory Judgment and Injunction**  
**Against All Defendants**

74. In the alternative to a Writ of Mandamus to Defendants NMLB and NMLB Supervisor Benjamin Gonzales, Plaintiff/Petitioner requests that this Court issue its Injunction and Declaratory Judgment pursuant to the NM Declaratory Judgment Act to compel Defendants NMLB and Benjamin Gonzales to follow the law, specifically, to follow the Court of Appeals decisions cited above and the New Mexico Wild Horse statute, the horse transport law, and the general animal cruelty law as they pertain to wild horses, and to instruct private individuals holding wild horses as determined by NMLB to release those horses or, in the alternative, Defendant NMLB itself or its employees or agents immediately release the wild horses to the public lands they inhabit.

75. In the alternative to a Writ of Mandamus to Sandoval County Defendants, Plaintiff/Petitioner also requests that this Court issue its Declaratory Judgment and Injunction pursuant to the NM Declaratory Judgment Act to: 1) compel Defendants Board of County Commissioners of Sandoval County and the Sandoval County Sheriff to follow county law, and specifically, to keep a record of all impounded animals/horses pursuant to Sandoval County Ordinance 4.4, and also, 2) to advise the public that the NM Wild Horses law prohibits the capture and impoundment of wild horses by private individuals under NMSA 77-18-5, pursuant to the constitutional duty of Defendant County Commissioners and the County Sheriff to support the laws of this state and discharge their duties (NM Const. art XX § 1).

76. In the event that the Court issues the Writ of Mandamus against Sandoval County Defendants to keep a record of all impounded animals, including horses, pursuant to County

Ordinance 4.4, then Plaintiff/Petitioner still requests the Court to enter a Declaratory Judgment against Defendant Sandoval County Sheriff Casaus compelling him, pursuant to his duties under NM Const. art. XX Section 1, to put policies in place to advise the public that the New Mexico Wild Horses law requires captured wild horses to be released to the public lands they inhabit.

77. Plaintiff/Petitioner further requests that the Court issue a Declaratory Judgment and Injunction against the Defendants Biane, Carroll, and David Gonzales, declaring that: 1) pursuant to the NM Wild Horses act and the Court of Appeals in *WHOA II*, a landowner's duty is to build a fence sufficient to prevent wild horses from entry onto his or her private property, and 2) Defendants do not have the authority to round up, capture, impound, move or sell any wild horses under the NM Wild Horses act, Section 77-18-5(C), 3) NM wild horses are covered under the NM horse transport laws, and 4) captured NM wild horses are protected by the general animal cruelty law.

78. In addition, Defendant NMLB and its agents, and Defendant NMLB Regional Manager Benjamin Gonzales, are violating the Livestock Code by allowing members of the public, including Defendants JERRY CARROLL, ANDRE BIANE and DAVID GONZALES, to take possession of New Mexico wild horses, transport, and possibly sell them. These violations include, but are not limited to:

- a. Defendants NMLB and Benjamin Gonzales unlawfully allowed the capture and possession of wild horses in violation of NMSA 77-18-5 which requires the return of wild horses to public land, and in violation of NMSA 77-9-22 which prohibits a person from having possession of, selling or disposing of horses without a written bill of sale.
- b. Defendants NMLB and Benjamin Gonzales unlawfully issued permits for the transport or otherwise allowed the transport of wild horses in violation of NMSA 77-18-5 which requires



the return of wild horses to public land, and in violation of the horse transport law §§ 77-9-41 to -2 and 77-9-21

- c. Defendants NMLB and Benjamin Gonzales unlawfully allowed the public to impound, remove, and sell wild horses that had been captured, in violation of NM general animal cruelty statute, NMSA §30-18-1.

79. For these reasons, Plaintiff/Petitioner additionally seek a declaration from this Court that 1) the NMLB and its Regional Manager, Benjamin Gonzales acted unlawfully under the Livestock Code by treating wild horses as property of the private party impounding the same, and 2) the NMLB should be enjoined from any further allowing the unlawful capture, possession, transport, sale, or cruelty of New Mexico horses from any wild horse herd in the state of New Mexico.

80. The actions taken by the NMLB Defendants go above and beyond the duties of the agency to inspect and govern the livestock meat industry, are ultra vires acts, and are illegal and invalid.

WHEREFORE PREMISES CONSIDERED, Petitioner WHOA prays that this Court issue its Preliminary Injunction pending the outcome of this action prohibiting the actions alleged above by Defendants NMLB and its Regional Manager, Benjamin Gonzales, Defendants Sandoval County and its Sheriff Casaus, and individual Defendants Carroll, Baines and David Gonzales as described above, and that on final hearing issue its permanent injunction.

**Third Claim for Relief: Equitable Disgorgement and Damages from the Individual Defendants Biane, Carroll, David Gonzales, and Benjamin Gonzales**

81. Plaintiff/Petitioner incorporates the above allegations.

82. Defendants Biane, Carroll and David Gonzales conspired with the aid and assistance of the NMLB and its agent Regional Manager, Benjamin Gonzales to remove wild horses from

Sandoval County in violation of New Mexico law, to potentially enhance the property values of San Pedro Creek Estates, to rid San Pedro Creek Estates of wild horses for personal reasons, and on information and belief to make a profit from selling the wild horses.

83. Each of these Defendants should be equitably ordered to disgorge any money received for the sale or transportation of the wild horses without setoff for any expenses. That money should be ordered paid to either the State of New Mexico because the wild horses are an asset of the state which the state is charged with conserving or paid to Plaintiff to aid Plaintiff in enforcing the Wild Horse Act throughout the state of New Mexico.

84. Additionally, each of these Defendants should be made to pay as damages the costs of locating and returning the wild horses that they unlawfully removed from Sandoval County. If the horses cannot be located or have been taken out of state or otherwise disposed of or slaughtered, then these Defendants should be ordered to pay for the value of those horses not as meat, but their aesthetic value to the community.

85. Additionally, each of these Defendants should be ordered to pay punitive damages for their intentional and willful violation of the Wild Horse Act.

**Plaintiff/Petitioner's Prayer for Relief**

**First**, Plaintiff/Petitioner respectfully requests that this Court ENTER ITS WRITS OF MANDAMUS DIRECTING DEFENDANTS NMLB AND NMLB REGIONAL SUPERVISOR BENJAMIN GONZALES to comply with the law of New Mexico and/or GRANT EMERGENCY TEMPORARY INJUNCTIVE RELIEF:

1. Prohibiting Defendants NMLB and Benjamin Gonzales from allowing private parties to capture, take ownership of, dispose of, transport or sell wild horses taken from Sandoval County and the entire state of New Mexico.

2. Prohibiting the Defendants NMLB and Benjamin Gonzales from issuing transportation permits for wild horses outside of the requirements of 77-18-5C, absent a determination from the Mammal Division of the Museum of Southwestern Biology at the University of New Mexico that a wild horse herd "exceeds the number of horses that is necessary for preserving the genetic stock of the herd and for preserving and maintaining the range,"

**Second,** Plaintiff/Petitioner respectfully requests that this Court enter its writ of mandamus directing Defendants Board of County Commissioners of the County of Sandoval and the Sandoval County Sheriff to comply with the law of Sandoval County, Ordinance 4.4 and record the impoundments of wild horses.

**Third,** Plaintiff/Petitioner also requests that the Court issue a Declaratory Judgment:

1. Declaring that the NMLB is acting beyond its statutory authority under the NM Wild Horses law by allowing private individuals to take possession of, transport and sell wild horses taken from public or private lands;

2. Declaring Defendants NMLB and NMLB Regional Supervisor Benjamin Gonzales violated the Livestock Code and the general animal cruelty laws by improperly allowing private individuals to take possession of, impound, transport, dispose of or sell wild horses, and by unlawfully allowing cruelty of captured wild horses;

3. Award Plaintiff/Petitioner's costs that this Court deems equitable and just,

4. Grant Plaintiff WHOA any such other and further relief as this Court deems just and equitable.

**Fourth,** Plaintiff/Petitioner further requests that the Court issue a Declaratory Judgment and Injunction against Defendants NMLB, Benjamin Gonzales, and the individual Defendants declaring:

1) Defendant NMLB, its agents, Defendant Benjamin Gonzales, and the public, including Defendants Jerry Carroll, Andre Biane and David Gonzales, do not have the authority to round up, capture, take ownership of, sell or otherwise dispose of NM wild horses.

2) Defendant NMLB, its agents, and Defendant Benjamin Gonzales, are violating the Livestock Code by allowing members of the public, including DEFENDANTS JERRY CARROLL, ANDRE BIANE and DAVID GONZALES, to transport New Mexico wild horses by unlawfully issuing permits for the transport, or otherwise allowing the ownership or transport, of wild horses in violation of NMSA 77-18-5 which requires the return of wild horses to public land and NMSA, Sections 77-9-21 and -41 to -42 which requires a written bill of sale for transport.

3) Defendant NMLB, its agents, and Defendant Benjamin Gonzales are violating NMSA, Section 30-18-1, by allowing members of the public, including DEFENDANTS JERRY CARROLL, ANDRE BIANE and DAVID GONZALES, to inflict cruelty on the captured wild horses.

**Fifth**, Plaintiff/Petitioner further requests that the Court issue a Declaratory Judgment and Injunction against Defendants Board of County Commissioners and Sandoval County Sheriff Casaus declaring that the Sandoval County Defendants must record all impounding of horses, including wild horses, according to its Ordinance 4-4, and must advise the public that the New Mexico Wild Horses law prohibits the capture, transportation and disposal of wild horses.

**Sixth**, Plaintiff/Petitioner further requests that the Court order Defendants Jerry Carroll, Andre Biane, David Gonzales and Benjamin Gonzales to pay compensatory and punitive damages and disgorge any funds received without setoff from the sale of the wild horses.



Respectfully submitted.

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**UNSWORN AFFIRMATION UNDER PENALTY OF PERJURY  
PURSUANT TO NMRA 1-011:**

I, Patience O'Dowd, President of Plaintiff/Petitioner, Wild Horse Observers Association Inc., under penalty of perjury pursuant to NMRA 1-011 hereby affirm of my own personal knowledge that the above statements of fact are true and correct under penalty of perjury of the state of New Mexico.

  
Patience O'Dowd

Dated

