

**ORIGINAL**

FILED  
2013 JUL -2 A 9:34

RECEIVED  
U.S. DISTRICT COURT  
SAN FRANCISCO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SCHIFF HARDIN LLP  
Bruce A. Wagman, Esq. (CSB #159987)  
[bwagman@schiffhardin.com](mailto:bwagman@schiffhardin.com)  
One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
Telephone: (415) 901-8700  
Facsimile: (415) 901-8701

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

YGR  
*[Handwritten Signature]*

FRONT RANGE EQUINE RESCUE; THE  
HUMANE SOCIETY OF THE UNITED  
STATES; MARIN HUMANE SOCIETY;  
HORSES FOR LIFE FOUNDATION;  
RETURN TO FREEDOM; RAMONA  
CORDOVA; KRYSTLE SMITH; CASSIE  
GROSS; DEBORAH TRAHAN; and  
BARBARA SINK,

Plaintiffs,

v.

TOM VILSACK, Secretary U.S. Department  
of Agriculture; ELIZABETH A. HAGEN,  
Under Secretary for Food Safety, U.S.  
Department of Agriculture; and ALFRED A.  
ALMANZA, Administrator, Food Safety and  
Inspection Service, U.S. Department of  
Agriculture,

Defendants.

Case No. **CV 13 3034**

**NOTICE OF MOTION AND MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

**(Administrative Procedure Act Case)**

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<u>Page</u>
NOTICE OF MOTION AND MOTION.....	vi
MEMORANDUM OF POINTS AND AUTHORITIES .....	1
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND .....	3
A. Horses Are Not Raised for Slaughter for Human Consumption.....	3
B. For Six Years The Status Quo Has Been No Domestic Horse Slaughter .....	5
C. Defendants Granted Inspection Without Environmental Review.....	6
III. STATUTORY AND REGULATORY BACKGROUND.....	7
A. National Environmental Policy Act. ....	7
B. Administrative Procedure Act.....	10
C. Federal Meat Inspection Act.....	11
IV. ARGUMENT .....	11
A. Applicable Legal Standard.....	11
B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.....	12
1. Defendants Violated NEPA and the APA by Failing to Prepare an EIS .....	12
a) Defendants’ Actions are “Major Federal Actions” .....	13
b) Defendants’ Actions May Significantly Affect the Environment.....	14
C. Plaintiffs Will Suffer Irreparable Harm in the Absence of a TRO .....	23
D. The Balance of Equities Favors Plaintiffs.....	27
E. The Requested Injunction Is in the Public Interest .....	28
V. CONCLUSION .....	30

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CASES**

*Alliance for the Wild Rockies v. Cottrell*,  
632 F.3d 1127 (9th Cir. 2011) .....12, 24, 28, 29

*American Motorcyclist Ass'n v. Watt*,  
714 F.2d 962 (9th Cir.1983) .....12

*Amoco Prod. Co. v. Village of Gambell*,  
480 U.S. 531 (1987).....27

*Anacostia Watershed Society v. Babbitt*,  
871 F. Supp. 475 (D.D.C. 1994) .....23

*Animal Legal Def. Fund v. Glickman*,  
154 F.3d 426 (D.C. Cir. 1998) .....25

*Bair v. California Dep't of Transp.*,  
C 10-04360 WHA, 2011 WL 2650896 (N.D. Cal. July 6, 2011) ..... 9, 10

*Blue Mountains Biodiversity Project v. Blackwood*,  
161 F.3d 1208 (9th Cir.1998), *cert. denied*, 527 U.S. 1003 (1999).....14, 15

*Border Power Plant Working Grp. v. Dep't of Energy*,  
260 F. Supp. 2d 997 (S.D. Cal. 2003) .....9, 19, 23

*Bowen v. Consol. Elec. Distrib., Inc. Emp. Welfare Ben. Plan*,  
461 F. Supp. 2d 1179 (C.D. Cal. 2006) .....26

*California ex rel. Lockyer v. U.S. Dep't of Agric.*,  
575 F.3d 999 (9th Cir. 2009) .....14, 23

*California v. Norton*,  
311 F. 3d 1162 (9th Cir. 2002) .....10

*Citizens for Better Forestry v. U.S. Dep't. of Agric.*,  
341 F.3d 961 (9th Cir. 2003) .....24

*City of Sausalito v. O'Neill*,  
386 F. 3d 1186 (9th Cir. 2004) .....24

*Ctr. for Biological Diversity v. Salazar*,  
706 F.3d 1085 (9th Cir. 2013) .....9, 13

*Ctr. for Biological Diversity v. Salazar*,  
791 F. Supp. 2d 687 (D. Ariz. 2011) .....13

*Davis v. Morton*,  
469 F.2d 593 (10th Cir. 1972) .....13

*Friends of the Earth, Inc. v. U.S. Army Corps of Engineers*,  
109 F. Supp. 2d 30 (D.D.C. 2000) .....13

**TABLE OF AUTHORITIES (Continued)**

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

<i>Fund For Animals v. Espy</i> , 814 F. Supp. 142 (D.D.C. 1993) .....	23
<i>Gov't of the Province of Manitoba v. Salazar</i> , 691 F. Supp. 2d 37 (D.D.C. 2010) .....	22
<i>Great Basin Mine Watch v. Hankins</i> , 456 F.3d 955 (9th Cir.2006) .....	22
<i>High Sierra Hikers Ass'n v. Blackwell</i> , 390 F.3d 630 (9th Cir. 2004) .....	12, 24
<i>Humane Society of the U.S. v. Bryson</i> , 2012 WL 1952329 (D. Or. May 30, 2012) .....	25
<i>Humane Society of U.S. v. Gutierrez</i> , 523 F. 3d 990 (9th Cir. 2008) .....	28
<i>Humane Society of the United States v. Johanns</i> , No. 06-cv-265-CKK (D.D.C. 2006) .....	2
<i>Humane Soc. of U.S. v. Johanns</i> , 520 F. Supp. 2d 8 (D.D.C. 2007) .....	<i>passim</i>
<i>Landwatch v. Connaughton</i> , 905 F. Supp. 2d 1192 (D. Or. 2012) .....	26
<i>League of Wilderness Defenders-Blue Mountains Biodiversity Project v. Zielinski</i> , 187 F. Supp. 2d 1263 (D. Or. 2002) .....	19
<i>Lockheed Missile &amp; Space Co., Inc. v. Hughes Aircraft Co.</i> , 887 F. Supp. 1320 (N.D. Cal. 1995) .....	11
<i>M.R. v. Dreyfus</i> , 697 F. 3d 706 (9th Cir. 2012) .....	26
<i>N. Plains Res. Council, Inc. v. Surface Transp. Bd.</i> , 668 F.3d 1067 (9th Cir. 2011) .....	7, 21, 22
<i>Nat'l Senior Citizens Law Center v. Legal Serv. Corp.</i> , 581 F. Supp. 1362 (D.D.C. 1984) .....	28
<i>Native Ecosystems Council &amp; Alliance for the Wild Rockies v. U.S. Forest Serv. ex rel. Davey</i> , 866 F. Supp. 2d 1209 (D. Idaho 2012) .....	13, 20
<i>New York v. Nuclear Regulatory Comm'n</i> , 681 F.3d 471 (D.C. Cir. 2012) .....	14
<i>Ocean Advocates v. U.S. Army Corps of Eng'rs</i> , 402 F.3d 846 (9th Cir. 2005) .....	18

**TABLE OF AUTHORITIES (Continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<u>Page</u>
<i>Ocean Mammal Inst. v. Gates</i> , 546 F. Supp. 2d 960 (D. Haw. 2008) .....	15
<i>Pit River Tribe v. U.S. Forest Serv.</i> , 469 F.3d 768 (9th Cir. 2006) .....	12
<i>Public Citizen v. Department of Transp.</i> , 316 F.3d 1002 (9th Cir.2003) .....	9
<i>Ramsey v. Kantor</i> , 96 F.3d 434 (9th Cir. 1996) .....	13, 14
<i>Realty Income Trust v. Eckerd</i> , 564 F.2d 447 (D.C. Cir. 1977) .....	27, 28
<i>Reed v. Salazar</i> , 744 F. Supp. 2d 98 (D.D.C. 2010) .....	10, 15
<i>Robertson v. Methow Valley Citizens Council</i> , 490 U.S. 332 (1989).....	10, 13
<i>San Luis &amp; Delta-Mendota Water Auth. v. Salazar</i> , 686 F. Supp. 2d 1026 (E.D. Cal. 2009).....	13
<i>Save Our Ecosystems v. Clark</i> , 747 F. 2d 1240 (9th Cir. 1984) .....	24, 29
<i>Sierra Club v. Bosworth</i> , 510 F. 3d 1016 (9th Cir. 2007) .....	12, 23
<i>Silva v. Romney</i> , 342 F. Supp. 783 (D. Mass. 1972) .....	19
<i>Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep’t of Interior</i> , 608 F.3d 592 (9th Cir.2010) .....	21
<i>Thomas v. Peterson</i> , 753 F.2d 754 (9th Cir.1985) .....	24
<i>W. Watersheds Project v. Abbey</i> , 11-35705, 2013 WL 2532617 (9th Cir. June 7, 2013).....	22
<i>White Tanks Concerned Citizens, Inc. v. Strock</i> , 563 F.3d 1033 (9th Cir. 2009) .....	13
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	11, 12, 24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES (Continued)**

**Page**

**STATUTORY AUTHORITIES**

5 U.S.C. § 551, *et seq.*..... vi, 10  
 5 U.S.C. § 706(2) .....12  
 16 U.S.C. § 1540(g) .....2  
 21 U.S.C. § 342(a) .....16  
 21 U.S.C. § 601, *et seq.*.....11  
 21 U.S.C. § 603 .....11  
 21 U.S.C. § 671 .....11  
 33 U.S.C. § 1251, *et seq.*.....21  
 42 U.S.C. § 4321 ..... vi, 1, 7  
 42 U.S.C. § 4321, *et seq.*.....7  
 42 U.S.C. § 4332(C) .....7, 8, 12, 14

**RULES AND REGULATIONS**

7 C.F.R. § 1b.1(a).....8  
 7 C.F.R. § 1b.3(c).....10  
 7 C.F.R. § 1b.4(a).....10, 23  
 9 C.F.R. § 416.2 .....11  
 9 C.F.R. § 500.6 .....11  
 40 C.F.R. parts 1500-1508 .....7  
 40 C.F.R. § 1500.1(a).....7  
 40 C.F.R. § 1500.1(b) .....10  
 40 C.F.R. § 1501.4(a).....8  
 40 C.F.R. § 1501.4(a)(2) .....9  
 40 C.F.R. § 1507.3(b) .....8  
 40 C.F.R. § 1507.3(b)(2)(ii) .....9  
 40 C.F.R. § 1508.4 .....9, 10  
 40 C.F.R. § 1508.7 .....21  
 40 C.F.R. § 1508.8 .....8, 21  
 40 C.F.R. § 1508.9(a) .....9  
 40 C.F.R. § 1508.18 ..... *passim*  
 40 C.F.R. § 1508.25(a)(2), (c) .....21  
 40 C.F.R. § 1508.27 .....8, 16  
 40 C.F.R. § 1508.27(b)(2), (5) .....16  
 40 C.F.R. § 1508.27(b)(6) .....20  
 40 C.F.R. § 1508.27(b)(7) .....22  
 40 C.F.R. § 1508.27(b)(9) .....20  
 40 C.F.R. § 1508.27(b)(10) .....20

**NOTICE OF MOTION AND MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

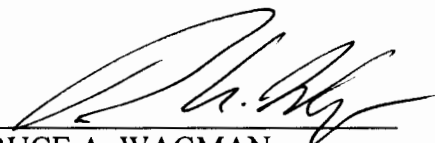
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs hereby move for a temporary restraining order and a preliminary injunction. This motion is being filed along with the Complaint in the above-captioned case on July 2, 2013, with a request for a hearing as soon as the Court is available. No hearing date or time has been set. This motion is made pursuant to Federal Rule of Civil Procedure 65 and is supported by the accompanying memorandum of points and authorities, declarations and other attached exhibits, a proposed order, and such additional information as may be presented to the Court at or before the hearing.

Plaintiffs seek a temporary restraining order and a preliminary injunction against Defendants to prevent them from carrying out inspections or grants of inspections of domestic horse slaughter facilities pending a resolution of the merits of this case. Because Defendants have decided to grant horse slaughter inspection and adopt a new residue testing plan without undertaking the environmental review required by the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, they have acted contrary to law and the decision must be set aside under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* Without this relief, plaintiffs will suffer irreparable harm, as described in the memorandum of points and authorities and the accompanying declarations. Further, the balance of equities tips in Plaintiffs' favor, and emergency relief is in the public interest. Accordingly, Plaintiffs seek this emergency relief to allow for meaningful judicial review.

Dated: July 1, 2013

SCHIFF HARDIN LLP

By:   
BRUCE A. WAGMAN  
Attorneys for Plaintiffs

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs challenge Defendants' grant of inspection under the Federal Meat Inspection Act ("FMIA") to horse slaughter facilities throughout the United States and the creation of a new horse meat drug residue testing plan, without conducting the necessary environmental review required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* Plaintiffs seek a temporary restraining order ("TRO") and preliminary injunction ("PI") to enjoin Defendants from allowing horse slaughter for human consumption to occur at domestic facilities pending resolution of the merits. Plaintiffs seek only a brief continuation of the longstanding status quo of no horse slaughter in the United States, to allow the Court to review USDA's actions.

There has been no horse slaughter in America in six years. However, in 2011, Congress authorized funding for horse slaughter facility inspections. Shortly thereafter, defendant USDA received several applications for inspection from facilities seeking to slaughter horses.<sup>1</sup> At the time of this filing, USDA has given one grant of inspection, and indicated that more are imminent.

In April 2012, Plaintiffs Front Range Equine Rescue (FRER) and The Humane Society of the United States ("The HSUS") submitted a Petition for Rulemaking requesting that USDA promulgate rules ensuring horse meat intended for human consumption is not adulterated under the FMIA (the "Rulemaking Petition"), attached as Exhibit 1 to Declaration of Bruce Wagman in Support of Temporary Restraining Order ("Wagman Decl."). The Rulemaking Petition documented concrete risks to public health from consuming meat from American horses, who are administered numerous substances throughout their lives that are prohibited for use in food animals. The Rulemaking Petition was denied on June 28, 2013.

Prior to initiating this action, FRER and HSUS notified Defendant Vilsack in writing that a decision by USDA to authorize horse slaughter without preparing any environmental review would violate NEPA. In addition, on April 16, 2013, FRER and HSUS also notified Defendant Vilsack that

<sup>1</sup> These include Valley Meat Co., LLC ("Valley Meat") in Roswell, New Mexico; Responsible Transportation in Sigourney, Iowa; Rains Natural Meats located in Gallatin, Missouri; American Beef Company/Unified Equine, LLC in Rockville, Missouri; Trail South Meat Processing Co. in Woodbury, Tennessee; and Oklahoma Meat Company in Washington, Oklahoma.



1 Plaintiffs intended to file suit under the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), if  
2 USDA granted inspection to Valley Meat without consulting with the U.S. Fish and Wildlife Service  
3 concerning the impact of Valley Meat’s horse slaughter operations on threatened and endangered  
4 species and their critical habitat near Valley Meat’s facility.

5 Defendants have now granted inspection for horse slaughter without undertaking sufficient  
6 environmental review. Defendants have also established their new residue testing plan for drug  
7 residues and inspections at *all* domestic horse slaughter facilities, again without any substantive  
8 NEPA review. Defendants may also grant additional inspections for horse slaughter facilities at any  
9 time. Thus, Defendants’ actions have implications that are far-reaching in scope.

10 As explained in detail below, Plaintiffs are likely to succeed on the merits of their claim that  
11 Defendants violated NEPA by granting inspection to domestic horse slaughter facilities and by  
12 creating a new residue testing plan without conducting any substantive environmental review.  
13 Defendants have abdicated their Congressionally-mandated obligation to evaluate all reasonably  
14 foreseeable environmental impacts of horse slaughter, and ignored the substantial information  
15 presented to the agency by Plaintiffs regarding these impacts and the public health risks associated  
16 with the grant of inspection and creation of the new residue testing plan. Absent emergency relief  
17 from this Court, Defendants’ actions will allow horse slaughter to occur, altering the status quo and  
18 potentially causing substantial environmental impacts.

19 Absent emergency relief, Defendants’ actions will also cause irreparable harm to Plaintiffs  
20 Ramona Cordova, Krystle Smith, Cassie Gross, Deborah Trahan, and Barbara Sink, who all live  
21 close to the proposed plants, and to members of The HSUS, supporters of FRER, and other members  
22 of the public living near the plants. *See* Declarations of Ramona Cordova, Krystle Smith, Cassie  
23 Gross, Deborah Trahan, Barbara Sink, and Lawrence Seper, Wagman Decl., Exs. 20-25. As shown  
24 by the history of horse slaughter operations in this country, residents near horse slaughter plants  
25 suffer significant and irreparable environmental, health, property, and aesthetic harms.<sup>2</sup> On the other  
26 hand, an order maintaining the status quo will simply add a short delay to what has already been

27 <sup>2</sup> *See* Wagman Decl., Exs. 2-13 (declarations of residents near slaughterhouses); *see also The*  
28 *Humane Society of the United States v. Johanns*, No. 06-cv-265-CKK (D.D.C. 2006), ECF No. 5.

1 years of dormancy for domestic horse slaughter facilities.

2 **II. FACTUAL BACKGROUND**

3 **A. Horses Are Not Raised for Slaughter for Human Consumption.**

4 Horses are unique companion animals with a special place in American culture.  
 5 Accordingly, the horse slaughter industry is highly controversial. Approximately 80% of Americans  
 6 surveyed oppose horse slaughter for human consumption.<sup>3</sup> A March 2013 survey confirmed that  
 7 70% of registered voters in New Mexico oppose horse slaughter.<sup>4</sup> Nevertheless, every year more  
 8 than 140,000 American horses are sold to slaughter.<sup>5</sup> Because those horses are not raised in  
 9 regulated industries, but rather as pets, on racetracks, and as working animals, their slaughter can  
 10 potentially cause serious environmental and public health issues because of the tainted nature of their  
 11 flesh. *See* Rulemaking Petition, pp. 61-65, Wagman Decl., Ex. 1. Almost all American horses are  
 12 given a wide variety of drugs and other substances that render their blood and tissue contaminated  
 13 and dangerous to consume.<sup>6</sup> The discard of the byproducts of horse slaughter poses environmental  
 14 and public health risks when the tissue and blood seep into the ground and water supply. *See* Song  
 15 *W. et al., Selected Veterinary Pharmaceuticals in Agricultural Water and Soil from Land*  
 16 *Application of Animal Manure*, 39 J. Environ. Qual. 4, 1211-17 (2010).

17 **B. Horse Slaughter Causes Significant Environmental Harms.**

18 USDA's grant of inspection to domestic horse slaughter plants is the first federal

19 <sup>3</sup> American Society for the Prevention of Cruelty to Animals ("ASPCA") Survey by Lake  
 20 Research Partners, *Research Findings on Horse Slaughter for Human Consumption* (Jan. 2012),  
 21 available at <http://www.apnm.org/mailbox/horseslaughter/Poll%20Memo%20-%20ASPCA%20Horse%20Slaughter%20Research.pdf>; *see also* Press Release, HSUS, *USDA*  
 22 *Threatened with Suit if Court Order Not Followed Before Horse Slaughter Resumes* (Feb. 3,  
 2012),  
 23 [http://www.humanesociety.org/news/press\\_releases/2011/11/usda\\_threatened\\_02032012.html](http://www.humanesociety.org/news/press_releases/2011/11/usda_threatened_02032012.html).

24 <sup>4</sup> *Press Release, ASPCA, New Research Reveals New Mexicans Strongly Oppose Slaughter of*  
 25 *Horses for Human Consumption* (Apr. 4, 2013), [http://www.aspca.org/Pressroom/press-](http://www.aspca.org/Pressroom/press-releases/040413)  
 26 [releases/040413](http://www.aspca.org/Pressroom/press-releases/040413).

27 <sup>5</sup> U.S. Gov't Accountability Office, GAO-11-228, *Horse Welfare: Action Needed to Address*  
 28 *Unintended Consequences from Cessation of Domestic Slaughter*, at 12 (June 2011), available at  
<http://www.gao.gov/assets/320/319926.pdf>.

<sup>6</sup> Plaintiffs have provided USDA with undisputed evidence in the Rulemaking Petition that  
 virtually every American horse who goes to slaughter has received medications that federal law  
 specifically states cannot be used on animals intended to be eaten. Rulemaking Petition, pp. 31-  
 34, 46-48, Exh. 1 to Wagman Decl.

1 authorization of this controversial practice in six years. By its nature, the operation of a horse  
 2 slaughter plant causes significant environmental impacts in the community, including an  
 3 overpowering noxious stench, blood in the water supply, and lost property values. The  
 4 environmental havoc caused by horse slaughterhouses dumping blood, entrails, urine, feces, heads,  
 5 and hooves into local water systems, overwhelming local waste water infrastructures, and causing  
 6 numerous environmental violations is well documented in the record before the agency.<sup>7</sup>

7 The last three American horse slaughter plants were closed in 2007, and caused extensive  
 8 environmental and other harms, including the destruction of community members' ability to enjoy  
 9 the area surrounding the slaughterhouse, and the tragic contamination of the waste management and  
 10 disposal systems.<sup>8</sup> The Cavel plant in DeKalb, Illinois repeatedly violated its state and federal  
 11 discharge limits for wastewater.<sup>9</sup> Even the mayor of Kaufman, Texas felt it necessary to speak out  
 12 about the tragic environmental consequences of horse slaughter in her town, which "robbed [ ]  
 13 citizens of the quiet and peaceful enjoyment of their property." Declaration of Paula Bacon ("Bacon  
 14 Decl."), at ¶ 4, Wagman Decl., Ex. 13. Dallas Crown "caused massive economic and environmental  
 15

16 <sup>7</sup> See Jane Allin, *When Horse Slaughter Comes to Town*, p. 3 (Mar. 2011), available at  
 17 [http://www.horsefund.org/resources/When\\_Horse\\_Slaughter\\_Comes\\_to\\_Town\\_Updated\\_March\\_2011.pdf](http://www.horsefund.org/resources/When_Horse_Slaughter_Comes_to_Town_Updated_March_2011.pdf) ("When Slaughter Comes to Town"). See also Eckhoff, Vickery, "Horse  
 18 Slaughterhouse Investigation Sounds Food Safety and Cruelty Alarms," *Forbes*, Dec. 6, 2011,  
 available at <http://www.forbes.com/sites/vickeryeckhoff/2011/12/06/horse-slaughterhouse-investigation-sounds-food-safety-and-cruelty-alarms>.

19 <sup>8</sup> See Declaration of Robert Eldridge ("Eldridge Decl.") (Kaufman, Texas resident "unable to use  
 20 [his] yard" because of stench of plant, seeing blood spills and animal parts, concerned for loss of  
 property values), Wagman Decl., Ex. 2; Declaration of Tonja Runnels ("Runnels Decl.") (same),  
 21 Wagman Decl., Ex. 3; Declaration of Juanita Smith ("J. Smith Decl.") ("blood in my bathtub,  
 sinks, and toilets," unable to have family over because of "severe stench on daily basis"),  
 22 Wagman Decl., Ex. 4; Declaration of Yolanda Salazar ("Salazar Decl.") (Fort Worth, Texas  
 resident unable to go outside for activities because of stench), Wagman Decl., Ex. 5; Declaration  
 23 of Margarita Garcia ("Garcia Decl.") ("constantly exposed to the severe stench of the plant;"  
 cannot open windows because "odor is unbearable"), Wagman Decl., Ex. 6; Declaration of Mary  
 24 Farley ("Farley Decl.") (DeKalb, Illinois resident stating that "smell was so bad, and it would  
 linger in my head for the rest of the day"), Wagman Decl., Ex. 7; Declaration of Elizabeth  
 25 Kershnik ("Kershnik Decl.") (describing "ongoing water pollution violations"; "polluted,  
 green foam oozing from the plant's wastewater treatment tank"), Wagman Decl., Ex. 8; and  
 Declaration of James Kitchen ("Kitchen Decl.") (same), Wagman Decl., Ex. 9.

26 <sup>99</sup> See Administrative Orders in *In Re the Matter of: Cavel Int'l, Inc.*, DeKalb Sanitary District:  
 27 (Mar. 17, 2005) (Cavel found to be in "'significant' non-compliance" with discharge permit for  
 first six months of 2004), Wagman Decl., Ex. 10; (Jan. 30, 2006) (Cavel in "'significant' non-  
 28 compliance" with discharge requirements for first eleven months of 2005), Wagman Decl., Ex.  
 11; and (Oct. 18, 2006) (Cavel found to be in "'significant' non-compliance" with discharge  
 permit for first nine months of 2006), Wagman Decl., Ex. 12.

1 problems since its inception. It has also violated . . . a multitude of local laws pertaining to waste  
 2 management, air and water quality, and other environmental concerns.” *Id.* at ¶ 5. The stench from  
 3 the plant “has permeated the community and adversely affected [its] citizens, who continuously  
 4 complain about the odor deriving from the plant.” *Id.* at ¶ 8.<sup>10</sup> In fact, on multiple occasions,  
 5 Kaufman residents’ faucets delivered blood and horse tissue instead of water.<sup>11</sup> Dallas Crown’s  
 6 environmental contamination and repeated local waste water code violations altogether imposed  
 7 environmental, aesthetic, public health, and economic harms on its host community.<sup>12</sup>

8 As noted in the Rulemaking Petition, the disposal of horse blood and offal presents a  
 9 particularly grave environmental threat because of the drugs and substances horses, as opposed to  
 10 traditional food animals, are given throughout their lives. The byproducts of horse slaughter –  
 11 especially blood, sludge, and waste water – may contaminate groundwater and even enter the food  
 12 chain in the event that the sludge is distributed on crops.

13 **B. For Six Years The Status Quo Has Been No Domestic Horse Slaughter.**

14 Until 2006, FSIS inspected horse slaughter plants. In an amendment to the 2006 Agricultural  
 15 Appropriations Act, Congress withdrew funding for the inspection of horses. Agriculture, Rural  
 16 Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006,  
 17 Pub. L. 109-97, § 794, 119 Stat. 2120, 2164 (A.R. 51) (Nov. 10, 2005). Because the Federal Meat  
 18 Inspection Act prohibits the sale of meat for human consumption without federal inspections, the  
 19 defund amendment effectively shut down the horse slaughter plants. The funding prohibition was  
 20 reinstated annually through 2011.

21 After the 2006 defund amendment passed, USDA enacted a rule allowing “fee-for-service”  
 22 horse slaughter inspections, to go around Congress’ decision to shut down horse slaughter.

23 <sup>10</sup> A local physician reported, “I myself and my staff have been nauseated and sick with this  
 24 smell. Our patients have also been sick with this smell...” *Id.* The president of a local hospital  
 25 declared that the “pollution caused by [the horse slaughterhouse] is causing a health threat that  
 [a]ffects the emotional and physical well being of our patients and families.” *Id.* In late 2005, the  
 City’s Zoning Board of Adjustments “unanimously declared that [the horse slaughterhouse]  
 constituted a public nuisance....” *Id.* at ¶ 10.

26 <sup>11</sup> Former Mayor Paula Bacon, *Open Letter to State Legislatures Considering Pro-Horse*  
 27 *Slaughter Resolutions* (Feb. 2009), available at <http://animallawcoalition.com/open-letter-to-state-legislatures-considering-pro-horse-slaughter-resolutions> (“Paula Bacon Letter”).

28 <sup>12</sup> Paula Bacon Letter, *supra* note 11.

1 However, the U.S. District Court for the District of Columbia held that USDA had violated NEPA  
 2 by doing so, stating that “any notion that USDA may avoid NEPA review simply by *failing* even to  
 3 consider whether a normally excluded action may have a significant environmental impact flies in  
 4 the face of the [Council on Environmental Quality] regulations.” *Humane Soc. of U.S. v. Johanns*,  
 5 520 F. Supp. 2d 8, 34 (D.D.C. 2007) (internal quotation omitted; emphasis in original).

6 Congress failed to renew its ban on funding for FSIS’s horse slaughter inspections in 2011,  
 7 opening the door for horse slaughter to resume in this country. However, due to the extraordinarily  
 8 controversial nature of horse slaughter, bipartisan Congressional efforts were immediately  
 9 undertaken to prevent resumption of this inhumane, unpopular, environmentally destructive, and  
 10 health-threatening industry. Several members of Congress from both parties sponsored the  
 11 Safeguard American Food Exports (SAFE) Act, S. 541/H.R. 1094, which would end all horse  
 12 slaughter for human consumption in the U.S. and would also prohibit exporting American horses for  
 13 slaughter abroad. In addition, President Obama’s 2014 budget proposal recommended that Congress  
 14 once again remove all funding for any inspections of horse slaughter plants in the U.S. *See* Office of  
 15 Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal  
 16 Year 2014, Dept. of Agriculture, Title VII, Sec. 725 (Apr. 10, 2013). In response, both the House  
 17 and Senate Appropriations Committees amended the FY2014 Agriculture Appropriations bills to  
 18 eliminate funding for the inspections.<sup>13</sup> That defund may become law within the very near future.

19 **C. Defendants Granted Inspection Without Environmental Review.**

20 Defendants are aware that Valley Meat committed numerous egregious violations of  
 21 environmental laws and regulations when it operated a cattle slaughter facility from 2010-2012.<sup>14</sup>

22  
 23 <sup>13</sup> Agriculture, Rural Development, Food and Drug Administration, and Related Agencies  
 24 Appropriations Act, 2014, Sec. 749, H. R. 2410 [Report No. 113–116] (Jun. 18, 2013), available  
 25 at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2410rh/pdf/BILLS-113hr2410rh.pdf>; *Press*  
*Release, U.S. Senator Mary Landrieu, Landrieu Horse Slaughter Ban Passes Appropriations*  
*Committee* (Jun. 20, 2013), available at  
 26 [http://www.landrieu.senate.gov/?p=press\\_release&id=3816](http://www.landrieu.senate.gov/?p=press_release&id=3816).

27 <sup>14</sup> *See, e.g.*, Letter from William C. Olson, Chief, Ground Water Quality Bureau, New Mexico  
 28 Environment Department (“NMED”), to Richard De Los Santos, President, Pecos Valley Meat  
 Packing Co., Re: Notice of Violation, Pecos Valley Meat Packing Company, DP-236 (May 7,  
 2010), Wagman Decl., Ex. 14; Letter from Dr. Ron Nelson, Denver District Manager, USDA  
 FSIS, FO, to Director, New Mexico Health Department, regarding rotting cattle carcasses *and*  
*blood on De Los Santos’s property* (Jan. 22, 2010) (“Nelson Letter”), Wagman Decl., Ex. 15;

(Footnote continued on next page)

1 Indeed, FSIS itself first documented Valley Meat's extensive maggot-infested piles of decaying  
 2 animals on its property – some as high as fifteen feet. *See* Nelson Letter, Wagman Decl., Ex. 15.  
 3 Valley Meat's environmental violations persisted for years, despite several warnings from USDA  
 4 and New Mexico regulators, before FRER urged state officials to take action. In August 2012, the  
 5 Solid Waste Bureau of the New Mexico Environment Department found that Valley Meat was in  
 6 violation of the solid waste laws and that it should be fined \$86,400.<sup>15</sup> Nevertheless, Defendants  
 7 have now granted Valley Meat approval to slaughter horses without substantive NEPA review.

8 USDA has also failed to conduct any NEPA review of its new equine residue testing plan, so  
 9 that dangerous byproducts of horse slaughter may contaminate the environment.

### 10 **III. STATUTORY AND REGULATORY BACKGROUND**

#### 11 **A. National Environmental Policy Act.**

12 The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Council  
 13 for Environmental Quality (CEQ) regulations, 40 C.F.R. parts 1500-1508, require federal agencies to  
 14 conduct environmental impact analyses for regulatory actions. NEPA is the “basic national charter  
 15 for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA seeks, among its purposes, to  
 16 “promote efforts which will prevent or eliminate damage to the environment and biosphere and  
 17 stimulate the health and welfare of man.” 42 U.S.C. § 4321.

18 Federal agencies must take a “hard look” at the potential environmental consequences of  
 19 their projects *before* taking action and must make “relevant information [ ] available to the larger  
 20 public audience.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir.  
 21 2011) (internal citations omitted); *see also* 42 U.S.C. § 4332(C).

22 NEPA established the Council on Environmental Quality (“CEQ”) to formulate regulations  
 23 for implementing NEPA. CEQ regulations define “effects” to encompass both direct and indirect

24 *(Footnote continued on from previous page)*

25 *Letter from George W. Akeley, Jr., Manager, Enforcement Section, NMED, to Ricardo and Sarah*  
 26 *De Los Santos, Owners, Valley Meat Company, LLC, Regarding Notice of Violation-Valley Meat*  
 27 *Company, LLC Composting Facility* (January 4, 2011), Wagman Decl., Ex. 16; E-mail from  
 28 Auralie Ashley-Marx, NMENV, to Troy Grant, Enforcement Officer, Solid Waste Bureau,  
 NMED, regarding failure of Pecos Valley Meat Company to dispose of legacy waste (April 18,  
 2012 5:51 p.m.), Wagman Decl., Ex. 17.

<sup>15</sup> *N.M. Env't Dep't v. Valley Meat Company, LLC*, SWB 12-16 (CO) (N.M. Env't Dep't Oct. 31,  
 2012) (stipulated final order).

1 effects and impacts, including but not limited to ecological, aesthetic, historic, cultural, economic,  
2 social, or health effects, whether direct, indirect, or cumulative. 40 C.F.R. § 1508.8. USDA has  
3 expressly adopted all of CEQ's NEPA implementing regulations. *See* 7 C.F.R. § 1b.1(a).

4 NEPA requires that federal agencies prepare one of the following three levels of  
5 documentation based on the significance of an action's possible impact on the environment: (1) the  
6 environmental impact statement ("EIS"); (2) the environmental assessment ("EA"), which may lead  
7 to either a finding of no significant impact ("FONSI") or a decision to produce a complete an EIS;  
8 and (3) the categorical exclusion ("CE"). *See* 40 C.F.R. §§ 1507.3(b), 1501.4(a).

9 An agency is required to prepare an EIS for "major Federal actions significantly affecting the  
10 quality of the human environment." 42 U.S.C. § 4332(C). "'Major Federal action' includes actions  
11 with effects that may be major and which are potentially subject to Federal control and  
12 responsibility." 40 C.F.R. § 1508.18. "Actions include new and continuing activities, including  
13 projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by  
14 federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and  
15 legislative proposals." *Id.* § 1508.18(a). Major federal action also includes "formal documents  
16 establishing an agency's policies which will result in or substantially alter agency programs,"  
17 "[a]doption of programs, such as a group of concerted actions to implement a specific policy or plan;  
18 systematic and connected agency decisions allocating agency resources to implement a specific  
19 statutory program or executive directive" and the "[a]pproval of specific projects . . . [including]  
20 approv[al] by permit or other regulatory decision as well as federal and federally assisted activities."  
21 *See id.* § 1508.18(b)(1), (3)-(4).

22 Whether an action "significantly" affects the environment requires considerations of both  
23 "context" and "intensity". *See id.* 40 C.F.R. § 1508.27. For a site-specific action, such as the grant  
24 of inspection to horse slaughter plants in the United States, "significance would usually depend upon  
25 the effects in the locale rather than in the world as a whole." *Id.*

26 For intensity, relevant considerations include but are not limited to "[t]he degree to which the  
27 proposed action affects public health or safety," "[t]he degree to which the effects on the quality of  
28 the human environment are likely to be highly controversial," "[t]he degree to which the possible

1 effects on the human environment are highly uncertain or involve unique or unknown risks,” “[t]he  
2 degree to which the action may establish a precedent for future actions with significant effects or  
3 represents a decision in principle about a future consideration,” “[t]he degree to which the action  
4 may adversely affect an endangered or threatened species or its habitat that has been determined to  
5 be critical under the Endangered Species Act of 1973,” and “[w]hether the action threatens a  
6 violation of Federal, State, or local law or requirements imposed for the protection of the  
7 environment.” *Id.* Courts have found that the presence of one or more of these “significance”  
8 factors should result in an agency decision to prepare an EIS. *See Border Power Plant Working Grp.*  
9 *v. Dep’t of Energy*, 260 F. Supp. 2d 997, 1019 (S.D. Cal. 2003) (citing *Public Citizen v. Department*  
10 *of Transp.*, 316 F.3d 1002, 1023 (9th Cir.2003)); *Johanns*, 520 F.Supp.2d at 19-20.

11 An EIS is not required if an agency determines, based on a more limited analysis in an EA,  
12 that its proposed action would not have a significant environmental impact. *See Bair v. California*  
13 *Dep’t of Transp.*, C 10-04360 WHA, 2011 WL 2650896, at \*4 (N.D. Cal. July 6, 2011). The EA is a  
14 “concise public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining  
15 whether to prepare an [EIS].” 40 C.F.R. § 1508.9(a).

16 An agency need not prepare an EIS or an EA if the agency instead lawfully invokes a  
17 “categorical exclusion”. *See* 40 C.F.R. § 1501.4(a)(2). A “categorical exclusion” exempts from full  
18 NEPA review a category of actions which do not have a significant effect on the human environment  
19 and “for which, therefore, neither an [EA nor an EIS] is required.” *See id.* § 1508.4. A categorical  
20 exclusion may only be invoked for those actions which do not “individually or cumulatively have a  
21 significant effect on the human environment and which have been found to have no such effect in  
22 procedures adopted by a Federal agency in implementing [the CEQ] regulations.” *Id.* Moreover, an  
23 agency’s procedures for determining categorical exclusions must “provide for extraordinary  
24 circumstances in which a normally excluded action may have a significant environmental effect.”  
25 *See id.* § 1508.4; *see also id.* at 40 C.F.R. § 1507.3(b)(2)(ii); *Ctr. for Biological Diversity v. Salazar*,  
26 706 F.3d 1085, 1096 (9th Cir. 2013) (“[E]ven where an action falls into a categorical exclusion, an  
27 agency must nevertheless provide *procedures* for determining whether ‘extraordinary circumstances’  
28 exist.”) (emphasis added).



1           USDA regulations state that FSIS actions, which include the grant of inspection to domestic  
2 horse slaughter facilities and the new horse meat residue testing plan, “are categorically excluded  
3 from the preparation of an EA or EIS *unless the agency head determines that an action may have a*  
4 *significant environmental effect.*” 7 C.F.R. § 1b.4(a) (emphasis added); *see also* 40 C.F.R. § 1508.4  
5 (CEQ regulation to implement NEPA requiring that “[a]ny procedures under this section shall  
6 provide for extraordinary circumstances in which a normally excluded action may have a significant  
7 environmental effect.”).

8           Thus, according to USDA’s own regulations, a determination that there is a mere *possibility*  
9 of an action having a significant environmental effect is sufficient to remove the action from the  
10 cover of a CE. Furthermore, USDA has an ongoing affirmative obligation to analyze whether a CE  
11 continues to be appropriate for the category. *See* 7 C.F.R. § 1b.3(c) (“Agencies shall continue to  
12 scrutinize their activities to determine continued eligibility for categorical exclusion.”); *see also*  
13 *California v. Norton*, 311 F. 3d 1162, 1168 (9th Cir. 2002) (in “extraordinary circumstances, a  
14 categorically excluded action would nevertheless trigger preparation of an EIS or an EA”); *Reed v.*  
15 *Salazar*, 744 F. Supp. 2d 98, 103 (D.D.C. 2010) (finding that if a proposed action falls within a  
16 categorical exclusion, then “the agency must then determine whether there are any ‘[e]xtraordinary  
17 circumstances’ that nevertheless require the agency to perform an environmental evaluation”)  
18 (quoting 40 C.F.R. § 1508.4).

19           Agencies must complete the necessary NEPA process “before decisions are made and before  
20 actions are taken.” 40 C.F.R. § 1500.1(b). Therefore, “NEPA ensures that important effects will not  
21 be overlooked or underestimated only to be discovered after resources have been committed or  
22 the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

23           **B. Administrative Procedure Act.**

24           The Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (“APA”), provides that “[a]  
25 person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency  
26 action within the meaning of a relevant statute, is entitled to judicial review thereof.” *See id.* § 702.  
27 “[F]inal agency action for which there is no other adequate remedy in a court” is subject to judicial  
28 review. *Id.* § 704. A reviewing court shall “hold unlawful and set aside agency action, findings, and

1 conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
 2 with law; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or]  
 3 without observance of procedure required by law.” *Id.* §§ 706(2)(A), (C), and (D).

4 **C. Federal Meat Inspection Act.**

5 The Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.* (“FMIA”), is a comprehensive  
 6 statutory inspection scheme designed both to prevent “adulterated” meat products from entering the  
 7 human food supply and to prevent “inhumane slaughtering.” 21 U.S.C. § 603. In order to be  
 8 eligible for federal inspection, a horse slaughter facility must apply to FSIS for inspection. Review  
 9 of an application for inspection necessarily involves FSIS assessing detailed paperwork regarding the  
 10 applicant’s premises, standard operating procedures, and management of waste-streams, including  
 11 sewage and water. 9 C.F.R. § 416.2. Facilities may not slaughter horses for human consumption  
 12 unless and until FSIS grants inspection and conditional approval.

13 FSIS has discretion in granting inspection applications. *See id.* § 304.2 (establishing that  
 14 FSIS Administrator has the authority to grant or deny an application for inspection). The FMIA  
 15 provides that USDA may refuse or withdraw inspection services under circumstances where the  
 16 applicant for or recipient of such services has been declared unfit to engage in any business requiring  
 17 inspection services. *See* 21 U.S.C. § 671. Furthermore, the FSIS Administrator may file a complaint  
 18 to withdraw a grant of Federal inspection from an establishment for, among other reasons, producing  
 19 or shipping an adulterated product, not handling or slaughtering livestock humanely, or being  
 20 otherwise unfit to engage in any business requiring inspection. *See* 9 C.F.R. § 500.6.

21 **IV. ARGUMENT**

22 **A. Applicable Legal Standard.**

23 A plaintiff seeking a temporary restraining order or a preliminary injunction must establish  
 24 that: (1) he is substantially likely to succeed on the merits; (2) he is likely to suffer irreparable harm  
 25 in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction  
 26 is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The same  
 27 standard applies to both temporary restraining orders and preliminary injunctions, which are often  
 28 granted in NEPA cases. *See Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.

1 Supp. 1320, 1323 (N.D. Cal. 1995); *Sierra Club v. Bosworth*, 510 F. 3d 1016, 1033 (9th Cir. 2007)  
 2 (injunctive relief is appropriate when government action “may significantly degrade some human  
 3 environmental factor”).

4 The Ninth Circuit employs a “sliding scale” approach to *Winter*’s four-element test, so that  
 5 where a plaintiff shows that the balance of hardships tips strongly in its favor, it need only raise  
 6 “substantial questions” going to the merits of its claim. *Id.* at 1135. *Alliance for the Wild Rockies v.*  
 7 *Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). “While an injunction does not automatically issue  
 8 upon a finding that an agency violated NEPA, ‘the presence of strong NEPA claims gives rise to  
 9 more liberal standards for granting an injunction.’” *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d  
 10 630, 642 (9th Cir. 2004) (quoting *American Motorcyclist Ass’n v. Watt*, 714 F.2d 962, 965 (9th  
 11 Cir.1983)). As set forth below, Plaintiffs make a strong showing on each of the four requirements  
 12 for injunctive relief, and thus the Court should issue a TRO and a PI.

13 **B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.**

14 **1. *Defendants Violated NEPA and the APA by Failing to Prepare an EIS.***

15 A reviewing court must “hold unlawful and set aside agency action” that is “arbitrary,  
 16 capricious, an abuse of discretion, or otherwise not in accordance with law,” as well as agency action  
 17 that is taken “without observance of procedure required by law.” 5 U.S.C. § 706(2); *see also Pit*  
 18 *River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 781 (9th Cir. 2006). Courts “will defer to an agency’s  
 19 decision [not to prepare an EIS] only if it is fully informed and well considered.” *High Sierra*  
 20 *Hikers*, 390 F.3d at 640 (quotation omitted).

21 USDA is required to prepare an EIS for “major Federal actions significantly affecting the  
 22 quality of the human environment.” 42 U.S.C. § 4332(C). “The purpose of an EIS is to apprise  
 23 decisionmakers of the disruptive environmental effects that may flow from their decisions at a time  
 24 when they retain a maximum range of options.” *Pit River Tribe*, 469 F.3d at 785 (quotation  
 25 omitted). Both acts challenged here – granting inspection to domestic horse slaughter facilities and  
 26 creating a new residue testing plan – trigger the EIS requirement. Defendants have deprived  
 27 decisionmakers and the public of a frank discussion of the potentially far-reaching environmental  
 28 impacts of starting up numerous horse slaughter facilities in this country after many years of

1 dormancy.<sup>16</sup>

2 **a) Defendants' Actions are "Major Federal Actions".**

3 It is without question that Defendants' grant of inspection to domestic horse slaughter plants  
4 constitutes a "major Federal action" under the CEQ regulations. *See* 40 C.F.R. § 1508.18.

5 Defendants' acts are clearly within the CEQ regulations' definition of "major federal action", which  
6 includes "projects and programs . . . regulated, or approved by federal agencies," "new or revised  
7 agency rules, regulations, plans, policies, or procedures," "formal documents establishing an  
8 agency's policies which will result in or substantially alter agency programs," or "[a]doption of  
9 programs," and the "[a]pproval of specific projects . . . [including] approv[al] by permit or other  
10 regulatory decision." *See id.* §§ 1508.18(a), (b)(1), (3)-(4).<sup>17</sup>

11 Defendants' new horse meat residue testing plan is also a "major federal action," as it will be  
12 the standard operating protocol for every horse slaughter facility across the country, governing all  
13 FSIS testing and inspections and determining when a slaughter facility has either received animals  
14 with excess residue levels, or when it has produced horse meat with dangerous drug residues. This is  
15 just the kind of program that demands NEPA review.<sup>18</sup>

16 <sup>16</sup> As a threshold matter, it is clear that the grant of inspections to domestic horse slaughter  
17 facilities and the implementation of a new residue testing plan change the status quo, and thus  
18 constitute Federal "action" as defined in CEQ regulations. *See* 40 C.F.R. §1508.18. As the  
19 District Court for the District of Columbia has previously held, a change in the "legal or  
20 regulatory status quo" triggers the requirement for NEPA review. *Johanns*, 520 F. Supp. 2d at  
21 29.

22 <sup>17</sup> *Johanns*, 520 F. Supp. 2d at 28; *see also Ramsey v. Kantor*, 96 F.3d 434, 444 (9th Cir. 1996)  
23 ("[I]f a federal permit is a prerequisite for a project with adverse impact on the environment,  
24 issuance of that permit does constitute major federal action and the federal agency involved must  
25 conduct an EA and possibly an EIS before granting it."); *Methow Valley*, 490 U.S. at 336 (Forest  
26 Service's decision to issue recreational special use permit constitutes major federal action within  
27 the meaning of NEPA); *Ctr. for Biological Diversity v. Salazar*, 791 F. Supp. 2d 687, 697 n.6 (D.  
28 Ariz. 2011) *reconsideration denied*, CV-09-8207-PCT-DGC, 2011 WL 2550392 (D. Ariz. June  
29 27, 2011) and *aff'd*, 706 F.3d 1085 (9th Cir. 2013) (noting that "[a]ll parties agree that issuance of  
[a free use permit for removing road-repair gravel] was a major federal action"); *White Tanks  
Concerned Citizens, Inc. v. Strock*, 563 F.3d 1033, 1036-37 (9th Cir. 2009) (Army Corp of  
Engineers' issuance of a discharge permit is a major federal action); *Friends of the Earth, Inc. v.  
U.S. Army Corps of Engineers*, 109 F. Supp. 2d 30, 40 (D.D.C. 2000) (Army Corps of Engineers'  
decision to issue permit to casino builders is a major federal action); *Davis v. Morton*, 469 F.2d  
593, 596-97 (10th Cir. 1972) (approving leases on federal land constitutes major federal action).

<sup>18</sup> *See San Luis & Delta-Mendota Water Auth. v. Salazar*, 686 F. Supp. 2d 1026, 1048-49 (E.D.  
Cal. 2009) (agency took major federal action by provisionally accepting and implementing U.S.  
Fish and Wildlife Service's biological opinion concerning the impact of coordinated operations of  
state water projects on threatened delta smelt because that decision "substantially alter[ed] the  
status quo" of project operations); *Native Ecosystems Council & Alliance for the Wild Rockies v.*

(Footnote continued on next page)

1                                   **b) Defendants' Actions May Significantly Affect the Environment.**

2           The grant of inspection and the new horse meat residue testing plan will, or at the very least  
3 may, have a significant effect upon the quality of the human environment, thus mandating the  
4 preparation of an EIS. 42 U.S.C. § 4332(C). As explained above, American horses are given a  
5 pharmacopeia of different drugs during their lives, and those drugs are given without any  
6 consideration of the federal laws restricting the administration of drugs to animals intended for  
7 human consumption. Rulemaking Petition, pp. 31-34, 46-48, 61-65, Wagman Decl., Ex. 1. The fact  
8 that American horses are not intended for human consumption also means that there is a high  
9 likelihood that horse slaughter operations could affect the human environment surrounding the horse  
10 slaughter plants, because the discarded parts, organs and blood could be dangerous to the natural  
11 environment. Rulemaking Petition, pp. 50-52, Wagman Decl., Ex. 1. Past horse slaughter plants'  
12 operations and the evidence in the Rulemaking Petition are proof that Defendants' actions may  
13 significantly harm the environment. *See* Rulemaking Petition, pp. 27-29, Wagman Decl., Exhibit 1;  
14 Bacon Decl., Wagman Decl., Ex. 13; Administrative Orders regarding Cavel's "significant" non-  
15 compliance, Wagman Decl., Exs. 10, 11, 12; *see also* *Johanns*, 520 F. Supp. 2d at 19.

16           The evidence of environmental impacts is well-beyond the threshold to trigger the agency's  
17 duties under NEPA. In order to prevail on their claim here, plaintiffs need only raise "substantial  
18 questions whether a project may have a significant effect" on the environment to prevail on a claim  
19 that a federal agency violated its statutory duty to prepare an EIS. *Blue Mountains Biodiversity*  
20 *Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir.1998), *cert. denied*, 527 U.S. 1003 (1999)  
21 (quotation omitted). The plaintiff does not have to show that significant effects will in fact occur.  
22 *Id.*; *see also* *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1012 (9th Cir. 2009)

23  
24 (Footnote continued on from previous page)

25 *U.S. Forest Serv. ex rel. Davey*, 866 F. Supp. 2d 1209, 1227 (D. Idaho 2012) (Forest Service's  
26 adoption of a revised map delineating analysis units for Canada lynx within a national forest was  
27 a major federal action requiring preparation of an EIS); *Ramsey*, 96 F.3d at 437 (National Marine  
28 Fisheries Service issuing an incidental take statement for salmon populations that would guide  
state fishing plans was a major federal action requiring at least an EA and possibly an EIS); *see*  
*also* *New York v. Nuclear Regulatory Comm'n*, 681 F.3d 471, 476-77 (D.C. Cir. 2012) (a decision  
by an agency that "will be used to enable licensing decisions" and that "renders uncontestable  
general conclusions about the environmental effects of plant licensure that will apply in every  
licensing decision" constitutes a major federal action).

1 (threshold for requiring an EIS “is relatively low: ‘It is enough for the plaintiff to raise substantial  
2 questions whether a project may have a significant effect on the environment.’”) (quoting *Blue*  
3 *Mountains*, 161 F.3d at 1212); *Ocean Mammal Inst. v. Gates*, 546 F. Supp. 2d 960, 977 (D. Haw.  
4 2008) *modified in part*, CIV. 07-00254DAELEK, 2008 WL 2020406 (D. Haw. May 9, 2008)  
5 (Navy’s EA prepared for its use of mid-frequency active sonar was insufficient to satisfy NEPA  
6 where plaintiffs raised substantial questions as to whether the sonar would have a significant impact  
7 on the environment). As outlined below, Plaintiffs have presented Defendants with clear evidence  
8 that Defendants’ actions implicate numerous CEQ “significance” factors and may cause significant  
9 environmental effects, and thus have certainly at minimum raised substantial questions as to such  
10 effects, sufficient to warrant injunctive relief.

11 For example, in *Johanns*, the District Court for the District of Columbia found that horse  
12 slaughter may cause potentially severe environmental effects. 520 F. Supp. 2d at 19. That fact has  
13 not changed since the court issued its decision, and the evidence makes clear that the potential for  
14 serious environmental impacts from horse slaughter facilities is ongoing, including overwhelming  
15 the area around the slaughterhouse with a noxious stench, potentially polluting local groundwater  
16 and water supplies with toxic horse blood and tissue, and attracting pests and vermin to the area. *See*  
17 Eldridge Decl., ¶¶3-5 (“blood spills and animal parts left outside to rot” attract vermin and insects),  
18 Ex. 2 to Wagman Decl.; Runnels Decl., ¶¶3-5 (same), Ex. 3 to Wagman Decl.; J. Smith Decl., ¶¶3-4,  
19 6-7 (“blood in my bathtub, sinks and toilets”), Ex. 4 to Wagman Decl.; Salazar Decl., ¶¶3-4, 6, Ex. 5  
20 to Wagman Decl.; Garcia Decl., ¶¶3-4, Ex. 6 to Wagman Decl.; Farley Decl., ¶4, Ex. 7 to Wagman  
21 Decl.; and Bacon Decl., ¶¶4-7 (Dallas Crown plant issued “[t]wenty-nine citations for wastewater  
22 violations”), Ex. 13 to Wagman Decl.

23 Thus, given the evidence of past environmental harms at horse slaughter facilities, *see*  
24 *generally* Declarations, *supra*, and the possibility for similar harms to occur upon Defendants’  
25 authorizations, Defendants have violated NEPA and the CEQ regulations by allowing horse  
26 slaughter facilities to begin slaughtering horses for human consumption without first preparing an  
27 EIS. *Reed v. Salazar*, 744 F. Supp. 2d 98 (D.D.C. 2010) (NEPA violation where the Department of  
28 Interior failed to conduct environmental review or even to consider whether a categorical exclusion

1 properly could be invoked before signing a new land management agreement with a party who had  
2 mismanaged the property under a prior agreement).<sup>19</sup>

3 Moreover, granting inspection to a horse slaughter facility in combination with the creation  
4 of a new horse meat residue testing plan implicates several CEQ “significance” factors, thus  
5 requiring an EIS, or at minimum a detailed environmental assessment. *See* 40 C.F.R. § 1508.27.

6 First, Defendants’ grant of inspection and new residue testing plan both pose serious risks to  
7 public health or safety and unique or unknown health and safety risks. *See* 40 C.F.R.  
8 § 1508.27(b)(2), (5). There is a very long list of the unknown ramifications of starting horse  
9 slaughter operations – regardless of where the plant is located. As documented in the Rulemaking  
10 Petition, there are dozens of drug and chemical residues that may have been given to American  
11 horses that are specifically “not intended for use” in horses who will be eaten. *See* Exhibit 1 to the  
12 Rulemaking Petition, Wagman Decl., Ex. 1. That the federal agencies have gone so far as to  
13 expressly ban the use of those drugs for horses destined for slaughter and human consumption,  
14 combined with the fact that virtually every American horse has been administered most of those  
15 drugs, in itself should trigger a comprehensive review of the public health impacts of authorizing any  
16 horse slaughter plants to operate. *See* Exhibit 1 to the Rulemaking Petition, Wagman Decl., Ex. 1;  
17 *see also* Rulemaking Petition, pp. 14-23, Wagman Decl., Ex. 1. Some are indisputably known to be  
18 unsafe, and there is no minimal residue that scientists can guarantee is safe. Rulemaking Petition,  
19 pp. 61-62, Wagman Decl., Ex. 1; *see also* Nicholas Dodman, Nicolas Blondeau, Ann M. Marini,  
20 “*Association of phenylbutazone usage with horses bought for slaughter: A public health risk*”, Food  
21 and Chemical Toxicology 48 (2010) 1270–74, Exhibit 20 to the Rulemaking Petition, Wagman  
22 Decl., Ex. 1. Not only are the drugs not to be used for horses who are eaten, and the horse meat  
23 “adulterated” under the Food, Drug, and Cosmetic Act by virtue of the use of these drugs,<sup>20</sup> but the  
24 waste byproducts from horse slaughter may also contain dangerous residues, capable of  
25

26 <sup>19</sup> Valley Meat’s history of contempt for environmental laws suggests that it will conduct itself in  
27 a similar manner when operating a horse slaughter facility. This fact alone makes clear that the  
act of granting inspections to Valley Meat may cause significant environmental impacts.

28 <sup>20</sup> *See, e.g.*, 21 U.S.C. § 342(a).

1 contaminating local ecosystems and water and soil supplies.<sup>21</sup> Indeed, recent studies have shown  
 2 that veterinary pharmaceuticals can be present in animal manure and can persist in the environment  
 3 following land application. For example,

4 [A] certain fraction of the pharmaceuticals [given at subtherapeutic levels  
 5 to livestock] are excreted into animal manures. Land application of these  
 6 manures contaminates soils with the veterinary pharmaceuticals, which  
 7 can subsequently lead to contamination of surface and groundwaters . . .  
 8 High concentrations of pharmaceuticals in soils were generally observed  
 9 at the sites where the respective concentrations in surface water were also  
 10 high . . . These results suggest that soil is a reservoir for veterinary  
 11 pharmaceuticals that can be disseminated to nearby surface water via  
 12 desorption from soil, surface runoff, and soil erosion.

13 Song W., *et al.*, *Selected Veterinary Pharmaceuticals in Agricultural Water and Soil from Land*  
 14 *Application of Animal Manure*, 39 J. Environ. Qual. 4, 1211-17 (2010). In addition, a recent study  
 15 conducted by Kansas State University examined the environmental fate of pharmaceuticals that are  
 16 introduced into soils with animal waste land application. The study found

17 A significant portion of these chemicals remained un-degraded during  
 18 wastewater treatment and was transferred to the biosolids. The use of  
 19 biosolids containing high concentrations of [veterinary pharmaceuticals]  
 20 raises concerns about their use as agricultural soil amendments. Future  
 21 studies should investigate the feasibility of treating the biosolids to ensure  
 22 removal of [veterinary pharmaceuticals] prior to their application on  
 23 agricultural lands.

24 See Kan. State Univ., *Environmental Fate Of Pharmaceuticals In Animal Wastes*, U.S. Dep't of  
 25 Agric. REEIS, [http://www.reeis.usda.gov/web/crisprojectpages/0189154-environmental-fate-of-](http://www.reeis.usda.gov/web/crisprojectpages/0189154-environmental-fate-of-pharmaceuticals-in-animal-wastes.html)  
 26 [pharmaceuticals-in-animal-wastes.html](http://www.reeis.usda.gov/web/crisprojectpages/0189154-environmental-fate-of-pharmaceuticals-in-animal-wastes.html) (last visited July 1, 2013).

27 Finally,

28 A recent study by the Toxic Substances Hydrology Program of the U.S.  
 Geological Survey (USGS) shows that a broad range of chemicals found  
 in residential, industrial, and agricultural wastewaters commonly occurs  
 in mixtures at low concentrations downstream from areas of intense  
 urbanization and animal production. The chemicals include human and  
 veterinary drugs (including antibiotics), natural and synthetic hormones,

<sup>21</sup> Plaintiffs note that the recently released "Residue Testing of Equine" provides no protection to the environment or consumers. Food Safety & Inspection Serv., *FSIS Directive 6130.1, Ante-Mortem, Postmortem Inspection of Equines and Documentation of Inspection Tasks*, U.S. Dept. of Agric. (June 28, 2013), <http://www.fsis.usda.gov/wps/wcm/connect/6d64bdd1-53d9-4130-adbe-89c657f6d901/6130.1.pdf?MOD=AJPERES>. All horses have an "increased likelihood of a violative residue" and horse meat is adulterated whenever a horse receives a prohibited substance, regardless of the presence of residues – therefore the slight increase in residue testing of horses, suggested by last week's Directive, is meaningless.



1 detergent metabolites, plasticizers, insecticides, and fire retardants. One  
 2 or more of these chemicals were found in 80 percent of the streams  
 3 sampled. Half of the streams contained 7 or more of these chemicals, and  
 4 about one-third of the streams contained 10 or more of these chemicals.

5 *See* U.S. Dep't of the Interior, *Pharmaceuticals, Hormones, and Other Organic Wastewater*  
 6 *Contaminants in U.S. Streams*, USGS: Science for a Changing World, (June 2002)  
 7 <http://toxics.usgs.gov/pubs/FS-027-02/pdf/FS-027-02.pdf> (“*Pharmaceuticals*”).

8 “Where the environmental effects of a proposed action are highly uncertain or involve  
 9 unique or unknown risks, an agency must prepare an EIS.” *Ocean Advocates v. U.S. Army Corps of*  
 10 *Eng'rs*, 402 F.3d 846, 870 (9th Cir. 2005) (quotations and citations omitted). It is undisputed that  
 11 there have been no studies or research done on the environmental effects related to the special nature  
 12 of horse meat and the byproducts and offal of horse slaughter. It is also clear from the foregoing that  
 13 serious questions are raised about the possible negative effects of horse slaughter on the human  
 14 environment. There is a significant likelihood that the wastewater and biosolids generated at  
 15 domestic horse slaughter facilities will contain detectable concentrations of phenylbutazone and  
 16 other veterinary drugs that are generally associated with horses, but which are not associated with  
 17 cattle, swine, sheep or goats.

18 Second, the human health and environmental impacts of the agency's actions are not yet  
 19 understood and are highly controversial, implicating another CEQ significance factor. A recent  
 20 United States Geological Survey study of wastewater-related organic chemicals in water, including  
 21 veterinary drugs, noted that “there is little information about the extent or occurrence of many of  
 22 these compounds in the environment.” *Pharmaceuticals, supra*. Moreover, as detailed above, a  
 23 frightening number of the drugs administered to horses over their lifetimes have not been tested on  
 24 humans, so their potential toxicity and adverse reactions to their consumption by humans are  
 25 completely unknown. *See* Exhibit 1 to the Rulemaking petition, Wagman Decl., Ex. 1. The impact  
 26 and reliability of Defendants' new testing protocols, which attempt to address the serious problem of  
 27 horse meat drug residues, are also highly controversial within the meaning of the CEQ factors.<sup>22</sup>

28 <sup>22</sup> *See Bair v. Cal. Dep't of Transp.*, C 10-04360 WHA, 2011 WL 2650896, at \*7 (N.D. Cal.  
 July 6, 2011) (a project is “highly controversial” if there is “a substantial dispute about [its] size,  
 (Footnote continued on next page)

1 USDA's new residue testing plan requires testing only 4 of each 100 or more horses slaughtered, so  
 2 that ninety-six per cent of the byproducts of slaughtered horses will flow into the local groundwater  
 3 and waterways, and ninety-six percent of normal-looking horses need not be tested for residues.  
 4 Food Safety & Inspection Serv., *FSIS Directive 6130.1, Ante-Mortem, Postmortem Inspection of*  
 5 *Equines and Documentation of Inspection Tasks*, U.S. Dept. of Agric. (June 28, 2013),  
 6 [http://www.fsis.usda.gov/wps/wcm/connect/6d64bdd1-53d9-4130-adbe-](http://www.fsis.usda.gov/wps/wcm/connect/6d64bdd1-53d9-4130-adbe-89c657f6d901/6130.1.pdf?MOD=AJPERES)  
 7 [89c657f6d901/6130.1.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/6d64bdd1-53d9-4130-adbe-89c657f6d901/6130.1.pdf?MOD=AJPERES). Whether this approach is adequate to address the  
 8 impacts stemming from the drugs present in horse flesh is highly controversial.

9 Third, Defendants' actions implicate the degree to which the action may adversely affect an  
 10 endangered or threatened species or its habitat that has been determined to be critical under the ESA.  
 11 See 40 C.F.R. § 1508.27(b)(9). As documented in Plaintiffs' April 16, 2013 letter to Defendant  
 12 Vilsack, Valley Meat is located near South Spring River, Pecos River, Bitter Lake Wildlife Refuge,  
 13 and Bottomless Lakes State Park. *Letter from Bruce A. Wagman to USDA Secretary Tom Vilsack*  
 14 *Re: Sixty-Day Notice of Intent to Sue the United States Department of Agriculture Pursuant to the*  
 15 *Endangered Species Act* (Apr. 16, 2013), Wagman Decl., Ex. 18. Threatened and endangered  
 16 species are found within the vicinity of Valley Meat, and their continued existence, as well as their  
 17 critical habitats, may be jeopardized by Valley Meat's horse slaughter operations. *Id.* Multiple  
 18 species may be affected. See *id.* Thus, Defendants' decision to approve inspection at Valley Meat  
 19 "may adversely affect an endangered or threatened species or its habitat that has been determined to  
 20 be critical," which alone is sufficient for triggering the EIS requirement. 40 C.F.R. § 1508.27(b)(9).  
 21 And of course similar concerns may arise at other proposed horse slaughter facilities.

22 Fourth, Defendants' actions implicate the "degree to which the action may establish a  
 23 precedent for future actions with significant effects." 40 C.F.R. § 1508.27(b)(6). Both actions – the

24 *(Footnote continued on from previous page)*

25 nature, or effect") (internal quotation omitted); *League of Wilderness Defenders-Blue Mountains*  
 26 *Biodiversity Project v. Zielinski*, 187 F. Supp. 2d 1263, 1271 (D. Or. 2002) (finding agency's plan  
 27 to burn timber "controversial" where there was substantial dispute about its nature or effect, as  
 28 agency discounted scientific evidence opposing the logging and failed to provide hard data  
 supporting a critical assumption for its environmental mitigation plan); *Silva v. Romney*, 342 F.  
 Supp. 783, 784 (D. Mass. 1972) (proposed Federal housing development was "controversial"  
 where there was "considerable opposition" to it and disagreement about the drainage facilities  
 between the agency and town residents).

1 grant of inspection to a horse slaughterhouse for the first time in six years, along with the new drug  
2 residue testing plan – will establish a significant precedent for the granting of inspections to any  
3 future horse slaughter plants, with wide-ranging future consequences. The grant of inspection for  
4 domestic slaughter of horses suggests (incorrectly) that USDA can ensure the safety of the horse  
5 meat that will be produced, and of the environment and consumers, for this and future slaughter  
6 plants. Moreover, the new residue testing plan will be used to conduct, evaluate, and analyze horse  
7 meat for all horse slaughter facilities in the country, both those currently known and all of those  
8 unknown.

9 As of March 2013, there were at least six applications for inspection of horse slaughter  
10 facilities on file with Defendants. All of those facilities create similar problems and will be governed  
11 by Defendants' new testing protocol. Defendants created the new residue plan without proper  
12 environmental review, so all of the public health and environmental risks generated by the chemical  
13 and drug residues in horse meat accumulate across all of the horse slaughter facilities that  
14 Defendants authorize. It is evident that Defendants' new residue protocol is the governing,  
15 controlling document for all horse slaughter facilities – current and future. When an agency  
16 establishes such guiding implementation principles for a new program, it is subject to NEPA review.  
17 *See Native Ecosystems Council & Alliance for the Wild Rockies v. U.S. Forest Serv.*, 866 F. Supp. 2d  
18 1209, 1230 (D. Idaho 2012) (agency's adopting of a map delineating analysis units for Canadian  
19 lynx required an EIS as it "opened nearly 400,000 acres of land to precommercial thinning. The fact  
20 that no other precommercial thinning projects have been identified does not diminish the fact that the  
21 adoption of the 2005 map represents a decision in principle about the future use of the land."").  
22 Defendants' actions plainly "establish a precedent for future actions with significant effects." 40  
23 C.F.R. § 1508.27(b)(6).

24 Fifth, Defendants' grant of inspection and new residue testing plan required implicate the  
25 CEQ significance factor regarding "[w]hether the action threatens a violation of Federal, State, or  
26 local law or requirements imposed for the protection of the environment." 40 C.F.R.  
27 § 1508.27(b)(10). For example, Defendants know that Valley Meat has repeatedly committed gross  
28 violations of New Mexico environmental laws and regulations when it was in the business of

1 slaughtering cattle. *See, e.g.*, Letter from William C. Olson, Wagman Decl., Ex. 14; Nelson Letter,  
 2 Wagman Decl., Ex. 15; Letter from George W. Akeley, Wagman Decl., Ex. 15; E-mail from Auralie  
 3 Ashley-Marx, Wagman Decl., Ex. 16. Moreover, Defendants know that the last three horse  
 4 slaughter plants in the U.S. that were shut down in 2007 wreaked environmental havoc on their host  
 5 communities, which included violations of environmental regulations. *See Johanns*, 520 F. Supp. 2d  
 6 at 19; Bacon Decl., Wagman Decl., Ex. 13; Administrative Orders, Wagman Decl., Exs. 10-12. And  
 7 as just stated, Valley Meat's operation threatens violations of the Endangered Species Act. Wagman  
 8 Decl., Ex. 18. Finally, Valley Meat has been in violation of the Clean Water Act, 33 U.S.C. § 1251  
 9 *et seq.*, for years, operating without a permit or an official exclusion from the permitting process.  
 10 *See* Wagman Decl., Ex. 19. Defendants' actions implicate the CEQ significance factor of threatened  
 11 violations of environmental laws or regulations, which alone is sufficient to trigger the requirement  
 12 to prepare an EIS.

13 Finally, and importantly, NEPA review is required here because of the "cumulative impact"  
 14 of the grant of inspection to the current horse slaughter plants and the likely grant of inspection to  
 15 future facilities . 40 C.F.R. §§ 1508.7, 1508.8. "Cumulative impact" is the

16 impact on the environment which results from the incremental impact of the  
 17 action when added to other past, present, and reasonably foreseeable future  
 18 actions regardless of what agency (Federal or non-Federal) or person  
 19 undertakes such other actions. Cumulative impacts can result from  
 20 individually minor but collectively significant actions taking place over a  
 21 period of time.

22 40 C.F.R. § 1508.7.

23 A comprehensive analysis of cumulative impacts is mandated by NEPA and the CEQ  
 24 regulations. *See N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir.  
 25 2011) ("[W]here several actions have a cumulative ... environmental effect, this consequence must  
 26 be considered in an EIS.") (citing *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*,  
 27 608 F.3d 592, 602 (9th Cir.2010)); 40 C.F.R. § 1508.25(a)(2), (c). "The purpose of this requirement  
 28 is to prevent an agency from dividing a project into multiple actions, each of which individually has  
 an insignificant environmental impact, but which collectively have a substantial impact." *N. Plains  
 Res. Council*, 668 F.3d at 1087 (quoting *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th  
 Cir.2006)).

1           The regulations make clear that cumulative impact analysis requires a careful review of all  
2 reasonably foreseeable future activities. *N. Plains Res. Council*, 668 F.3d at 1076 (“A cumulative  
3 impact analysis must be more than perfunctory; it must provide a useful analysis of the cumulative  
4 impacts of past, present, and future projects.”) (internal quotation omitted). And “[s]ignificance  
5 exists if it is reasonable to anticipate a cumulatively significant impact on the environment.  
6 Significance cannot be avoided ... by breaking [an action] down into small component parts.” 40  
7 C.F.R. § 1508.27(b)(7).

8           Here, the compounding of potential problems is obvious. There has been no horse slaughter  
9 in America for six years. There are serious environmental threats to each and every community and  
10 its surroundings from horse slaughter, as elaborated in this brief and the complaint in this action,  
11 with potentially tremendous nationwide impacts to numerous communities. Moreover, with each  
12 additional horse slaughterhouse, the domestic horse slaughter industry will grow and strengthen,  
13 adding momentum and encouraging and facilitating the opening of additional slaughter plants. And,  
14 with each additional request for inspection it will be harder for the agency to undertake meaningful  
15 review, having already set a precedent for granting inspection to previous facilities without  
16 undertaking a detailed review. In short, now is the time to undertake meaningful review of the  
17 environmental and public health impacts of horse slaughter facilities, not later after the cumulative  
18 damage is done. Thus, in order to perform proper NEPA analysis and the requisite “hard look,”  
19 USDA needs to consider the cumulative impact of future horse slaughterhouses, including those  
20 identified in the six applications currently pending. *See N. Plains Res. Council*, 668 F.3d 1067 at  
21 1078 (“[P]rojects need not be finalized before they are reasonably foreseeable.”); *Gov’t of the*  
22 *Province of Manitoba v. Salazar*, 691 F. Supp. 2d 37, 47 (D.D.C. 2010) (failure to consider other  
23 “reasonably foreseeable” projects is “a glance at the issue, not a hard look”).

24           Defendants’ actions implicate multiple CEQ significance factors, and they were required to  
25 prepare an EIS *prior* to acting, or at least a detailed EA. *See W. Watersheds Project v. Abbey*, 11-  
26 35705, 2013 WL 2532617, at \*12 (9th Cir. June 7, 2013) (EA for a particular site’s grazing  
27 management plan failed to include the required “hard and careful look” at no grazing and reduced  
28 grazing alternatives); *Border Power Plant Working Grp. v. Dep’t of Energy*, 260 F. Supp. 2d 997,

1 1033 (S.D. Cal. 2003) (EA for building electricity transmission lines was inadequate where agency  
 2 failed to consider relevant issues including the project's potential for controversy, impacts on water,  
 3 alternatives to the project, and cumulative impacts); *Anacostia Watershed Society v. Babbitt*, 871 F.  
 4 Supp. 475, 482 (D.D.C. 1994) (setting aside a land exchange that was not preceded by either an EA  
 5 or an EIS); *Fund For Animals v. Espy*, 814 F. Supp. 142, 150-151 (D.D.C. 1993) (enjoining the  
 6 removal of bison from a National Park without first preparing an EA or an EIS).

7 Given the negative environmental, aesthetic, economic, and cultural effects that past horse  
 8 slaughter facilities inflicted on their host communities, environmental review in this instance is  
 9 crucial to inform Defendants and the public of the possible environmental effects of their actions,  
 10 and so that the public can ascertain: (1) whether local waste disposal system and water, air, and soil  
 11 systems are being adequately protected against dangerous and foul contaminants from horse  
 12 slaughter facilities operations; (2) whether there is any threat to local ecosystems or local endangered  
 13 species; (3) whether FSIS inspectors have the minimally adequate procedures and training to ensure  
 14 that adulterated meat is not making it to market; and (4) whether local waterways will be safe from  
 15 contamination. Preparing an EIS "provide[s] full and fair discussion of significant environmental  
 16 impacts and [informs] decision makers and the public of reasonable alternatives that would minimize  
 17 adverse environmental impacts." *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999,  
 18 1012 (9th Cir. 2009). USDA has not made any relevant information regarding its environmental  
 19 analysis for horse slaughter available to the public.<sup>23</sup>

20 **C. Plaintiffs Will Suffer Irreparable Harm in the Absence of a TRO.**

21 Injunctive relief is appropriate when government action "may significantly degrade some  
 22 human environmental factor," and the court can apply more liberal standards for granting an  
 23 injunction when "strong NEPA claims" are present. *Sierra Club v. Bosworth*, 510 F. 3d 1016, 1033

24 <sup>23</sup> Nor can defendants rely on a Categorical Exclusion to avoid full NEPA review in this case,  
 25 since numerous CEQ significance factors implicated in their actions cut off any possible  
 26 application of a categorical exclusion. According to USDA's own regulations implementing  
 27 NEPA, all FSIS actions are categorically excluded from NEPA review "unless the agency head  
 28 determines that an action may have a significant environmental effect." 7 C.F.R. § 1b.4(a). In  
 other words, application of a categorical exclusion is precluded by the mere *possibility* of  
 significant environmental harm. As discussed in detail above, that minimal threshold is clearly  
 met here in light of the application of not one, but several of the CEQ significance factors.

1 (9th Cir. 2007). Thus, even after the Supreme Court's ruling in *Winter*, the Ninth Circuit has  
 2 provided a deferential preference for plaintiffs seeking injunctions in NEPA cases, with respect to  
 3 the irreparable harm prong.

4 The Ninth Circuit has noted the tight link between a NEPA violation and the irreparable  
 5 injury that results: "In the NEPA context, irreparable injury flows from the failure to evaluate the  
 6 environmental impact of a major federal action." *High Sierra Hikers*, 390 F. 3d at 643 (citing  
 7 *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir.1985)). See also *Save Our Ecosystems v. Clark*, 747  
 8 F. 2d 1240, 1250 (9th Cir. 1984) ("Irreparable damage is presumed when an agency fails to evaluate  
 9 thoroughly the environmental impact of a proposed action.") Irreparable harm is "compounded by  
 10 the added risk to the environment that takes place when governmental decisionmakers make up their  
 11 minds without having before them an analysis (with public comment) of the likely effects of their  
 12 decision on the environment." *Bosworth*, 521 F. 3d at 1034 (quoting *Citizens for Better Forestry v.*  
 13 *U.S. Dep't. of Agric.*, 341 F.3d 961, 971 (9th Cir. 2003).<sup>24</sup>

14 Moreover, the named individual plaintiffs have clearly demonstrated that they will be  
 15 irreparably harmed if Defendants' grant of inspection is not enjoined, as set out in detail in their  
 16 declarations. Specifically, plaintiffs and the other declarants have established that they will be  
 17 immediately and irreparably harmed because:

18 1. They will be subjected to regular viewing of horses going to slaughter, waiting to be  
 19 slaughtered, and to viewing the trucks leaving Valley Meat with the horse meat produced there.  
 20 Plaintiffs Ramona Cordova, Krystle Smith, Cassie Gross, and Barbara Sink regularly drive by the  
 21 horse slaughter plant in their communities and the stockyards where some of the slaughter facilities'

22  
 23 <sup>24</sup> Further, by granting inspection to domestic horse slaughter facilities without NEPA review,  
 24 Defendants have harmed Plaintiffs by depriving them of their statutory right to participate in the  
 25 NEPA review process and threatening concrete injury caused by the resumption of horse  
 26 slaughter in their communities. See *City of Sausalito v. O'Neill*, 386 F. 3d 1186, 1197 (9th Cir.  
 27 2004) ("[A] cognizable procedural injury exists when a plaintiff alleges that a proper EIS has not  
 28 been prepared under [NEPA] when the plaintiff also alleges a 'concrete' interest—such as an  
 aesthetic or recreational interest—that is threatened by the proposed action."); *Cottrell*, 632 F. 3d  
 at 1137-38 (9th Cir. 2011) ("AWR was harmed by its inability to participate in the administrative  
 appeals process, and that harm is perpetuated by the Project's approval. The administrative  
 appeals process would have allowed AWR to challenge the Project under . . . NEPA, and to seek  
 changes in the Project before final approval.").

1 horses would be held prior to slaughter, and their ability to enjoy their lives and daily activities  
 2 would be seriously harmed by seeing the trucks filled with horses going in to the slaughterhouse, and  
 3 the trucks filled with dead horses, horse meat, and the remains of the horses, coming back out of the  
 4 facility.<sup>25</sup> They would also be detrimentally impacted by the sight of horses who are about to be  
 5 slaughtered at the slaughter facility in their town waiting in the holding pens. *See* K. Smith Decl., ¶  
 6 12, Wagman Decl., Ex. 20; Gross Decl., ¶¶ 17-18, Wagman Decl., Ex. 22; Cordova Decl., ¶ 10,  
 7 Wagman Decl., Ex. 23; Sink Decl., ¶ 9, Wagman Decl., Ex. 24; and Seper Decl., ¶ 8, Wagman  
 8 Decl., Ex. 25.

9 In similar circumstances, courts have found that irreparable harm exists where plaintiffs  
 10 suffer real emotional and aesthetic injury from the knowledge that animals will be unjustifiably  
 11 killed. *See Humane Society of the U.S. v. Bryson*, 2012 WL 1952329, \*6 (D. Or. May 30, 2012)  
 12 (unreported) (“The individual Plaintiffs will suffer a real emotional and aesthetic injury from the  
 13 knowledge that [California Sea Lions] have been killed as a result of the authorizations, and this  
 14 injury is not compensable with monetary damages.”). “People have a cognizable interest in viewing  
 15 animals free from inhumane treatment.” *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426, 433  
 16 (D.C. Cir. 1998) (*en banc*) (internal citations omitted).

17 2. If the horse slaughterhouses in the Plaintiffs’ respective communities begin horse  
 18 slaughter operations, plaintiffs will be unable to continue their personal and family recreational  
 19 activities of fishing and camping in and on waterways that may be tainted by the discharge of  
 20 contaminated horse slaughter byproducts. Cordova Decl., ¶¶ 6-8, Wagman Decl., Ex. 23; Sink  
 21 Decl., ¶¶ 7-8, Wagman Decl., Ex. 24; K. Smith Decl., ¶¶ 3-7, Wagman Decl., Ex. 20; Trahan Decl.,  
 22 ¶¶ 6-7, Wagman Decl., Ex. 21. For example, Deborah Trahan and her family, along with several of  
 23

24 <sup>25</sup> *See* Declaration of Krystle Smith (“Smith Decl.”), ¶¶ 11-16, Wagman Decl., Ex. 20 (being  
 25 “directly confronted with the view of horses in holding pens” will “cause [her] intense aesthetic  
 26 injury”); Trahan Decl., ¶ 12, Wagman Decl., Ex. 21 (will experience an “immediate and long-  
 27 lasting injury from viewing those trucks and animals”); Declaration of Cassie Gross (“Gross  
 28 Decl.”), ¶¶ 17-18, Wagman Decl., Ex. 22; Declaration of Ramona Cordova (“Cordova Decl.”), ¶¶  
 10-11, Wagman Decl., Ex. 23 (seeing trucks carrying horse carcasses “will affect [her] deeply”);  
 Declaration of Barbara Sink (“Sink Decl.”), ¶¶ 9-11, Wagman Decl., Ex. 24 (she “will suffer  
 distress” upon seeing “horses on their way to the auction and then to slaughter at Rains Natural  
 Meats.”); and Declaration of Lawrence Seper (“Seper Decl.”), ¶ 8, Wagman Decl., Ex. 25.



1 the other Plaintiffs, engage in camping and fishing activities in lakes and streams in proximity to and  
2 downstream from Valley Meat. All of these lakes and streams connect with the waterways closest to  
3 Valley Meat, such that any contamination from the slaughter facility will eventually get into the  
4 lakes and streams used by the Trahan family. Trahan Decl., ¶¶ 6-7, Wagman Decl., Ex. 21. Given  
5 that direct connection, the Trahans will be compelled to curtail their recreational activities in the  
6 area. *Id.* at ¶ 6. This is aesthetic and recreational injury of the highest order, and is shared by other  
7 individual plaintiffs. *See* Cordova Decl., ¶¶ 6-8, Wagman Decl., Ex. 23; Sink Decl., ¶¶ 7-8,  
8 Wagman Decl., Ex. 24; K. Smith Decl., ¶¶ 3-7, Wagman Decl., Ex. 20.

9 Courts have granted injunctions in similar cases where aesthetic interests would be  
10 irreparably harmed in the absence of relief. *See Landwatch v. Connaughton*, 905 F. Supp. 2d 1192,  
11 1197 (D. Or. 2012) (granting motion for injunction where project will “irreparably harm plaintiff and  
12 its members and supporters that use and enjoy the area at issue for its aesthetics, recreation such as  
13 hiking, camping, fishing, and photography, as well as watershed research, education and observing  
14 wildlife. Plaintiff and its members will further be harmed because the Project will degrade water  
15 quality, diminish aesthetic values and harm fish and wildlife in and around the Project area”).

16 3. The horse slaughter process and the possibility of contaminated runoff into local  
17 waterways threaten the Plaintiffs’ health and their communities. *See, e.g.*, Trahan Decl., ¶¶7-11,  
18 Wagman Decl., Ex. 21. In the context of a preliminary injunction courts have found a showing of  
19 irreparable harm where the movant’s health is in danger. *See Bowen v. Consol. Elec. Distrib., Inc.*  
20 *Emp. Welfare Ben. Plan*, 461 F. Supp. 2d 1179, 1184 (C.D. Cal. 2006) (“[C]onsidering that  
21 plaintiff’s health appears to be at risk if the defendant continues to withhold plaintiff’s benefits under  
22 the Plan, the Court concludes that the risk of irreparable harm to the plaintiff is sufficiently great.”);  
23 *M.R. v. Dreyfus*, 697 F. 3d 706, 732 (9th Cir. 2012) (finding irreparable injury where challenged  
24 activity established a significant likelihood of impacting plaintiffs’ mental and physical health).

25 In addition to these harms, FRER’s thousands of supporters in New Mexico, Missouri, and  
26 Iowa and The HSUS’s thousands of members in New Mexico, Missouri, and Iowa who are  
27 interested in observing and enjoying horses, and otherwise protecting these animals from slaughter,  
28 will be irreparably harmed if Defendants permit horse slaughter facilities to open. And once horse

1 slaughter has begun, there will be nothing the Court or Plaintiffs can do to restore or replace all of  
2 the horses rounded up, transported, and killed as a result of Defendants' unlawful agency actions.  
3 Without a temporary restraining order and preliminary injunction pending resolution of this case,  
4 horse slaughterhouses throughout the United States will begin slaughtering horses, at which time  
5 Plaintiffs, and other similarly situated Americans near other facilities, face substantial likelihood of  
6 suffering these irreparable harms to their health, environmental, economic, aesthetic, cultural, and  
7 other interests. As the Supreme Court recognized in *Amoco Prod. Co. v. Village of Gambell*,  
8 "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money" and, thus, "the  
9 balance of harms will usually favor the issuance of an injunction." 480 U.S. 531, 545 (1987).  
10 Therefore, for NEPA violations, "there is a presumption that injunctive relief should be granted  
11 against continuation of the action until the agency brings itself into compliance." *Realty Income*  
12 *Trust v. Eckerd*, 564 F.2d 447, 456 (D.C. Cir. 1977). *See also Amoco*, 480 U.S. at 545 (where  
13 plaintiff shows that injury is "sufficiently likely, the balance of the harms will usually favor the  
14 issuance of an injunction").

15 **D. The Balance of Equities Favors Plaintiffs.**

16 There is certainly no harm whatsoever to Defendants by not inspecting domestic horse  
17 slaughter facilities while proper NEPA review is conducted with respect to both the slaughter  
18 operations and the residue testing plan. USDA has discretion related to the grant of inspection, and  
19 there is no limitations period for its decision making process. Far greater harm will occur to the  
20 agency and the public if a grant of inspection is approved without putting the proper safeguards in  
21 place or properly ascertaining the extent of environmental impacts resulting from these actions. Nor  
22 would any loss of income to any party be sufficient to override the harm to Plaintiffs set out above.  
23 Any harm that could be potentially claimed by Defendants or any of the slaughterhouses certainly  
24 does not outweigh the substantial harms that would be suffered by Plaintiffs in the absence of relief.  
25 *See Humane Society of U.S. v. Gutierrez*, 523 F. 3d 990, 991 (9th Cir. 2008) (issuing an emergency  
26 stay halting the state's lethal removal of sea lions in order to conserve the salmon run, which was "by  
27 definition, irreparable," where the stay would only affect the salmon run for one year, and where the  
28 salmon run in that year was unusually larger than in past years); *Eckerd*, 564 F. 2d at 456 ("The

1 substantial additional costs which would be caused by court-ordered delay may well be justified by  
 2 the compelling public interest in the enforcement of NEPA.”). And because Defendants’ grant of  
 3 inspection is the first authorization of horse slaughter in six years, the injunction will merely “require  
 4 the defendants to maintain a course of conduct that they have pursued for many years.” *Nat’l Senior*  
 5 *Citizens Law Center v. Legal Serv. Corp.*, 581 F. Supp. 1362, 1373 (D.D.C. 1984).

6 Lastly, USDA currently is facing furloughs of employees. As noted in the letter from  
 7 Congressman Moran to Defendant Vilsack, “federal meat inspectors will be furloughed, impacting  
 8 the operations of over 6,000 food processing businesses.” Letter from Congressman Jim Moran to  
 9 Secretary Vilsack, Mar. 25, 2013, available at [http://moran.house.gov/press-release/moran-calls-](http://moran.house.gov/press-release/moran-calls-usda-deny-horse-slaughter-facility-permits)  
 10 [usda-deny-horse-slaughter-facility-permits](http://moran.house.gov/press-release/moran-calls-usda-deny-horse-slaughter-facility-permits). Requiring USDA inspections of horse slaughter plants  
 11 would only worsen the impact of the furloughs felt by traditional slaughter industries and reduce the  
 12 FSIS inspection funding available for beef, chicken, and pork inspections – “meat actually consumed  
 13 by Americans.” *Id.* For all of these reasons, Defendants will not suffer irreparable harm if an  
 14 injunction is issued, so the equities balance in favor of granting injunctive relief to prevent  
 15 irreparable harm to Plaintiffs.

16 **E. The Requested Injunction Is in the Public Interest.**

17 The public interest weighs heavily in favor of a temporary restraining order and preliminary  
 18 injunctive relief. There is no question that the public interest is advanced by having NEPA carried  
 19 out as intended by Congress. *See Cottrell*, 632 F. 3d at 1138 (“This court has also recognized the  
 20 public interest in careful consideration of environmental impacts before major federal projects go  
 21 forward, and we have held that suspending such projects until that consideration occurs comports  
 22 with the public interest.”). Additionally, the vast majority of Americans are strongly opposed to  
 23 horse slaughter, regardless of their age, gender, geographic location, or personal experience with or  
 24 ownership of horses.<sup>26</sup> In New Mexico, seventy percent of registered voters in New Mexico oppose  
 25

26 <sup>26</sup> American Society for the Prevention of Cruelty to Animals (“ASPCA”) Survey by Lake  
 27 Research Partners, *Research Findings on Horse Slaughter for Human Consumption* (Jan. 2012),  
 28 available at [http://www.apnm.org/mailbox/horseslaughter/Poll%20Memo%20-](http://www.apnm.org/mailbox/horseslaughter/Poll%20Memo%20-%20ASPCA%20Horse%20Slaughter%20Research.pdf)  
[%20ASPCA%20Horse%20Slaughter%20Research.pdf](http://www.apnm.org/mailbox/horseslaughter/Poll%20Memo%20-%20ASPCA%20Horse%20Slaughter%20Research.pdf).

1 horse slaughter for human consumption and also are opposed to a horse slaughter plant being located  
2 in their communities.<sup>27</sup> Polls done in Iowa and Missouri collected similar results.<sup>28</sup> Therefore, it is  
3 in the public interest to require Defendants to conduct environmental analysis before saddling any  
4 community with a major environmental liability that it itself does not even want.

5 There is a “well-established public interest in preserving nature and avoiding irreparable  
6 environmental injury.” *See Cottrell*, 632 F. 3d at 1138. The public must have access to and  
7 knowledge of the detrimental environmental effects caused by horse slaughter facilities before  
8 residents start seeing horse blood in their faucets, piles of rotting carcasses at the slaughterhouse  
9 operating in their communities, polluted waterways, and news that our meat supply has been  
10 contaminated by adulterated horse flesh. Defendants have not presented any reason as to why horse  
11 slaughter must begin *now* as opposed to after completion of the required environmental review, and  
12 so injunctive relief is appropriate. *See Save Our Ecosystems*, 747 F. 2d at 1250. It is evident that  
13 Plaintiffs’ requested relief of temporarily maintaining the status quo is truly modest when compared  
14 to what is at stake if Defendants are permitted to proceed by completely ignoring NEPA.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24

25 \_\_\_\_\_  
26 <sup>27</sup> Survey on Attitudes Regarding Horse Slaughter in New Mexico, April 2, 2013,  
<http://www.asPCA.org/Pressroom/press-releases/040413>.

27 <sup>28</sup> *Press Release, ASPCA, New Research Reveals New Mexicans Strongly Oppose Slaughter of*  
*Horses for Human Consumption* (April 2, 2013), [http://www.asPCA.org/Pressroom/press-](http://www.asPCA.org/Pressroom/press-releases/040413)  
28 [releases/040413](http://www.asPCA.org/Pressroom/press-releases/040413).

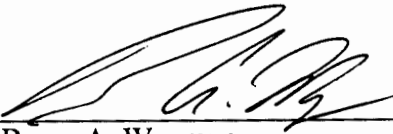
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V. CONCLUSION

For the reasons presented herein, Plaintiffs request that the Court issue a TRO enjoining Defendants from authorizing horse slaughter at a domestic horse slaughter facility pending consideration of the merits of Plaintiffs' claims.

Dated: July 1, 2013

SCHIFF HARDIN LLP

By:   
Bruce A. Wagman  
Attorneys for Plaintiffs

40858-0000  
SF320711630.1