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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLENE TOBIN, et al.,  
Plaintiff,  
v.  
BROOKE L. ROLLINS, IN HER  
OFFICIAL CAPACITY AS THE U.S.  
SECRETARY OF AGRICULTURE, et  
al.,  
Defendants.

Case No. 2:25-cv-02259-CSK

ORDER  
(ECF No. 41)

Pending before the Court is a motion for a preliminary injunction pending appeal by Plaintiffs Charlene Tobin, Carol Mrozek, and Craig Downer.<sup>1</sup> (ECF No. 41.) A hearing was held on July 7, 2026 by Zoom. Randall Weiner appeared as counsel for Plaintiffs, and all Plaintiffs also attended the hearing. (ECF No. 45.) Jacob Jose appeared as counsel for Defendants Brooke L. Rollins, in her official capacity as the U.S. Secretary of Agriculture, the United States Forest Service, Doug Burgum, in his official capacity as the U.S. Secretary of the Interior, and the Bureau of Land Management. (Id.)

For the reasons that follow, the Court DENIES Plaintiffs' motion for a preliminary

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<sup>1</sup> This case proceeds before the undersigned pursuant to 28 U.S.C. § 636(c) for all purposes, including the entry of judgment, pursuant to the consent of all parties. (ECF Nos. 7, 10, 11.)

1 injunction pending appeal.

2 **I. BACKGROUND**

3 **A. Factual Background**

4 The Court provides a brief overview of the factual background and incorporates  
5 the more detailed background in its February 20, 2026 summary judgment order. See  
6 2/20/2026 Order (ECF No. 31).

7 Defendants United States Forest Service (“USFS”) and Bureau of Land  
8 Management (“BLM”) co-manage federal public lands located in the Montgomery Pass  
9 Wild Horse Territory (“Territory”). AR 9401 (ECF No. 9). The Territory comprises the  
10 federal, state, and private lands inhabited by wild horses when the Wild Free-Roaming  
11 Horses and Burros Act was enacted by Congress on December 15, 1971. *Id.* In 1971,  
12 the Territory had an estimated wild horse population of 50 wild horses. AR 9401, 9418.  
13 Since the establishment of the Territory in 1971, the wild horse population has increased  
14 in an open range environment and in the absence of a population control program. AR  
15 3387, 9401-02, 9418.

16 On November 7, 2023, Defendants BLM and USFS announced their proposal to  
17 gather and remove<sup>2</sup> excess wild horses located outside the Territory. AR 9408. After a  
18 30-day public scoping period and 30-day public review and comment period, Defendants  
19 BLM and USFS issued an Environmental Assessment (“EA”) (AR 9398-464). On March  
20 7, 2025, Defendants BLM and USFS issued a Finding of No Significant Impact (AR  
21 9897-9900), Decision Notice (AR 10066-72), and Decision Record (AR 9532-39)  
22 (collectively, “2025 Decision”) concluding that wild horses residing outside the  
23 boundaries of the Territory (624 of the 694) are in excess and that removal is necessary  
24 to achieve and maintain a thriving ecological balance. AR 9534, 10066.

25 Plaintiffs Tobin, Mrozek, and Downer are, respectively, a primary physician and  
26 photographer, a documentary filmmaker, and a scientist and wildlife ecologist. Compl.

27 \_\_\_\_\_  
28 <sup>2</sup> Throughout this order, the terms “gather” and “remove”/“removal” are used interchangeably.

1 ¶¶ 7-9 (ECF No. 1). Plaintiffs opposed Defendants’ proposed removal of excess wild  
2 horses. *Id.* ¶ 2.

3 **B. Procedural Posture**

4 Plaintiffs filed their Complaint on August 11, 2025, asserting four causes of action  
5 for violations of the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1787;  
6 the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (“Wild Horse  
7 Act”); the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f (“NEPA”); the  
8 National Forest Management Act, 16 U.S.C. §§ 1600-1614; and the Administrative  
9 Procedure Act, 5 U.S.C. §§ 701-706. See Compl. On September 4, 2025, Plaintiffs  
10 moved for summary judgment on all four causes of action in the Complaint as to  
11 Defendants’ alleged violations of the Wild Horse Act and NEPA.<sup>3</sup> (ECF No. 13.) On  
12 September 18, 2025, Defendants filed a cross-motion for summary judgment and  
13 opposition to Plaintiff’s motion. (ECF Nos. 14, 15.) After briefing was complete on both  
14 motions, the Court held a hearing on January 20, 2026. (ECF No. 30.)

15 On February 20, 2026, the Court issued an Order denying Plaintiffs’ motion for  
16 summary judgment and granting Defendants’ motion for summary judgment in full. See  
17 2/20/2026 Order. The Court held that the 2025 Decision does not violate the Wild Horse  
18 Act or NEPA and rejected Plaintiff’s arguments that (1) Defendants’ excess  
19 determination of wild horses was made arbitrarily and capriciously; (2) Defendants have  
20 not made a determination whether the removal of excess wild horses will maintain a  
21 thriving natural ecological balance within the Territory; and (3) the 2025 Decision will  
22 result in a reduction of wild horses well below the appropriate management level’s lower  
23 limit within the Territory. *Id.* at 11-20. After the Court granted summary judgment for  
24 Defendants, the Clerk of the Court entered judgment for Defendants and closed this  
25 case on February 20, 2026. (ECF No. 32.)

26  
27 <sup>3</sup> As noted in the Court’s summary judgment order, Plaintiffs abandoned their claims  
28 based on alleged violation of the National Forest Management Act or the Federal Land  
Policy and Management Act. 2/20/2026 Order at 9 n.5.

1 On April 21, 2026, Plaintiffs filed a notice of appeal of the Court's February 20,  
2 2026 Order and Judgment. (ECF No. 35.) The appeal is pending before the Ninth Circuit  
3 in Case No. 26-2673. (ECF No. 37.)

4 On July 1, 2026, Plaintiff Charlene Tobin filed a pro se emergency motion for an  
5 injunction pending appeal. (ECF No. 39.) Because Plaintiffs are still represented by  
6 counsel in this district court, the Court disregarded Plaintiff Tobin's pro se motion and  
7 ordered Plaintiffs' counsel to file a counseled Motion for Emergency Injunction Pending  
8 Appeal or a status report indicating that Plaintiffs are not seeking the relief requested in  
9 Plaintiff Tobin's pro se motion. 7/2/2026 Minute Order (ECF No. 40). The Court ordered  
10 Defendants to file an opposition or statement of non-opposition to a counseled motion by  
11 Plaintiffs, and that if such a motion was filed, a hearing would be held on July 7, 2026 by  
12 Zoom.<sup>4</sup> *Id.*

13 On July 3, 2026, pursuant to the Court's July 2, 2026 Minute Order, Plaintiffs,  
14 through counsel, filed a Motion for Emergency Injunction Pending Appeal. (ECF Nos. 41,  
15 42<sup>5</sup>.) Defendants filed their opposition on July 6, 2026, and the Court held a hearing on  
16 July 7, 2026 by Zoom. (ECF No. 43.) The Court granted Plaintiffs' request that Plaintiff  
17 Tobin be permitted to address the Court at the hearing regarding the circumstances for  
18 Plaintiffs' requested injunction. (See ECF No. 41 at 2.)

## 19 **II. LEGAL STANDARDS**

20 Although in general the filing of a notice of appeal confers exclusive jurisdiction on  
21 the appellate court, Federal Rule of Civil Procedure 62(d) creates an exception: "While  
22 an appeal is pending from an interlocutory order or final judgment that grants, continues,  
23 modifies, refuses, dissolves, or refuses to dissolve or modify an injunction," in which  
24 cases the district court may "suspend, modify, restore, or grant an injunction" during the  
25 pendency of the appeal. Fed. R. Civ. P. 62(d); *see also Mayweathers v. Newland*, 258

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26 <sup>4</sup> Counsel for Plaintiffs is located in Boulder, Colorado and counsel for Defendants is  
27 located in Washington, D.C.

28 <sup>5</sup> Plaintiffs separately filed their Exhibit 14 on July 6, 2026, which appears to have been  
inadvertently omitted from their motion filed at ECF No. 41. (ECF No. 42.)

1 F.3d 930, 935 (9th Cir. 2001). Rule 62(d) “grants the district court no broader power than  
2 it has always inherently possessed to preserve the status quo during the pendency of an  
3 appeal; it does not restore jurisdiction to the district court to adjudicate anew the merits  
4 of the case.” *Natural Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166  
5 (9th Cir. 2001). Federal Rule of Appellate Procedure 8 requires that, before a party may  
6 move the appellate court, the party must move first in the district court for an injunction  
7 pending appeal. Fed. R. App. P. 8(a)(1)(C).

8 A motion for an injunction pending appeal is considered under a similar standard  
9 as that in assessing a motion for a preliminary injunction. See *S. Bay United Pentecostal*  
10 *Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020). “To prevail, the party seeking  
11 relief must show (1) they are likely to succeed on the merits, (2) they are likely to suffer  
12 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips  
13 in their favor, and (4) that an injunction is in the public interest.” *Sanai v. Kruger*, 2023  
14 WL 5496802, at \*2 (N.D. Cal. Aug. 24, 2023) (quoting *Winter v. Natural Resources*  
15 *Defense Council, Inc.*, 555 U.S. 7, 20 (2008)); accord *Harrosh v. Tahoe Reg'l Plan.*  
16 *Agency*, 640 F. Supp. 3d 962, 984 (E.D. Cal. 2022); *Sierra Forest Legacy v. Rey*, 691 F.  
17 Supp. 2d 1204, 1207 (E.D. Cal. 2010). “If the government is the non-moving party, the  
18 last two factors—the balance of equities and public interest—merge.” *Amazon.com*  
19 *Servs. LLC v. Nat'l Lab. Rels. Bd.*, 2025 WL 1766349, at \*2 (C.D. Cal. June 9, 2025)  
20 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

### 21 **III. DISCUSSION**

22 Plaintiffs move for an emergency injunction pending appeal to halt Defendants’  
23 removal of wild horses outside the Territory beginning on July 8, 2026. Plaintiffs argue  
24 they have a likelihood of success on the merits of their appeal on the following grounds:  
25 (1) Defendants caused the wild horses’ migration outside the boundaries of the Territory  
26 by failing to make sufficient water resources available for the horses on the Territory, Pls.  
27 Mot. at 10-14 (ECF No. 41-1); (2) Defendants’ removal of excess wild horses outside the  
28 Territory is unlawful because Defendants unlawfully changed the Territory boundaries,

1 reducing the Territory's area by 77,000 acres in 1987, and therefore the excess horses  
2 are not properly considered off-Territory, *id.* at 14-17; (3) Defendants failed to develop a  
3 Herd Management Area Plan of the Territory prior to its decision to remove the wild  
4 horses, *id.* at 17-18; and (4) Defendants' findings are incorrect that off-Territory wild  
5 horses affect the Thriving Natural Ecological Balance in the areas they are present, *id.* at  
6 19-20. As discussed, Plaintiffs' first and second arguments are new arguments that were  
7 not raised on summary judgment.

8 Plaintiffs also argue they have established irreparable harm because the wild  
9 horses subject to removal will be at risk of death during capture, separated from other  
10 members of the herd, or sold to slaughter. Pls. Mot. at 21. Finally, Plaintiffs assert an  
11 injunction pending appeal favors the public interest in preserving the wild horses. *Id.* at  
12 23-24.

13 **A. Preliminary Matters**

14 The Court first addresses three preliminary matters before turning to the motion's  
15 merits. First, at the July 7, 2026 hearing, Plaintiffs' counsel made an oral motion to  
16 withdraw as Plaintiffs' counsel, noting that Plaintiffs are proceeding pro se on appeal.  
17 Counsel also noted that he was prepared to go forward with the hearing as counsel if the  
18 motion was denied. Defendants opposed the oral motion. At the hearing, it was apparent  
19 that Plaintiffs did not have notice that their counsel would be moving to withdraw as  
20 counsel at the hearing. Given that the notice of appeal was filed over two months ago,  
21 Plaintiffs' counsel did not move to withdraw as counsel in district court before counsel's  
22 oral motion at the hearing, Plaintiffs were not aware that their counsel would be making  
23 such a motion, and the legal issues presented, the Court DENIES without prejudice  
24 Plaintiffs' counsel oral motion to withdraw as counsel.

25 Second, after Defendants filed their opposition on July 6, 2026, Plaintiff Tobin  
26 filed a Supplemental Declaration without leave of court. (ECF No. 44.) This  
27 Supplemental Declaration is unsigned and has a filing date of July 6, 2026, but was not  
28 docketed until July 7, 2026, after the hearing scheduled for 10:00 a.m. As a result,

1 Defendants and the Court did not have the opportunity to review the Supplemental  
2 Declaration before the hearing and Plaintiffs did not alert the Court of this new  
3 supplemental filing during the hearing. Unsigned filings and declarations are not properly  
4 considered. Further, Plaintiff Tobin's Supplemental Declaration was filed late, after  
5 Defendants' opposition was filed, and without leave of court. The Court declines to  
6 consider this late, unsigned Supplemental Declaration.

7 Third, Plaintiffs have submitted evidence outside the administrative record in  
8 support of their arguments, including wildlife ecologist reports, photographs taken by  
9 Plaintiff Tobin, and other reports. See Pls. Mot., Exhs. 2, 3, 4, 9, 11, 12, 13, 14, 15.  
10 Defendants object to Plaintiffs' extra-record evidence. See Defs. Opp'n at 5 n.2.

11 Generally, on review of agency action under the Administrative Procedure Act,  
12 "the focal point for judicial review should be the administrative record already in  
13 existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411  
14 U.S. 138, 142 (1973). Supplementary evidence may be justified: "(1) if admission is  
15 necessary to determine whether the agency has considered all relevant factors and has  
16 explained its decision, (2) if the agency has relied on documents not in the record,  
17 (3) when supplementing the record is necessary to explain technical terms or complex  
18 subject matter, or (4) when plaintiffs make a showing of agency bad faith." *Lands Council*  
19 *v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005) (citation and internal quotation marks  
20 omitted). "These exceptions are to be narrowly construed, and the party seeking to admit  
21 extra-record evidence initially bears the burden of demonstrating that a relevant  
22 exception applies." *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992-  
23 93 (9th Cir. 2014).

24 Here, Plaintiffs have not identified which, if any, exception applies to consider its  
25 extra-record evidence to the extent it is submitted in support of a finding of a likelihood of  
26 success on appeal. Nor may Plaintiffs rely on extra-record evidence that post-date the  
27 2025 Decision because "[p]arties may not use post-decision information as a new  
28 rationalization either for sustaining or attacking the Agency's decision." *Ctr. for Biological*

1 *Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930, 943 (9th Cir. 2006). But even if the  
2 Court were to consider Plaintiffs' extra-record evidence for purposes of a merits  
3 determination, Plaintiffs have not met their burden of showing the 2025 Decision was  
4 arbitrary and capricious, i.e., that Defendants "fail[ed] to consider important aspects of  
5 the issue before it, . . . support[ed] its decisions with explanations contrary to the  
6 evidence, or [their] decision [was] either inherently implausible or contrary to governing  
7 law." *Cent. Oregon Wild Horse Coal. v. Vilsack*, 2025 WL 25696, at \*1 (9th Cir. Jan. 3,  
8 2025).

9 Courts may consider, however, extra-record evidence to assess irreparable harm,  
10 the balancing of equities, and the public interest. See *Souza v. California Dep't of*  
11 *Transportation*, 2014 WL 1760346, at \*7 n.1 (N.D. Cal. May 2, 2014) (courts may  
12 consider extra-record evidence for irreparable harm); *E. Bay Sanctuary Covenant v.*  
13 *Trump*, 354 F. Supp. 3d 1094, 1107 (N.D. Cal. 2018) (courts may consider extra-record  
14 evidence for balance of equities and public interest).

#### 15 **B. New Arguments Raised on Motion for Injunction Pending Appeal**

16 Plaintiffs have raised two new arguments in their Motion for Emergency Injunction  
17 Pending Appeal that were not raised at summary judgment:<sup>6</sup> (1) Defendants caused the  
18 wild horses' migration outside the Territory by their alleged mismanagement of water  
19 resources for horses in the Territory, and (2) Defendants unlawfully altered the  
20 Territory's boundaries. Pls. Mot. at 10-17. As a threshold matter, these arguments fail to  
21 support a likelihood of success on appeal because they were not raised prior to the  
22 Court's entry of final judgment and therefore lack reviewability on appeal. The Ninth  
23 Circuit has held that it does not consider arguments raised for the first time on appeal  
24 unless "(1) there are exceptional circumstances why the issue was not raised in the trial  
25 court; (2) the new issue arises while the appeal is pending because of a change in the  
26 law; or (3) the issue presented is a pure question of law and the opposing party will

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27 <sup>6</sup> As a case challenging federal government agency action, this case was decided on  
28 the merits at summary judgment. See 2/20/2026 Order.

1 suffer no prejudice as a result of the failure to raise the issue in the trial court.” *Momox-*  
2 *Caselis v. Donohue*, 987 F.3d 835, 841-42 (9th Cir. 2021).

3 Here, Plaintiffs have not identified any exceptional circumstances explaining why  
4 they failed to present these new arguments on summary judgment, and the Court has  
5 not identified any such circumstances in the record. At oral argument, Plaintiffs  
6 conceded that the Territory boundaries argument was not raised at summary judgment.  
7 Plaintiff argued that the water issue was referenced in the Complaint at Paragraph 51,  
8 and this issue is part of their challenge to Defendants’ failure to prepare a herd  
9 management area plan (“HMAP”). Plaintiffs were not, however, able to identify where in  
10 their summary judgment briefing they raised this argument. Though Plaintiffs do refer to  
11 the lack of adequate water as one of the reasons horses migrated out of the Territory in  
12 their Complaint and summary judgment briefing, this is different from their argument in  
13 this emergency motion—that Defendants caused the wild horses’ migration outside the  
14 Territory by their alleged mismanagement of water resources for horses in the Territory.  
15 See Compl. ¶¶ 71, 97; Pls. MSJ at 5, 10 (ECF No. 13); Pls. MSJ Reply at 1, 3 (ECF No.  
16 19).

17 Further, Plaintiffs’ new arguments do not arise out of a change in the law  
18 occurring since the Court’s February 20, 2026 Order, nor do they present pure questions  
19 of law. Accordingly, the Court declines to consider Plaintiffs’ new arguments.<sup>7</sup> Plaintiffs

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21 <sup>7</sup> Even if the Court were to consider the merits of Plaintiffs’ argument that Defendants  
22 unlawfully altered the Territory’s boundaries in 1987, Defendants respond that the  
23 Territory boundaries have remained substantially the same. See Defs. Opp’n at 7. The  
24 administrative record appears to support Defendants’ position rather than Plaintiffs’  
25 position. The 1979 Environmental Assessment in the administrative record indicates that  
26 the boundaries of the Territory as of 1979 covered 207,921 acres. AR00048-50.  
27 Similarly, the 2024 EA states that the Territory “encompass[es] approximately 207,921  
28 acres.” AR09401; *compare* AR00050 (1979 EA map), *with* AR09232 (2024 EA map).  
Thus, it is unclear why Plaintiffs raise this argument, relying on a 2015 study, to argue  
that the Territory was reduced by 77,000 acres in 1987. See Pls. Mot. at 14, Exh. 7. In  
addition, this 2015 study was part of the Administrative Record and Plaintiffs present no  
explanation as to why this new argument was not raised below. See AR03384-413 (John  
W. Turner Jr, Environmental influences on movements and distribution of a wild horse  
(*Equus caballus*) population in western Nevada, USA: a 25-year study, *J. Nat. Hist.*

1 cannot establish a likelihood of success on these arguments because no exception  
2 applies for the Ninth Circuit to consider them on appeal. See *Raich v. Gonzales*, 500  
3 F.3d 850, 868 (9th Cir. 2007) (declining to consider new arguments on appeal where  
4 plaintiff failed to overcome presumption against hearing new arguments, such as by  
5 citing exceptional circumstances why arguments were not raised below); *United States*  
6 *v. Antonakeas*, 255 F.3d 714, 721 (9th Cir. 2001) (same).

### 7 C. Likelihood of Success on Merits of Appeal

8 Though likelihood of success on the merits is also considered as a factor for a  
9 motion seeking an injunction pending appeal, “[s]everal courts have observed that the  
10 ‘success on the merits factor cannot be rigidly applied,’ because if it were, an injunction  
11 [pending appeal] would seldom, if ever, be granted ‘because the district court would  
12 have to conclude that it was probably incorrect in its determination on the merits.’”  
13 *Protect Our Water v. Flowers*, 377 F. Supp. 2d 882, 884 (E.D. Cal. 2004) (quoting  
14 *Oregon Natural Res. Council v. Marsh*, 1986 WL 13440, at \*1 (D. Or. 1986)); see also  
15 *NetChoice v. Bonta*, 761 F. Supp. 3d 1232 (N.D. Cal. 2025) (“Applying the preliminary  
16 injunction factors can create some tension when a party seeks to appeal a district court’s  
17 denial of a preliminary injunction.”). “Such a result would not be consistent with the  
18 express language of Rule 62[d] which contemplates the possibility that the district court  
19 may grant an injunction pending appeal from an [ ] order denying [an] injunction.” *Am.*  
20 *Beverage Ass’n v. City & Cty. of San Francisco*, 2016 WL 9184999, at \*2 (N.D. Cal. June  
21 7, 2016). Therefore, an injunction pending appeal may be appropriate when “‘the trial  
22 court is charting a new and unexplored ground’ by ‘ruling on an admittedly difficult legal  
23 question, and when the equities of the case suggest that the status quo should be  
24 maintained.’” *NetChoice*, 761 F. Supp. 3d at 1236 (quoting *Protect Our Water*, 377 F.  
25 Supp. 2d at 884). “That said, the fact that a court previously found that a[n] [ ] injunction

26  
27 (2015)); AR03388 (“In 1987 the Inyo National Forest and BLM partnered in MPWHT  
28 management and formed a Coordinated Resource Management Planning committee,  
which adjusted the MPWHT map boundaries to more appropriately reflect horse use.”).

1 was not warranted should carry significant weight, so . . . [o]nly when the legal question  
2 raised is particularly important and ‘serious questions going to the merits’ have been  
3 raised should a district court consider such a course of action. *NetChoice*, 761 F. Supp.  
4 3d at 1236 (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir.  
5 2011)).

6 Here, Plaintiffs’ two remaining arguments in support of a likelihood of success on  
7 appeal are that (1) Defendants failed to develop a Herd Management Area Plan of the  
8 Territory; and (2) Defendants are wrong that the wild horses living outside the Territory’s  
9 boundaries have a negative impact on the Thriving Natural Ecological Balance where  
10 they are present. Pls. Mot. at 17-20. This Court previously rejected similar arguments at  
11 the summary judgment stage. First, the undersigned held that “[a]lthough Plaintiffs argue  
12 the 2025 Decision was made arbitrarily because it was made without a herd  
13 management area plan and therefore decided ‘blindly,’ Defendants were not required to  
14 prepare a herd management area plan for a herd area outside a designated herd  
15 management area.” 2/20/2026 Order at 13. Second, the undersigned further held that  
16 “the administrative record supports the 2025 Decision that the removal of excess wild  
17 horses outside the Territory was necessary to achieve and maintain a thriving natural  
18 ecological balance in areas not designated for the management of wild horses and that  
19 are being managed for natural resource values. . . . Accordingly, Plaintiffs have not  
20 established that Defendants acted in an arbitrary and capricious manner.” *Id.* at 16.

21 Neither of the Court’s prior conclusions at the summary judgment stage involved  
22 “new and unexplored ground” or a “difficult legal question.” *NetChoice*, 761 F. Supp. 3d  
23 at 1236 (citation omitted). Nor do Plaintiffs’ arguments in their current emergency motion  
24 raise “serious questions going to the merits” of their claims. *See id.* (citation omitted). In  
25 addition, Plaintiffs have not identified error in the Court’s summary judgment ruling.  
26 Accordingly, Plaintiffs have not established a likelihood of success on the merits of their  
27 appeal to justify an injunction pending appeal. *See Sierra Forest Legacy v. Rey*, 691 F.  
28 Supp. 2d 1204, 1208 (E.D. Cal. 2010) (no likelihood of success where Plaintiffs failed to

1 identify error in court’s summary judgment analysis, repeated prior arguments, and  
2 provided no grounds to revisit conclusions reached on summary judgment); *Env’t Prot. &*  
3 *Info. Ctr. v. U.S. Forest Serv.*, 2006 WL 2084856, at \*2 (E.D. Cal. July 25, 2006) (same).

4 **D. Irreparable Harm**

5 Plaintiffs argue that the removal of wild horses beginning on July 8, 2026 will  
6 cause irreparable harm in several ways. First, Plaintiffs argue that a gather will result in  
7 significant deaths of wild horses due to stampeding or other events during capture,  
8 including newborn foals and pregnant mares. Pls. Mot. at 21, 22. Second, Plaintiffs  
9 argue the sub-herd groups developed by the wild horses will be irreversibly split during  
10 removal. *Id.* at 21. Third, Plaintiffs argue that some wild horses will be “sold into the  
11 slaughter pipeline” because “[o]nly a small percentage of captured wild horses are ever  
12 adopted, and slaughter is not limited to older horses.” *Id.* Fourth, Plaintiffs argue that  
13 gather by helicopter will negatively affect field research, equine ecotourism, and Plaintiff  
14 Mrozek’s in-progress documentary of the wild horse herds. *Id.* at 22.

15 Although the Court recognizes that Plaintiffs have expressed sincere concerns  
16 about the effects of the upcoming removal process and their genuine dedication to and  
17 love of wild horses, Plaintiffs have not made a sufficient showing of irreparable harm to  
18 support an injunction pending appeal.

19 1. Delay

20 At the outset, the Court has concerns regarding Plaintiffs’ delay in bringing this  
21 motion for emergency injunctive relief. A party’s delay in filing a motion for an injunction  
22 pending appeal may weigh against a finding of irreparable harm. For example, in  
23 *Demartini v. Microsoft Corp.*, the district court denied Plaintiffs’ motion for injunctive relief  
24 pending appeal to “hold separate” two merging entities because “Plaintiffs inexplicably  
25 waited five months, until the eve of the merger’s closing, to file a motion requesting  
26 injunctive relief noticed to be heard well after the merger was to have—and in fact did—  
27 close.” 2023 WL 7346402, at \*1 (N.D. Cal. Nov. 7, 2023). Likewise, in *M&T Bank v. SFR*  
28 *Invs. Pool 1, LLC*, the district court denied the defendant’s emergency motion for an

1 injunction pending appeal to stop the foreclosure of property where summary judgment  
2 had been granted ninth months before the motion and the defendant “waited until three  
3 business days before the foreclosure sale to file ‘emergency’ motions for a temporary  
4 restraining order and preliminary injunction.” 2019 WL 3577645, at \*3 (D. Nev. Aug. 6,  
5 2019).

6 Here, the Court granted summary judgment for Defendants and entered final  
7 judgment for Defendants on February 20, 2026. (ECF Nos. 31, 32.) Plaintiffs appealed  
8 the order and judgment on April 21, 2026. (ECF No. 35.) Thus, since at least April 21,  
9 2026, if not after the Court’s February 20, 2026 summary judgment order, Plaintiffs knew  
10 that Defendants could potentially begin the process to remove excess wild horses. But  
11 Plaintiffs did not seek an injunction pending appeal when they filed their notice of appeal  
12 or even close in time after they filed their notice of appeal. On June 22, 2026,  
13 Defendants USFS and BLM publicly announced that they would initiate a helicopter  
14 gather of wild horses located outside the Territory beginning July 8, 2026. Pls. Mot., Exh.  
15 1 (ECF No. 41-4). Even then, nothing was filed in this case until Plaintiff Tobin filed a pro  
16 se motion on July 1, 2026, followed by a counseled motion (pursuant to the Court’s July  
17 2, 2026 Minute Order) filed on July 3, 2026—seven to five days before the gather is  
18 scheduled to commence. (ECF Nos. 39, 41.)<sup>8</sup> While the Court is sympathetic to Plaintiffs  
19 proceeding pro se on appeal, Plaintiffs were and are represented by counsel in this  
20 district court, and before the oral motion made during the July 7, 2026 hearing, Plaintiffs’  
21 counsel never filed a motion to withdraw as counsel in the district court case. Even were  
22 the Court to consider Plaintiffs’ pro se status on appeal, this does not excuse waiting  
23 over two months to file their motion for an injunction pending appeal, especially when  
24 Plaintiffs stated at the hearing that they knew or heard the roundup would occur in the  
25 summer.

26 Thus, Plaintiffs’ delay to file their motion for an injunction pending appeal over four

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27 <sup>8</sup> Additionally, the Court notes that Plaintiffs’ counseled motion (ECF No. 41) is  
28 substantially similar to the pro se motion (ECF No. 39).

1 months after the Court’s summary judgment ruling, over two months after filing their  
2 notice of appeal, and just five to seven days before Defendants’ gather is scheduled to  
3 commence,<sup>9</sup> suggests that “by failing to effectively manage this case, [Plaintiffs] created  
4 this emergency and comes to the court with unclean hands.” *M&T Bank*, 2019 WL  
5 3577645 at \*3. Accordingly, Plaintiffs’ delay in bringing the Motion for Emergency  
6 Injunction Pending Appeal weighs against a finding of irreparable harm. See *Demartini*,  
7 2023 WL 7346402, at \*1; *Galderma Lab'ys L.P. v. Lupin Inc.*, 2024 WL 5431488, at \*4  
8 (D. Del. Apr. 11, 2024) (holding that delay militated against the issuance of an injunction  
9 pending appeal of patent infringement claim where court announced the outcome of the  
10 case on February 22, issued opinion on March 22, final judgment was entered on April 1,  
11 and Plaintiff waited until April 4 to file its emergency motion).

## 12 2. Irreparable Harm

13 Defendants assert that, because the planned removal “aims to remove horses  
14 that reside *permanently* off Territory,” Plaintiffs have alleged harms only as to wild horse  
15 populations living outside the Territory. Defs. Opp’n at 8 (emphasis added) (ECF No.  
16 43). Defendants argue that there is therefore a mismatch between Plaintiffs’ alleged  
17 harms and their requested relief in the proposed order, which seeks to enjoin the  
18 removal of wild horses only “from the Montgomery Pass Wild Horse Territory,” not  
19 outside of the Territory. (ECF No. 41-17.)

20 Although Plaintiffs’ requested relief is unclear, the Court agrees with Defendants  
21 that Plaintiffs have not established irreparable harm to the extent that Defendants seek  
22 to remove only the wild horses located *outside* the Territory (as set out in the EA and  
23 2025 Decision) and Plaintiffs’ motion seeks an injunction limited to horses located *inside*  
24 the Territory. See Defs. Opp’n at 8-9. However, for purposes of examining whether  
25 Plaintiffs have otherwise shown irreparable harm as to wild horses living outside the  
26 Territory, the Court will assume that Plaintiffs seek injunctive relief to prevent the July

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27 <sup>9</sup> The Court also notes that Plaintiffs filed their emergency motion on the eve of a  
28 federal court holiday.

1 2026 removal in its entirety.

2 Plaintiffs argue that gather by helicopter will negatively affect field research,  
3 equine ecotourism, and Plaintiff Mrozek’s in-progress documentary of the wild horse  
4 herds. Defendants argue that Plaintiffs have not established a cognizable harm based  
5 on the effects of a helicopter gather on wild horses living outside the Territory because  
6 Plaintiffs lack the right to observe a particular number of horses. Defs. Opp’n at 9. The  
7 Court agrees to the extent Plaintiffs allege harm based on the effects of removal on field  
8 research, equine ecotourism, and Plaintiff Mrozek’s documentary production. “The Court  
9 is unaware of any enforceable right to observe a particular number of animals.” *See In*  
10 *Def. of Animals v. U.S. Dep’t of Interior*, 737 F. Supp. 2d 1125, 1138 (E.D. Cal. 2010).  
11 Here, Defendants July 8 gather is limited to areas outside the Territory’s boundaries.  
12 Thus, wild horses within the Territory are not being removed, and Plaintiffs have not  
13 indicated that they cannot continue their observation of horses *inside* the Territory.  
14 Accordingly, because Plaintiffs have not shown that their academic or aesthetic interests  
15 will be entirely destroyed by Defendants’ planned removal of wild horses outside the  
16 Territory, Plaintiffs have not established irreparable harm. *See In Def. of Animals*, 737 F.  
17 Supp. 2d at 1138 (holding that irreparable injury not established for preliminary injunction  
18 where plaintiffs argued their ability to study and observe particular family bands would be  
19 affected by gather of wild horses).

20 3. Unsupported Allegations of Harm

21 Plaintiffs’ other allegations of irreparable harm, namely, that the gather and  
22 removal will result in death, separation of sub-herd units, or the sale of wild horses for  
23 slaughter, lack supporting evidence and are speculative. For this additional reason,  
24 Plaintiffs have not established irreparable injury. *See In Def. of Animals*, 737 F. Supp. 2d  
25 at 1138 (no irreparable injury where “it is sheer speculation that any particular individual  
26 or family unit will be affected” by gather).

27 ///

28 ///

1           **E. Balance of Equities and Public Interest**

2           The balance of equities and the public interest weigh in favor of Defendants.<sup>10</sup>  
3           The Wild Horse Act requires Defendants to “immediately” remove horses determined to  
4           be excess. *See In Def. of Animals, Dreamcatcher Wild Horse & Burro Sanctuary v. U.S.*  
5           *Dep’t of Interior*, 751 F.3d 1054, 1062 (9th Cir. 2014) (“BLM is *required* to remove wild  
6           horses and burros from a given area of the public lands when an overpopulation exists.”)  
7           (emphasis in original) (citing 16 U.S.C. § 1333(b)).

8           The 2025 Decision identified excess wild horses living outside the Territory and  
9           determined that removal of the excess wild horses would “eliminate ongoing impacts to  
10           archaeological resources caused by displacement of artifacts, damage to features,  
11           erosion and breakage” (AR 9428-29); “may reduce the spread of invasive species and  
12           allow native vegetation communities to be more resilient to wildfire” (AR 9430); “impacts  
13           to tufa from trailing, trampling, and rubbing by wild horses would be substantially  
14           reduced, if not eliminated” (AR 9431-32); “reduce or eliminate the potential for wild  
15           horse/vehicle collisions and improve visitor safety” (AR 9432-33); “would likely result in a  
16           reduction in vectors of spread as well as fewer disturbed sites that are vulnerable to  
17           invasion” (AR 9433-34); and removal of excess wild horse “increase forage availability  
18           and quality, minimize competition for water and forage between livestock and wild  
19           horses, and improve vegetative resources” (AR 9434-46).

20           Accordingly, the balance of equities and the public interest weigh against an  
21           injunction pending appeal because the administrative record indicates that Defendants  
22           determined that it must remove excess wild horses located outside the Territory for the  
23           sake of various public interests, including environmental interests. *See In Def. of*  
24           *Animals*, 737 F. Supp. 2d at 1139-40 (denying preliminary injunction where public  
25           interest favors gather because BLM established overpopulation of wild horses);

26 \_\_\_\_\_  
27 <sup>10</sup> Plaintiffs’ motion does not expressly address the balance of equities prong of the  
28 *Winter* test, whereas Defendants address this prong simultaneously with the public  
interest prong.

1 *Kohleriter v. Dep't of Agric.*, 2025 WL 2986725, at \*5 (E.D. Cal. Oct. 23, 2025) (denying  
2 preliminary injunction where balance of equities and public interest tip in favor of “both  
3 maintaining control of the wild horse population and the efficient usage of government  
4 funds”).


5 **IV. CONCLUSION**

6 In conclusion, IT IS HEREBY ORDERED that Plaintiffs’ Motion for Emergency  
7 Injunction Pending Appeal (ECF No. 41) is DENIED.

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9 Dated: July 7, 2026

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\_\_\_\_\_  
CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

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