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5 Attorney for Plaintiff LAURA LEIGH

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 LAURA LEIGH,

9 Plaintiff,

10 Case No. **3:11-cv-0608-HDM-WGC**

11 vs.

12 SALLY JEWELL, in her official capacity as  
Secretary of the U.S. DEPARTMENT OF  
THE INTERIOR, MIKE POST, in his official  
13 capacity as Acting Director of the BUREAU  
OF LAND MANAGEMENT; AMY LUEDERS  
14 in her official capacity as Nevada State  
Director of the BUREAU OF LAND  
15 MANAGEMENT,

16 Defendants.

17 \_\_\_\_\_ /  
**PROPOSED**

18  
19 **THIRD AMENDED COMPLAINT FOR**  
**INJUNCTIVE AND DECLARATORY RELIEF;**  
20 **JURY DEMAND**  
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19 JURY DEMAND**

20 Plaintiff LAURA LEIGH, avers as follows:

21 ***Triple B Complex General Allegations***

22 1. Plaintiff seeks to halt ongoing inhumane conduct demonstrated at the  
23 Bureau of Land Management's ("BLM") "Triple B, Maverick-Medicine, and Antelope  
24 Valley Herd Management Areas" ("Triple B Complex") "Wild Horse Gather" ("roundup")  
25 ongoing in northwestern White Pine and southern Elko counties, Nevada and which are  
26 subject to the defendants' recently revised, modified, altered, amended, or new "record  
27 of decision" ("ROD") and final "environmental assessment" ("EA").

28 2. The Defendants' Triple B Complex roundups were conducted inhumanely,

1 in contravention of law, in contravention of the CFRs, in contravention of the  
2 Defendants' own established regulation or order as determined in its EA for the Triple B  
3 Complex roundup, and also in contravention of established norms of "humane"  
4 treatment; and with a ten-year "environmental assessment" ("EA"), the plaintiff may  
5 reasonably anticipate that such activities could repeat with further roundups in the same  
6 Triple B Complex; and the likelihood of such events repeating is now confirmed by the  
7 newly announced removal operations commencing June 13, 2013 with a "bait trap"  
8 operation to be conducted in Triple B Complex afar from public observation and even  
9 without the observation of the BLM's own COR for 75% of the newly announced change  
10 in standard removal operation, and would commence during the BLM's own established  
11 foaling season, all being a recipe for an inhumane and unmonitored disaster for the  
12 horses the defendants seek to remove; and plaintiff is informed and believes such  
13 activities would be arbitrary, capricious, it would amount to an abuse of discretion, it  
14 would otherwise not be in accordance with law, or implemented without observance of  
15 procedure required by law, as is contemplated by relevant provisions of the  
16 Administrative Procedure Act, including but not limited to 5 U.S.C. § 706(2)(A) and (D)  
17 and the Wild Free-Roaming Horses and Burro Act of 1971 ("Wild Horse and Burro  
18 Act"). See, P.L.92-195, 16 U.S.C. 1331 et. seq.; and further, such activity would be  
19 contrary to plaintiff's rights under the U.S. Constitution, First Amendment ("First  
20 Amendment") where the defendants' anticipated activity specifically, wrongfully and  
21 unreasonably excludes in its entirety, the public's and press observation of such "bait  
22 trap" operations.

23 3. Where the Triple B Complex roundup has been, and would be conducted  
24 contrary to 16 USC §1333 (b)(2)(iv)(B) for the *humane* removal of wild horses, and  
25 contrary to the definition of what the United States considers "humane" as is defined at  
26 43 CFR § 4700.0-5, and against reasonable notions of what is considered "humane"  
27 including those defined by the Laws of the State of Nevada, and also in contravention  
28 of requirements that place responsibility of observation of humane treatment of animals

1 with the BLM's COR but where the COR would be present only a maximum of twenty-  
2 five percent (25%) of the time to observe ongoing bait trap operations, and where such  
3 operation would also be conducted in contravention of, and in derogation to the  
4 plaintiff's First Amendment right of access as a member of the public and also as a  
5 member of the press, the Defendants' action in refusing to enforce regulations and laws  
6 of the United States for the humane treatment of wild horses removed and to be  
7 removed by the defendants at Triple B Complex, and in refusing to recognize the  
8 plaintiffs' First Amendment right of access, and in refusing to conduct its own  
9 monitoring of bait trapping, that such matters amount to conduct by the defendants that  
10 is arbitrary, capricious, it amounts to an abuse of discretion, it is otherwise not in  
11 accordance with law, or it is implemented without observance of procedure required by  
12 law, as is contemplated by relevant provisions of the Administrative Procedure Act,  
13 including but not limited to 5 U.S.C. § 706(2)(A) and (D), and is not conducted in  
14 accordance with the U.S. Constitution, First Amendment relative to plaintiffs rights, and  
15 is or would be conducted in contravention of the Wild Horse and Burro Act. **See**  
16 **Exhibit 1 attached** which is Appendix to EA on SOP or Standard Operating  
17 Procedures.

18 4. That, the "Defendants' action" or "agency action" as used or referenced  
19 herein, include the definition ascribed to "agency action" at 5 U.S.C. § 551(13) and  
20 which includes but is not limited to the Defendants' "failure to act" to enforce its own  
21 regulations and to enforce the laws of the United States which, in this case, concerns  
22 the *humane* removal of wild horses removed from the Triple B Complex and which  
23 concerns the plaintiffs right of access to observe government activity as is contemplated  
24 under the U.S. Constitution, First Amendment. See, e.g., *Leigh v. Salazar*, 677 F.3d  
25 892 (9th Cir. 2012).

26 5. The newly announced bait trapping operation at Triple B Complex is  
27 coming up in too short a duration to allow full litigation before these newly created-type  
28 roundups (bait trapping of large numbers of animals) commence beginning June 14,

1 2013. Plaintiff is informed and believes she (and other members of the public) would be  
2 subjected to perceptible harm in being precluded access to observe upcoming bait trap  
3 operations, that these bait trap operations are meant and intended to preclude and  
4 eliminate completely, all public's scrutiny and observation, and also the majority of the  
5 scrutiny of the BLM's own COR. The defendants would claim the new or revised EA  
6 and operation ("bait trap operation") would "moot" all issues in the complaint where the  
7 BLM does not intend to use helicopters for roundups. But this complaint has always,  
8 and continues to encompass more improper conduct than just the helicopter operations  
9 that caused this court in this action to issue its TRO against such dangerous helicopter  
10 operation. Plaintiff is informed and believes that all other alleged and admitted to,  
11 inappropriate, inhumane conduct would continue to occur *sans* helicopter pilot conduct.  
12 Plaintiff is informed and believes the defendants also play the "shell game" to confuse  
13 the court and public when changing the name of the new or revised EA to read "Three  
14 HMA Bait Trap" operation where the new or revised EA encompasses the identical area  
15 as that known by this court as the "Triple B Complex" operation, and where the  
16 defendants' inhumane activities toward wild horses caused public outrage during 2011  
17 operations (again, covered by the previous version of this Complaint) and which 2011  
18 operations caused this court to issue its TRO and ultimately a limited preliminary  
19 injunction.

20 6. BLM's newly created large scale operation for this specific area (after  
21 making claims in the past that bait trapping was not a suitable option for large areas)  
22 creates not only an operation that would be conducted completely outside the scope of  
23 public scrutiny, but even fails to define the number of animals targeted, in contravention  
24 of law. The newly crafted operation in no way precludes BLM from creating yet another  
25 EA, Record of Decision, work order, after (or at anytime in the future) that reintroduces  
26 the exact operations as what occurred in the 2011 roundups at Triple B that was  
27 criticized by the court and which is the subject of the original complaint herein; that the  
28 creation of the new EA is a consequence and manifestation of the 2011 operations at

1 Triple B following public scrutiny of that operation. Plaintiff is informed and believes  
2 when public and/or press scrutiny ceases to exist because the defendants are able to  
3 hide their actions, the disputed conduct is capable of reoccurring at any moment,  
4 although unseen by public or press or the plaintiff, where the BLM maintains the  
5 capability of resuming any or all of such action, including helicopter use; and  
6 accordingly, none of the disputes in the original complaint are moot.

7 7. Plaintiff has every expectation of attending any and all roundups that  
8 occur in the state of Nevada as she has always done. Plaintiff attended bait trap  
9 operations conducted by BLM at Deer Run in the Carson District earlier this year, that  
10 faced public scrutiny for removing the animals; and plaintiff applauded the BLM's  
11 method of removing the Deer Run bait trap operation and the BLM's handling of those  
12 Deer Run wild horses. Daily observation of bait trapping operations was facilitated to  
13 the public and to plaintiff at Deer Run; daily observation of bait trapping was facilitated  
14 to the public in the Pryor Mountains. Plaintiff is informed and believes the BLM's  
15 assertion, if any, that the Deer Run and Pryor Mountain horses are somehow more  
16 "popular" with the public, is not true and is irrelevant in this instance.

17 8. Because the BLM repeatedly thus far, demonstrated that they (a) choose  
18 not to enforce the "humane" requirements of its own EA at the Triple B Complex (and  
19 elsewhere gathering continued scrutiny of the court, noteworthy, Owyhee), (b) choose  
20 to not enforce laws requiring "humane" removal of horses from public lands, © refuse to  
21 take corrective action to enforce the "humane" removal of wild horses from public lands  
22 in accordance with 16 USC §1333 (b)(2)(iv)(B) as interpreted by 43 CFR § 4700.0-5 at  
23 Triple B Complex, and where the defendants refuse to respect the plaintiffs' First  
24 Amendment right of access to observe the management, handling and operation of,  
25 and trapping and removing of American public resources, wild horses, from America's  
26 rangelands, Plaintiff may reasonably expect she would likely be subjected to observing  
27 the same arbitrary, capricious, unlawful, inhumane activity at these roundups if she is  
28 not banned or precluded from observing them, consistent with what plaintiff witnessed

1 at Triple B (and ongoing elsewhere) thus far, and which she also witnessed at Warm  
2 Springs previously, and which she also witnessed at Callaghan previously, and also  
3 which she witnessed at Antelope previously; or alternatively, plaintiff's precluded access  
4 from observing such bait trap operations is a violation of plaintiff's First Amendment  
5 press access and right as a public person with standing, to observe government activity  
6 involving the management of public resources where such access and observation had  
7 been historically allowed and included to the public.

8 9. Where the offending, inhumane conduct is capable of repetition at Triple  
9 B Complex, yet judicial review is evaded by the short duration in time of the offensive  
10 conduct of each bait trap operation, Plaintiff asserts that mootness would not apply in  
11 this instance since the case could never be fully adjudicated prior to the beginning of  
12 the newly crafted Triple B roundup. See, e.g., *Greenpeace Action v. Franklin*, 14 F. 3d  
13 1324 (9<sup>th</sup> Cir. 1992)("capable of repetition yet evading review" exception to mootness  
14 applied to fishing regulations in effect less than a year). And further, that the operation  
15 is intended to extend the next 10 years.

16 10. The Defendants at the Triple B Complex roundup, have employed  
17 methods contrary to clear public policy of the United States of America that are likely to  
18 repeat relative to management practices of wild horses where such practices are  
19 mandated by 16 USC §1333 (b)(2)(iv)(B) as interpreted by 43 CFR § 4700.0-5, to be  
20 conducted humanely. See, The Wild Free-Roaming Horses and Burro Act of 1971.  
21 ("Wild Horse and Burro Act"). See, P.L.92-195, 16 U.S.C. 1331 et. seq. That 16 USC  
22 §1333 requires the Defendants to roundup only excess wild horses in a mandated order  
23 of preference that is not observed with this type roundup, and the Defendants are  
24 required to roundup wild horses "humanely." See, 16 USC §1333 (b)(2)(iv)(B).

25  
26 ***Jackson Mountain HMA General Allegations***

27 11. In continuation of the issues faced by plaintiff when attempting to address  
28 these same issues outside of federal court proceedings, through all avenues open to

1 her, plaintiff, again finds herself with her only recourse being the court. As the court is  
2 aware, lengthy conferences were attempted without a sincere attempt by Defendant to  
3 resolve access and humane issues. Ms. Leigh's comments addressing humane  
4 handling and access were dismissed during public comment period to the newly  
5 proposed protocol. BLM either disregards the concerns or creates obstacles that did not  
6 exist prior to this newly proposed for of removal to any conversation to resolve  
7 expressed concerns. **See Exhibit 2** attached, which is the Appendix containing public  
8 comments to the defendants' newly crafted roundup process at Triple B.

9 12. Defendant is obstructing Plaintiffs ability to assess conditions of animals  
10 removed from the Triple B Complex and animals removed from Jackson Mountain by  
11 failure to disclose disposition of animals post removal. This makes it impossible to  
12 assess the ramifications of roundup operations to individual animals. This year it was  
13 discovered that the rendering receipts from BLM holding facilities do not match the  
14 deaths reported at facilities. BLM asserts that the discrepancy is that they do not report  
15 foal deaths. BLM has not reported, disclosed, provided vet reports on any foals that  
16 have died post operation. Without such disclosure the true effects of operations can not  
17 be determined or reported to the public. Without such disclosure the true cost in lives to  
18 the foals from both Triple B in summer of 2011 and Jackson Mountain of June 2012  
19 remain an unknown to the public.

20 13. The preclusion of the public's and plaintiff's observation by the  
21 defendants, and the defendants' failure to disclose information on the dispositions of  
22 animals, and in view of the newly formulated removal plan at Triple B that creates a  
23 new precedent, a total prohibition of observation by public and press to observe the  
24 defendants' activities, and the defendants' new precedent in hiding all activities of  
25 actual handling of animals, plaintiff is informed and believes her constitutional First  
26 Amendment right to observe government activities while the defendants manage,  
27 handle and remove wild horses from both Jackson Mountain and Triple B are  
28 threatened, denigrated and violated; and that a reasonable likelihood is that plaintiff's

1 First Amendment right of access to observe such activities would be violated with the  
2 future roundups planned at both Jackson Mountain as well as at Triple B.

3 14. The court in *Leigh v. Salazar*, 3:10-cv-597 held a rehearing in February  
4 this year on the issue of constitutional access at Silver King, following the decision and  
5 instruction in *Leigh v. Salazar*, 377 F.3d 892 (9<sup>th</sup> Cir. 2012); that for clarity of issue and  
6 to preserve resources of hers and of the court's, that plaintiff kept the constitution  
7 access issue to the case involving her preclusion at Silver King (again, the case in 3:10-  
8 cv-597). But, the recent announcement by the defendants which precludes all public  
9 access to observe the defendants' activities at Triple B and Jackson Mountain, requires  
10 plaintiff to pursue the claim in this matter. Plaintiff is informed and believes the same  
11 conduct as is alleged above relative to Triple B is intended to occur in Jackson  
12 Mountain as well where both are subject to the same new "bait trap" roundup methods.  
13 On May 16, 2013, BLM defendant announced in its press release that the defendants  
14 would begin this newly formulated operation beginning as early as June 13, 2013.

15 15. Plaintiff has been present in attempts at observing prior Jackson  
16 roundups. Plaintiff's access to observe and report what occurred is repetitively,  
17 unreasonably and unconstitutionally restricted in contravention of First Amendment  
18 constitutional principles, which effectively prevents her from adequately photographing  
19 and using same to report to this court and to the public, the conduct of the defendants  
20 when engaged in such activities, and the resulting inhumane consequences of such  
21 activities. Plaintiff is informed and believes she is entitled, as credentialed press and  
22 also as a member of the public, to observe and report the government's activities as it  
23 relates to roundups in Jackson Mountain; that such activity is newsworthy; that Plaintiff  
24 maintains a constitutional right to gather such news; that the rounding up of wild horses  
25 from public lands by the defendants garners passionate public interest. That  
26 consequently, she is precluded from obtaining the very proof that may be necessary via  
27 photographs and video, to report such inhumane conduct and consequences of the  
28 defendants' activities.

**JURISDICTION AND VENUE**

1  
2 16. Jurisdiction of this matter, involving a federal question, is governed in  
3 accordance with 28 U.S.C. § 1331. Relief is sought under applicable provisions of the  
4 Administrative Procedures Act, 5 U.S.C. §§ 701 et seq.

5 17. Venue remains proper in the Northern Division of the District of Nevada  
6 pursuant to 28 U.S.C. §1391(a) where the roundup which gives rise to the matters  
7 asserted herein are occurring and causing an effect within the northeastern portion of  
8 the State of Nevada on public lands.

**PLAINTIFF AND STANDING**

9  
10 18. The court in this very case has already recognized Plaintiff LAURA  
11 LEIGH's ("Ms. Leigh")(phonetic "Lee") standing to bring this suit.

12 19. Ms. Leigh maintains standing under 5 U.S.C. § 702 of the Administrative  
13 Procedures Act to seek judicial review of the BLM's action (or failure to act) where she  
14 has suffered and would continue to suffer actual injury or injury in fact that is within the  
15 zone of interests protected by the relevant federal statutes indicated herein which  
16 Defendants fail and refuse to enforce. The Administrative Procedure Act allows a party  
17 "suffering legal wrong because of agency action, or adversely affected or aggrieved by  
18 agency action" to seek judicial review. 5 U.S.C. § 702.

19 20. Plaintiff is an award winning illustrator, journalist / videographer and report  
20 on issues dealing with the American West. Her published articles and video have  
21 appeared in many venues including Horseback Magazine, KLAS-TV and CNN.

22 21. Ms. Leigh has been a horse owner and keeper for many years. Ms.  
23 Leigh is informed and believes she is reasonably informed on many issues involving the  
24 care, maintenance and safety of horses including but not limited to matters involving  
25 their physiology, structure, hoof care, feed and diet, diseases, conditioning, handling,  
26 and their natural instincts, to name but a few. Ms. Leigh has personally given medical  
27 aid and attention to horses, treating such ailments or injuries involving, among other  
28 conditions, leg injuries, digestive issues, colic, heat and hydration issues. She has

1 taken care of foals with congenital anomalies. She has treated and cared for horses  
2 with metabolic and stress founder. Ms. Leigh operated a home-based nursery for  
3 wildlife rehab in conjunction with a county wildlife center where, during her tenure there,  
4 the center maintained a zero percent death rate with over 100 orphans of varied  
5 species of wildlife.

6 22. Ms. Leigh has attended more BLM roundups the past 18 months than any  
7 BLM, DOI or other government personnel, any journalist, any photojournalist, and any  
8 other member of the public, in her attempts at accurately documenting wild horses in  
9 the wild, and which includes the Defendants' management of wild horses. In the past  
10 two years Ms. Leigh filmed/recorded thousand of hours of video and has more than a  
11 hundred-thousand photos of wild horses on public lands.

12 23. As a documentarian Ms. Leigh also reports in the capacity as a Subject  
13 Matter Expert (Research, wild herds) to many equine welfare agencies, including the  
14 Equine Welfare Alliance. She is the founder / president of Wild Horse Education (seen  
15 at [www.wildhorseeducation.org](http://www.wildhorseeducation.org)). Wild Horse Education is devoted to education through  
16 documentation toward facilitating dialogue for sensible change in the management of  
17 wild horses and burros on public land. Ms. Leigh was the founder of "Herd Watch," a  
18 program no longer in existence, dedicated to documentation and research of wild  
19 horses on public lands. The Herd Watch program is subsumed into Wild Horse  
20 Education. Ms. Leigh is Vice President of Wild Horse Freedom Federation, a non-profit  
21 Texas corporation.

22 24. Ms. Leigh traveled over 150,000 miles since September 2010 to observe  
23 and document wild horses and the BLM's management practices. Ms. Leigh has thus  
24 far, traveled in six states to accomplish this work, she visited and attempted to visit wild  
25 horse holding facilities operated by the government. She has attended numerous  
26 Advisory Board meetings and even traveled to Denver, CO to participate in what BLM  
27 referenced as a "workshop" toward "problem solving."

28 25. Ms. Leigh has endured personal searches, vehicle and property searches,

1 road blocks, background checks, extreme temperatures from minus 10 degrees  
2 Fahrenheit to over 100 degrees Fahrenheit, all in attempts at gaining access to view and  
3 observe and document wild horses on public lands and at government wild horse  
4 facilities and during capture for their removal from public lands.

5 26. Ms. Leigh endures death threats, discriminatory access, vandalism to her  
6 personal property, significant wear and tear to her personal property, countless hours of  
7 off-road travel and on-road travel, all in attempts at gaining access to view and observe  
8 and document wild horses on public lands and at government wild horse facilities and  
9 during capture for their removal from public lands.

10 27. When not in the field, Ms. Leigh is conducting research on a multitude of  
11 wild horse related topics particularly those involving public lands and interests that  
12 compete with wild horses.

13 28. Ms. Leigh's life is devoted to documentation and education of the care of  
14 wild horse herds. Ms. Leigh is dedicated to helping to create reform where appearing  
15 necessary, in the management of America's wild horses.

16 29. As a documentarian and photojournalist Ms. Leigh is dedicated to creating  
17 honest dialogue based on the truth about wild horses and burros on public lands; that  
18 her goal is to educate the public about wild horses on public lands, including educating  
19 on how wild horses live, thrive, survive, travel, their social order and interaction, how  
20 they become impacted by competing private and also public interests that affect their  
21 remaining habitat, how they are impacted by man and by those charged with the  
22 responsibility of protecting them, who are the Defendants herein.

23 30. As a documentarian and a current historian of America's wild horses, Ms.  
24 Leigh has gained a deep appreciation of, and respect for, wild horses, not just for a  
25 particular horse or two, nor in a general sense toward all wild horses, but rather, to  
26 certain horses comprising specified groups or families of wild horses who thrive and  
27 interact in a dynamic social order among themselves as particular herds in certain  
28 remote regions within public lands, and which Ms. Leigh photographed or documented

1 multiple times in the past and also recently, and with whom Ms. Leigh spent countless  
2 hours and days visiting, watching, appreciating and understanding while observing them  
3 in their environment, on rangelands comprising public lands managed by the  
4 Defendants.

5 31. That some wild horse groups or families within herds, with whom Ms.  
6 Leigh observed on multiple occasions in the past and for whom Ms. Leigh gained deep  
7 appreciation and respect over time while she observed them in their rangeland  
8 environment living, growing, thriving, surviving, traveling and interacting in dynamic  
9 social order, are or were, residing within the Triple B Complex and subject to the  
10 Defendants' continuing Triple B Complex roundup efforts.

11 32. Ms. Leigh witnessed first-hand, the handling of wild horses during the  
12 Triple B Complex roundup and also at the Antelope Complex roundup (occurring  
13 January / February 2011) located adjacent to the same geographical region as Triple B,  
14 of a number of the very horses who were part of those groups or families of wild horses  
15 for whom Ms. Leigh gained deep appreciation and respect over time as the result of her  
16 efforts to document and observe them in their natural habitat.

17 33. Ms. Leigh's observations include but are not limited to the following acts:

- 18 a. on or about January 31, 2011 and again on or about February 6, 2011,  
19 the contractor at Antelope Complex roundup ("Antelope" or "Antelope  
20 roundup"), flying its helicopter dangerously close to wild horses who  
21 appeared to have found difficulty moving because they were noted to be  
22 exhausted in having been driven miles by the helicopter; and where the  
23 helicopter either came into contact or caused near contact with at least  
24 one wild horse on each of those dates;
- 25 b. In August, and in particular August 11, 2011 at Triple B Complex roundup,  
26 observing the same contractor and helicopter pilot make contact with an  
27 exhausted horse with the skid of a flying helicopter, repeatedly operating  
28 its helicopter dangerously close to individual wild horses on multiple

1 occasions, unnecessarily chasing wild horses in the wrong direction from  
2 traps, repeatedly fracturing family bands of horses that a seasoned and  
3 proficient helicopter pilot would otherwise avoid, repeatedly chasing  
4 horses over miles of terrain unnecessarily, depriving captured horses of  
5 sufficient amounts of water, driving young, unweaned foals miles beyond  
6 which is healthy for the horse, causing unnecessary injury, causing  
7 unweaned foals to be orphaned, causing unnecessary injuries to those  
8 horses targeted for capture from running them down in the heat of the  
9 desert, causing pregnant mares to be run in the heat of the desert for  
10 miles, and not utilizing sufficient dust control at trap sites.

11 That Ms. Leigh is informed and believes such conduct is unnecessary, is despicable  
12 and is inhumane toward the wild horses the Defendants seek to capture and remove  
13 from the range, which also includes some of the wild horses Ms. Leigh documented and  
14 photographed and with whom Ms. Leigh spent time on the range previously when  
15 respecting and appreciating their presence, their dynamics and social order, and their  
16 contribution to the aesthetics of the range.

17 34. That when Ms. Leigh observes the Defendants engage in the inhumane  
18 conduct described herein, toward wild horses the Defendants' contractor captures and  
19 removes, and in particular toward some of those very horses with whom Ms. Leigh had  
20 in the past, spent time in the range appreciating and respecting as described herein,  
21 that Ms. Leigh experiences shock, humiliation, grief, trepidation, anxiety, discomfort,  
22 nightmares, and a sense of moral degradation, helplessness, and personal defeat when  
23 observing the unnecessary, inhumane treatment of the very wild horses Ms. Leigh had  
24 come to appreciate and respect over time as averred herein.

25 35. On the prior occasion at the Antelope Complex where Ms. Leigh observed  
26 inhumane treatment by the Defendants' contractor occurring there in January and  
27 February 2011 at the Antelope Complex roundup conducted by the Defendants, Ms.  
28 Leigh reported the inhumane conduct she observed to both the BLM and to the local

1 Sheriff's department. The reported inhumane conduct involved pushing exhausted  
2 horses by 's operating a helicopter dangerously close to the horses. Ms. Leigh filmed  
3 the dangerous helicopter operation at Antelope and offered both the BLM and Sheriff's  
4 Dept. links to published material, of the video clips which documented her  
5 observations. The BLM also interviewed Ms. Leigh in investigating pilot conduct at the  
6 Antelope Complex roundup. That the incidents she witnessed and filmed at the  
7 Antelope Complex roundup earlier this year were substantially similar in nature and  
8 content to that of the conduct Ms. Leigh witnessed and videoed August 11, 2011 when  
9 a helicopter's skid, pushed (or came dangerously close to the horse, as the case may  
10 be determined by a trier of fact), a single exhausted horse away from a set trap at the  
11 Triple B Complex roundup (the subject of which involved issuance of a Temporary  
12 Restraining Order in this matter).

13 36. When attempting to report to the local Sheriff's office the Antelope  
14 roundup inhumane event, Sheriff's personnel indicated the matter was out of their  
15 jurisdiction and that they could not help; and they refused Ms. Leigh's effort to report.  
16 When attempting to report to the BLM the Antelope roundup inhumane events, Plaintiff  
17 is informed and believes the BLM conducted an internal investigation and determined  
18 the helicopter operation was being done in accordance with safe practices and/or  
19 humane practices, and/or that the horse(s) involved were the cause of the incidents but  
20 not the helicopter pilot; or, that the film did not clearly depict the incident at least to the  
21 satisfaction of BLM investigating personnel, sufficiently to cause reprimands or  
22 corrections to the work by the Defendants' chosen contractor ; that Ms. Leigh's  
23 impression was that the BLM personnel were more interested in taking possession of  
24 her computer (where original video footage and photographs of the Antelope Complex  
25 roundup incidents were stored), than having concern over the incidents themselves.

26 37. As a consequence of no corrective action having been taken at Antelope,  
27 despite Ms. Leigh's attempt at engaging authorities, to prevent a repeat of the  
28 inhumane issues having occurred there, Plaintiff is informed and believes she

1 witnesses the same or similar acts of inhumanity toward the wild horses being captured  
2 at the Triple B Complex roundup as she witnessed and recorded previously at the  
3 hands of the contractor who was the Defendants' contractor at Antelope; and that the  
4 only time Ms. Leigh is somewhat "believed" is when she records on video or via photos,  
5 inhumane incidents where by chance, she finds herself at suitable locations where the  
6 photo moment presents the opportunity to capture the inhumane event  
7 photographically; and even then, Ms. Leigh's photographic or video-graphic proof of  
8 incidences of inhumane conduct, are dismissed by the Defendants, or the Defendants  
9 contend the video images are not accurately portrayed, or that the images are  
10 deceiving, or that the video images are not clear enough to cause the Defendants to  
11 take corrective action.

12       38. As a consequence of no corrective action having been taken at Antelope  
13 to prevent a repeat of the inhumane issues having occurred there, despite her attempts  
14 at involving what appeared at the time to be appropriate official authorities, Ms. Leigh  
15 finds herself in the identical position at Triple B, without remedy or recourse, to stop  
16 further acts of inhumane conduct toward those wild horses at Triple B that are the  
17 target of the Defendants' roundup, just as it was at the Antelope Complex roundup  
18 previously. That the Plaintiff's only apparent avenue of relief is through assistance of  
19 this court with this suit, to halt further inhumane treatment of Triple B Complex wild  
20 horses including those particular family bands and groups of wild horses with whom Ms.  
21 Leigh has come to respect and appreciate as averred herein.

22       39. Understanding that she as but a mere citizen having no other recourse  
23 whatsoever to act when an agency who operates with broad discretion, contrary to laws  
24 and which such action or inaction causes her harm as averred herein, Plaintiff is  
25 compelled to bring the improper conduct to the attention of the courts, to ask for the  
26 court's help in this suit, to stop and enjoin further inhumane conduct toward the Triple B  
27 Complex wild horses, and to prevent her further perceptible harm.

28       40. Plaintiff is informed and believes she maintains a right to seek judicial

1 review of agency action (or lack of action) under the Administrative Procedure Act,  
2 which allows a party "suffering legal wrong because of agency action, or adversely  
3 affected or aggrieved by agency action" to seek judicial review. 5 U.S.C. § 702.

4 41. Plaintiff is informed and believes she has suffered and continues to suffer  
5 an invasion of a legally protected interest amounting to the harms as averred herein,  
6 caused when she is compelled time and time again, to watch the Defendants engage  
7 Triple B Complex wild horses (and at other roundups by the Defendants as well) in an  
8 inhumane manner contrary to laws and policies of the United States; that Ms. Leigh  
9 maintains a right to observe the *humane* removal of, at the bare minimum, those wild  
10 horses from public lands with which she has gained appreciation and for which she has  
11 gained respect, as averred herein.

12 42. Plaintiff is adversely affected and aggrieved where she suffers perceptible  
13 harm which is imminent and continuing when having repetitively been subjected to  
14 observations of overt displays of inhumane treatment toward Triple B Complex wild  
15 horses and where she is likely to incur the same conduct in the future, toward those  
16 certain wild horses with which she's gained appreciation and respect, during their  
17 removal from public lands; that the offending conduct is within the zone of interest  
18 contemplated by Congress which clearly calls for the *humane* removal of excess wild  
19 horses.

20 43. Plaintiff is informed and believes her perceptible harm is: concrete and  
21 particularized, and imminent, and not conjectural or hypothetical, that there is a causal  
22 connection between her perceptible harm and the conduct complained of, and that the  
23 continuing threat of such perceptible harm to her person would be redressed with the  
24 imposition of temporary, preliminary and permanent injunctive relief as requested  
25 herein.

26 44. Plaintiff is informed and believes her requested relief is traceable to the  
27 Defendants' practice of ignoring the expressed intent of Congress when Congress  
28 unanimously adopting the Wild Free-Roaming Horses and Burro Act 16 U.S.C. §1331

1 *et seq.*, where Congress unambiguously requires the Defendants to remove excess  
2 horses *humanely*. See, 16 USC § 1333 (b)(2)(iv)(B) (as amended in 1978). That the  
3 “humane” handling of free-roaming wild horses when removing their excess brethren, is  
4 part and parcel with the Wild Horse and Burro Act and is stated in mandatory, not  
5 permissive terms. 16 USC § 1333 (b)(2)(iv)(B). [See also, 16 U.S.C. § 1338a (the use  
6 of helicopters, “shall be in accordance with *humane* procedures . . . .”), 16 U.S.C.  
7 §1333(c)(calling for “humane conditions” by adopters), 1338(a)(3)(criminal penalty for  
8 “maliciously causes the death or harassment of any wild free-roaming horse or burro”)  
9 and 1338(a)(6) (willfully violates a regulation issued pursuant to the Wild Free-Roaming  
10 Horse and Burro Act)]. Plaintiff is informed and believes the Wild Free-Roaming Horse  
11 and Burro Act remains clear, cogent and unambiguous in regard to the mandatory  
12 *humane* handling of wild horses by the Defendants during their removal of excess  
13 horses.

14 45. That the definition of what the United States considers “humane” and  
15 also “inhumane” is specifically referenced at 43 CFR § 4700.0-5. Plaintiff is informed  
16 and believes the Defendants’ conduct as described and identified herein and elsewhere  
17 in support of her requested injunctive relief, is contrary to that considered humane as  
18 defined in 43 CFR §4700.0-5 and further, meets the definition of what would be  
19 considered inhumane as that term is likewise described in 43 CFR §4700.0-5; and  
20 further, such conduct by the Defendants is against all reasonable notions of what  
21 groups of reasonable people would consider as being “humane,” and such conduct is  
22 further inhumane as that term is contemplated within the laws of the State of Nevada.

23 46. Plaintiff has no other avenue of recourse but to seek injunctive relief in the  
24 courts when the Defendants repeatedly choose not to follow and enforce the laws of the  
25 United States with regard to the humane removal of excess wild horses from public  
26 lands, and which conduct causes Plaintiff a perceptible harm as averred herein.

## 27 DEFENDANTS

28 47. The named Defendants collectively comprise the governing authorities of

1 the United States of America responsible for managing certain public lands in the  
2 United States. The U.S. Department of Interior is a cabinet-level agency headed by Ms.  
3 Sally Jewell who replaces Ken Salazar. The BLM is a U.S. Department of Interior  
4 “bureau” headed temporarily by Mike Pool, with Ms. Amy Lueders the BLM’s Nevada  
5 State Director. The individuals currently, like those they replace, are sued only in their  
6 official capacity as those most senior in decision-making processes and responsible for  
7 their respective governing agency / bureau / department. Plaintiff is informed and  
8 believes the BLM manages 47 million acres of public land in Nevada, accounting for  
9 more than 80 percent of Nevada’s land mass.

10 **GENERAL ALLEGATIONS**

11 48. Plaintiff is informed and believes the Triple B HMA (“HMA” references  
12 “herd management area”), Maverick-Medicine HMA, Antelope Valley HMA, and Cherry  
13 Springs “Wild Horse Territory” (designated as such by U.S. Forest Service) (Cherry  
14 Springs “WHT”) are located approximately 30 miles northwest of Ely, Nevada, and 70  
15 miles southeast of Elko, Nevada, within White Pine and Elko Counties. These comprise  
16 the Triple B Complex.

17 49. The Triple B Complex comprises approximately 2,615 square miles of  
18 public lands. All wild horses therein are managed by BLM.

19 50. Plaintiff seeks to enjoin, not the roundups themselves, but the inhumane  
20 conduct occurring at these roundups such that issues of ongoing, repetitive inhumane  
21 treatment can be addressed at a time when doing so would no longer impede the  
22 BLM’s own action and interpretation of their multiple use mandate.

23 51. In 1971 the Wild Horse and Burro Act passed unanimously in both houses  
24 of Congress and was signed into law December 1971 by President Nixon. The  
25 Congressional findings and declaration of policy of the Act are as follows:

26 Congress finds and declares that wild free-roaming horses  
27 and burros are living symbols of the historic and pioneer  
28 spirit of the West; that they contribute to the diversity of life

1 forms within the Nation and enrich the lives of the American  
2 people; and that these horses and burros are fast  
3 disappearing from the American scene. It is the policy of  
4 Congress that wild free-roaming horses and burros shall be  
5 protected from capture, branding, harassment, or death; and  
6 to accomplish this they are to be considered in the area  
7 where presently found, as an integral part of the natural  
8 system of the public lands.

9 The Wild Free-Roaming Horses and Burro Act of 1971,  
10 P.L.92-195, 16 U.S.C. 1331.

11 52. Congress defines the powers and duties of the Secretary of the Interior,  
12 relative to the management of wild horses on public lands, in Section 1333 of the Act.  
13 That Section defines by mandatory language the Secretary's obligation to *humanely*  
14 capture certain wild horses. Section 1333 provides in relevant part, that the removal of  
15 excess horses from public lands,

16 [s]hall be taken, in the following order and priority until all  
17 excess animals have been removed so as to restore a  
18 thriving natural ecological balance to the range, and protect  
19 the range from the deterioration associated with  
20 overpopulation:

21 \* \* \*

22 (B) ***The Secretary shall cause such number of***  
23 ***additional excess wild free-roaming horses and***  
24 ***burros to be humanely captured*** and removed for  
25 private maintenance and care for which he  
26 determines an adoption demand exists by qualified  
27 individuals, and for which he determines he can  
28 ***assure humane treatment*** and care (including

1 proper transportation, feeding, and handling) . . . .

2 16 USC 1333 (b)(2)(iv)(B) (Emphasis Added).

3 53. Plaintiff was an observer no less than 14 days at the Triple B Complex  
4 roundups. Although her access is considerably restricted, she nevertheless was able to  
5 observe several examples of inhumane treatment toward captured wild horses. Three  
6 examples of several incidents follow:

- 7 a. The helicopter pilot repeatedly flew to within ten feet of animals  
8 including making contact with an exhausted horse with the skids of  
9 the helicopter. The video of this event shows conduct so disturbing  
10 that YouTube placed an age appropriate restriction on the clip;
- 11 b. Horses in temporary holding were repeatedly denied sufficient  
12 quantities of water, day after day;
- 13 c. Horses in temporary holding were repeatedly denied sufficient  
14 quantities of feed, day after day.

15 54. The BLM's own EA for Triple B Complex provides that their action in  
16 removing horses from the Complex must be, "consistent with all applicable regulations  
17 at Title 43 Code of Federal Regulations (CFR) 4700 and policies." BLM's EA, p. 7.  
18 See Exhibit 9 to accompanying injunction motions.

19 55. 43 CFR § 4700.0-5 provides in relevant part, as follows:

- 20 (e) Humane treatment means handling compatible with animal  
21 husbandry practices accepted in the veterinary community, without  
22 causing unnecessary stress or suffering to a wild horse or burro.
- 23 (f) Inhumane treatment means any intentional or negligent action or  
24 failure to act that causes stress, injury, or undue suffering to a wild  
25 horse or burro and is not compatible with animal husbandry  
26 practices accepted in the veterinary community.

27 56. 43 CFR § 4740.1 provides in relevant part, the following:

28 [a]ircraft may be used by the authorized officer

1 in all phases of the administration of the Act, .  
2 . . . All such use shall be conducted in a  
3 humane manner.

4 43 CFR § 4740.1.

5 57. 16 U.S.C. § 1338a likewise provides in relevant part as follows:

6 In administering this Act [16 USCS §§ 1331 et  
7 seq.], the Secretary may use or contract for the  
8 use of **helicopters**. . . . Such use shall be  
9 undertaken only after a public hearing and  
10 under the direct supervision of the Secretary or  
11 of a duly authorized official or employee of the  
12 Department. . . . **Such use shall be in**  
13 **accordance with humane procedures**. . . .

14 16 U.S.C. § 1338a.

15 58 In one example, observers clearly saw the helicopter repeatedly flying  
16 dangerously close to horses being rounded up, day after day, roundup after roundup, to  
17 within ten feet of animals who had difficulty moving further because of exhaustion from  
18 having been driven miles. In one example, a horse was pushed by the skid of the  
19 helicopter. Plaintiff is informed and believes this is not humane treatment. See Exhibit  
20 1 to accompanying injunction motions. This was captured on film and published on  
21 YouTube. The content however, is so disturbing that YouTube “age restricted” this  
22 video clip.

23 59. In one example, observers saw a single exhausted foal, no more than  
24 three months old, who broke away from his horse family before being pushed into a  
25 trap. The foal was then pursued by the helicopter and pushed further away from the  
26 trap and from ropers helping with the gather. The helicopter came within ten feet of this  
27 young horse. Plaintiff is informed and believes this is not humane treatment. See  
28 Exhibit 1 to accompanying injunction motions.

1           60. Plaintiff has in the past, observed the following: every day of the Triple B  
2 roundup that she observed, the dust from the rotor wash was significant to the point of  
3 obscuring visibility not only of the trap but of the helicopter; and on only one day after  
4 Plaintiff's photos of rotor wash dust at the trap were published, did Ms. Leigh see a  
5 water truck water down the ground at the trap area. See Exhibit 1 to accompanying  
6 injunction motions. Others observed similarly. See Exhibit 2 to accompanying  
7 injunction motions. Plaintiff is informed and believes this is not humane treatment.

8           61. The defendants had in the past at Triple B during prior roundups,  
9 repeatedly failed, day after day, roundup after roundup, to provide captured horses a  
10 sufficient supply of water while horses are held in the BLM's temporary holding. One  
11 example is that Plaintiff documented a mare and foal holding pen, holding 15 mares  
12 and their foals (which should total 30 horses), with one water trough the BLM identified  
13 as having a 50 gallon capacity. Plaintiff is informed and believes the water trough holds  
14 up to 70 gallons. Plaintiff is informed and believes the water trough is filled twice each  
15 day, once in the morning and once in the evening. Plaintiff observed the water trough  
16 empty most every day. See Exhibit 1 to accompanying injunction motions. When  
17 raising the "lack of water" issue with BLM personnel, Plaintiff was advised, by BLM's  
18 Alan Shepard, that the horses, "sometimes drain them." See Exhibit 1 to plaintiff's prior  
19 injunction motions. Plaintiff is informed and believes the defendants in the past  
20 repeatedly failed to supply captured horses a sufficient supply of both water and feed  
21 as required by the BLM's EA and by the contract. See Exhibit 1 to plaintiff's prior  
22 injunction motions. On the days when noticing lack of water, Ms. Leigh noted  
23 temperatures as high as 96 degrees. Plaintiff is informed and believes this is not  
24 humane treatment.

25           62. In another example, a stud pen containing as many as 47 animals, had  
26 two tubs which the BLM identified as having a capacity of 50 gallons. Even if the water  
27 troughs were 70 gallon troughs, the BLM and contractor repeatedly failed to supply  
28 these captured horses a sufficient supply of both water and feed as required by the

1 BLM's EA and contract. See Exhibit 1 to plaintiff's prior injunction motions. Plaintiff is  
2 informed and believes this is not humane treatment.

3 63. At the trap location, unweaned foals can remain in a holding pen as long  
4 as eight hours without their mothers. This condition was noted by observers. The drive  
5 to the holding facility thereafter, can take as long as two hours before these foals are  
6 processed and finally reunited with their mothers. During this potential ten hour time  
7 frame, foals are denied any water or any nourishment from their mothers. Plaintiff is  
8 informed and believes this is not humane treatment.

9 64. Plaintiff and other observers note several other instances of conduct  
10 which Plaintiff is informed and believes, demonstrates inhumane treatment toward the  
11 captured wild horses. These witness could be available, if necessary, for hearing.

12 65. Where such instance of conduct were observed while BLM is nearby or  
13 present, that with the newly announced bait trap operation, plaintiff may reasonably  
14 expect that such conduct would repeat where the BLM's own COR employees,  
15 responsible for assuring the humane process, would not be present 75% of the time.  
16 And, where the public and press including plaintiff would be precluded from observing,  
17 no one is present to enforce or require the humane treatment of wild horses as they are  
18 captured, handled and removed from NON-OBSERVED BAIT TRAPPING.

19 **FIRST CLAIM FOR RELIEF**  
20 **(Triple B)**

21 66. Plaintiff incorporates by reference the averments contained in Paragraphs  
22 1 through 65 of the Complaint as though the same were fully set forth herein.

23 67. Plaintiff is informed and believes the Defendants' roundup methods as  
24 occurring in the past and anticipated in the future at Triple B Complex are and would be  
25 "inhumane" and contrary to the clear intent of Congress when passing The Wild Free-  
26 Roaming Horses and Burro Act of 1971, 16 U.S.C. 1331 *et seq.*, which governs the  
27 conduct of such activities on BLM-managed lands; that the methods employed in  
28 handling wild horses removed from Triple B Complex are contrary to, and deviate from,

1 the policies of the United States, that they are contrary to, and deviate from the laws of  
2 the United States and the Code of Federal Regulations, and particularly contrary to the  
3 following provisions:

- 4 a. 16 USC § 1333 (b)(2)(iv)(B);
- 5 b. 16 U.S.C. § 1338a;
- 6 c. 43 CFR § 4740.1;
- 7 d. 43 CFR § 4700.0-5(e), (f).

8 68. That the roundup methods at Triple B Complex contravene the  
9 Defendants' own stated, publicized policies with respect to the *humane* management  
10 and care of wild horses removed during such roundups.

11 69. That the Defendants maintain authority to enforce the *humane* laws of the  
12 United States, and they maintain authority to correct or to modify or to stop the  
13 contractor's or other third party's work in this very instance, to cause compliance with  
14 such humane laws, policies and regulations; that the failure to enforce such laws and  
15 provisions and the failure to implement a method of observation to ensure humane  
16 care, is an abuse of discretion that causes Plaintiff's harm as averred herein.

17 70. That the Defendants' failure and/or refusal to act to enforce the humane  
18 laws of the United States as indicated herein, is in fact, agency action defined at 5  
19 U.S.C. § 551(13) (a failure to act), that is arbitrary, capricious, and an abuse of  
20 discretion, or otherwise not in accordance with law, and/or is agency action  
21 implemented without observance of procedure required by law, as is contemplated in  
22 the Administrative Procedures Act, 5 U.S.C. §§ 706(2)(A) and/or (D). And such failure  
23 to act causes Plaintiff's harm as averred herein.

24 71. Plaintiff is informed and believes she maintains standing under 5 U.S.C. §  
25 702 of the Administrative Procedures Act to seek judicial review of the Defendants'  
26 action (or failure to act) where she has suffered and would continue to suffer actual  
27 injury or injury in fact that is within the zone of interests protected by the relevant federal  
28 statutes indicated herein above which Defendants fail and refuse to enforce.

1           72. Plaintiffs' actual injury, injury in fact and harm includes but is not limited to  
2 the following:

- 3           a. Harm to her personal aesthetic interests when she compares, in her  
4 mind's eye, the following:
- 5           (i) the specified groups or families of wild horses that Ms. Leigh  
6 observed, studied and photographed as roaming free within the  
7 Triple B Complex, who before capture, thrived and interacted  
8 peacefully in a dynamic yet structured social order within the Triple  
9 B Complex, and which Ms. Leigh photographed or documented  
10 multiple times in the past and also recently, and with whom Ms.  
11 Leigh spent countless hours and days visiting, watching,  
12 appreciating and understanding while observing them in their  
13 environment, and with whom Ms. Leigh gained deep respect and  
14 appreciation;  
15 compared with,
  - 16           (ii) the observation by Plaintiff, of the brutality of the inhumane method  
17 the Defendants systematically employ when capturing, handling  
18 and removing members of the same specified groups or families of  
19 wild horses that Ms. Leigh came to appreciate and respect as the  
20 result of the time she spent with these specific families and groups  
21 of horses within the Triple B Complex previously.

22           As one familiar with horses, Ms. Leigh does not have a reasonable or  
23 valid explanation to herself, for the dichotomy between having personally  
24 viewed in one aesthetic sense, the particular wild horses she viewed and  
25 studied when roaming free and peacefully in their native habitat, and the  
26 aftermath she observed where these same groups and families of wild  
27 horses are subjected to undeserved inhumane treatment by the very  
28 agency left in charge of their safe keeping. That Ms. Leigh's personal,

1 internal lack of validation or a reasonable explanation for such inhumane  
2 treatment toward the very groups of wild horses Ms. Leigh came to  
3 understand, to appreciate and to respect, results in a gnawing,  
4 depressing, confusing and sobering look into the dark side of humanity  
5 that disturbs the senses and destroys all notions of aesthetic appreciation  
6 the Plaintiff otherwise enjoyed previously when having observed and  
7 photographed these same wild horse families at the Triple B Complex  
8 when roaming free in peaceful, dynamic social order.

9 b. Harm to her personal well being where she is physically sickened in  
10 having observed repetitive inhumane acts towards wild horses, including  
11 many of those who belong to the specified groups or families of wild  
12 horses with whom Ms. Leigh became thoroughly familiar and which she  
13 identified previously as thriving and interacting peacefully in a dynamic  
14 social order within the Triple B Complex before the roundups there,  
15 commence. Ms. Leigh suffers harm to her personal well being and to her  
16 mind's soul amounting to anxiety, trepidation, grief, chagrin, and a shock  
17 to the senses, which she must relive in both her conscious mind and also  
18 at an unconscious level when experiencing nightmares, from having  
19 personally witnessed the brutal and inhumane efforts employed by the  
20 Defendants' contractor toward the very groups and families of wild horses  
21 Ms. Leigh came to enjoy, appreciate and respect as she avers herein;

22 c. Harm to her personal well being where the Defendants conduct causes  
23 Ms. Leigh to internally question the ethics and morality of the governing  
24 agency assigned to protect these wild horses, and the unfairness and  
25 undeservedness of the conduct toward the specific wild horses she  
26 identifies herein, which in her mind, creates conflict where the Defendants'  
27 wrongful conduct is antithetical to her personal notions of a caring, moral,  
28 decent, civilized society, whereas the governing agency in charge,

1 Defendants herein, defends, justifies and normalizes the conduct with  
2 explanations that portray the same conduct as something that is  
3 reasonable, even humane. That the dichotomy of these diverging views  
4 of the same conduct, is personally disturbing and frightening to the soul of  
5 her mind, and damaging to her spirit, and causes her depression.

6 d. Harm to her vocation, to her reputation and also, economic harm. Ms.  
7 Leigh is an honest photojournalist seeking to document and educate for  
8 responsible change, the plight of the survival of America's wild horses as  
9 they interact with government officials in charge of their safety and well  
10 being. Ms. Leigh receives payment for some of her photojournalistic  
11 work. When however, Ms. Leigh is compelled to publish to the public,  
12 photos and videos of the Defendants' conduct which to some like  
13 *YouTube*, is so distressful and offensive that the organization (*YouTube*  
14 being the example) finds it necessary to "age restrict" its viewing audience  
15 who might watch Ms. Leigh's videos or photographs, because the video  
16 clips portray acts of animal cruelty, Ms. Leigh, although merely recording  
17 and conveying the truth of the events and of what transpired through her  
18 camera, becomes identified as a sensationalist or as someone who  
19 enjoys publishing acts of animal cruelty. Where Ms. Leigh becomes  
20 "pegged" with such a reputation merely because she publishes the raw  
21 truth via video and photos of that in which she catches the Defendants  
22 engaged, causes her detrimental harm to her vocation and to her  
23 reputation for which an action at law is not available.

24 Plaintiff is informed and believes that these personal harms establish the requisite  
25 concrete and particularized injury to her personal interests.

26 73. Plaintiff planned to observe the Defendants' roundup operations at Triple  
27 B Complex in the future for bait trap operations. Plaintiff accordingly could reasonably  
28 expect that she would continue to suffer the same harm as referenced herein, at

1 remaining Triple B Complex roundups and at other roundups elsewhere in Nevada  
2 should the defendants allow her access; or, her preclusion of access violates her right  
3 of access to observe government activity in contravention of the First Amendment as  
4 averred herein.

5 74. As of this writing, Plaintiff is informed and believes the Defendants have  
6 not engaged in any corrective efforts to ensure such inhumane conduct is not repeated  
7 at future roundups at Triple B Complex or at Jackson Mountain.

8 75. There remains a real and immediate threat that the injuries to Ms. Leigh's  
9 personal interests as herein described would repeat and reoccur where she would be  
10 present at remaining Triple B Complex roundups conducted by the Defendants'  
11 contractor and at other roundups in Nevada and elsewhere conducted by the  
12 Defendants.

13 76. A ruling in Plaintiff's favor would likely address and resolve the Plaintiffs'  
14 harm that would likely occur in the future without assistance of the court.

15 77. That the Defendants' arbitrary and capricious action, its abuse of  
16 discretion, its conduct not in accordance with law, and its action implemented without  
17 observance of procedure required by law, relevant to the Defendants' refusal to enforce  
18 humane laws and policies of the United States during the Triple B Complex roundup, is  
19 the direct and proximate cause of the Plaintiff's harm as described herein

20 78. The harms to Ms. Leigh as are more particularly described herein are  
21 irreparable. The Plaintiff's diminished opportunity to view wild horses in the wild and to  
22 then observe them become inhumanely removed because the Defendants choose not  
23 to intervene to cause the *humane* removal of excess horses, additionally disturbs the  
24 senses of reasonable people including Ms. Leigh, and causes further irreparable harm  
25 to Ms. Leigh. Such inhumane conduct is intolerable, it is shocking to the conscience of  
26 reasonable persons including Ms. Leigh, and such inhumane conduct is unlawful and  
27 unnecessary. There is no measure of damages and no action at law available to Ms.  
28 Leigh which can account for the personal, irreparable loss to Ms. Leigh as heretofore

1 mentioned. Ms. Leigh has no other remedy available to her in seeking a remedy to stop  
2 the harmful conduct. Without the help of this court, she finds herself without remedy  
3 and without justice.

4 79. For the reasons outlined herein, the Defendants should be preliminarily  
5 and permanently enjoined from engaging in conduct considered inhumane as is  
6 previously defined herein, during the Defendants' completion of the Triple B Complex  
7 roundup; and for the same reasons, the Defendants should be preliminarily and  
8 permanently enjoined from engaging in conduct considered inhumane as is previously  
9 defined herein, during the Defendants' completion of those remaining roundups within  
10 Nevada where the Defendants' contractor is scheduled or contemplated to be used.

11 **SECOND CLAIM FOR RELIEF**  
12 **(Jackson Roundup)**

13 80. Plaintiff incorporates herein by reference the averments contained in  
14 Paragraphs 1 through 79 of the Complaint as though the same were fully set forth  
15 herein.

16 81. For the same reasons as are discussed in the First Claim for Relief,  
17 Plaintiff is informed and believes the Defendants' roundup methods at Triple B Complex  
18 are "inhumane" and contrary to the clear intent of Congress when passing The Wild  
19 Free-Roaming Horses and Burro Act of 1971, 16 U.S.C. 1331 *et seq.*, which governs  
20 the conduct of such activities on BLM-managed lands; that the methods employed in  
21 handling wild horses removed from Triple B Complex are contrary to, and deviate from,  
22 the policies of the United States, that they are contrary to, and deviate from the laws of  
23 the United States and the Code of Federal Regulations, and particularly contrary to the  
24 following provisions:

- 25 a. 16 USC § 1333 (b)(2)(iv)(B);
- 26 b. 16 U.S.C. § 1338a;
- 27 c. 43 CFR § 4740.1;
- 28 d. 43 CFR § 4700.0-5(e), (f);

1           82. Plaintiff is informed and believes the conduct of the Jackson Roundup is  
2 contrary to the defendants' own governing policies and procedures when previously  
3 engaging in helicopter roundups during foaling season, and where they now engage in  
4 bait trapping during foaling season where, although not specifically prohibited is  
5 nevertheless inhumane where baby horses are prone to slipping under panels and  
6 becoming injured, while such bait traps are unmanned, unobserved and afar from the  
7 public's eye. That the Defendants' action is accordingly, arbitrary and capricious, and  
8 results in an abuse of discretion, or otherwise involves activity not in accordance with  
9 law, and that the plan is implemented without observance of procedure required by law.

10           83. As of this writing, Plaintiff is informed and believes the Defendants have  
11 not engaged (nor have they expressed an intent to engage) in any corrective efforts to  
12 ensure compliance with the defendants' own policies and procedures as it relates to  
13 rounding up wild horses by helicopters during foaling season.

14           84. There remains a real and immediate threat that the injuries to Ms. Leigh's  
15 personal interests to which she is prepared to testify, would repeat and reoccur where  
16 she would be present at remaining Jackson Roundup.

17           85. The denying of Plaintiff from having reasonable access to view the  
18 defendants' activities at the Jackson roundup and also with following handling of wild  
19 horses, contravenes rights enumerated in the First Amendment to the U.S. Constitution  
20 as an impermissible infringement on the freedom of the press to report matters  
21 involving government actions which have a significant and compelling public interest;  
22 that the Defendants are not able to demonstrate an interest, compelling or otherwise,  
23 that could be achieved with the least restrictive means necessary to achieve its  
24 purported interest when precluding or unreasonably restricting Plaintiff from observing  
25 the defendants' conduct in the handling of wild horses. See, *Leigh v. Salazar*, 677 F.3d  
26 892 (9<sup>th</sup> Cir. 2012). That the public has maintained a longstanding history of accessing  
27 and viewing wild horses on public lands, including access to observe roundup and  
28 related activities. That the Defendants' action in precluding Plaintiff's access is also,

1 arbitrary and capricious, and results in an abuse of discretion, or otherwise involves  
2 activity not in accordance with law, and that the plan is implemented without  
3 observance of procedure required by law.

4 **THIRD CLAIM FOR RELIEF**

5 86. Plaintiff incorporates herein by reference the averments contained in  
6 Paragraphs 1 through 85 of the Complaint as though the same were fully set forth  
7 herein.

8 87. Plaintiff is informed and believes the methods to be employed to roundup  
9 wild horses at Triple B and which also have occurred previously, are intended to, and in  
10 fact violate plaintiff's First Amendment constitutional right to observe government  
11 activity; that open government has been a hallmark of America's democracy since its  
12 founding;

13 88. The First Amendment prohibits any law "abridging the freedom of speech,  
14 or of the press [.]" U.S. Const. amend. I. Although the First Amendment does not  
15 enumerate special rights for observing government activities, "[t]he Supreme Court has  
16 recognized that newsgathering is an activity protected by the First Amendment." *United*  
17 *States v. Sherman*, 581 F.2d 1358, 1361 (9<sup>th</sup> Cir.1978); see *Branzburg v. Hayes*, 408  
18 U.S. 665, 681, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972) ("[W]ithout some protection for  
19 seeking out the news, freedom of the press could be eviscerated."); and plaintiff is a  
20 newsgatherer who reports her observations of the management of wild horses to the  
21 public; and as a member of the public and the press, plaintiff is informed and believes  
22 she maintains a qualified right of access to observe and report government activities  
23 which is unconstitutionally restricted by the defendants past and also, intended  
24 operations at Triple B and at Jackson Mountain.

25 89. Plaintiff is informed and believes wild horse roundups in Triple B and at  
26 Jackson have historically been open to the press and general public even long before  
27 the Wild Horse and Burro Act was passed into law. Plaintiff is informed and believes  
28 public access plays a significant positive role in the proper and reasonable functioning

1 of wild horse management and roundups on and around public lands; that transparency  
2 with the public (or the lack thereof) in this very process was considered key in findings a  
3 recent study completed by a 14 member panel of experts assembled by the National  
4 Science Academy's National Research Council, which cited "transparency" no less than  
5 46 times. An electronic copy is available at the following internet address:  
6 [http://www.nap.edu/catalog.php?record\\_id=13511](http://www.nap.edu/catalog.php?record_id=13511). Plaintiff asks that the court take  
7 judicial notice of this most important study for this purpose.

8 90. Plaintiff is informed and believes the blanket preclusion and denial of  
9 access to the public and to plaintiff during the bait trap operations intended by the  
10 defendants, unconstitutionally restricts plaintiffs' right of access in contravention of First  
11 Amendment constitutional principals. As a member of the press, the defendants' denial  
12 of Plaintiff to access to observe and report what occurs relative to the defendants work  
13 while handling or managing public resources, wild horses in this instance, particularly  
14 where access has not been denied historically, unreasonably and unconstitutionally  
15 restricts plaintiffs' right of access as a public person and also as a member of the press,  
16 in contravention of First Amendment constitutional principles; and which effectively  
17 prevents her from adequately photographing and using same to report to this court and  
18 to the public, the conduct of the defendants when engaged in such activities, and the  
19 resulting inhumane consequences of such activities. Plaintiff is informed and believes  
20 she is entitled, as credentialed press and also as a member of the public, to observe  
21 and report the government's activities as it relates to the roundups anticipated and  
22 those occurring previously to which she was denied, that such activity is newsworthy;  
23 that Plaintiff maintains a constitutional right to gather such news; that the rounding up of  
24 wild horses from public lands by the defendants garners passionate public interest; that  
25 as a consequence of the defendants' method of precluding the public from observing  
26 and from having access to observe the defendants' activities, plaintiff is precluded from  
27 obtaining the very proof that may be necessary via photographs and video, to report  
28 such inhumane conduct and consequences of the defendants' activities.



- 1 Mountains and also locally in the Carson City District, to observe locations where  
2 bait trapping is to occur in Triple B and Jackson Mountain;
- 3 5. A mandatory or prohibitive injunction issue preliminarily and permanently  
4 precluding the defendants from interfering with the plaintiffs constitutional right of  
5 access to observe and report government activity during roundups at Triple B  
6 and Jackson Mountain whether by bait trapping and precluding the public there,  
7 or by other means meant to remove her observation of the government's  
8 activities;
- 9 6. A mandatory or prohibitive injunction issue preliminarily and permanently  
10 mandating a continuous supply of water to wild horses captured from Triple B  
11 Complex and Jackson Mountain held at temporary holding corrals by the  
12 Defendants, in minimum sums of 10 gallons of water per horse per day.
- 13 7. A mandatory or prohibitive injunction issue preliminarily and permanently  
14 mandating a supply of feed for horses in minimum sums required by the  
15 Defendants' own EA for the Triple B Complex.
- 16 8. A mandatory or prohibitive injunction issue preliminarily and permanently  
17 mandating that the Defendants use sufficient sums of water to abate dust from  
18 helicopter rotor wash (where helicopters may be employed), at the wild horse  
19 trap sites and at holding pens.
- 20 9. A mandatory or prohibitive injunction issue preliminarily and permanently  
21 mandating that the Defendants be required to man and observe bait traps while  
22 foals are likely to be trapped or displaced from family, whether during foaling  
23 season or not;
- 24 10. A declaration that the Defendants' action and intended processes and  
25 procedures at Triple B and at Jackson Mountain are arbitrary and capricious, and  
26 results in an abuse of discretion, or otherwise involves activity not in accordance  
27 with law, and that the Defendants' action is without observance of procedure  
28 required by law.

- 1 11. A declaration that the Defendants' current plan as currently contemplated  
2 violates laws of the United States, in particular the following:
- 3 a. 16 USC § 1333 (b)(2)(iv)(B);
  - 4 b. 16 U.S.C. § 1338a;
  - 5 c. 43 CFR § 4740.1;
  - 6 d. 43 CFR § 4700.0-5(e), (f).
- 7 12. A declaration that plaintiff maintains standing to bring both injunctive relief and  
8 also declarative relief as averred herein, that she suffers irreparable harm, that  
9 the issuance of such relief is in the public's interest.
- 10 13. A declaration that Plaintiff has no speedy or adequate remedy at law and that  
11 Plaintiff has and will suffer irreparable harm from the manner in which the  
12 roundup is implemented;
- 13 14. Plaintiff seeks a declaration that the defendants' conduct in depriving Plaintiff  
14 reasonable access to observe the defendants' activities so as to report to the  
15 public, contravenes and violates her rights enumerated in the First Amendment  
16 to the U.S. Constitution.
- 17 15. That the public has maintained a longstanding history of accessing and viewing  
18 wild horses on public lands, including access to observe roundup and related  
19 activities. That the Defendants' action in precluding Plaintiff's access is also,  
20 arbitrary and capricious, and results in an abuse of discretion, or otherwise  
21 involves activity not in accordance with law, and that the plan is implemented  
22 without observance of procedure required by law.
- 23 16. Plaintiff seeks a declaration that the Defendants' action as currently  
24 implemented, results in inhumane treatment toward horses, that the Defendants'  
25 action is accordingly, arbitrary and capricious, and results in an abuse of  
26 discretion, or otherwise involves activity not in accordance with law, and that the  
27 plan is implemented without observance of procedure required by law.
- 28 17. That the Court award Plaintiff:

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- a. damages according to proof;
- a. her costs of suit and expenses including expert witness and consultant fees and reasonable attorney’s fees; and
- b. such other and further relief as the Court deems appropriate under the circumstance.

Dated June 11, 2013

LAW OFFICE OF GORDON M. COWAN

s/

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Gordon M. Cowan Esq. (SBN 1781)  
Attorney for Plaintiff LAURA LEIGH

**DEMAND FOR JURY**

Plaintiff LAURA LEIGH hereby requests and demands a trial by jury of any and all matters to which the right of jury trial attaches in the above-captioned matter.

Dated June 11, 2013

LAW OFFICE OF GORDON M. COWAN

s/

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Gordon M. Cowan Esq. (SBN 1781)  
Attorney for Plaintiff LAURA LEIGH

**Exhibits**

- Exhibit 1 - SOP Appendix to the newly issued EA
- Exhibit 2 - Public comment Appendix to the newly issued EA