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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. 3:13-cv-0006-MMD-VPC**

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.

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**PROPOSED**

18  
19 **SECOND AMENDED AND SUPPLEMENTAL COMPLAINT FOR**  
20 **DECLARATORY AND INJUNCTIVE RELIEF**  
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**SECOND AMENDED AND SUPPLEMENTAL COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff LAURA LEIGH, avers as follows:

**AMENDED AND SUPPLEMENTAL GENERAL AVERMENTS**

1. Plaintiff seeks to halt further inhumane conduct of the type demonstrated at the Bureau of Land Management's ("BLM") Owyhee Complex Wild Horse Gather ("Owyhee Complex roundups") in Humboldt and Elko Counties, Nevada, occurring this past January 2013, and which roundups are expected to continue in the same geographical region, Owyhee Complex, as is outlined and authorized under the defendants' ten-year Environmental Assessment ("EA"). See Exhibit 1, Dkt. 52-2.

2. Plaintiff seeks to halt a newly crafted bait / water trap method of rounding

1 up wild horses where the bait / water trap method as would be used in this region, the  
2 Owyhee Complex area, likely causes unnecessary risk of harm and risk of probable  
3 injury to captured wild horses where the captures remain unmonitored the majority of  
4 the time, even by those responsible for the welfare and safety of those horses, who are  
5 the BLM's COR employees. This planned operation is within the purview of the ten-year  
6 EA governing removal of wild horses in the Owyhee Complex area.

7 3. Plaintiff seeks to halt an intended preclusion of her constitutional, First  
8 Amendment right of access to observe and report to the public the activities of the  
9 roundups in Owyhee Complex. Plaintiff challenges two methods of her preclusion from  
10 observing, as follows:

- 11 a. historical limitations occurring previously and which are likely to repeat in  
12 the future at helicopter roundups and their related activities at Owyhee  
13 Complex; and
- 14 b. the newly announced bait / water trap operation at Owyhee Complex which  
15 precludes and forbids all public or press observation of the defendants'  
16 bait / water trap operations, and which causes these particular  
17 government operations to be conducted entirely in secrecy, afar from  
18 public scrutiny contrary to First Amendment press access notions.

19 4. Plaintiff challenges the methods by which the defendants determine  
20 "excess" horses. Plaintiff challenges the method used to determine borders of Herd  
21 Management Areas ("HMAs") and upon which the defendants rely to justify removal of  
22 purported "excess" wild horses under the ten-year EA.

23 5. Plaintiff challenges emergency roundups based on so called "drought  
24 emergencies," the one most recently announced as requiring the bait / water trap  
25 operation method, intended to commence August 3, 2013 at the Snowstorm HMA  
26 within the Owyhee Complex area but was subsequently cancelled by the defendants  
27 after the plaintiff filed her Motion for Temporary Restraining Order.

28 6. The Owyhee Complex roundups described above are phased-in through

1 the ten-year EA which remains in progress commencing November 26, 2012 through  
2 the tenth anniversary date of November 25, 2022, and includes five (5) separate Herd  
3 Management Areas ("HMA"s) known as Little Humboldt, Little Owyhee, Owyhee, Rock  
4 Creek and Snowstorm (collectively, the "Owyhee Complex" or Owyhee Complex area  
5 and which includes "herd areas" or "HAs"). The Owyhee, Rock Creek and Little  
6 Humboldt HMAs are administered by the BLM's Elko District (Tuscarora field Office).  
7 The Little Owyhee and Snowstorm HMAs are administered by the BLM's Winnemucca  
8 District (Humboldt River Field office). See, Exhibit 1.

9 7. This complaint originally addresses several activities some of which  
10 continue or are capable of repeating and are, therefore, discussed herein. Plaintiff is  
11 informed and believes the same activity can likely repeat where the activity is  
12 authorized under the ten year EA plan (Exhibit 1 attached), an example being the  
13 following:

14 a. The original complaint addresses roundups completed, that resumed  
15 January 4, 2013 with the intended removal of 50 horses from Owyhee  
16 because of a drought emergency or "because of severely limited water  
17 sources" (i.e. drought emergency). But the drought ended when the range  
18 became flooded with early rainstorms. Drought ceased to exist on the  
19 range after December 6, 2012 and the defendants nevertheless forged on  
20 with the roundup.

21 8. This action does not seek to halt the Owyhee Complex roundups  
22 conducted in accordance with law. This action does not seek to stop roundups  
23 conducted by helicopters when implemented in accordance with law. This action seeks,  
24 among other requests for relief, to halt the inhumane treatment of wild horses during  
25 roundups, capture, corralling and transportation which, plaintiff is informed and  
26 believes, is the BLM's apparent, demonstrable, intended normal and customary  
27 practice, method and operation, employed thus far during the Owyhee Complex  
28 roundups, and which could be reasonably expected to repeat in the continuation of the

1 Owyhee Complex roundup ten-year EA plan.

2 9. This action also seeks to enforce Ms. Leigh's constitutional right of access  
3 to view, observe, document, assess horses, against unreasonable restrictions meant to  
4 preclude her from reporting and photographing government activity.

5 10. This action also seeks to halt improper and unauthorized roundups where,  
6 plaintiff is informed and believes, the reasoning and rationale purportedly justifying  
7 some of the roundups in this same region are inaccurate, not factually true or accurate,  
8 flawed, or that the defendants' description of range conditions, herd movement, herd  
9 population and the assessment of water resources and reclamation of such, are not  
10 accurately determined or ignored, or not considered, and are instead based on  
11 speculation or flawed data, or outdated data, and are not reflective of what is currently  
12 found in the same region. Plaintiff is informed and believes accurate data is required  
13 where the defendants are only authorized to remove "excess" wild horses. Plaintiff is  
14 informed and believes that "excess" wild horses is not determinable with flawed or  
15 outdated data which is utilized and relied on by the defendants currently.

16 11. Specific to paragraph 10 above, Plaintiff is informed and believes the  
17 agency should have considered but failed to consider in their final decision,

18 a. complex-wide population census data that is up-to-date and current rather  
19 than census data obtained from mere HMAs and which is also stale when  
20 taken the year or two previously, in determining current wild horse  
21 populations to determine AML and then "excess" horses slated for  
22 removal;

23 b. historic horse range, specific and historic movement or migration of wild  
24 horses from range to range or from HMA to HMA, or to and from HMA and  
25 what was formerly known as HA, or, as the defendants coin the term, "off  
26 HMA," and how long the horses remain in particular regions, what  
27 artificially created conditions create movement, and what percentage or  
28 numbers in population of wild horses actually move or migrate versus

- 1 those horses who remain more permanently residing in the HMA, from  
2 which population is counted to determine AML and then "excess" horses;
- 3 c. whether wild horse movement or migration is seasonal, and the number of  
4 wild horses in movement or migration;
- 5 d. historic horse range which includes HMA and HA land ("HMA" meaning  
6 "herd management area" designated after 1974, and "HA" or "Herd Area"  
7 which is rangeland designated, beginning in 1971 following passage of  
8 the original Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C.  
9 §1331 *et seq.* ("Wild Horse Act"); and

10 in failing to consider the foregoing before finalizing the EA and foregoing obtaining  
11 accurate and current range data while nevertheless intending to forge ahead to assign  
12 population numbers to determine AML and then "excess" wild horses for removal, the  
13 defendants actions are "not in accordance with law" or, they are agency actions that are  
14 arbitrary and capricious, or implemented without observance of procedure required by  
15 law, including but not limited to relevant provisions of the Administrative Procedures  
16 Act, 5 U.S.C. §706(2)(A) and (D).

17 12. Plaintiff is informed and believes the agency should have considered but  
18 failed to consider or determine range conditions and wild horse populations existing in  
19 locales with normally dry conditions and in failing to determine what the normally dry  
20 range condition is in the first instance. Plaintiff is informed and believes the defendants  
21 should have considered but failed to consider the following:

- 22 a. what locales, areas or portions of HMAs normally experience dry range  
23 conditions, and the horse populations that remain and otherwise survive in  
24 normally dry range conditions, before the defendants conclude that the  
25 condition on which they contend is a "drought" condition (which justifies  
26 an the emergent removal of wild horses) is in truth, the typical dry range  
27 conditions existing in the normal course in the given locale and which  
28 nevertheless supports the population of wild horses remaining there; or in

- 1 determining the extent to which normally dry range conditions cause  
2 horses in those locales to move or migrate to a usual locale elsewhere  
3 during the normally dry range conditions that traditionally exist in the given  
4 locale, or how far horses travel in normally dry range conditions for water;
- 5 b. current complete range data during the life of the ten-year EA rather than  
6 outdated data on which to compare normally dry range conditions, before  
7 concluding that "drought" conditions exist to justify roundups of purported  
8 "excess" wild horses on an emergent basis;
- 9 c. what locales or HMAs have normally dry range conditions; and the  
10 populations historically supported in such conditions
- 11 d. an objective method or approach to determining when a "drought" exists  
12 on normally dry ranges in the Owyhee Complex;
- 13 e. when having determined a true drought condition exists in a given locale,  
14 that rain storms and snow storms promptly alleviate drought condition and  
15 voids the necessity of continuing on with emergency roundups begun and  
16 based on drought conditions which no longer exist;
- 17 f. methods to immediately halt ongoing roundups that are emergency based  
18 when the emergency that creates the purported need for the roundup,  
19 ceases or is no longer a threat;
- 20 g. if developing drought conditions truly exist, then every use must be  
21 limited, not just wild horses;

22 In not taking into account the foregoing before finalizing the EA and before removing  
23 horses, the defendants proceed "not in accordance with law" or, their action is arbitrary  
24 and capricious, or implemented without observance of procedure required by law;

25 13. The Owyhee Complex roundups were temporarily suspended December  
26 23, 2012 for the holidays and resumed early January 2013, beginning with the removal  
27 of 50 horses in the Owyhee HMA. The number of horses to be removed there (50  
28 horses) was raised from 11 horses because of "severely limited water sources"

1 (meaning, a purported drought emergency) in the Owyhee HMA that, plaintiff is  
2 informed and believes, simply did not exist at the time. Although the range suffered  
3 from limited water resources, if this were considered a drought condition in the Owyhee  
4 HMA at this point, the condition was alleviated when the range became flooded with  
5 early winter storms. The drought emergency ceased to exist beginning with these early  
6 heavy rains; even so, the defendants continued on with an emergency-type roundup  
7 based on "drought" conditions that no longer existed. Plaintiff is informed and believes,  
8 because the agency should have considered but failed to consider in their final decision  
9 the data and facts as heretofore mentioned, that the removal of the horses at that time  
10 was, accordingly, "not in accordance with law" or, was agency actions that was arbitrary  
11 and capricious, or implemented without observance of procedure required by law.  
12 Plaintiff is informed and believes, since the final EA extends over the course of ten  
13 years, Exhibit 1, that instances such as this are capable of repeating throughout the life  
14 of the EA.

15 14. Plaintiff is informed and believes the following: the BLM would use the  
16 same leadership and supervision for all Owyhee Complex roundups whether occurring  
17 in the BLM Winnemucca District or the BLM Elko District; that Melanie Mirati, a  
18 BLM-employed Wild Horse and Burro Specialist, is the chosen COR / PI for the  
19 Owyhee Complex roundups; and Alan Shepard, the BLM-employed State lead for  
20 Nevada's Wild Horse and Burro Program, is the other chosen COR / PI for the Owyhee  
21 Complex roundups; that Ms. Mirati and Mr. Shepard are indicated as such in the BLM's  
22 final EA (Exhibit 1). Plaintiff is informed and believes, where the same leadership is  
23 anticipated over the EA's ten-year course as what has been observed in roundups at  
24 Owyhee Complex thus far, plaintiff can reasonably expect to observe the same conduct  
25 that would be "not in accordance with law" or, agency action that is arbitrary and  
26 capricious, or implemented without observance of procedure required by law, in future  
27 roundup operations.

28 15. Regarding the Snowstorm HMA wild horse removal plan, Plaintiff is

1 informed and believes:

- 2 a. BLM intended to commence a bait / water trap operation at the  
3 Snowstorm HMA beginning August 3, 2013 to set up panels such that  
4 roundups could commence August 10, 2013 and continue the 60 days  
5 thereafter;
- 6 b. Snowstorm HMA is located in the southwestern portion of the Owyhee  
7 Complex. The Snowstorm HMA encompasses 103,644 acres of public  
8 lands and 13,465 acres of private land;
- 9 c. the defendants intended to remove 340 wild horses with a bait / water trap  
10 method;
- 11 d. the defendants' current justification to remove the Snowstorm horses is  
12 based on either one or two population surveys of the Snowstorm HMA,  
13 both of which are outdated and do not reflect current range conditions or  
14 current wild horse populations; a survey conducted two year past, in May  
15 2011 estimates the population at 577 horses while the survey completed  
16 in September 2012 estimates the population at 537 horses; but no current  
17 data is available to determine an accurate, permanent population at the  
18 entire Snowstorm HMA; and also, not even minimal data has been  
19 gathered to count horses that may be found distributed throughout the  
20 complex currently;
- 21 e. the EA (Exhibit 1) acknowledges there is dynamic movement or migration  
22 of horses between the HMAs in the Owyhee Complex, Snowstorm  
23 included; but the defendants do not take into account this acknowledged  
24 dynamic movement or migration when determining AML or "excess"  
25 horses for future roundups, the intended Snowstorm roundup being the  
26 most recent example;
- 27 f. that when these two prior "static" surveys or snapshot moments were  
28 completed (May 2011 and September 2012), the defendants did not

1 determine the actual resident population, nor the change in population,  
2 based on movement or migration that the defendants acknowledge occurs  
3 (Exhibit 1), and the defendants never determined how many horses  
4 historically remain in Snowstorm at any given period or season, nor did  
5 the defendants determine if there is even a permanent population that  
6 remains in Snowstorm; that the permanent population of horses in  
7 Snowstorm, if any, is an unknown number or "unknown quantity"  
8 currently;

9 g. the defendants did not consider the foregoing, nor did the defendants  
10 engage in any method to determine the nature, timing or extent of the  
11 movement or migration of horses, between and among HMAs in the  
12 Owyhee Complex, the Snowstorm HMA included, before entering their  
13 final EA Exhibit 1;

14 h. the defendants' recently announced Snowstorm horse roundup, to round  
15 up 340 wild horses with a bait / water trap method, relies on no basis in  
16 fact in regard to the population of Snowstorm horses existing there  
17 currently where the true wild horse population is not known, the true AML  
18 for Snowstorm is not known, the movement or migration of horses in and  
19 out of Snowstorm is not known, the true number of "excess" horses, if  
20 any, remains unknown; and where the prior surveys did not consider  
21 dynamic movement or migration of horses coming and going from  
22 Snowstorm (although the fact of movement is acknowledged in the  
23 defendants' EA), that those surveys are likewise not accurate in  
24 determining true population of wild horses existing at Snowstorm at the  
25 time those surveys were completed, and reliance on those surveys is  
26 likewise flawed;

27 i. the announced roundup at Snowstorm is likely to repeat at other HMAs in  
28 the Owyhee Complex and also likely to repeat at Snowstorm in the future

1                    throughout the ten year EA; and  
2 the agency should have considered but failed to consider the foregoing before finalizing  
3 the EA, and when nevertheless intending to proceed with the removal of wild horses  
4 from the Snowstorm HMA, the defendants proceed "not in accordance with law" or,  
5 their action is arbitrary and capricious, or implemented without observance of procedure  
6 required by law;

7            16.    Specific and in addition to the foregoing, with respect to the Snowstorm  
8 HMA and planned roundup operation, Plaintiff is informed and believes, before  
9 finalizing their EA Exhibit 1 the agency should have considered but failed to consider or  
10 determine,

- 11            a.    accurate herd counts to determine AML or "excess" horses;
- 12            b.    actual movement or actual migration in population numbers, and in what  
13                    times of year or seasons the migrations or movement occurs, of wild  
14                    horses from adjacent HMAs in the same Owyhee Complex;
- 15            c.    accurate herd count of a permanent population, if any, that might exceed  
16                    AML;
- 17            d.    causes of movement or migration of wild horse herds and whether the  
18                    movement or migration is seasonal;
- 19            e.    the extent of dynamic herd movement or migration of wild horses;
- 20            f.    an accurate method of determining future herd populations when  
21                    considering a ten-year EA for the removal of horses during that period;
- 22            g.    ongoing surveys; and

23 when nevertheless not taking these factors in consideration before finalizing the EA and  
24 also, when intending to proceed with the removal of wild horses from the Snowstorm  
25 HMA beginning approximately August 10, 2013 to remove 340 horses, the action is "not  
26 in accordance with law" or, the intended action is arbitrary and capricious, or  
27 implemented without observance of procedure required by law.

28            h.    The trap was set August 1. The roundup was canceled about August 19

1 after plaintiff's Motion for Temporary Restraining Order had been filed,  
2 and without due regard of reasonably notifying the public.

3 17. On July 25, 2013, the plaintiff personally completed a range review tour of  
4 the Snowstorm HMA with a BLM official. The plaintiff's "draft" report of her findings is at  
5 **Exhibit 6** attached ("Drought Monitoring Report"). Plaintiff provided a copy of the report  
6 to the BLM.

7 18. The previously intended removal of 340 horses from the Snowstorm HMA  
8 is based on a purported drought emergency. Based on plaintiff's and another observer's  
9 personal observation, there is no drought emergency and horses found in this region,  
10 appear healthy and well nourished, which are contra-indications to a purported drought  
11 emergency. Plaintiff is informed and believes the purported drought emergency does  
12 not exist. When the defendants intend to proceed with the removal of wild horses from  
13 the Snowstorm HMA beginning about August 10, 2013 through the next 60 days  
14 thereafter, to remove 340 horses, the action is "not in accordance with law" or, the  
15 intended action is arbitrary and capricious, or implemented without observance of  
16 procedure required by law. When the defendants should have considered but failed to  
17 consider before finalizing the EA, that current, accurate range conditions and current,  
18 accurate conditions of horses should be determined before proceeding with roundups  
19 at Snowstorm and other HMAs in the Owyhee Complex, before determining that horses  
20 should be removed based on emergency drought which in truth does not exist, the  
21 action is "not in accordance with law" or, the intended action is arbitrary and capricious,  
22 or implemented without observance of procedure required by law.

23 19. Artificial boundary lines of HMAs do not take into consideration the natural  
24 and historical movement of horses to water sources. Plaintiff is informed and believes  
25 when artificially placed boundary lines are not aligned to encompass water sources or  
26 watering holes that have been traditionally used by the wild horses, that wild horses  
27 traveling to those water sources after HMA boundaries are artificially determined, are  
28 improperly considered by the defendants as traveling "off HMA" (a BLM-coined phrase)

1 and thus are improperly slated for removal because they are seen or found outside the  
2 arbitrarily assigned boundary line of the HMA, even though these same watering holes  
3 are part of the horses natural and traditional movement in finding and using these same  
4 water sources before the artificial boundary lines were drawn, and which water sources  
5 were included in boundary lines in 1971 following the passage of the Wild Free  
6 Roaming Horse and Burrow Act (referenced below); and unknown to the horses, they  
7 crossed the line, an artificial one in this instance, which slates them for removal from  
8 their habitat that the same herds have been using long before these arbitrary boundary  
9 lines were drawn. The defendants should have considered but failed to consider this  
10 conceptual flaw before finalizing their EA, and the intended removal of the horses found  
11 "off HMA" who traveled to traditionally used watering holes or water sources, is action  
12 "not in accordance with law" or, the intended action is arbitrary and capricious, or  
13 implemented without observance of procedure required by law.

14 20. The agency should have considered but, before finalizing the EA, failed to  
15 consider or determine,

- 16 a. the natural and historic movement of wild horses to and from water  
17 sources in and around the Owyhee Complex;
- 18 b. that not taking into account the natural and historic movement of wild  
19 horses to and from water sources before drawing arbitrary HMA lines, that  
20 horses could be reasonably expected to travel beyond artificially created  
21 HMA lines when traveling to and from those water sources and watering  
22 holes that were included in boundary lines in 1971 when considered  
23 traditional horse ranges then;
- 24 c. in the instance of the Snowstorm HMA, the water source in question is  
25 less than one-quarter mile from the defendants' arbitrarily re-set boundary  
26 line of the Snowstorm HMA boundary; and

27 the intended removal of the horses found "off HMA" (BLM coined phrase) who traveled  
28 to traditionally used watering holes or water sources, particularly in years of low

1 precipitation, is action "not in accordance with law" or, the intended action is arbitrary  
2 and capricious, or implemented without observance of procedure required by law.

3 21. The intended removal of 340 horses from the Snowstorm HMA is based  
4 on a purported drought emergency. The defendants intend to remove these horses with  
5 a bait / water trap operation. But the bait / water trap operation, meant to capture the  
6 horses over a sixty-day period rather than on an emergent, swift method, is the  
7 testament to the fact that there is no emergency. If a true emergent drought existed or  
8 horses were not in healthy shape, the BLM would be rounding up horses immediately  
9 through more expedient means rather than taking horses casually through the extended  
10 course of 60 days via a bait / water trap method. The agency should have considered  
11 but, before finalizing the EA, failed to consider or determine, that,

- 12 a. a casual 60 day time period to remove horses purportedly based on a  
13 drought emergency, is neither appropriate nor effective;
- 14 b. the method of bait / water trapping of wild horses used to remove horses  
15 purportedly based on a drought "emergency," is neither appropriate nor  
16 effective; and

17 the intended removal of the horses because of a purported drought emergency that  
18 does not truly exist, and the use of bait / water trap methods to remove horses on an  
19 emergency drought basis, are agency actions "not in accordance with law" or, the  
20 intended action is arbitrary and capricious, or implemented without observance of  
21 procedure required by law.

22 22. Although emergent drought conditions are claimed as the reason to  
23 remove horses found at Snowstorm, the defendants never curtailed or halted grazing  
24 livestock from the same region. Also, new or expanding mining operations are being  
25 allowed in Snowstorm which also uses significant water in the same region for its  
26 operation. That if removal of wild horses was necessitated by a true drought  
27 emergency, it would appear reasonable and necessary that livestock grazing in the  
28 same region as the areas claimed to have been stricken with drought, would have also

1 been curtailed during the purported emergency drought condition; and that if true  
2 drought emergency conditions were present, that new mining operations and existing  
3 operations that consume significant amounts of water from the same region, that they  
4 too would be curtailed during drought emergencies; and that grazing animals such as  
5 cattle share the impact on the area as much as do wild horses, and mining operations  
6 consume considerable water resources over that of grazing animals. The defendants  
7 should have considered but failed to consider such facts before finalizing the EA, that  
8 when finding it necessary to remove only wild horses but not curtail other users of the  
9 same rangeland, in this case, the Snowstorm HMA, the defendants action is "not in  
10 accordance with law," or is arbitrary and capricious, or implemented without observance  
11 of procedure required by law.

12         23. The defendants should have considered but failed to do so before  
13 finalizing the EA, that when calling for emergent drought conditions as reason to  
14 remove wild horses, that all grazing animals controlled by their human owners should  
15 be halted and curtailed as well, in the same HMA, Snowstorm in this instance, as the  
16 areas where the defendants contend horses should be removed. And, in not taking into  
17 account the foregoing before finalizing the EA which causes the removal of those  
18 horses that may be found at Snowstorm, the defendants actions are "not in accordance  
19 with law" or, their actions are arbitrary and capricious, or are implemented without  
20 observance of procedure required by law.

21         24. All horses observed at Snowstorm during the plaintiff's tour July 25, 2013  
22 were found in good shape and in good health. The health and condition of these horses  
23 remains a clear indication that there is no emergent drought condition to justify a  
24 roundup. Plaintiff is informed and believes the defendants should have considered but  
25 failed to consider before finalizing the EA, that horses to be removed based on  
26 emergency drought conditions should not be removed when found in good condition on  
27 the range just prior to the purported emergent roundup, and failing to do so, the  
28 defendants action is "not in accordance with law," or is arbitrary and capricious, or

1 implemented without observance of procedure required by law.

2 25. Plaintiffs' observations during her July 25, 2013 tour demonstrates that  
3 the defendants' contention that the number of horses claimed by the defendants to be  
4 "excess" or above AML in Snowstorm, is not true. On July 25, 2013, plaintiff saw very  
5 few horses, noting their count and location in her report. Few horses were found and  
6 certainly, there were far fewer than that which the defendants suggest must be removed  
7 as excess horses. Plaintiff is informed and believes, before finalizing their EA the  
8 defendants should have considered but failed to consider or determine,

- 9 a. accurate herd counts to determine AML or "excess" horses;
- 10 b. actual movement or actual migration in population numbers, and in what  
11 times of year or seasons the migrations or movement occurs, of wild  
12 horses from adjacent HMAs in the same Owyhee Complex;
- 13 c. accurate herd count of a permanent population, if any, that might exceed  
14 AML;
- 15 d. causes of movement or migration of wild horse herds and whether the  
16 movement or migration is seasonal;
- 17 e. the extent of dynamic herd movement or migration of wild horses;
- 18 f. an accurate method of determining future herd populations when  
19 considering a ten-year EA for the removal of horses during that period;
- 20 g. ongoing surveys; and

21 when nevertheless not taking these factors in consideration before finalizing the EA and  
22 also, when intending to proceed with the removal of wild horses from the Snowstorm  
23 HMA beginning about August 10, 2013 to remove 340 horses, the action is "not in  
24 accordance with law" or, the intended action is arbitrary and capricious, or implemented  
25 without observance of procedure required by law. Also, where the defendants continue  
26 to proceed with rounding up horses from Snowstorm while aware of Ms. Leigh's and  
27 others' recent observations of Snowstorm that the population contended by the  
28 defendants to be there, is simply not there currently, the defendants action is "not in

1 accordance with law," or is arbitrary and capricious, or implemented without observance  
2 of procedure required by law.

3         26. Plaintiff is further informed and believes, in view of the foregoing, the  
4 defendants did not take into consideration the dynamic change in wild horse  
5 populations and range conditions within the Owyhee Complex when adopting and  
6 finalizing a ten-year process through their final EA, they did not take into consideration  
7 before finalizing the EA, true relevant factors likely to occur in the future of the plan (i.e.  
8 within the next several years of the ten year EA); and in failing to consider and  
9 accommodate dynamic and changing wild horse populations and range conditions  
10 occurring in future years of the ten-year EA, the example being the substantial  
11 differences in population of Snowstorm found July 25, 2013 versus the surveys of  
12 populations occurring more than a year and two previously, that the defendants have  
13 made clear errors of judgment in finalizing a ten-year EA and also in following through  
14 with roundup horses at Snowstorm where in truth, there is no emergent need, there are  
15 no excess horses there, and the horses there are in good health and condition.

16         27. The Snowstorm HMA roundup is a water / bait trap operation not  
17 supervised by anyone other than by the contractor or just occasionally by BLM's COR.  
18 Plaintiff is informed and believes the terms "COR" or "PI" are BLM acronyms for those  
19 employed by the BLM (not independent contractors) who are designated as the  
20 "Contracting Officer Representative" and "Project Inspector" for roundup operations.  
21 The BLM's COR personnel are charged with the responsibility of ensuring that horses  
22 handled by their chosen contractor are treated humanely at all times. But the EA limits  
23 the BLM COR's participation during bait / water trap operations to only 20 percent of the  
24 time, meaning the remainder of the time, 80 percent of the operation, the handling of  
25 wild horses would remain un-monitored except by the chosen contractor - the very  
26 person whose monitoring is required by BLM's COR. The BLM's COR remains  
27 responsible for monitoring humane care and treatment of wild horses handled by the  
28 contractor.

1           28. After advising the public the Snowstorm roundup would proceed, the  
2 Snowstorm roundup was cancelled. The defendants canceled the roundup about 19  
3 days after the defendants began setting up horse traps, which was two days prior to the  
4 court's hearing August 21, 2013 on the plaintiff's Temporary Restraining Order motion.

5           29. Plaintiff is informed and believes the defendants should have considered  
6 but failed to consider before finalizing the EA, that leaving the handling and humane  
7 care of wild horses during roundup operations to the very entity / individuals whose  
8 monitoring for humane handling is required, potentially places wild horses slated for  
9 capture and removal, in jeopardy and to potential inhumane treatment; and the process  
10 prevents the BLM from accurately monitoring the capture and removal of wild horses by  
11 80 percent of the time; and the process prevents the BLM from independently verifying  
12 and reporting to the public with any accuracy, except by, perhaps 20 percent, the  
13 number of horses removed, the number of horses injured, the number of horses  
14 destroyed and whether wild horses were captured, handled and shipped "humanely."  
15 Accordingly, in failing the foregoing, the defendants action is "not in accordance with  
16 law," or is arbitrary and capricious, or implemented without observance of procedure  
17 required by law. The plaintiff is further informed and believes that the defendants have  
18 made clear errors of judgment in finalizing a ten-year EA and also in proceeding with  
19 roundups in accordance with the EA when not having taken into consideration these  
20 concerns.

21           30. The National Academy of Sciences report released to the public June 6,  
22 2013 (i.e., this year) reaffirms the plaintiff's concerns relative to the foregoing alleged  
23 lack of data upon which the defendants rely, leading the defendants to inappropriate  
24 decisions relative to the rounding up of wild horses from the Owyhee Complex. The  
25 National Academy of Sciences Report ("NAS report" or "NAS study"), entitled, Using  
26 Science to Improve the BLM Wild Horse and Burro Program: A Way Forward, can be  
27 found at the following web link:  
28 <http://dels.nas.edu/Report/Using-Science-Improve/13511>. Plaintiff is informed and

1 believes the entire report consists of about 450 pages which is beyond that allowed as  
2 a document to be filed with the court absent special permission. Plaintiff asks that the  
3 court allow its filing, to take judicial notice of the NAS report as an official, government  
4 authorized report following a requested study or investigation made pursuant to  
5 authority granted by the defendants according to law. If the NAS report is not filed with  
6 this pleading, the plaintiff has no objection to the court considering the NAS report as  
7 one outside the pleadings, if not made part of the record.

8 31. Plaintiff is informed and believes the defendants requested the NAS  
9 study, that the NAS study cost the government in excess of \$1.5 million, it took two  
10 years in the making and was completed by 14 top experts and scientists.

11 32. Plaintiff is informed and believes, that some of the findings of the NAS  
12 study, relative to the defendants' management of wild horses and which are relevant to  
13 the allegations herein, confirm the plaintiffs concerns and allegations, and include but  
14 are not limited to the following:

- 15 a. The Wild Horse and Burro Program has not used scientifically rigorous  
16 methods to estimate the population sizes of horses and burros, to model  
17 the effects of management actions on the animals, or to assess the  
18 availability and use of forage on rangelands, even though science-based  
19 methods exist for improving population estimates and predicting the  
20 effects of management practices in order to maintain genetically diverse,  
21 healthy populations, and estimating the productivity of rangelands;
- 22 b. Management of free-ranging horses and burros is not based on rigorous  
23 population-monitoring procedures. At the time of the committee's review,  
24 most Herd Management Areas did not use inventory methods or statistical  
25 tools common to modern wildlife management. Survey methods used to  
26 count animals were often inconsistent and poorly documented and did not  
27 quantify the uncertainty attached to counts;
- 28 c. On the basis of information provided to the committee, the statistics on

1 the national population size cannot be considered scientifically rigorous.  
2 The links between BLM's estimates of the national population size and its  
3 actual population surveys the data that underlie these estimates are  
4 obscure. The procedures used to develop population estimates for the  
5 Herd Management Areas from counts of animals are not standardized  
6 and frequently not documented. It seems that the national statistics are  
7 the product of hundreds of subjective, probably independent judgments  
8 and assumptions by range personnel about the proportion of animals  
9 counted during surveys, population growth rates, and other factors. As a  
10 result BLM's reported annual population statistics, which are based on the  
11 assumption that all animals are detected and counted, probably  
12 underestimate the actual number of animals on the range;

13 d. Management practices are facilitating high rates of population growth.  
14 Free-ranging horse populations are growing at high rates because BLM's  
15 removals hold populations below levels affected by food limits. If  
16 population density were to increase to the point that there was not enough  
17 forage available, it could result in fewer pregnancies and births and lower  
18 young-to-female ratios and survival rates. Decreased competition for  
19 forage through removals may instead allow population growth, which then  
20 drives the need to remove more animals;

21 e. Management of horses and burros as metapopulations is necessary for  
22 their long-term genetic health. Genetic studies of horses on 102 Herd  
23 Management Areas show that the genetic diversity for most populations is  
24 similar to those of healthy mammal populations, although genetic diversity  
25 is not static and could change over time. Little is known about the genetic  
26 health of burros; the few studies that have been conducted reported low  
27 genetic diversity compared to domestic donkeys. To achieve an optimal  
28 level of genetic diversity, managers could consider the collective

1 populations of several Herd Management Areas as a single population.  
2 Management options include intensively managing individuals according  
3 to their genetic makeup within Herd Management Areas, translocating  
4 horses and burros among these areas, or both;

5 f. The Wild Horses and Burros Management Handbook lacks specificity.  
6 Issued by BLM in 2010, the handbook provides some degree of  
7 consistency in goals, allocation of forage, and general habitat  
8 considerations. Currently the handbook lacks the specificity needed to  
9 adequately guide managers on establishing and adjusting Appropriate  
10 Management Levels the number of horses and burros BLM deems  
11 appropriate for a given Herd Management Area . It does not provide  
12 sufficient detail on how to conduct various kinds of assessments. In  
13 addition, the handbook does not clarify the important legal definitions  
14 related to implementing and assessing management strategies for  
15 free-ranging horses and burros, leaving these concepts uninformed by  
16 science and open to multiple interpretations.

17 Plaintiff is informed and believes the bottom line of the NAS study is that the  
18 defendants' management of wild horses, including those in Owyhee Complex and  
19 Snowstorm HMA, is not based on science, although it should be, and that the  
20 defendants lack data to make informed decisions concerning horses' removal, make  
21 decisions subjectively, make decisions which adversely effect herd population contrary  
22 to the desired effect of reducing the quantity of wild horses and the defendants make  
23 decisions which adversely effect genetic viability of wild horse herds.

24 33. The defendants should have considered but failed to consider before  
25 finalizing the EA, the facts and conclusions as outlined herein in the NAS report long  
26 before an expensive study became necessary to tell the defendants the obviously bleak  
27 facts of the defendants' management of wild horses on public lands, including the  
28 defendants' management of wild horses in the Owyhee Complex. Accordingly, in failing

1 the foregoing, the defendants action is "not in accordance with law," or is arbitrary and  
2 capricious, or implemented without observance of procedure required by law. The  
3 plaintiff is further informed and believes that the defendants have made clear errors of  
4 judgment in finalizing a ten-year EA and also in proceeding with roundups in  
5 accordance with the EA when not having taken into consideration these concerns as  
6 have been outlined and confirmed by the NAS report.

7 34. The defendants conduct toward wild horses observed at roundups at the  
8 Owyhee Complex and which is described more specifically in the original complaint and  
9 below, demonstrates an "as practiced" low regard for the wild horses the defendants  
10 capture and seek to capture, appearing to cause wild horses to be handled inhumanely.  
11 The defendants in their EA acknowledge that horses shall be handled humanely  
12 although in practice during roundups, this does not occur. The Wild Free Roaming  
13 Horse and Burro Act mandates "humane" handling of wild horses. In the preamble of  
14 the Wild Free Roaming Horse and Burro Act, Congress's policy is stated clearly that  
15 wild horses shall be protected from capture, branding, harassment or death and to  
16 accomplish this, wild horses are to be considered as an integral part of the natural  
17 system of public lands. In regard to the humane handling of wild horses that are  
18 targeted for removal from the Owyhee Complex, and as but a few examples, the  
19 defendants should have considered but failed to consider before finalizing the EA,

20 a. adopting a uniform standard of care or specific, enforceable rules that  
21 ensure and promote the humane handling of wild horses during the  
22 roundup, capture, holding, storing, transportation and disposition  
23 ("roundup activities") of wild horses in the Owyhee Complex;

24 b. adopting specific methods to avoiding the harassment and death of wild  
25 horses in the Owyhee Complex, occurring during roundup activities; and

26 in failing the foregoing, the defendants action is "not in accordance with law," or is  
27 arbitrary and capricious, or implemented without observance of procedure required by  
28 law.

1           35. The defendants intend to conduct the Snowstorm HMA roundup in a cloak  
2 of secrecy, afar from public and press and Ms. Leigh's observation by denying all public  
3 observation of roundup activity occurring as bait / water trap operations in the Owyhee  
4 Complex beginning with the Snowstorm HMA roundups. The defendants should have  
5 considered but failed to consider before finalizing the EA,

6           a. that continuing to prohibit public observation in the manner that had taken  
7 place previously in both Owyhee Complex and elsewhere before finalizing  
8 the EA, and in intending to completely eliminate public observation and  
9 the plaintiff's observation of bait / water trap roundup operations in the  
10 Owyhee Complex, including the Snowstorm HMA, that doing so violates  
11 Ms. Leigh's and the public's and other credentialed press's constitutional  
12 First Amendment right of access to observe government activity. See,  
13 e.g., Leigh v. Salazar, 677 F.3d 892 (9th Cir. 2012).

14           b. that public observation is successfully employed and permitted in other  
15 bait / water trap operations elsewhere, conducted on BLM lands;

16           c. that Ms. Leigh and other members of the public and/or press have  
17 personally observed ongoing bait / water trap operations of wild horses on  
18 BLM lands;

19 in not taking into account the foregoing before finalizing the EA which causes the  
20 removal of those horses that may be found at Snowstorm, the defendants would  
21 proceed "not in accordance with law" or, their action would be arbitrary and capricious,  
22 or implemented without observance of procedure required by law.

23           36. The defendants' intended preclusion and ongoing preclusion of the  
24 plaintiff from having access to observe roundup activities, to observe the handling of  
25 horses during roundups, corralling, shipment, temporary holding, and the defendants'  
26 preclusion of the plaintiff and the public from observing horses close enough so as to  
27 independently assess the condition of horses when they are captured and handled by  
28 the defendants or their chosen contractor(s), has violated and continues to violate the

1 plaintiff's and others constitutional First Amendment right of access. The defendants'  
2 conduct also violates the plaintiffs' right to observe and report to the public what  
3 transpires with respect to the government activities the plaintiff seeks to observe as a  
4 credentialed member of the press, in derogation of the First Amendment freedom of the  
5 press. Plaintiff is informed and believes the defendants' interference with the Plaintiff's  
6 constitutional First Amendment freedoms, is unlawful.

7 37. Plaintiff is informed and believes the BLM's conduct toward wild horses  
8 observed during the Owyhee Complex roundups thus far, appears to be the "the norm,"  
9 or is observed as the BLM's usual custom and practice in place when rounding up,  
10 capturing, corralling and transporting wild horses during the Owyhee Complex  
11 roundups. Plaintiff, accordingly, maintains a reasonable expectation that the inhumane  
12 conduct observed toward wild horses at these roundups thus far, would likely repeat in  
13 subsequent phases of the Owyhee Complex roundup including that which would begin  
14 January 4, 2013.

15 38. This suit addresses multiple issues. Demonstrated uses of purported  
16 emergency to either expand or justify an action and then in the case of Snowstorm  
17 abandon that action without any note to the purported emergency that created the  
18 action and a failure to notify the public in a timely manner.

19 39. This suit also addresses conduct observed at the Owyhee Complex  
20 roundups thus far, repeating nearly daily, which included the following:

- 21 a. Routine (i.e. repeated and non-emergent) "hot shot" (cattle prod) or  
22 electric prod use on wild horses during their corralling and transport,  
23 including the use of electric prods on young horses (foals, weanlings and  
24 yearlings);
- 25 b. driving by helicopter, wild horses through barbed wire fence lines, thus  
26 subjecting wild horses to unnecessary injury, trauma or death;
- 27 c. rushed and aggressive loading from the trap site into trucks, subjecting  
28 captured wild horses to unnecessary trauma or injury;

- 1 d. unsafe locations for trap sites where horses repeatedly (meaning day after  
2 day at the same site) crash or tumble into an unsuspecting ditch close to  
3 the trap site, where the fallen horses, usually foals or younger horses, are  
4 trampled by their companions when groups of horses are chased toward  
5 the mouth of the trap, subjecting all horses to unnecessary injury or  
6 trauma;
- 7 e. foals less than six months weaned from their mothers at the trap;
- 8 f. foals unable to keep up with the drive because of distance or speed. In  
9 one instance, a foal came in draped over a horse rider's saddle horn,  
10 clearly exhausted; and the same foal was carried off the trailer after  
11 having been transported to temporary holding;
- 12 g. horses chased at a gallop pace in sub-freezing temperatures where  
13 daytime temperatures hovered in the teens and twenties in Fahrenheit.
- 14 h. pilot flew helicopter in significant winds, demonstrating difficulties in  
15 controlling the movement of horses;

16 40. The offensiveness with these issues stems from the following: the  
17 conditions existing and methods employed which unnecessarily endanger these horses,  
18 although known to BLM officials, repeats without corrective action. The BLM either  
19 dismisses the issue or justifies the conduct, or simply ignores the condition or method,  
20 refusing to take corrective action. The BLM's "bury the head in the sand" or, "justify  
21 rather than do something about it" approaches to these inhumane methods and  
22 conditions, subjects wild horses, day after day, time after time, to conditions and  
23 methods that are dangerous to the horses, absent corrective action by BLM's COR.

24 41. More than a year and a half past, in a case that raised inhumane conduct  
25 by the BLM, the defendants promised this court in hearing in Leigh v. Salazar,  
26 3:11-cv-608, that the defendants intended to put in place a humane care standard or  
27 policy, to help protect horses targeted for roundups in the future, from inhumane  
28 conditions and methods that had been observed repeatedly in previous roundups. The

1 BLM even presented the court a document at hearing, the BLM labeled its Intention  
2 Memorandum ("IM"), stating further the BLM intended to adopt the document as policy,  
3 for Nevada roundups, shortly. Plaintiff is informed and believes these prior statements  
4 to the court and the document the BLM presented, were made to placate the plaintiff  
5 and perhaps to lessen the impact of an adverse ruling from the court, rather than to  
6 truly cause change to the methods the BLM employed. Even the document the BLM  
7 presented to the court at hearing in Leigh v. Salazar , 3:11-cv-608, acknowledges that  
8 corrections were necessary for humane handling reasons. The court appeared  
9 convinced at the time, that the BLM had the best interests of the horses in mind when  
10 the BLM came to court armed with its proposed humane care policy to be adopted  
11 shortly for roundups in Nevada. The court accorded the agency the benefit of the doubt.  
12 Where, as of this date, no humane care policy has been implemented thus far, despite  
13 statements and documents presented to the contrary, Plaintiff is of the impression the  
14 BLM does not have the best interests of the horses in mind. Otherwise, a policy would  
15 have been adopted and followed at this point. Otherwise, the Plaintiff would not have  
16 found it necessary to bring this suit because of the repeated and continued inhumane  
17 conditions and methods she observed repeatedly at recent Owyhee Complex roundups.

18 42. Plaintiff acknowledges the court cannot force a government agency to  
19 adopt standards for its methods. Rather, Plaintiff seeks only to cause correction of that  
20 which the agency refuses to correct where the methods and conditions employed are  
21 not humane toward the wild horses, in violation of relevant laws.

22 43. For the foregoing reasons, the Owyhee Complex roundup has been  
23 conducted inhumanely thus far, in contravention of law, in contravention of the CFRs, in  
24 contravention of the Defendants' own established regulation or order as determined in  
25 its Environmental Assessment ("EA") for the Owyhee Complex roundup, and also in  
26 contravention of established norms of "humane" treatment. And, there is no indication  
27 the BLM would change course or alter plans from that allowed at the previous Owyhee  
28 Complex roundups, to correct inhumane methods of rounding up, corralling and

1 transporting wild horses at upcoming Owyhee Complex roundups.

2 44. Where the Owyhee Complex roundup is conducted contrary to the BLM's  
3 own published EA for the Owyhee, and contrary to 16 U.S.C. §1333(b)(2)(iv)(B) for the  
4 humane removal of wild horses, and contrary to the definition of what the United States  
5 considers "humane" as is defined at 43 CFR §4700.0-5, and against reasonable  
6 notions of what is considered "humane" including those defined by the Laws of the  
7 State of Nevada, the Defendants' action in refusing to enforce its own established  
8 regulation, order or decision, or in refusing to enforce its own EA, or in refusing to  
9 enforce regulations and laws of the United States for the humane treatment of wild  
10 horses removed by the Defendant at the Owyhee Complex, is arbitrary, capricious, it  
11 amounts to an abuse of discretion, it is otherwise not in accordance with law, or it is  
12 implemented without observance of procedures required by law, including relevant  
13 provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. §706(2)(A) and (D).

14 45. That, the "Defendants' action" or "agency action" as used or referenced  
15 herein, includes the definition ascribed to "agency action" at 5 U.S.C. §551(13) as that  
16 term is intended in connection with Section 706(2) of the APA and which includes but is  
17 not limited to the Defendants' "failure to act" to enforce its own regulations and to  
18 enforce the laws of the United States which, in this case, concerns the humane removal  
19 of wild horses at the Owyhee Complex roundups; and also the unauthorized removal of  
20 the 50 horses from the Owyhee HMA.

21 46. Each of the Owyhee Complex roundups are too short in duration to allow  
22 full litigation before the roundups cease. The Defendants would claim on cessation of  
23 the roundup, as they have on several occasions in the past when faced with litigation  
24 over a roundup, that the end of roundup activity "moots" all issues raised herein, leaving  
25 Plaintiff without justice and without remedy. Plaintiff is informed and believes where the  
26 roundups are to continue in the same fashion and method employed thus far, over the  
27 next ten (10) years, that the cessation of one phase would not moot the case where the  
28 EA contemplates a ten (10) year removal plan, where the BLM intends on returning to

1 these same areas within the Owyhee Complex. See, *Leigh v. Salazar*, 677 F.3d 892  
2 (9th Cir. 2012).

3 47. Plaintiff and others personally observed the inhumane conditions  
4 discussed herein. Plaintiff was present for the roundups from November 27, 2012  
5 through December 15, 2012. Plaintiff is planning on being present at most all roundups  
6 occurring at the Owyhee Complex.

7 48. Plaintiff and others have been subjected to perceptible harm when  
8 observing the same inhumane conditions and methods employed, the same arbitrary,  
9 capricious and abuses of discretion by the Defendants at the first phase of the Owyhee  
10 Complex roundups. Because Plaintiff intends to be present at most of the upcoming  
11 roundups there, Plaintiff reasonably expects, without corrective action, she would be  
12 subjected to more perceptible harm in observing the same inhumane conditions and  
13 methods employed.

14 49. Because the BLM repeatedly thus far, (a) chooses not to operate with a  
15 clearly defined humane care policy for the Owyhee Complex roundups, demonstrated  
16 by the BLM's lack of recognition that the issues herein described would be considered  
17 by the common man, let alone professionals, as inhumane treatment of the Owyhee  
18 Complex wild horses rounded up thus far, (b) refuses to acknowledge and then enforce  
19 laws requiring "humane" removal of horses from public lands at the Owyhee Complex,  
20 © refuses to take corrective action to enforce the "humane" removal of wild horses from  
21 public lands in accordance with 16 U.S.C. §1333(b)(2)(iv)(B) as interpreted by 43 CFR  
22 §4700.0-5 at the Owyhee Complex roundups, the Plaintiff reasonably expects she  
23 would likely be subjected to observing the same arbitrary, capricious, unlawful,  
24 inhumane activity at the remaining Owyhee Complex roundups that she observed thus  
25 far, particularly where the same COR and chosen contractor remain to conduct,  
26 oversee and supervise remaining roundups there, and where Messrs. Miller and Seidlitz  
27 oversee and approve the roundups.

28 50. The Defendants at the Owyhee Complex roundups, employ methods

1 contrary to clear public policy of the United States of America relative to management  
2 practices of wild horses where such practices are mandated by 16 U.S.C.  
3 §1333(b)(2)(iv)(B) as interpreted by 43 CFR 4700.0-5, to be conducted humanely. See,  
4 The Wild Free-Roaming Horses and Burro Act of 1971. ("Wild Horse and Burro Act" or  
5 "WHBA"). See, P.L.92-195, 16 U.S.C. §1331 et. seq. That 16 U.S.C. §1333 requires  
6 the Defendants to roundup only excess wild horses in a mandated order of preference,  
7 and the Defendants must do so "humanely." See, 16 U.S.C. §1333 (b)(2)(iv)(B).

### 8 **JURISDICTION AND VENUE**

9 51. Jurisdiction of this matter, involving a federal question, is governed in  
10 accordance with 28 U.S.C. §1331. Relief is sought under applicable provisions of the  
11 Administrative Procedures Act, 5 U.S.C. §701 et seq.

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

### 16 **PLAINTIFF AND STANDING**

17 53. The court in this very case has already recognized Plaintiff LAURA  
18 LEIGH's ("Ms. Leigh") standing to bring this suit.

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

26 55. This court has recognized Ms. Leigh's standing previously, to bring  
27 actions against the inhumane treatment of wild horses. See generally, *Leigh v. Salazar*,  
28 3:10-cv-597 and *Leigh v. Salazar*, 3:11-cv-608 filed in this court. See also *Leigh v.*

1 *Salazar*, 677 F.3d 892 (9th Cir. 2012).

2 56. Plaintiff is an award winning illustrator, journalist / videographer and report  
3 on issues dealing with the American West. Her published articles and video have  
4 appeared in many venues including Horseback Magazine, KLAS-TV and CNN. Ms.  
5 Leigh is President and founder of Wild Horse Education, a non-profit group devoted to  
6 documenting, reporting to the public and advocating on issues involving wild horses on  
7 public lands. See, [www.wildhorseeducation.org](http://www.wildhorseeducation.org).

8 57. Ms. Leigh has been a horse owner and keeper for many years. Ms.  
9 Leigh is informed and believes she is reasonably informed on many issues involving the  
10 care, maintenance and safety of horses including but not limited to matters involving  
11 their physiology, structure, hoof care, feed and diet, diseases, conditioning, handling,  
12 and their natural instincts, to name but a few. Ms. Leigh has personally given medical  
13 aid and attention to horses, treating such ailments or injuries involving, among other  
14 conditions, leg injuries, digestive issues, colic, heat and hydration issues. She has  
15 taken care of foals with congenital anomalies. She has treated and cared for horses  
16 with metabolic and stress founder. Ms. Leigh operated a home-based nursery for  
17 wildlife rehab in conjunction with a county wildlife center where, during her tenure there,  
18 the center maintained a zero percent death rate with over 100 orphans of varied  
19 species of wildlife.

20 58. Ms. Leigh has attended more BLM roundups the past thirty (30) months  
21 than any BLM, DOI or other government personnel, any journalist, any photojournalist,  
22 and any other member of the public, in her attempts at accurately documenting wild  
23 horses in the wild, and in documenting the Defendants' management of wild horses. In  
24 the past two years Ms. Leigh filmed/recorded thousand of hours of video and has  
25 amassed more than a hundred-thousand photos of wild horses on public lands.

26 59. Ms. Leigh traveled nearly 200,000 miles since September 2010 to  
27 observe and document wild horses and the BLM's management practices. Ms. Leigh  
28 has thus far, traveled in six states to accomplish this work, she visited and attempted to

1 visit multiple wild horse holding facilities operated or managed by the government. She  
2 attended numerous Advisory Board meetings and also traveled to Denver, CO to  
3 participate in what BLM referenced as a “workshop” toward “problem solving.” And, she  
4 attended numerous meetings in BLM district offices, she attended RAC meetings  
5 (“RAC” is the BLM acronym for Resource Advisory Council) whenever opportunity  
6 presents to provide public comment.

7 60. Ms. Leigh has endured personal searches, vehicle and property searches,  
8 road blocks, background checks, extreme temperatures from minus 10 degrees  
9 Fahrenheit to over 100 degrees Fahrenheit, vehicle breakdowns in remote regions, all  
10 in attempts at gaining access to view and observe and document wild horses on public  
11 lands and at government wild horse facilities and during capture, corralling and  
12 transportation for their removal from public lands.

13 61. Ms. Leigh has endured death threats, discriminatory access, vandalism to  
14 her personal property, significant wear and tear to her personal property, countless  
15 hours of off-road travel and on-road travel, all in attempts at gaining access to view and  
16 observe and document wild horses on public lands and at government wild horse  
17 facilities and during capture for their removal from public lands.

18 62. When not in the field, Ms. Leigh is conducting research on a multitude of  
19 wild horse related topics particularly those involving public lands and interests that  
20 compete with wild horses; she arranges for adoptions of wild horses captured by the  
21 BLM from public lands and is responsible for having caused the adoption of a  
22 significant percent of all horses adopted out by the BLM; Ms. Leigh is a regular  
23 publisher of articles concerning the management of wild horses on public lands.

24 63. Ms. Leigh’s life is devoted to documentation and education of the care of  
25 wild horse herds. Ms. Leigh is dedicated to helping create reform where appearing  
26 necessary, in the management of America’s wild horses.

27 64. As a documentarian and photojournalist Ms. Leigh is dedicated to creating  
28 honest dialogue based on the truth about wild horses and burros on public lands; her

1 goal is to educate the public about wild horses on public lands, including educating on  
2 how wild horses live, thrive, survive, travel, their social order and interaction, how they  
3 become impacted by competing private and also public interests that affect their  
4 remaining habitat, how they are impacted by man and by those charged with the  
5 responsibility of protecting them, who, in this instance, are the Defendants herein.

6 65. As a documentarian and a current historian of America's wild horses, Ms.  
7 Leigh has gained a deep appreciation of, and respect for, wild horses, not just for a  
8 particular horse or two, nor in a general sense toward all wild horses, but rather, to  
9 certain groups of horses, certain herds exhibiting genetic similarities within defined  
10 geographical regions, and to certain herds of horses who thrive viably where the BLM  
11 has had little involvement, and with specified groups or families of wild horses who  
12 thrive and interact in a dynamic social order among themselves as particular herds in  
13 certain remote regions within public lands, and which Ms. Leigh photographed or  
14 documented multiple times in the past and also recently, and with whom Ms. Leigh  
15 spent countless hours and days visiting, watching, appreciating and understanding  
16 while observing them in their environment, on rangelands comprising public lands  
17 managed by the Defendants.

18 66. Ms. Leigh maintains significant history with the Owyhee Complex horses  
19 and the issues surrounding the management of wild horses at the Owyhee Complex.  
20 Ms. Leigh filed suit previously in this court in 3:10-cv-597 where the Hon. Larry Hicks  
21 agreed with Ms. Leigh when finding the blanket closure of public lands during roundup  
22 activities occurring there in the summer of 2010, violated First Amendment notions.  
23 Judge Hicks allowed an emergency roundup based on perceived drought conditions to  
24 continue. BLM claimed at the time, the Owyhee horses were in such degraded  
25 condition that 75 percent of the population would expire in three days' time if not  
26 immediately removed. With this unprecedented assertion, the court allowed the removal  
27 of those horses on an emergency basis. BLM allowed no independent or public  
28 confirmation or observation of a single horse rounded up in Owyhee in 2010 and

1 intentionally chose private land to place its traps and alerted the Sheriff to arrest those  
2 who trespassed on private land if public observers attempted to independently view the  
3 capture of these horses. And, an independent range expert who visited the same area  
4 immediately following the conclusion of the Owyhee 2010 roundup, where the purported  
5 “drought emergency” existed, found no evidence of a drought emergency and instead,  
6 found normal range conditions for that time of year. Meanwhile, not a single horse  
7 perished at Owyhee in 2010 until the BLM commenced its roundup. And several horses  
8 perished when the BLM engaged the roundup process.

9         67. The foregoing paragraph is significant where the defendants employ the  
10 identical trap for the Owyhee roundups commencing January 4, 2013 as was used in  
11 the controversial Owyhee 2010 roundup. The BLM is using this identical trap as its only  
12 trap for the entire Owyhee HMA, meaning, horses that BLM, once again contends,  
13 show signs of significant impact from drought conditions, would be driven as much as  
14 25 miles to this single trap location. Plaintiff is informed and believes this circumstance  
15 would place those wild horses in harm’s way and those horses would not be humanely  
16 managed when having to travel such a distance in winter conditions.

17         68. As a consequence of no corrective action having been taken at Owyhee  
18 Complex roundups thus far, Ms. Leigh finds herself in a position without remedy or  
19 recourse, to stop further acts of inhumane conditions and methods toward those wild  
20 horses at the Owyhee Complex. Ms. Leigh’ only apparent avenue of relief is through  
21 assistance of this court with this suit, to halt further inhumane treatment of Owyhee  
22 Complex wild horses.

23         69. Ms. Leigh engaged the BLM on the inhumane issues raised by this suit, at  
24 this roundup, in the avenues open to her. Ms. Leigh commented on the Preliminary EA.  
25 She commented at the RAC meeting. She wrote letters. She disclosed her  
26 documentation to the public and encouraged the public to write as the Owyhee  
27 Complex roundups continued with instances of inhumane conditions and methods  
28 remaining uncorrected.

1           70. Ms. Leigh's repeated attempts at addressing the inhumane conditions and  
2 methods remaining uncorrected at the current Owyhee Complex roundups, caused the  
3 BLM to publish an open letter naming Ms. Leigh's organization, Wild Horse Education,  
4 on the BLM's roundup update web page. The BLM's open letter does not address Ms.  
5 Leigh's concerns and instead, denies wrongdoing.

6           71. Understanding that she as but a mere citizen having no other recourse  
7 whatsoever to act when an agency who operates with broad discretion, contrary to  
8 laws, where the activity or inaction causes her harm as averred herein, Plaintiff is  
9 compelled to bring the improper conduct to the attention of the courts, to ask for the  
10 court's help, to stop and enjoin further inhumane conduct toward the Owyhee Complex  
11 wild horses during the BLM's described processes, and to prevent her further  
12 perceptible harm.

13           72. Plaintiff is informed and believes she maintains a right to seek judicial  
14 review of agency action (or lack of action) under the Administrative Procedure Act,  
15 which allows a party "suffering legal wrong because of agency action, or adversely  
16 affected or aggrieved by agency action" to seek judicial review. 5 U.S.C. § 702.

17           73. Plaintiff is informed and believes she suffered and continues to suffer an  
18 invasion of a legally protected interest amounting to the harms as averred herein,  
19 caused when she is compelled, time and time again, to watch the Defendants engage  
20 Owyhee Complex wild horses with inhumane methods and conditions, contrary to laws  
21 and policies of the United States; that Ms. Leigh maintains a right to observe the  
22 *humane* removal of Owyhee Complex wild horses from public lands.

23           74. Plaintiff is adversely affected and aggrieved where she suffers perceptible  
24 harm which is imminent and continuing when having repetitively been subjected to  
25 observations of inhumane treatment toward Owyhee Complex wild horses and which  
26 she would likely observe with ongoing Owyhee Complex roundups; that the offending  
27 conduct is within the zone of interest contemplated by Congress which clearly calls for  
28 the *humane* removal of excess wild horses.

1           75. Plaintiff is informed and believes her perceptible harm is: concrete and  
2 particularized, and imminent, and not conjectural or hypothetical, that there is a causal  
3 connection between her perceptible harm and the conduct complained of, and that the  
4 continuing threat of such perceptible harm to her person would be redressed with the  
5 imposition of temporary, preliminary and permanent injunctive relief as requested  
6 herein.

7           76. Plaintiff is informed and believes her requested relief is traceable to the  
8 Defendants' practice of ignoring the expressed intent of Congress when Congress  
9 unanimously adopted the Wild Free-Roaming Horses and Burro Act 16 U.S.C. §1331 *et*  
10 *seq.*, where Congress unambiguously requires the Defendants to remove excess  
11 horses *humanely*. See, 16 USC § 1333 (b)(2)(iv)(B) (as amended in 1978). That the  
12 "humane" handling of free-roaming wild horses when removing their excess brethren, is  
13 part and parcel with the Wild Horse and Burro Act and is stated in mandatory, not  
14 permissive terms. 16 USC § 1333 (b)(2)(iv)(B). [See also, 16 U.S.C. § 1338a (the use  
15 of helicopters, "shall be in accordance with *humane* procedures . . . ."), 16 U.S.C.  
16 §1333(c)(calling for "humane conditions" by adopters), 1338(a)(3)(criminal penalty for  
17 "maliciously causes the death or harassment of any wild free-roaming horse or burro")  
18 and §1338(a)(6) (willfully violates a regulation issued pursuant to the Wild Free-  
19 Roaming Horse and Burro Act)]. Plaintiff is informed and believes the Wild Free-  
20 Roaming Horse and Burro Act remains clear, cogent and unambiguous in regard to the  
21 mandatory *humane* handling of wild horses by the Defendants during their removal of  
22 excess horses.

23           77. That the definition of what the United States considers "humane" and  
24 also "inhumane" is specifically referenced at 43 CFR § 4700.0-5. Plaintiff is informed  
25 and believes the Defendants' conduct as described and identified herein and elsewhere  
26 in support of her requested injunctive relief, is in contradiction to that considered  
27 "humane" as defined in 43 CFR §4700.0-5, and is "inhumane" as that term is described  
28 in 43 CFR §4700.0-5; and further, such conduct by the Defendants is against all

1 reasonable notions of what groups of reasonable people would consider as being  
2 “humane;” and such conduct is further inhumane as that term is contemplated within  
3 the laws of the State of Nevada.

4 78. Plaintiff has no other avenue of recourse but to seek injunctive relief in the  
5 courts when the Defendants repeatedly choose not to follow and enforce the laws of the  
6 United States with regard to the humane removal of excess wild horses from public  
7 lands, and where they intend to remove horses not considered excess horses from  
8 public lands, and which conduct causes Plaintiff a perceptible harm as averred herein.

### 9 **DEFENDANTS**

10 79. The named Defendants collectively comprise the governing authorities of  
11 the United States of America responsible for managing certain public lands in the  
12 United States. The U.S. Department of Interior is a cabinet-level agency headed by Mr.  
13 Ken Salazar. The BLM is a U.S. Department of Interior “bureau” headed by Mr. Mike  
14 Pool as its Acting Director. Ms. Amy Lueders is the BLM’s Nevada State Director. The  
15 individuals are sued only in their official capacity as those most senior in decision-  
16 making processes and responsible for their respective governing agency / bureau /  
17 department. Plaintiff is informed and believes the BLM manages 47 million acres of  
18 public land in Nevada, accounting for more than 80 percent of Nevada’s land mass.

### 19 **GENERAL ALLEGATIONS**

20 80. The Owyhee comprises in excess of one million acres. The roundup area  
21 is larger and includes more than two million acres, crossing two counties, Elko and  
22 Humboldt. Complaint, Exhibit 1, EA, ¶ 3, p.1.

23 81. Although the opening section of the EA indicates roundups would last 45  
24 days, the EA, in truth, contemplates and incorporates a ten (10) year roundup removal  
25 plan. Exhibit 1, EA, 4th ¶, p.16; ¶ 5, p.18; ¶ 2, p.19.

26 “Maintenance gathers to reapply fertility control and to remove adoptable  
27 wild horses would be conducted for the next 10 years following the date of  
28 the decision.” Exhibit 1, EA, 4th ¶, p.16.



1 gathers based on drought and, in some cases, animal conditions that  
2 have been affected by diminishing forage and water across the West.

3 \* \* \*

4 The gather of Owyhee Herd Management Area in Nevada will seek to  
5 remove 50, rather than 11, horses because of severely limited water  
6 sources.

See BLM Update, **Exhibit 2**, attached.

7 Plaintiff is informed and believes the BLM update was posted when in fact, there was a  
8 drought emergency or severely limited water resources; such conditions no longer  
9 exists following several storms or after December 6, 2012 when the range was flooded  
10 and became saturated by multiple rain storms. The roundup of horses beyond 11  
11 horses, beginning January 4, 2013, is clearly not justified where these horses, beyond  
12 11, would not be excess horses.

13 85. Plaintiff seeks to enjoin, not the roundups themselves, but the inhumane  
14 conduct occurring at these roundups that has now become the BLM's "norm."

15 86. In 1971 the Wild Horse and Burro Act passed unanimously in both houses  
16 of Congress and was signed into law December 1971 by President Nixon. The purpose  
17 of the act was to protect wild horses found on federal public lands. The Congressional  
18 findings and declaration of policy of the Act are as instructive. They are as follows:

19 Congress finds and declares that wild free-roaming horses  
20 and burros are living symbols of the historic and pioneer  
21 spirit of the West; that they contribute to the diversity of life  
22 forms within the Nation and enrich the lives of the American  
23 people; and that these horses and burros are fast  
24 disappearing from the American scene. It is the policy of  
25 Congress that wild free-roaming horses and burros shall be  
26 protected from capture, branding, harassment, or death; and  
27 to accomplish this they are to be considered in the area  
28 where presently found, as an integral part of the natural

1 system of the public lands.

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

4 87. Congress defines the powers and duties of the Secretary of the Interior,  
5 relative to the management of wild horses on public lands, in Section 1333 of the Act.  
6 That Section defines by mandatory language the Secretary’s obligation to *humanely*  
7 capture certain wild horses. Section 1333 provides in relevant part, that the removal of  
8 excess horses from public lands,

9 [s]hall be taken, in the following order and priority until all  
10 excess animals have been removed so as to restore a  
11 thriving natural ecological balance to the range, and protect  
12 the range from the deterioration associated with  
13 overpopulation:

14 \* \* \*

15 (B) ***The Secretary shall cause such number of***  
16 ***additional excess wild free-roaming horses and***  
17 ***burros to be humanely captured*** and removed for  
18 private maintenance and care for which he  
19 determines an adoption demand exists by qualified  
20 individuals, and for which he determines he can  
21 ***assure humane treatment*** and care (including  
22 proper transportation, feeding, and handling) . . . .

23 16 USC 1333 (b)(2)(iv)(B) (Emphasis Added).

24 88. Plaintiff had been an observer at Owyhee Complex roundup operations  
25 from November 27 through December 15, 2012. Although her access is customarily  
26 unduly and unreasonably restricted, she nevertheless observed several examples of  
27 inhumane conditions and methods in the process of capturing, corralling and  
28 transporting wild horses. Those specific instances of conduct are described in

1 paragraph 11 above, at pp. 5-6, and are described in detail in the Declaration of Laura  
2 Leigh at **Exhibit 3**.

3 89. Plaintiff was not the only observer who witnessed these incidents  
4 repetitively. See Declaration of Keegan Kuhn at **Exhibit 4** which outlines Mr. Kuhn's  
5 observations of inhumane conditions and methods ongoing at the Owyhee Complex  
6 roundups.

7 90. Another observer present during some of the Owyhee Complex roundups,  
8 likewise became offended at viewing the same inhumane conditions and methods. See  
9 Declaration of Stephanie Martin at **Exhibit 5** which outlines Ms. Martin's observations of  
10 inhumane conditions and methods ongoing at the Owyhee Complex roundups.

11 91. 43 CFR § 4700.0-5 provides in relevant part, as follows:

- 12 (e) Humane treatment means handling compatible with animal  
13 husbandry practices accepted in the veterinary community, without  
14 causing unnecessary stress or suffering to a wild horse or burro.
- 15 (f) Inhumane treatment means any intentional or negligent action or  
16 failure to act that causes stress, injury, or undue suffering to a wild  
17 horse or burro and is not compatible with animal husbandry  
18 practices accepted in the veterinary community.

19 92. As of this writing, due to the holidays, Plaintiff had not yet received  
20 Declarations from respectable veterinarians who intend to provide support confirming  
21 that the observed conditions and methods are not "humane" toward those wild horses.  
22 Plaintiff asks leave of court to supplement the complaint and any motion to include such  
23 Declarations.

24 93. The BLM's own EA for the Owyhee Complex roundups provides as  
25 follows:

26 The primary concern of the contractor is the safe and humane handling of  
27 all animals gathered. Exhibit 1, Appendix A, p.132.

28 94. The BLM's own EA for the Owyhee Complex provides as follows:

1 The COR would coordinate with the contractor and the BLM  
2 Corrals to ensure animals are being transported from the gather site in a  
3 safe and humane manner and are arriving in good condition.

4 The contract specifications require humane treatment and care of  
5 the animals during removal operations. These specifications are designed  
6 to minimize the risk of injury and death during and after gather of the  
7 animals. The specifications would be vigorously enforced.

8 Should the Contractor show negligence and/or not perform  
9 according to contract stipulations, he would be issued written instructions,  
10 stop work orders, or defaulted.

11 Exhibit 1, Appendix A, p.138.

12 95. 43 CFR § 4740.1 provides in relevant part, the following:

13 [a]ircraft may be used by the authorized officer  
14 in all phases of the administration of the Act, .  
15 . . All such use shall be conducted in a  
16 humane manner.

17 43 CFR § 4740.1.

18 96. 16 U.S.C. § 1338a likewise provides in relevant part as follows:

19 In administering this Act [16 USCS §§ 1331 et  
20 seq.], the Secretary may use or contract for the  
21 use of **helicopters**. . . . Such use shall be  
22 undertaken only after a public hearing and  
23 under the direct supervision of the Secretary or  
24 of a duly authorized official or employee of the  
25 Department. . . . **Such use shall be in**  
26 **accordance with humane procedures**. . . .

27 16 U.S.C. § 1338a.

28 **FIRST CLAIM FOR RELIEF**

1 97. Plaintiff incorporates by reference the averments contained in Paragraphs  
2 1 through 96 of the Complaint as though the same were fully set forth herein.

3 98. Plaintiff is informed and believes the Defendants' roundup methods at  
4 Owyhee Complex are "inhumane" and contrary to the clear intent of Congress when  
5 passing The Wild Free-Roaming Horses and Burro Act of 1971, 16 U.S.C. §1331 *et*  
6 *seq.*, which governs the conduct of such activities on BLM-managed lands; that the  
7 methods employed in handling wild horses removed from Owyhee are contrary to, and  
8 deviate from, the policies of the United States, that they are contrary to, and deviate  
9 from the laws of the United States and the Code of Federal Regulations, and  
10 particularly contrary to the following provisions:

- 11 a. 16 U.S.C. §1333 (b)(2)(iv)(B);
- 12 b. 16 U.S.C. §1338a;
- 13 c. 43 CFR §4740.1;
- 14 d. 43 CFR §4700.0-5(e), (f),

15 and hat the roundup methods and conditions employed by the BLM at the Owyhee  
16 Complex contravene the Defendants' own stated, publicized policies with respect to the  
17 humane management and care of wild horses removed during such roundup, as is  
18 stated in the BLM's own published EA.

19 99. That the Defendants maintain authority to enforce the humane laws of the  
20 United States, and they maintain authority to correct or to modify or to stop the  
21 contractor's work in this very instance, to cause compliance with such humane laws,  
22 policies and regulations; that the failure to enforce such laws and provisions is an  
23 abuse of discretion that causes Plaintiff's harm as averred herein.

24 100. That the Defendants' failure and/or refusal to act to enforce the humane  
25 laws of the United States as indicated herein, is in fact, agency action defined at 5  
26 U.S.C. §551(13) (a failure to act), that is arbitrary, capricious, and an abuse of  
27 discretion, or otherwise not in accordance with law, and/or is agency action  
28 implemented without observance of procedure required by law, as is contemplated in

1 the Administrative Procedures Act, 5 U.S.C. §§706(2)(A) and/or (D). And such failure  
2 to act causes Plaintiff's harm as averred herein.

3 101. Plaintiff is informed and believes she maintains standing under 5 U.S.C.  
4 §702 of the Administrative Procedures Act to seek judicial review of the Defendants'  
5 action (or failure to act) where she has suffered and would continue to suffer actual  
6 injury or injury in fact that is within the zone of interests protected by the relevant federal  
7 statutes indicated herein above, which Defendants fail and refuse to enforce or correct.

8 102. Plaintiffs' actual injury, injury in fact and harm includes but is not limited to  
9 harm to her personal aesthetic interests when observing the brutality of the inhumane  
10 method the Defendants systematically employ when capturing, handling and removing  
11 wild horses. As one familiar with horses, Ms. Leigh does not have a reasonable or valid  
12 explanation to herself, for the dichotomy between having personally viewed in one  
13 aesthetic sense, the freedom wild horses in this region experience when roaming free  
14 and peacefully in their native habitat, with the aftermath she observed where wild  
15 horses are subjected to undeserved inhumane treatment by the very agency left in  
16 charge of their safe keeping. That Ms. Leigh's personal, internal lack of validation or a  
17 reasonable explanation for such inhumane treatment results in a gnawing, depressing,  
18 confusing and sobering look into the dark side of humanity that disturbs the senses and  
19 destroys all notions of aesthetic appreciation the Plaintiff otherwise would enjoy when  
20 observing Owyhee Complex horses roaming free in peaceful, dynamic social order. Ms.  
21 Leigh suffers harm to her personal well being where she is physically sickened in  
22 having observed repetitive inhumane acts towards wild horses. Ms. Leigh suffers harm  
23 to her personal well being and to her mind's soul amounting to anxiety, trepidation,  
24 grief, chagrin, and a shock to the senses, which she must relive in both her conscious  
25 mind and also at an unconscious level when experiencing nightmares, from having  
26 personally witnessed the inhumane conditions and methods employed at these  
27 roundups. Ms. Leigh. is informed and believes that these personal harms and other  
28 harms, establish the requisite concrete and particularized injury to her personal

1 interests.

2 103. Plaintiff plans to observe most of the Defendants' remaining roundup  
3 operations at the Owyhee Complex. Plaintiff accordingly could reasonably expect that  
4 she would continue to suffer the same harm as referenced herein, at remaining  
5 Owyhee Complex roundups where the Defendants refuse corrective action.

6 104. As of this writing, Plaintiff is informed and believes the Defendants have  
7 not engaged in any corrective efforts to ensure such inhumane conduct is not repeated  
8 at future roundups at Owyhee Complex roundups.

9 105. There remains a real and immediate threat that the injuries to Ms. Leigh's  
10 personal interests as herein described would repeat and reoccur where she would likely  
11 be present at remaining Owyhee Complex roundups.

12 106. A ruling in Plaintiff's favor would likely address and resolve the Plaintiffs'  
13 harm that would not likely occur except with assistance from the court.

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

19 108. The harms to Ms. Leigh as are more particularly described herein are  
20 irreparable. The Defendants' conduct in refusing to take corrective action disturbs the  
21 senses of reasonable people including Ms. Leigh, and causes further irreparable harm  
22 to Ms. Leigh. Such inhumane conduct is intolerable, it is shocking to the conscience of  
23 reasonable persons including Ms. Leigh, and such inhumane conduct is unlawful and  
24 unnecessary. There is no measure of damages and no action at law available to Ms.  
25 Leigh which can account for the personal, irreparable loss to Ms. Leigh as heretofore  
26 mentioned. Ms. Leigh has no other remedy available to her in seeking a remedy to stop  
27 the harmful conduct. Without the help of this court, she finds herself without remedy  
28 and without justice.



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

4 117. Plaintiff seeks a declaration that the Defendants' choice of action as is  
5 displayed at the Owyhee Complex as averred herein, violates laws of the United States,  
6 in particular the following:

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

11 118. Plaintiff seeks a declaration that plaintiff maintains standing to bring both  
12 injunctive relief and also declarative relief as averred herein, that she suffers irreparable  
13 harm, that the issuance of such relief is in the public's interest as well as in Ms. Leigh's  
14 interests.

15 **THIRD CLAIM FOR RELIEF**

16 119. Plaintiff incorporates herein by reference the averments contained in  
17 Paragraphs 1 through 118 of the Complaint as though the same were fully set forth  
18 herein.

19 120. The defendants should have considered but failed to consider before  
20 finalizing the EA, those matters averred in paragraphs 11-13, 15-16, 18-28 and 32-33  
21 herein.

22 121. In failing to consider the foregoing before finalizing the EA, the  
23 defendants' action is "not in accordance with law," or is arbitrary and capricious, or  
24 implemented without observance of procedure required by law.

25 122. The defendants' action which causes wild horses to be unnecessarily and  
26 unlawfully removed from Snowstorm HMA in violation of law and where the defendants  
27 refuse to implement corrective action, disturbs the senses of reasonable people  
28 including Ms. Leigh, and causes further irreparable harm to Ms. Leigh. There is no

1 measure of damages and no action at law available to Ms. Leigh which can account for  
2 the personal, irreparable loss to Ms. Leigh as heretofore mentioned. Ms. Leigh has no  
3 other remedy available to her in seeking a remedy to stop the harmful conduct. Without  
4 the help of this court, she finds herself without remedy and without justice.

5 123. For the reasons outlined in paragraphs 11-13, 15-16, 18-28 and 32-33  
6 herein, the Defendants should be temporarily restrained and preliminarily and  
7 permanently enjoined from proceeding with the bait/water trap roundups at Snowstorm  
8 HMA.

9 124. Because the plaintiff may reasonably expect that the same agency  
10 conduct would likely repeat in other areas of the Owyhee Complex during the ten-year  
11 EA as that outlined in paragraphs 11-13, 15-16, 18-28 and 32-33, and which also  
12 causes inhumane methods and conditions to occur, and which causes roundups to  
13 occur based on no information or mis-information or inaccurate or non-valid data,  
14 plaintiff avers that the Defendants should be temporarily restrained and preliminarily  
15 and permanently enjoined from proceeding with further roundups during the ten-year  
16 EA, within the Owyhee Complex until after the defendants conduct appropriate studies  
17 and obtain valid, current data. Alternatively, Plaintiff requests she be allowed to file  
18 temporary restraining orders on a case by case basis without having to amend the  
19 complaint on each occasion where new roundups that are based on defective or  
20 unlawful decisions or actions, are announced during the remaining ten-year EA and  
21 occurring within the Owyhee Complex.

#### 22 **FOURTH CLAIM FOR RELIEF**

23 125. Plaintiff incorporates herein by reference the averments contained in  
24 Paragraphs 1 through 124 of the Complaint as though the same were fully set forth  
25 herein.

26 126. The conduct as described herein in paragraphs 34 and 35 is an unlawful  
27 violation and infringement on the Plaintiff's First Amendment right of access and as a  
28 press member, to her freedom of the press, to observe and then report government in

1 action on matters involving activities garnering passionate public interest.

2 127. Plaintiff is informed and believes the methods to be employed to roundup  
3 wild horses at the Owyhee Complex and particularly those that would use the methods  
4 proposed at the Snowstorm HMA via bait / water trap method, that were cancelled, are  
5 intended to, and in fact violate plaintiff's First Amendment constitutional right to observe  
6 government activity; that open government has been a hallmark of America's  
7 democracy since its founding;

8 128. The First Amendment prohibits any law "abridging the freedom of speech,  
9 or of the press [.]" U.S. Const. amend. I. Although the First Amendment does not  
10 enumerate special rights for observing government activities, "[t]he Supreme Court has  
11 recognized that news gathering is an activity protected by the First Amendment." *United*  
12 *States v. Sherman*, 581 F.2d 1358, 1361 (9th Cir.1978); see *Branzburg v. Hayes*, 408  
13 U.S. 665, 681, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972) ("[W]ithout some protection for  
14 seeking out the news, freedom of the press could be eviscerated."); and plaintiff is a  
15 newsgatherer who reports her observations of the management of wild horses to the  
16 public; and as a member of the public and the press, and is credentialed press.

17 129. Plaintiff maintains a qualified right of access to observe and report  
18 government activities which, in this instance, the defendants intend to unconstitutionally  
19 restrict with intended operations at the Owyhee Complex, the Snowstorm HMA, in  
20 particular.

21 130. Plaintiff is informed and believes wild horse roundups in the Owyhee  
22 Complex area have historically been open to the press and general public even long  
23 before the Wild Horse and Burro Act was passed into law in 1971. Plaintiff is informed  
24 and believes public access plays a significant positive role in the proper and reasonable  
25 functioning of wild horse management and roundups on and around public lands; that  
26 transparency with the public (or the lack thereof) in this very process was considered  
27 key in findings within the NAS study, where the term "transparency" when referencing  
28 the public's participation is cited no less than 46 times. Plaintiff asks that the court allow

1 its filing, to take judicial notice of the NAS report as an official, government authorized  
2 report following a requested study or investigation made pursuant to authority granted  
3 by the defendants according to law. If the NAS report is not filed with this pleading, the  
4 plaintiff has no objection to the court considering the NAS report as one outside the  
5 pleadings, if not made part of the record.

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



- 1 a. precluding the Defendants from, proceeding with the Snowstorm HMA  
2 roundup for those First Amendment concerns indicated at paragraphs 34  
3 and 35 herein and also in the plaintiff's Fourth Claim for Relief,  
4 paragraphs 125 through 132 herein;
- 5 b. mandating and allowing and accommodating the public and plaintiff in a  
6 reasonable manner, to observe captures of wild horses in bait / water trap  
7 operations intended for the Snowstorm HMA, and in so doing, to require  
8 the same public access to observe the bait / water trap captures of wild  
9 horses as were completed successfully in other BLM districts, namely the  
10 following locations:
- 11 I. The BLM Elko, Nevada District for the Maverick - Medicine HMAs  
12 which allowed public access to observe bait / water trap operations  
13 there earlier this month, August 2013;
- 14 II. The BLM Carson, Nevada District for the Deer Run HMA which  
15 allowed public access to observe bait / water trap operations there  
16 earlier this year;
- 17 III. The BLM Billings, Montana field office encompassing the Prior  
18 Mountains which allowed public access to observe bait / water trap  
19 operations there August 2012;
- 20 c. A mandatory or prohibitive injunction issue preliminarily and permanently  
21 precluding the defendants from interfering with the plaintiffs constitutional  
22 right of access to observe and report government activity during roundups  
23 at the Owyhee Complex during the ten-year EA whether by bait trapping  
24 and precluding the public there, or by other means meant to remove  
25 plaintiff's and others' observation of the government's activities;
- 26 4. A declaration that the Defendants' action as currently intended at the Owyhee  
27 Complex roundups, would result in inhumane treatment toward wild horses, that the  
28 Defendants' action is accordingly, arbitrary and capricious, and results in an abuse of

1 discretion, or otherwise involves activity not in accordance with law, and that the  
2 Defendants' action is without observance of procedure required by law.

3 5. A declaration that the Defendants' current plan as currently contemplated  
4 violates laws of the United States, in particular the following:

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

9 6. A declaration that plaintiff maintains standing to bring both injunctive relief and  
10 also declarative relief as averred herein, that she suffers irreparable harm, that the  
11 issuance of such relief is in both hers and the public's interest.

12 7. A declaration that the conditions and methods of rounding up, capturing,  
13 corralling and loading wild horses at Owyhee Complex as described herein, are  
14 inhumane and thus violate policies and laws of the United States.

15 8. A declaration that the absence of a specific humane care policy or policy  
16 implemented by the Defendants has caused inhumane treatment of wild horses at  
17 Owyhee Complex roundups, and has caused Plaintiff harm.

18 9. That the Court award Plaintiff:

- 19 a. her costs of suit and expenses including expert witness and  
20 consultant fees and reasonable attorney's fees; and
- 21 b. such other and further relief as the Court deems appropriate under  
22 the circumstance.

23 Dated August 21, 2013

LAW OFFICE OF GORDON M. COWAN

s/

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

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**Exhibits**

- Exhibit 1: BLM’s Final Environmental Assessment for the Owyhee Complex
- Exhibit 2: BLM Posted Update
- Exhibit 3: Declaration of Laura Leigh
- Exhibit 4: Declaration of Keegan Kuhn
- Exhibit 5: Declaration of Stephanie Martin
- Exhibit 6: Drought Monitoring Report (by Ms. Leigh for Wild Horse Education)