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

9 LAURA LEIGH,

10 Plaintiff,

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

11 vs.

12 KEN SALAZAR, in his official capacity as  
Secretary of the U.S. DEPARTMENT OF  
THE INTERIOR, BOB ABBEY, in his official  
13 capacity as Director of the BUREAU OF  
LAND MANAGEMENT; AMY LUEDERS in  
14 her official capacity as Nevada State Acting  
Director of the BUREAU OF LAND  
15 MANAGEMENT,

16 Defendants.

17  
18 **REPLY BRIEF IN RESPONSE TO DEFENDANTS' OPPOSITION (Dk. 37) TO**  
**MOTION TO RECONSIDER RULING (Dk. 30) DENYING WITHOUT**  
19 **PREJUDICE, PLAINTIFF'S MOTION FOR**  
**PRELIMINARY INJUNCTION (Dk. 12)**

20 Plaintiff LAURA LEIGH submits the following Reply to the government  
21 defendants' opposition (Dk. 37) to Plaintiff's Motion to Reconsider Ruling (Dk.30) that  
22 denied without prejudice, the Plaintiff's Motion for Preliminary Injunction (Dk. 12):

23 ***"Time Bar" Discussion***

24 The defendants contend the motion is time barred.

25 The defendants ignore that the court on its own, set the time when Ms. Leigh  
26 could bring her motion to reconsider. The motion was brought within that time. Ms.  
27 Leigh's motion emphasizes the point when confirming the following:

28 In its Order entered March 5, 2012 (Dk. 34) this court

1 graciously offered Plaintiff the opportunity to bring this  
2 motion. [Footnote Omitted]. The motion is brought under this  
3 authority.

4 ***The “Premature” Contention***

5 The defendants contend the case is premature because the Ninth Circuit has not  
6 yet issued its ruling on the defendants’ motion for a “panel rehearing” under FRAP 40.  
7 Presumably, as this purported argument goes, the Ninth Circuit’s decision has no  
8 precedential effect until it so rules.

9 The ruling in *Leigh v. Salazar*, 668 F.3d 1126 (9th Cir. 2012) stands as  
10 precedence unless or until the appellate court reverses itself.

11  
12 ***The “Different Gather” Argument and Mootness vs. Irreparable Harm***

13 The defendants contend the Silver King roundup which was the roundup at issue  
14 before the Ninth Circuit, has no bearing on the instant matter. The defendants further  
15 argue that the Ninth Circuit discussed a “mootness” issue not germane to the instant  
16 case, where the court denied relief because Ms. Leigh could not suffer irreparable harm  
17 if the defendants would not round up horses in the year 2012.

18 Contrary to this contention, the crux of this motion is based on the discussion the  
19 Ninth Circuit incorporated in its opinion when determining the mootness issue. Granted,  
20 the issue here involves “irreparable harm” and not “mootness,” this court nevertheless  
21 determined that Ms. Leigh could not possibly suffer irreparable harm where the  
22 defendants would not roundup horses at Triple B in the year 2012. This is the focus of  
23 the court’s concern when denying Ms. Leigh’s motion for preliminary injunctive relief.  
24 This conclusion is diametrically opposed to the Ninth Circuit’s discussion when  
25 determining “mootness” on nearly identical facts to that facing this court which involves a  
26 roundup at Triple B.

27 To be clear on how this court ruled, the following are excerpts from the transcript  
28 of the January 26, 2012 hearing conducted by this court:

1 Transcript, pp. 37-38:

2 The Court:

3 I don't know that that's necessarily relevant to the Court's decision here, because  
4 the Court's decision is based, principally, on whether or not there is the probability  
5 of, or likelihood of irreparable injury if the injunction is not issued. And when you  
6 have the Triple B Complex gather finished, at least during 2012, which is probably  
7 going to be the life of this lawsuit, you certainly accomplished something. There  
8 is no more gather out there this year. And that may well cause this court to  
9 conclude, among other things, that there is certainly no irreparable injury during  
10 the life of this lawsuit.

11

12 Transcript, p. 38

13 The Court:

14 And the critical action that was taken, as far as I'm concerned, at this point, on  
15 the motion that's before me, is the fact that they've stopped the gather at Triple B.

16

17 Transcript, p. 39:

18 The Court:

19 This case is not going to be decided on standing. I think your client has standing  
20 - - at least with respect to the Triple B. I already ruled that way. That's why I  
21 issued - - I wouldn't have issued the restraining order if I thought she didn't have  
22 standing.

23

24 Transcript p.43:

25 The Court:

26 And, accordingly, the Court then issued an injunction - - or Temporary  
27 Restraining Order, (*sic*) restraining the Bureau of Land Management from  
28 continuing the gather, or the use of the helicopter in an inhumane way, which, in

1 the opinion of the Court, occurred as a result fo the helicopter coming too close to  
2 the horse, and prohibiting similar conduct.

3 Following that, and on August 31<sup>st</sup>, 2011, the Temporary Restraining Order  
4 expired by its terms, and that was the last day of the gather at the Triple B.

5 Subsequent to that time, by virtue of the pleadings that have been filed in  
6 this court, the Court has been advised that the Bureau of Land Management - -  
7 and this is really not controverted - - has no intention to engage in any gather,  
8 during the 2012 year of wild horses, in the Triple B Complex.

9  
10 Transcript, p.46:

11 The Court:

12 And; as I've indicated all along, some of these factors favor the plaintiff. But, the  
13 factor in this case that does not favor the plaintiff, and which is fatal to the  
14 plaintiff's case, is in the opinion of the Court with respect to the issuance of a  
15 preliminary injunction, is plaintiff has failed, at this point, to sufficiently show that  
16 she will suffer irreparable injury if relief is denied. And that is so for the following  
17 reasons, which I've already articulated:

18 One, there is no further roundups scheduled during the year, in 2012, at  
19 the Triple B Complex;

20 Sun J is not - - and Jun J, quite frankly, was the focus of plaintiff's original  
21 Complaint, and to some degree the focus of the Amended Complaint, but  
22 certainly the original Complaint, at least the way I read it - - and Sun J is not  
23 contracted to do anymore work at the Triple B roundup.

24  
25 Transcript, pp.46-47:

26 The Court

27 And I certainly recognize that the plaintiff can't go out and attempt to view every  
28 one of these roundups. But in this case, I would say that her action in reviewing

1 what occurred at the Triple B Complex was of value in terms of achieving success  
2 in connection with the application that was before the Court. And I found that  
3 there was a basis for concluding that the plaintiff had suffered irreparable injury, if  
4 the Court didn't act at that point. The same facts don't exist at this time, as I  
5 indicated, -and I'm somewhat redundant on this - - there is no longer any roundup  
6 contemplated during 2012 at the Triple B Complex;

7  
8 Transcript, pp 47-48:

9 The Court:

10 That being the case, the Court finds that the plaintiff has failed to establish  
11 sufficient evidence at this preliminary injunction stage, and equitable stage, for  
12 purposes of the issuance of an injunction, to prohibit the Bureau of Land  
13 Management from continuing with roundups at either the Triple B, or any of the  
14 other roundups that they are engaged in in the State of Nevada . . . And for that  
15 reason, the application for injunctive relief is denied. It is so ordered.

16  
17 Transcript, pp. 48-49:

18 The Court:

19 With respect to the mootness issue, that's a fairly close call, in the opinion of the  
20 Court. But, again, the Court needs not address that. I think there is the capability  
21 of repetition. And if that were to occur, it could be argued that that would be done  
22 for purposes of evading review. If the Bureau of Land Management, for example,  
23 were saying that they weren't going to do anything at the Triple B for the next  
24 couple of months, that would be different than not even having it on the schedule  
25 for 2012. But, that's not what we have. What we have is that they don't have it  
26 on the schedule for 2012.

27 Should things change, the parties are free to come here. This case is still  
28 pending. So, the denial is without prejudice to renew an application for injunctive

1 relief with respect to the Triple B, in case something changes of a significant  
2 nature.

3 This will constitute findings fo the Court and conclusions of law. It is so ordered.  
4

5 ***The Focus***

6 The precise focus is whether Ms. Leigh, who plans to attend future BLM roundups  
7 at Triple B, would suffer “irreparable harm” where a roundup at Triple B *must* take place  
8 by law.

9 This court appeared satisfied that all elements for preliminary injunctive relief  
10 would have been satisfied *but for* the absence of “irreparable harm.” The court  
11 discerned that Ms. Leigh could not possibly suffer irreparable harm after the BLM chose  
12 to cancel further roundups at Triple B the remainder of this year, 2012. The court  
13 denied relief on this precise basis. (See transcript excerpts, above).

14 But, the conclusion reached by the court on irreparable harm, is  
15 diametrically opposed to the conclusion reached by the Ninth Circuit on “mootness,” on  
16 a nearly identical point with paralleling facts to the instant matter. The Ninth Circuit  
17 accepted that the BLM was by necessity of law, required to return to Silver King to  
18 remove more horses:

19 Although the government asserts that there are no current  
20 plans for future roundups at Silver King, it cannot rule out the  
21 possibility because the Wild Free–Roaming Horses and  
22 Burros Act requires the BLM to “immediately remove” excess  
23 horses from overpopulated federal lands. 16 U.S.C. §  
24 1333(b)(2). *Id.*

25 The appellate court did not narrow the window of opportunity of available  
26 injunctive relief at Silver King to a limited time frame or to the end of the current year.  
27 Rather, the Ninth Circuit found it important that the government defendants in that case  
28 *must* return at some point because the law required them to do so.

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**CONCLUSION**

The defendants do not object to the math or to the statistics the plaintiff employed in determining the probable wild horse herd population at Triple B, currently, or its growth rate in the immediate future. These statistics demonstrate, under the defendants' own Environmental Assessment, that the area has excess horses that must be removed immediately. They simply choose to avoid the statutory mandate to avoid the effects of an adverse ruling in this case.

For reasons discussed, Plaintiff respectfully asks the court reconsider its decision entered January 26, 2012 and enter an order granting the requested preliminary injunctive relief.

Respectfully, this 11<sup>th</sup> day of April 2012

LAW OFFICE OF GORDON M. COWAN

/S/

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Attorney for Plaintiff LAURA LEIGH

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**CERTIFICATE OF SERVICE**

[Pursuant to Fed. R. Civ. P. 5(b) & Local Rules for Electronic Filing]

I certify that on the date indicated below, I filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system, which would provide notification and a copy of same to counsel of record, including the following counsel:

Erik Petersen, Esq.  
Ayako Sato

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Dated this 11<sup>th</sup> day of April 2012

/S/

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G.M. Cowan