

DANIEL G. BOGDEN
United States Attorney
GREG ADDINGTON
Nevada Bar #6875
Assistant United States Attorney
100 West Liberty Street, Suite 600
Reno, Nevada 89501
Ph: (775) 784-5438
Fax: (775) 784-5181

IGNACIA S. MORENO, Assistant Attorney General
SETH M. BARSKY, Section Chief
S. JAY GOVINDAN, Assistant Section Chief
ERIK E. PETERSEN, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
(202) 305-0339 (tel)
(202) 305-0275 (fax)

Attorneys for Federal Defendants

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEVADA**

LAURA LEIGH,

Plaintiff,

v.

KEN SALAZAR, et al.,

Defendants.

CASE NO. 3:11-cv-00608-HDM-WGC

DECLARATION OF MELANIE L. MIRATI

I, Melanie L. Mirati, do declare as follows:

I have personal knowledge of the matters set forth herein and if called to testify I could and would testify competently thereto.

1. I am the Wild Horse and Burro Specialist for the Bureau of Land Management (BLM) Black Rock Field Office in the Winnemucca District, in Winnemucca, Nevada. I have held that position since August 15, 2011. Prior to that, I served as the Wild Horse and Burro Specialist for the BLM's Rawlins Field Office in Wyoming.
2. Prior to becoming a Wild Horse and Burro Specialist, I had extensive experience working with domestic horses, having owned, ridden, shown, bred and trained horses my entire life. I also worked as a stable hand feeding, watering, cleaning and exercising horses during high school. In the past I have maintained a small band of registered quarter horse brood mares and raised colts for sale and my own personal use. I have shown my personal horses and client's horses in Western and English disciplines as well as rodeo events. I have been employed starting colts and fitting horses for the show ring. I have also been a carded judge for the California Horse Show Association and I have worked as a veterinary assistant for multiple veterinary clinics serving both large and small animals. During my time in college I completed many equine studies classes including Equine Nutrition and Ration Balancing, Hoof Care, Colt Starting, Reined Cow Horse Basics and Judging.
3. My duties as a Wild Horse and Burro Specialist include administration and management of nine Herd Management Areas (HMAs), including the Jackson Mountains HMA. As the only Wild Horse and Burro Specialist in the District at this time, I am also currently responsible for managing wild horses within all twenty HMAs in the Winnemucca District, including conducting wild horse population survey flight inventories as well as aerial distribution flights, monitoring the condition of wild horses within the HMAs (including potential emergency situations or determining if water hauling is necessary to protect the health and well-being of the wild horses), collecting data on wild horse impacts to rangeland resources and habitat components relevant to determining whether the established Appropriate Management Levels require modification to ensure a thriving natural ecological balance.
4. I have reviewed the Motion for Temporary Restraining Order and amended motion filed in Laura Leigh v. Salazar, Case No. 3:11-cv-00608, and the accompanying declarations by plaintiff and others.
5. I am the Contract Officer Representative (COR) for the Jackson Mountains wild horse gather that is the subject of this litigation. As the COR, I am responsible for all aspects of the implementation of the contract, including coordinating with the helicopter pilot on bands of horses being gathered, distances the horses are moved, ensuring gathered horses are capable of traveling the distance necessary to the trap site, monitoring the temperatures, overseeing the feeding and watering of gathered horses, dust abatement, handling of gathered horses by the crew, coordinating with the APHIS veterinarian to ensure the gathered animals are assessed at least twice (after being gathered and in the morning before shipping to the short-term holding facility), ensuring humane treatment, coordinating with short-term holding, and making decisions as to whether to continue to pursue certain horses that are more skittish or to let them go. In most cases I accompany

the wranglers when a horse or foal is roped to ensure humane treatment and contract compliance.

6. I am very familiar with the Jackson Mountains HMA, which I have personally visited at least 20-30 times since August 2011, not including the time spent on site during the current emergency gather operations. I am also very familiar with the current data available on rangeland conditions within the HMA, as well as the condition of the wild horses at present within the HMA.

Emergency Conditions

7. Since arriving at the Winnemucca District, I have been monitoring conditions in the Jackson Mountains HMA due to concerns about rangeland conditions, namely water and forage availability. The forage base, especially in the lowlands in the southern portion of the HMA, consists almost entirely of cheatgrass, an invasive non-native species of grass which has limited protein content and nutritional value, especially once it has dried out or cured (after the growing season).
8. Around January 2012, we became aware of large numbers of wild horses coming from the mountains in the northern area to the flats outside of the HMA, which was atypical of their normal movement. This indicated a shortage of feed in the higher elevation areas, which was confirmed by monitoring by the District Wilderness Ranger. Due to these observations, we began more closely monitoring conditions in the Jackson Mountains HMA.
9. In March 2012, I started monitoring efforts twice a week due to concerns about water and forage shortages in the HMA. I also documented wild horse locations and approximate numbers were also documented. I measured water flows and implemented vegetation utilization monitoring to assess the use patterns and available forage in relation to key water sources.
10. In April 2012 we documented severe utilization up to 2.5 miles from Trail Springs in the southern portion of the HMA, with similar trends being observed at other key water sources.
11. Beginning in mid-April 2012, upon my recommendation to the District Manager, BLM started to haul water to Trail Springs due to the concentration of wild horses and insufficient spring flow in this area. Although there were some 200 head of wild horses in this area, when BLM brought the water truck into the area (including some road maintenance to access the area) and installed two water storage tanks and a trough, this activity scared the horses, scattering them away from the augmented water source.
12. In May 2012, after some of the horses returned to the area, BLM hauled 4000-5000 gallons a week due to the drought conditions and excess wild horse numbers, and continued monitoring the escalating situation due to concerns about an emergency developing in the HMA.

13. In addition to reduced spring flows, we documented a lack of available forage, with the grasses being largely consumed on the higher elevations where horses would normally have been found, leaving only the cheatgrass on the lower elevation areas. Due to a lack of precipitation and a lack of green-up during the winter and spring of 2012, there is very limited forage with any nutritional value available for the number of wild horses currently present in the HMA. Additionally, the horses have been forced to consume shrubs due to the absence of grasses, which has had negative impacts on their health and body condition.
14. The limited forage availability and reduced spring flows has affected the body condition of many mares and foals within the HMA, especially in the southern portion. Wild horses also have been moving outside the HMA in their search for water and forage. Photo documentation of specific "marker horses" has shown a steady decline in body condition since March 2012.
15. As conditions deteriorated and it became more apparent that an emergency situation was emerging, we considered whether it would be possible to alleviate the over-population in the southern portion of the HMA, especially around Trail Springs, through water or bait trapping prior to July 1. Because of the horses' sensitivity to any human presence, our observations of the wild horses' reaction to the water hauling and population inventory as well as the danger that water trapping would actually deter the wild horses from coming for water they needed to survive, I felt that water trapping would actually cause more distress and suffering for the wild horses and that it would not be possible to remove a sufficient number of horses using this method due to their skittishness to prevent possible death and suffering. For this reason, as the Wild Horse and Burro Specialist, I recommended to the District Manager that the emergency gather be conducted by helicopter, as water or bait trapping would likely be ineffectual and only aggravate the existing emergency situation.
16. Although water or bait trapping can be a useful tool in some areas at certain times it was not a viable option in this case. My professional opinion to not attempt water or bait trapping was based on the current body and health conditions observed as well as the wild horses' previous responses to human presence. Water trapping is generally only effective if the wild horses are kept off of all water sources. In this HMA there are other small springs available within the designated Wilderness Area. These other springs would not have been sufficient to water all the wild horses; however, wild horses have been known to stay at water sources even if only to have a small brief drink. This combined with their heightened sensitivity to human intrusions likely would have been enough to keep the wild horses from coming back to the augmented water source where the trap would have been set. Were this to happen not only would the water trapping be unsuccessful it would have severely compromised horse health and potentially caused large numbers of deaths. The first to be effected by such an incident would be mares and foals as the stallions fight for dominance at the limited water sources.

17. In Paragraphs 11 (G) and 11 (O), Ms. Leigh alleges that the “emergency” portion of the gather is over and the remaining horses are in better body condition. This is not correct. The emergency conditions are still present. There continues to be a lack of forage throughout the HMA, and this is most severe in the southern end of the HMA where BLM has been gathering excess horses first due to the emergency conditions. Due to windy weather conditions (when we shut down operations) and the skittishness of the horses, BLM may still be in the southern area for at least another week or more (contrary to Ms. Leigh’s claims that BLM will be finished gathering from this area by Wednesday June 20). The mares and foals that are being gathered up to the present date continue to reflect the emergency conditions on the range, with poor body condition. Additionally, many young stallions are also showing poor condition in these areas. The wild horses in the northern portion of the HMA are also experiencing a lack of forage due to the ongoing drought conditions and even with the removal of almost 300 wild horses since June 8th for the southern portion of the HMA, the population in the HMA remains significantly above the AML range, with too many horses competing for limited forage and water on the range.
18. The wild horses in the northern and southern portions of the HMA are not distinct populations and there is interchange/movement within the HMA as a whole, especially when the horses are pressured by gather activities. There is only limited fencing within the HMA and Wilderness Areas which also promotes movement of horses throughout the entire HMA. The population survey flights show wild horses tend to congregate to the north and south ends; however, there were also wild horses observed along the middle portions of the HMA, indicating that horses move throughout the entire area.

Gather Distances

19. In Paragraphs 11(H) and 11 (K), Ms. Leigh alleges that BLM is running young foals excessive distances to the trap site. There is no absolute cut-off on a maximum distance that wild horses or foals can travel to a trap site, and exercise is a natural part of a foal’s life, even at a young age. Of greatest concern to me as the COR, is that the pace, distance and terrain is appropriate for the condition of the horses.
20. The Contractor monitors the pace at which the horses are moving to ensure they are not being pushed at more than a comfortable pace before reaching the trap site. I also am familiar with the geography, terrain and locations from which the horses are being gathered and provide direction to the Contractor on whether the distance to be traveled is appropriate.
21. Based on my observations of the wild horses that have been gathered through the present date, it is my professional opinion that the wild horses have not been moved excessive distances. This is because the respiration and recovery rates of wild horses observed at the trap sites immediately after their capture, show that they are not in a state of distress and have not been moved too far or too fast. No wild horses have been sweated or lathered when entering the trap.

22. As the COR, I have worked with the Contractor to bring the trap sites as close as possible to the bands of wild horses that need to be gathered to minimize the distances that they travel during the gather operations. I have not observed any evidence that the wild horses are being moved excessive distances during this gather and we have taken particular care to ensure that foals are not separated from their mares.

Temperature

23. In Paragraphs 11 (I) and 11(J), Ms. Leigh alleges that BLM has gathered wild horses in temperatures in the 80s and that this is improper. There is no prohibition on gathering wild horses based on a specific temperature. This is because the wild horses are acclimated to their areas and animal condition is the key determinant in deciding whether to stop a gather for heat or other temperature related reasons.
24. Based on the condition of the horses as they have been brought in to the trap sites, I have not observed any evidence that the horses are showing heat-related effects during the gather operations in the Jackson Mountains HMA. BLM has also been hauling water (since prior to the gather) to the animals to prevent dehydration and the pace of the gather is set to account for the reduced body condition of the wild horses. As in all gathers, the wild horses are allowed to set their pace when coming to the trap site. Under no circumstances are the horses "stampeded" while being moved to the trap site. The horses are moved at a comfortable pace and only pushed a little faster when they reach the jute wings to prevent them from turning to escape.
25. As the COR, I take a temperature reading every time a group of horses is brought to the trap site. I record the temperature and time of reading in my notes and also provide it to the Public Affairs Officer who shares that information with members of the public who are observing the gather. In any given day, I may take and record up to a dozen separate temperature readings.
26. If I determine that conditions are too hot, i.e., it takes more than 5-10 minutes for the horses' respiration rate to recover, or horses are "lathered" or showing any other signs of distress, then I would order the gather to shut down for the day.

Dust Abatement

27. In Paragraph 11(L), Ms. Leigh alleges that she cannot see the number of horses coming into the jute because of the dust emanating from the helicopter wash, and assumes this means there is insufficient dust control. BLM has been pro-active in ensuring that the areas where the wild horses are being brought have been watered down to minimize dust. The dust from the helicopter wash is generally behind the wild horses that have entered the jute wings, and does not directly affect them. The wild horses are also only in the jute wings for a very short period of time (approximately 1-2 minutes). Due to the short duration the horses are in the wings, this area is not a priority for dust control in the same

manner as the trap site holding pens, which are watered multiple times to ensure the animals are not inhaling dust.

Pairing of Mare & Foal

28. In Paragraph 11 (M), Ms. Leigh complains of “breakdown in communications among staff” because she was told BLM had roped two mares and two foals, only to be informed later that it was only a single mare and foal. Ms. Leigh does not have a good understanding of the actual events that transpired during this gather event, nor was she prevented from observing these animals at the holding facility.
29. On Wednesday, June 13, 2012, the Contractor made two unsuccessful tries at bringing in a band of wild horses that included two mares and two foals. After the second try, the decision was made to let the wild horses go without further gather efforts, except that one foal fell behind the band and was at risk of being abandoned. The Contractor recommended roping the foal and mare to avoid having an orphaned foal and I agreed with that recommendation. I accompanied four wranglers (2 for the colt and 2 for the mare) to a location approximately two-three miles from the trap site. The foal was captured approximately 2 miles from the trap site and the mare was captured approximately three miles away. The animals were allowed to travel toward the trailer at their own pace. The mare and foal were paired at the trailer and the foal almost immediately began nursing. While the mare and foal were moving to the trailer, one of the domestic saddle horses ridden by a wrangler appeared to have severe abdominal discomfort and required medical assistance. After he was treated by the veterinarian, the saddle horse was loaded into a separate compartment of the trailer and taken back with the wild horses to the holding site. There was no limping foal or other injured wild horse, since the horse that was in distress was actually one of the domestic saddle horses ridden by a wrangler.
30. Public observers interested in seeing the roped mare and foal could do so at the holding site. However, the process of roping, trailing, and transporting the mare and foal (and saddle horse) took some time, during which Ms. Leigh chose to leave the area and not to travel to the holding site. The next morning, BLM started loading the gathered horses early in the morning as is its normal practice. Although Ms. Leigh wanted the activities to be suspended until she arrived, this was not possible because this would have required the Brand Inspector, the Contract crew, and BLM staff to delay shipping and gather activities until Ms. Leigh arrived. This would also have meant not taking advantage of the cooler weather in the early morning for the transport and gather activities.
31. Ms. Leigh alleges that foals have been harmed during the gather operations and that BLM has not accounted for foals it has gathered. As the COR, I am very aware of the condition and numbers of foals being brought in. Foals being gathered are exhibiting poor body condition due to lack of nutrition related to the extremely limited and poor forage available within the HMA. For this reason, great care is being taken to minimize the potential for injuries to the foals, as well as to keep mares and foals paired up. If a foal exhibits an inability to keep pace with the herd, the pilot allows the foal to fall

behind and radios a crew member on the ground to keep the foal in sight. Once the other horses have been caught, the wranglers and helicopter go back for the foals to ensure they are gathered in the most humane and caring way possible and to pair them with the mares in a timely manner. On almost all occasions, I have personally been present when foals or mares have been roped and brought back to the trap site. This task takes significant time and effort to accomplish so as to assure the well-being of the animals. This is why on June 13, 2012, capturing the mare and foal was such a time-consuming task.

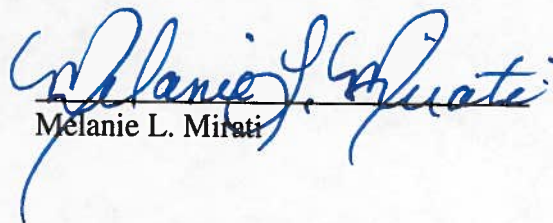
32. Based on my experience working with wild horses gather operations, the trap set up for the gather was well designed and set up in a proper manner. It was not L-shaped but rather a funnel with the wings set in a draw between a large hill and a mountain and ending with the trap pens on the other side of the draw, wrapping around the mountain to "hide" the trap itself. The horses entered the draw with the wings funneling them to the pens, which actually gave the appearance of being an escape since there is another open flat on the distant side where the pens were set up. The horses being gathered in this HMA have a heightened sensitivity to aircraft and all human activities, as evidenced by their actions of jumping or running through the jute wings, moving back towards the helicopter rather than away from it as wild horses generally do and moving up hill rather out into a flat area which would have led them into the double gates of the trap. The contractor choose without direction from myself on multiple occasions to allow horses that were not "easily trapped" in this location to escape without pursuing the horses at the contractors own expense.
33. Ms. Leigh has also alleged in Paragraph 11(N) of her declaration that the foaling rate is less than anticipated and this means BLM will be gathering wild horses that "do not exist." This statement ignores the actual population data and our foal counts during the gather. The population prior to 2012 foaling was 834 wild horses for an AML range of 130-217. Removal of the 630 excess horses to be gathered now would just bring the population to within the AML range. Based on the number of foals that have been gathered since June 8th, we estimate the foaling rate to be approximately 22% for 2012, which is close to the estimated population growth rate described in the Environmental Assessment.

Observation Areas

34. In Paragraph 13, Ms. Leigh alleges that she was kept at a distance that prevented her from "observing or obtaining a meaningful assessment of the capture of the horses." However, BLM has made a significant effort to accommodate Ms. Leigh's desire to observe the horses.
35. As the COR, it is my responsibility to identify observation areas that provide the best viewing opportunities that can be safely provided, will not spook the horses, and will not hinder or potentially interfere with the gather operations. I try to balance these competing interests to the best of my abilities, always keeping paramount the safety and well-being of the horses that are being gathered, the contract crew, BLM employees and the public viewers.

36. The first observation location that I selected in conjunction with the gather contractor was selected due to knowledge of the horses' flight behavior. The public viewing area was some distance away but it was possible to observe the horses come up the canyon and into the double gates of the trap. This was the safest place to put the public where their location would be disguised because we knew the horses were flighty and would want to move up the hills.
37. Ms. Leigh complained about this first observation location, and at the request of the District Manager, I worked with the gather contractor and incident commander to put the public still on a hill but literally just above the trap site. This was an area that was less convenient for the contractor (and meant not being able to pursue certain horses that evaded the trap wings), but was closer and appeared to be more to Ms. Leigh's liking on that day.
38. About two days later, Ms. Leigh and some other observers decided to go back to the first observation site that had been used. The observers were allowed to do this since the site had been previously identified as an appropriate viewing area and because we were able to communicate the change of location to the helicopter pilot for safety in a timely manner.
39. Ms. Leigh has not been denied access to the horses. She has just been asked to conform to the normal observation protocols in place to ensure the safety of all concerned and that all public viewers – media or individuals – have been asked to abide by. If anything, BLM has made special efforts to accommodate members of the public.

I declare under penalty of perjury that the foregoing is true and correct. Signed this 19th day of June, 2012 in Winnemucca, Nevada.


Melanie L. Mirati