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

17 LAURA LEIGH,
18 Plaintiff,
19 v.
20 KEN SALAZAR, et al.,
21 Defendants.

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

**FEDERAL DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

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1 The Federal Defendants hereby submit their opposition to Plaintiff's motion requesting
2 that this Court grant a temporary restraining order to halt the emergency gather that the Bureau
3 of Land Management is currently conducting in the Jackson Valley Herd Management Area.

4 INTRODUCTION

5 This case was brought on August 24, 2011, to challenge a wild horse gather ("the Triple
6 B Gather") planned and carried out by the Bureau of Land Management ("BLM") in an area in
7 eastern Nevada known as the Triple B complex. In a motion for preliminary injunctive relief,
8 Plaintiff asked this Court to enjoin the Triple B Gather and all future gathers where BLM uses
9 the gather contractor "Sun-J". Dkt. No. 12. Following briefing and argument, on January 26,
10 2012, this Court denied Plaintiff's motion for emergency injunctive relief. Dkt. No. 30. Plaintiff
11 then argued that this Court should reconsider its decision in light of a recent Ninth Circuit
12 opinion that relates to a wholly different gather ("the Silver King Gather"). *See* Dkt. No. 35 at 1
13 (citing *Leigh v. Salazar*, 668 F.3d 1126 (amended and superseded, 677 F.3d 892 (9th Cir. 2012)).
14 2012 WL 450471 (9th Cir. Feb. 14, 2012)). That motion remains pending.

17 Plaintiff is now attempting to introduce an entirely different gather into the litigation –
18 namely, BLM's decision to conduct an emergency gather at the Jackson Mountain Herd
19 Management Area ("HMA"). Dkt. No. 42. This HMA is roughly 150 miles away from the Triple
20 B complex, and the decision to gather at the Jackson Valley HMA is an entirely separate agency
21 action. Plaintiff also seeks a temporary restraining order that would halt the gather at the Jackson
22 Valley HMA.¹ Dkt. No. 43.

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27 ¹ The Court not need address Plaintiff's motion, of course, unless this Court determines that it is
28 proper to allow Plaintiff to amend her complaint. *See* Dkt. No. 42.

1 As discussed below, Plaintiff has failed to show that she is entitled to the extraordinary
2 relief that she requests. In particular, Plaintiff utterly failed to show that she is likely to succeed
3 on the merits of her case, nor will she suffer irreparable harm.²

4 **STATUTORY BACKGROUND**

5 The Wild Free-Roaming Horses and Burros Act (“Act” or “Wild Horse Act”), 16 U.S.C.
6 § 1331 et seq., directs BLM to manage wild horses on public lands, including the obligation to
7 remove excess horses “immediately” to address overpopulation and overuse of rangeland. BLM
8 “manage[s] the public lands under principles of multiple use and sustained yield.” 43 U.S.C. §
9 1732(a). Since 1971, this responsibility has included oversight and management of wild horses
10 and burros on public lands. See 16 U.S.C. § 1331 et seq. When enacted, Congress was concerned
11 that wild horses were vanishing from the West. Congress wished to preserve the horses as “living
12 symbols of the historic and pioneer spirit of the West,” and directed the Secretary to provide for
13 their protection and management. 16 U.S.C. § 1331. Within only a few years of the Act’s
14 passage, however, the situation had reversed itself, “and action [was] needed to prevent a
15 successful program from exceeding its goals and causing animal habitat destruction.” Am. Horse
16 Prot. Ass’n v. Watt, 694 F.2d 1310, 1316 (D.C. Cir. 1982) (quoting H.R. Rep. No. 95-1122 at 1-
17 2 (1978)); see also Blake v. Babbitt, 837 F. Supp. 458, 459 (D.D.C. 1993) (“[e]xcess numbers of
18 horses and burros pose a threat to wildlife, livestock, the improvement of range conditions, and
19 ultimately [the horses themselves]”) (citation omitted). Accordingly, in 1978, Congress passed
20 amendments to the Wild Horse Act, which provided the Secretary with greater authority and
21 discretion to manage and remove excess horses from rangeland. Id.

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27 ² After the Court established the briefing and hearing schedule for her TRO, Plaintiff then filed a
28 supplement to the TRO containing five additional exhibits. Dkt. No. 46.

1 The Wild Horse Act grants the Secretary of the Interior jurisdiction over all wild free-
2 roaming horses and burros on federal lands and directs the Secretary to “manage wild free-
3 roaming horses and burros in a manner that is designed to achieve and maintain *a thriving*
4 *natural ecological balance on the public lands.*” 16 U.S.C. § 1333(a) (emphasis added); see also
5 Fund for Animals v. BLM, 460 F.3d 13, 15 (D.C. Cir. 2006). “The Bureau (as the Secretary’s
6 delegate) carries out this function in ‘localized herd management areas’ (“HMAs”).” Id.; see also
7 16 U.S.C. § 1332(c); 43 C.F.R. § 4710.3-1, established in accordance with broader land use
8 plans. Fund for Animals, 460 F.3d at 15; see also 43 C.F.R. § 4710.1. “Responsibility for a
9 particular herd management area rests with [BLM’s] local field and state offices.” Fund for
10 Animals, 460 F.3d at 15. BLM is prohibited from allowing the range to deteriorate from an
11 overpopulation of wild horses. See 16 U.S.C. § 1333(2)(iv).

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14 In each HMA, BLM officials are afforded significant discretion to determine their own
15 methods for computing “appropriate management levels” (“AMLs”) for the wild horse and burro
16 populations they manage. Id.; see also 16 U.S.C. § 1333(b)(1). When wild horse populations
17 exceed the carrying capacity of the range, or when wild horses stray outside of a designated
18 HMA, BLM is obliged to remove them. See 16 U.S.C. § 1332(f) (defining “excess animals” as
19 “wild free-roaming horses or burros (1) which have been removed from an area by the Secretary
20 pursuant to applicable law, or (2) which must be removed from an area in order to preserve and
21 maintain a thriving natural ecological balance and multiple-use relationship in that area”); 43
22 C.F.R. § 4710.4 (management of wild horses “shall be undertaken with the objective of limiting
23 the animals' distribution to herd areas”); 43 C.F.R. § 4700.0-5(d) (herd areas are the “geographic
24 area identified as having been used by a herd as its habitat in 1971”). Once BLM has determined
25 “that an overpopulation exists on a given area of the public lands and that action is necessary to
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1 remove excess animals, [BLM shall] immediately remove excess animals from the range so as to
2 achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2).

3 The Wild Horse Act does not require that a certain number of horses be retained on the
4 range without regard to the impact on the ecosystem as a whole. Instead, Congress gave BLM
5 broad discretion to take action in a humane manner to remove horses in order to preserve and
6 maintain the habitat for sustained use or to control population growth through the use of fertility
7 contraception. See, e.g., Am. Horse Prot. Ass’n v. Frizzell, 403 F. Supp. 1206, 1217 (D. Nev.
8 1975); 16 U.S.C. § 1333(b)(1).

9
10 The 1978 amendments to the Wild Horses and Burros Act detailed the information that
11 BLM may rely upon in making decisions regarding whether to remove horses:

12 The most important 1978 amendment, for our purposes, is section 1333(b)(2).
13 That section addresses in detail the information upon which BLM may rest its
14 determination that a horse overpopulation exists in a particular area. The Agency
15 is exhorted to consider (i) the inventory of federal public land, (ii) land use plans,
16 (iii) information from environmental impact statements, [and] (iv) the inventory
17 of wild horses. But the Agency is explicitly authorized to proceed with the
18 removal of horses “in the absence of the information contained in (i-iv).” Id.
19 Clauses (i-iv) are therefore precatory; in the final analysis, the law directs that
20 horses “shall” be removed “immediately” once the Secretary determines, *on the*
21 *basis of whatever information he has at the time of his decision*, that an
22 overpopulation exists. The statute thus clearly conveys Congress’s view that
23 BLM’s findings of wild horse overpopulations should not be overturned quickly
24 on the ground that they are predicated on insufficient information.

25 Watt, 694 F.2d at 1318 (emphasis in original); Babbitt, 837 F. Supp. at 459 (“[t]he amendments
26 made clear the importance of management of the public range for multiple uses, rather than
27 emphasizing wild horse needs” and “[a]djustments can be made later, but the endangered and
28 rapidly deteriorating range cannot wait”) (citations omitted. In short, BLM, in its expert capacity
as the federal agency in charge of managing wild horses, is entitled to an enormous amount of

1 deference when deciding when and how to remove wild horses from the range. Watt, 694 F.2d at
2 1318.

3 **FACTUAL BACKGROUND**

4 The Jackson Mountain HMA is located within the administrative boundaries of BLM's
5 Black Rock Field Office in Humboldt County, Nevada, north and west of Winnemucca. EA at
6 1.³ Based on an aerial direct count population inventory of the Jackson Mountain HMA and
7 immediately adjacent areas conducted in April 2012, BLM determined that there are excess wild
8 horses present within and outside the boundaries of the HMA. *Id.* A total of 834 wild horses
9 were counted within the proposed gather areas in April 2012. BLM estimated that, at the time the
10 proposed gather operation was implemented, the population within the area was approximately
11 930 wild horses. *Id.*

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14 The AML range established for the HMA is 130-217 wild horses. *Id.* Therefore, the
15 estimated total population is expected to exceed the low-range of AML by 800 wild horses and
16 the high-range of AML by 713 wild horses. *Id.* Therefore, BLM proposed to conduct an initial
17 gather in order to remove approximately 630 excess wild horses and to implement a long-term
18 management strategy to reach and maintain AML over a period of ten years. *Id.*

19 The proposed gather area includes the HMA and immediately adjacent non-HMA areas
20 and encompasses approximately 775,000 acres, of which approximately 286,000 acres are within
21 the designated HMA and 489,000 acres are outside the HMA. *Id.* The entire gather area is
22 approximately 60 miles long and 35 miles wide. *Id.* A portion of the gather area is located
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26 ³ The Jackson Mountain Gather Environmental Assessment ("EA") and Decision Record ("DR")
27 are available at
http://www.blm.gov/nv/st/en/fo/wfo/blm_programs/wild_horses_and_burros/Jackson_Mountains_Gather/docs.html (last visited on June 19, 2012).

1 within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area.
2 *Id.*

3 While gather operations were originally scheduled to begin in July 2012, the lack of
4 spring vegetation growth, minimal residual vegetation from the previous year's forage crop and
5 reduced water at springs and other natural water sources resulted in declining wild horse health
6 conditions. *Id.* In early April 2012, BLM began hauling water to some areas of the HMA where
7 emergency conditions were arising and where an emergency situation ultimately resulted.
8 Declaration of Gene Seidlitz at ¶ 9 (Exhibit A). As water hauling efforts were initiated, most
9 wild horses in the area moved away for several weeks, after which time only a portion of the
10 wild horses returned to the area. *Id.* at ¶ 9-10; EA at 1. Those animals returning to the area were
11 observed to have declined in body condition from the time when they moved away due to human
12 presence. Exhibit A at ¶ 14; EA at 1. Monitoring showed a reduction of wild horse body
13 condition and overall health for wild horses within the gather area. *Id.* Animal health continues
14 to be impacted by the drought and lack of forage with nutritional value. Exhibit A at ¶ 24. Prior
15 to the emergency gather, mares were not receiving the nutrients they need from the existing
16 forage, as evidenced by the body condition scores of 2-4 that are being observed in the gathered
17 mares. *Id.* Their forage consumption for lactation is also insufficient, as evidenced by the body
18 condition of the young foals that have been gathered. *Id.* As a result of these conditions, BLM
19 determined that an emergency gather had become necessary. As a result, BLM decided that it
20 would begin the gather in June 2012. EA at 1.

21 Although helicopter gathers are generally the most effective gather method, they are
22 typically not utilized before July 1st, unless emergency conditions exist. Here, because of the
23 dire circumstances involved, BLM initiated a helicopter gather quickly, before wild horse health
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1 became further compromised. *Id.* at 2. Although it is likely there will be an increased number of
2 pregnant mares and young foals gathered in June (as compared with a gather in July), BLM,
3 utilizing its experts, concluded that the overall benefits of gathering and removing wild horses
4 before July 1, the original proposed start date, would limit the probability of individual animal
5 deaths due to extremely poor body condition related to poor nutrition and limited water
6 consumption opportunities, which disproportionately affects mares and foals. *Id.* In order to
7 preserve the overall health of mares and foals specifically, commencing the gather earlier would
8 provide an opportunity to transition the animals to adequate feed at temporary and short-term
9 holding while their bodies are still capable of recovering from their currently depleted body
10 condition. *Id.* If the gather was delayed until July 1, after conditions had further worsened, the
11 horses' body conditions will likely have deteriorated and the probability of death to pregnant and
12 nursing mares would have increased, thereby increasing the probability of orphaning foals and
13 spontaneous abortions. *Id.* Although there may be some possibility of incidence of orphan foals
14 and/or spontaneous abortions during gather operations that begin in June, an earlier gather
15 provides the opportunity to offer proper nutrition by feeding hay and providing water to mares
16 and foals at temporary and short-term holding, thereby increasing the chances of survival for
17 mares and foals that are currently competing for extremely limited resources, including forage
18 and water, and are exhibiting rapidly worsening body condition. *Id.*

22 STANDARD OF REVIEW

23 In considering whether to grant an application for a temporary restraining order, the
24 Court must examine four factors: (1) whether Plaintiff is likely to succeed on the merits; (2)
25 whether Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3)
26 whether the balance of equities tips in Plaintiff's favor; and (4) whether the public interest would
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1 be served by issuance of the temporary restraining order. *See Winter v. Natural Res. Def.*
2 *Council*, 555 U.S. 7, 20 (2008) (addressing the factors in granting preliminary injunctions). In
3 this circuit, the standard for granting a preliminary injunction and the standard for granting a
4 temporary restraining order are the same. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,
5 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
6 restraining order standards are “substantially identical.”); *see also Winch v. Lifepoint RC. Inc.*,
7 No. 3:10-CV-00061-LRH-RAM, 2010 WL 428918, at *1 (D. Nev. Feb. 1, 2010) (“The same
8 legal standard applies to temporary restraining orders and preliminary injunctions sought
9 pursuant to Federal Rule of Civil Procedure 65.”). In light of the Supreme Court’s decision in
10 *Winter*, courts must consider all four factors governing preliminary relief, *see Sierra Forest*
11 *Legacy v. Rey*, 577 F.3d 1015, 1019 (9th Cir. 2009) (finding that the district court erred in
12 granting a preliminary injunction because it failed to assess the non-merits factors – irreparable
13 harm, balancing of equities and the public interest – under the *Winter* standard), and may not
14 issue an injunction based on the mere possibility that there will be irreparable injury, *see Am.*
15 *Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (holding that
16 plaintiff must show that irreparable injury is likely).

19 ARGUMENT

20 I. Plaintiff is Unlikely to Succeed on the Merits.

21 As discussed below, Plaintiff failed to show that she is entitled to the extraordinary relief
22 that she requests, because, among other things, Plaintiff utterly failed to show that she is likely to
23 succeed on the merits of her case.

24 a. The Ongoing Gather at the Jackson HMA is Proper and Necessary.

25 The gravamen of Plaintiff’s first argument is that BLM is violating the law by conducting
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1 a helicopter gather during the month of June. *See* Dkt. No. 43 at 2. In support of this argument,
2 Plaintiff cites BLM's "Wild Horse and Burro Management Handbook" (the "Handbook").⁴ *Id.*

3 This handbook, which is not a regulation but is rather an agency guidance document, states:

4 The capture of wild horses by using a helicopter to herd the animals is prohibited
5 during the foaling season, which is defined as six weeks on either side of the peak
6 foaling to assure that young foals are mature enough to be able to remain with
7 their band during gather activities. This period is generally March 1 to June 30 for
8 most wild horse herds.

9 Handbook at 20. BLM does not dispute that this it is generally the practice of the agency to
10 refrain from conducting helicopter gathers during the foaling season, nor does BLM dispute that
11 it is currently deviating from this general practice in the Jackson Mountain HMA. What BLM
12 does dispute is that the current helicopter gather in the Jackson Mountain HMA constitutes a
13 violation of any law.

14 As an initial matter, Plaintiff's reliance on the general policies set for in the Handbook
15 paints an incomplete picture of the agency landscape. BLM routinely issues guidance to clarify
16 agency policy through Instruction Memoranda. Exhibit A at ¶ 15. As relevant here, on August
17 13, 2010, the agency issued an Instruction Memorandum ("IM") regarding the helicopter capture
18 of wild horses and burros. Exhibit A (Attachment A). The express purpose of this IM was to
19 "provide[] additional guidance with respect to [BLM] policy for the use of helicopters to assist in
20 the capture of wild horses and burros[]." *Id.* The IM stated:

21 The BLM's policy is to allow for the use of helicopters to assist in the capture of
22 wild horses from July 1 through February 28. Helicopters may be used year-round
23 in the capture of wild burros as they do not exhibit a specific foaling season. The
24 peak of foaling for wild horse herds on public lands in the West falls within about
25 a two week period, from mid-April to mid-May. It is the BLM's policy to prohibit
26 the use of helicopters to assist in the capture of wild horses the six weeks before
27 and the six weeks that follow the peak of foaling. Therefore, the use of helicopters

28 ⁴ Available at
http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/blm_handbook_s.html.

1 to capture wild horses is prohibited from March 1 until June 30, unless an
2 emergency situation occurs.

3 *Id.* In this instance, BLM determined that an emergency situation existed at the Jackson
4 Mountain HMA. EA at 1-2. Accordingly, BLM policy allows for a helicopter gather. Plaintiff's
5 argument fails as a result.

6 Even if the IM referenced above did not exist, however, that would not prevent BLM
7 from conducting a helicopter gather during foaling season. Internal agency guidance does not
8 prohibit the agency from taking a different course of action if warranted by the circumstances, as
9 agency guidance does not alter or amend the agency's statutory or regulatory authority. *See, e.g.,*
10 *Wilderness Soc'y v. Norton*, 434 F.3d 584, 595-97 (D.C. Cir. 2006); *see also River Runners for*
11 *Wilderness v. Martin*, 593 F.3d 1064, 1075 (9th Cir. 2010) ("Part of the discretion granted to
12 federal agencies is the freedom to change positions.... [A]n agency's view of what is in the public
13 interest may change, either with or without a change in circumstances. But an agency changing
14 its course must supply a reasoned analysis.") (internal citations and quotations omitted). In fact, a
15 bedrock tenet of administrative law is that an agency may deviate from typical practice so long
16 as it provides a reasonable explanation for doing so. *See, e.g., Atchison, Topeka & Santa Fe Ry.*
17 *Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808, (1973) (plurality opinion) (describing an
18 "agency's duty to explain its departure from prior norms" and holding that when an agency
19 departs from prior norms, its reasons "must be clearly set forth so that the reviewing court may
20 understand the basis of the agency's action and so may judge the consistency of that action with
21 the agency's mandate") (citation omitted).

22 Indeed, in *Federal Communications Comm'n v. Fox Television Stations*, 129 S. Ct. 1800
23 (2009), the Supreme Court expressly held that an agency rule is not subject to any "heightened"
24 review because it may conflict with past agency decisions. *Fox Television*, 129 S. Ct. at 1810
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1 (“We find no basis in the [APA] or in our opinions for a requirement that all agency change be
2 subjected to more searching review.”). Nor does the APA “demand explanation sufficient to
3 enable [the court] to weigh (by its own lights) the merits of the agency’s change.” *Id.* at 1811 n.2.
4 Rather, an agency must provide a “reasoned explanation” for its action and, where necessary,
5 “display awareness that it is changing position.” *Id.* at 1811. This reasoned explanation is
6 provided “so that the reviewing court may understand the basis of the agency’s action and so
7 may judge the consistency of that action with the agency’s mandate.” *Id.* at n.2 (citation
8 omitted).
9

10 Here, BLM originally intended to begin the Jackson Mountain gather on July 1, 2012, in
11 a manner consistent with the policy stated in the Handbook. EA at 2. But, unfortunately,
12 intervening events dictated an accelerated approach. EA at 1. In short, the rangeland conditions,
13 and the concomitant condition of the wild horses and other species that rely upon that rangeland,
14 reached a level that BLM considered an emergency. EA at 1-2. In a manner consistent with
15 BLM’s regulations, BLM made the determination that, in order to fulfill its statutory and
16 regulatory obligations, *see supra*, it had to begin the gather earlier than anticipated, EA at 1-2,
17 even though that deviated from BLM’s typical policy (as reflected in the Handbook). Moreover,
18 the agency explained why a helicopter gather was necessary and appropriate. Exhibit A at 16, 25;
19 Declaration of Melanie Mirati at ¶ 16 (Exhibit B); EA at 10-11. In accordance with applicable
20 law, *see supra*, the agency explained its reasoning for its actions. *See* EA at 1-2. In short, BLM
21 complied with the law. Plaintiff’s arguments fail utterly as a result.
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24 **b. Plaintiff Failed to Show a Violation of Her First Amendment Rights**

25 Plaintiff also asserts that the Federal Defendants have violated her First Amendment
26 rights. Dkt. No. 43 at 4. It is beyond question that BLM provided Plaintiff with the ability to
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1 view the gather. *See, e.g.*, Dkt. No. 43 at 2. So, in order to determine whether Plaintiff's rights
2 have been violated, this Court must apply the test laid out in *Press-Enterprise Co. v. Superior*
3 *Court*, 478 U.S. 1 (1986):

4 First, the district court must determine whether the public has a right of access to
5 horse gathers by considering whether horse gathers have historically been open to
6 the general public and whether public access plays a positive role in the
7 functioning of gathers. Second, if the district court determines that a right of
8 access exists in this case, it must determine whether the BLM has overcome that
9 right by demonstrating an overriding interest that the viewing restrictions are
essential to preserve higher values and are narrowly tailored to serve those
interests.

10 *Leigh v. Salazar*, 677 F.3d 892, 901 (9th Cir. 2012). It is Plaintiff's burden to establish the first
11 prong of the test. *See N. Jersey Media Grp. v. Ashcroft*, 308 F.3d 198, 209-211 (3rd Cir. 2002)
12 (the language of the first prong "seems to place the burden of proof on the party alleging a First
13 Amendment right"). And yet here, as in the case referenced above, "Leigh did not even attempt
14 to establish the existence of an historical tradition of public access to horse gathers or holding
15 facilities." *See Leigh v. Salazar*, 677 F.3d at 901 (Wallace, dissent). Plaintiff's complete failure
16 to carry the burden necessary to establish the first prong is fatal to her claim. *See* Dkt. No. 43 at
17 4-7. Accordingly, she has failed to show that she is likely to prevail on the merits on this claim.

19 **II. Plaintiff Failed to Demonstrate Irreparable Harm.**

20 Plaintiff also failed to show irreparable harm. A specific finding of irreparable harm to
21 the movant is one of the most important elements for the court to consider in deciding whether
22 preliminary injunctive relief is warranted. *See Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct.
23 2743, 2760 (2010) (an injunction should only issue if it is "needed to guard against any present
24 or imminent risk of likely irreparable harm."). To whatever extent that Plaintiff would be harmed
25 by the gather, that harm is not irreparable in light of the fact that the emergency gather is
26 designed to promote the health of the wild horses in the Jackson Mountain HMA, ensuring the
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1 continued existence of thriving, free-ranging herds on the range. *See Cloud Found. v. BLM*, 802
2 F. Supp. 1192, 1207-08 (D. Nev. 2011). Irreparable harm to an individual interested in studying
3 and enjoying a herd of horses cannot result from BLM improving the health of the herd. And
4 here, the agency has shown that a helicopter gather was necessary and the most protective
5 measure available. Exhibit A at 16, 25; EA at 10-11.
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7 **III. The Balance of the Equities Tips Sharply in Favor of BLM.**

8 In contrast to Plaintiff's lack of harm, if Plaintiff's motion is granted, substantial injury
9 will be suffered by BLM, the range, and the species that depend on the range for their survival,
10 including wild horses. Injunctive relief would increase the probability of individual animal
11 deaths due to extremely poor body condition related to poor nutrition and limited water
12 consumption opportunities, which disproportionately affects mares and foals. EA at 2. The wild
13 horse population in the Jackson Mountain HMA was estimated at 930 wild horses, which is
14 significantly above the AML range of 130-217. EA at 1. If BLM is forced to leave the excess
15 wild horses in the Jackson Mountain HMA, this will lead to deterioration of the range as the
16 over-population of wild horses adds greater grazing pressure and increases the removal of
17 vegetative cover, thereby negatively impacting soil and water quality. *See* EA at 2. This would
18 cause unnecessary harm to the range and to the wild horses. *See* EA at 2.
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21 **IV. Granting Plaintiff's Motion Would Not Serve the Public Interest.**

22 The public interest favors denial of Plaintiff's motion as well. Blocking the ongoing
23 gather would interfere with BLM's mandate to manage for multiple uses of the range and to
24 immediately remove horses determined to be in excess of a thriving, natural ecological balance.
25 This mandate directly relates to the public interest. The ongoing gather is necessary to promote a
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1 thriving, natural ecological balance and to protect the range from deterioration associated with
2 overpopulation and to protect the wild horses themselves.

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4 **CONCLUSION**

5 For the reasons discussed above, the Federal Defendants respectfully request that this
6 Court deny Plaintiff's motion for emergency injunctive relief.

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Dated: June 19, 2012

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9 Defendants.

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CERTIFICATE OF SERVICE

10
11 I hereby certify that on June 19, 2012, I electronically filed the foregoing with the Clerk
12 of the Court using the CM/ECF system, which will send notification of such to the attorneys of
13 record.

14
15 /s/ Erik E. Petersen

16 ERIK E. PETERSEN