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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAURA LEIGH,

Plaintiff,

vs.

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

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

Defendants.
_____/

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND TO ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff LAURA LEIGH opposes the government defendants' most recent motion to dismiss and alternative motion for judgment on the pleadings (Dkt. 84), as follows:

WHY THE DEFENDANTS' MOTIONS SHOULD BE DENIED

The defendants' motions should be denied for the following reasons:

1. The Second Amended Complaint aptly complies with pleading requirements. It outlines all facets of plaintiff's standing, her harm and seeks appropriate relief;
2. Where analysis under Rule 12(c) is "substantially identical" to analysis under Rule 12(b)(6), the same reasons defeating the defendants' 12(b)(6) motion aptly apply to the defendants' motion for judgment on the pleadings. Additionally, the

motion for judgment on the pleadings, this time, is not timely;

3. The defendants' motion, somewhat akin to one seeking summary judgment, is brought to challenge the sufficiency of the plaintiff's pleading before discovery is complete let alone started. Also, if this were truly regarded a summary judgment effort, the matters on which the defendants rely from outside the pleadings are not in acceptable "proof" form as would be required by Rule 56;
4. The defendants' motion is an "end run" attempt around the court's order that denied this same relief previously, at least as it pertains to Jackson Mountain. It is akin to a Fed.R.Civ.P. Rule 60 request for reconsideration where no appropriate element is present that would justify a reconsideration request;
5. The plaintiff just recently filed her Motion to amend her complaint to pursue First Amendment violations outlined in her proposed Third Amended Complaint (Dkts. 85, 85-1). The Third Amended Complaint and accompanying motion for temporary restraining order (Dkt. 91) became necessary where the defendants just announced a new roundup method and more aggressive ban against the public observing all roundups in the Triple B Complex. The new complaint, if allowed, would supersede the Second Amended Complaint;
6. The court entered equitable relief multiple times previously against the defendants, including two separate TROs and one preliminary injunction. Dkts. 15, 49, 50. The court found on each occasion, the plaintiff's alleged claims supported the requested relief.
7. The defendants' reliance on the *SUWA* decision to challenge the plaintiff's standing is misguided for multiple reasons. Also, *SUWA* would have no applicability whatsoever if the Third Amended Complaint is allowed;
8. The defendants' current motion, just like their previous dismissal motion, is brought to avoid having to turn over documents in discovery that are relevant to at least a portion of the claims asserted against the defendants.

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STANDARD OF REVIEW

On a motion to dismiss under Fed.R.Civ.P. 12(b)(6), a court assesses whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Chavez v. United States*, 683 F.3d 1102, 1108-09 (9th Cir. 2012), quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937 (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955 (2007)).

> "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'"

Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct., 2130, 2137 (1992)(quoting *Lujan v. National Wildlife Federation,* 497 U.S. 871, 889, 110 S.Ct. 3177, 3189 (1990)).

Under Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." "Judgment on the pleadings is properly granted when [accepting all factual allegations in the complaint as true,] there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Chavez*, 683 F.3d at 1108 (quoting *Fleming v. Pickard,* 581 F.3d 922, 925 (9th Cir.2009)).

Analysis under Rule 12(c) for judgment on the pleadings, is "substantially identical" to the analysis under Rule 12(b)(6) for dismissal because, under both rules, "a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy. (Cite omitted)." *Chavez*, 683 F.3d at 1108.

In determining whether the court has subject matter jurisdiction, the court may consider evidence outside of the complaint. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

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RELEVANT PROCEDURAL BACKGROUND

Relative to the pending motion, the court has, thus far, granted two TROs (Dkts. 15, 49) and one preliminary injunction (Dkt. 50), each of which centers on the inhumane handling of wild horses by the defendants within the Triple B Complex and Jackson Mountain HMA.

The defendants moved to dismiss the Jackson Mountain portion of the complaint after the plaintiff requested documents (in discovery) generated from the Jackson Mountain roundups. The defendants' motion to dismiss and motion for judgment on the pleadings were filed January 2, 2013. Dkt. 70. These motions were essentially denied March 26, 2013. Dkt. 74. When the plaintiff renewed her request in discovery for the same documents, the defendants resisted again, this time claiming they never understood, until just recently, the nature of the plaintiff's case, that the defendants were not challenging that part of the agency's decision allowing the roundups to proceed, at that they now needed another motion to dismiss. This caused the defendants to file their motion to dismiss and motion for judgment on the pleadings a second time. Dkt. 84. This is the motion (Dkt.84) challenged by this opposition.

In a most recent attempt at avoiding both court and public scrutiny while rounding up wild horses in the Triple B Complex, the defendants crafted an Environmental Assessment ("EA") they newly reference as the "Three HMA Water and Bait Gather or Project Area" ("Three HMA Bait/Water Trap Plan" or "Plan") and which they say is a "tiered" approach which is to compliment the existing Triple B Complex decision.[1] The Three HMA Bait/Water Trap Plan (1) prohibits any form of public or press observation or public scrutiny of the intended activity,[2] (2) limits BLM's own COR's observation of

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[1] This is, in essence, a new name coined by the defendants that references the identical geographical regions identified previously as the Triple B Complex and it targets the same Triple B Complex horses.

[2] Noteworthy is that public observation of bait/water trapping in herd management areas elsewhere are successfully employed. Plaintiff has personal knowledge and experience in observing a BLM bait/water trap operation.

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the contractor's interaction with wild horses to only 25 percent of the time, where COR is assigned responsibility for ensuring and enforcing humane treatment of wild horses, (3) fails to identify the chosen contractor(s) to conduct the bait/water trap operations. The Three HMA Bait/Water Trap Plan incorporates the same geographical region and herd management areas and target the same wild horses as that encompassed in the Triple B Complex.

THE DEFENDANTS' MOTIONS SHOULD BE DENIED FOR SEVERAL REASONS

The defendants' motions should be denied for the several reasons discussed below.

Reason One

The Second Amended Complaint aptly complies with pleading requirements. It outlines all facets of the plaintiff's standing and seeks appropriate relief.

On a Fed.R.Civ.P. 12(b)(6) motion, a court assesses whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Chavez,* 683 F.3d at 1108-09.

> "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *(Cite omitted)* "Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *(Cite omitted).*
>
> *Chavez,* 683 F.3d at 1108-09.

Clear allegations demonstrating plaintiff's standing are found as follows: See plaintiff's Second Amended Complaint, Dkt. 42-1, p.6, ¶20 through p.15, ¶48.

Plaintiff's actual injury, injury in fact and harm averments are found as follows: See plaintiff's Second Amended Complaint, Dkt. 42-1, p.24, ¶83 through pp.28-29, ¶91, and p.30, ¶¶96-97. The court also stated previously, verbally during hearings, the plaintiff's

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standing to assert these claims is established.

On two separate instances the court found the plaintiff's Second Amended Complaint sufficiently justified to grant equitable relief in her favor. See Dkts. 49, 50.

Reason Two

Where analysis under Rule 12(c) is "substantially identical" to analysis under Rule 12(b)(6) because, under both rules, "a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy,"[3] the same reasons why the defendants' 12(b)(6) motion should be denied aptly apply to justify the denial of the defendants' motion for judgment on the pleadings.

Also, motions for judgment on pleadings are not appropriate when they cause undue delays of the process. The defendants' most recent suggestion that they now have a "clear thinking" moment, or new understanding, or a figurative "light bulb" coming on with regard to understanding the plaintiff's claims, somehow entitling the defendants to a second bite at the same "dismissal apple," is the blind-folded approach to reading court documents and pleadings where the plaintiff had been clear and up-front all along with what is (and is not) sought with this case. Even the court recognized the plaintiff's focus. Only the defendant does not. Even so, the defendants' latest "interpretation" is wrong.

Reason Three

The defendants' motion, appearing akin to one for summary judgment, is brought to challenge the sufficiency of the plaintiff's pleading before discovery is complete let alone started. Also, if the defendants' motion were truly regarded a summary judgment effort, the matters the defendants reference from outside the pleadings would not be considered acceptable "proof" in form as is required by Fed.R.Civ.P. 56(c)(1),(2). The insufficient proof on which the defendants rely is found as argument within the motion

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[3] *Chavez*, 683 F.3d at 1108.

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itself, as follows:

> At a May 31, 2013, telephonic status conference presided over by Magistrate Judge Cobb to discuss the completeness of the administrative record, ... the parties established that they have fundamentally different views on the nature of Plaintiff's case. ... On summary judgment, Plaintiff intends to challenge the conduct of BLM that took place during the two gathers. *Id*. Because this Court does not have the jurisdiction necessary to adjudicate such a challenge, judgment should be entered in favor of Federal Defendants and Plaintiffs' Second Amended Complaint should be dismissed.
>
> Defendants' Second Motion to Dismiss, Dkt.84, p. 5, l. 15-22.

Even so, the defendants also acknowledge this is not their summary judgment motion because they intend to pursue one in the future. ("On summary judgment, Plaintiff intends to challenge the conduct of BLM that took place during the two gathers."). See, Dkt.84, p. 5, l. 18-20.

If the court considers the defendants' motion a type of summary judgment that requires no proof, in that event, plaintiff respectfully asks the matter be denied at this time such that discovery may be completed. Fed.R.Civ.P. 56(d)(2).

Reason Four

The defendants' motion is an "end run" attempt around the court's order that denied this same relief previously, at least as it pertains to Jackson Mountain. Order, Dkt. 74.

The defendants sought dismissal and judgment on the pleadings the beginning of this year when attempting to avoid giving up discovery documents generated during the Jackson Mountain HMA roundup. (Dkt. 70 filed Jan. 2, 2013). The defendants' motion was essentially denied. (Dkt. 74, entered March 26, 2013). The defendants now take a

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second swipe at dismissal at least with that part of the defendants' new dismissal motion which discusses or incorporates Jackson Mountain. See, e.g., defendant's motion to dismiss, Dkt. 84, p.8, l. 2-5, p.9, l. 19-25.

The defendants' motion is akin to a Fed.R.Civ.P. Rule 60 request for reconsideration of their prior motion (relative to Jackson Mountain) previously denied. Courts grant motions for reconsideration only where: (1) it is presented with newly discovered evidence; (2) it has committed clear error or the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law. *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004); *Kona Enters., Inc. v. Estate of Bishop,* 229 F.3d 877, 890 (9th Cir. 2000); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.,* 5 F.3d 1255, 1263 (9th Cir. 1993).

None of the enumerated reasons to reconsider the denial of the defendants' prior motion to dismiss are present with their resurrected motion to dismiss.

Reason Five

Plaintiff just recently filed her Motion to amend her complaint to pursue First Amendment violations outlined in her proposed Third Amended Complaint (Dkts. 85, 85-1).[4] The Third Amended Complaint became necessary when the defendants announced a more aggressive ban of the public from observing all roundups in the Triple B Complex. The defendants' latest effort to preclude public observation of roundups altogether became the breaking point or "final straw" for the plaintiff who has, for several years at Triple B Complex roundups, been repeatedly removed and

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[4] When last visiting the pleadings on the defendants' prior dismissal attempt, the court recognized the plaintiff had alleged First Amendment violations in the complaint but not sufficiently with a separately asserted First Amendment claim for relief. See Order, Dkt. 74, p.2, n.1. *Cf.,* Second Amended Complaint, Dkt. 42-1, p.6, ¶17, p.30, ¶97, p.31, ¶101, prayer, p.34, ¶17.

The proposed Third Amended Complaint which adds a separate claim for First Amendment violations, principally addresses the defendants' new, aggressive efforts to ban the plaintiff's observation of wild horse roundups at the Triple B Complex.

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unreasonably held afar from meaningful observation of roundup activities.

The plaintiff is stymied and challenged by the defendants' continual and repeated "ramping up" efforts to remove her from observing the defendants' roundup activities at the Triple B Complex. Her occasional "lucky shot" (meaning, a lucky photo opportunity) occurs only when the defendants are not able to contain their roundup efforts within their own confined space when occasionally drifting toward the plaintiff's assigned post, and into the view of the plaintiff and her camera.

The defendants' new "Three HMA Bait/Water Trap Plan"[5] just put in place for the Triple B Complex is outlined in the proposed Third Amended Complaint (Dkt. 85-1) and in the accompanying Emergency Motion for Temporary Restraining Order. (Dkt. 91). The defendants' newly crafted Plan creates a venue for wild horse roundups that is cloaked in secrecy at the Triple B Complex. The defendants' Plan completely excludes all public and press observation of wild horse roundups.[6]

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[5] The defendants' "Three HMA Water and Bait Gather or Project Area" ("Three HMA Bait/Water Trap Plan" or "Plan") was announced mid-May, 2013 with roundups to be scheduled as early as mid-June, 2013.

[6] In view of what transpired that led to the decision in *Leigh v. Salazar*, 377 F.3d 892 (9th Cir. 2012) ("*Leigh*" decision) and the strong testimony at the preliminary hearing conducted by the Hon. Larry R. Hicks February 19 and 20 in *Leigh v. Salazar*, 3:10-cv-597, it is an outrage that the plaintiff must now raise once again, a First Amendment challenge to the complete public and press blackout the defendants seek to employ once again, this time with their newly crafted bait/water trap Plan. The last time the defendants did this, it called attention to the Reporters' Committee for Freedom of the Press and the National Press Photographers' Association, who were also offended and allowed to file Amici brief by the Ninth Circuit in support of Ms. Leigh.

Plaintiff can only surmise that this agency, appearing dissuaded from hiding its conduct while remaining cavalier to persons' constitutional freedoms, irrespective of the federal appellate judiciary's ruling and the continuing public outcry for transparency, is out of control. The agency often talks of "transparency" but delivers none of it.

The *Leigh* decision is issued by three American heroes, all of whom equated Ms. Leigh's effort with the likes of Ida Tarbell, (she took on Standard Oil single-handedly with her investigative reporting), Rachel Carson (her publication *Silent Spring* caused the nation to reconsider its pesticide safety policies and she is credited with inspiring the beginnings of the EPA), and Izzy Stone (a prolific publisher whose weekly investigative newsletter was ranked sixteenth by fellow journalists among the "Top 100 Works of Journalism in the United States in the Twentieth Century").

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The plaintiff respectfully asks that the court allow her to incorporate by reference, the matters set forth in her motion to amend (Dkt.85), the proposed Third Amended Complaint (Dkt.85-1), her Emergency Motion for Temporary Restraining Order (Dkt.91) and the exhibits accompanying the TRO motion (Dkts.91-1 through 91-4), herein, for the court's reference purpose in deciding this motion.

The proposed Third Amended Complaint, if allowed by the court, would supersede the Second Amended Complaint. See, *Forsyth v. Humana, Inc.*, 114 F.3d 1467 (9th Cir. 1997), *rev'd on other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012) (reversing the harsh "*Forsyth* Rule" which "waived" prior dismissed claims not incorporated into the next amended complaint).

Reason Six

The court entered equitable relief multiple times against the defendants, including two separate TROs and one preliminary injunction. Dkts. 15, 49, 50. The court found on each occasion, the plaintiff's alleged claims supported the requested relief as alleged under the Administrative Procedures Act ("APA") and Wild Free-Roaming Horse and Burro Act of 1971 ("Wild Horse Act" or "WFRHBA"). This court, advised of all matters when ordering equitable relief, would have never granted the requested relief if the same were not supported by the relevant law and facts. (See discussions above). Equitable relief under these circumstances is rarely given and subject to the strictest of hurdles to obtain. When granting equitable relief, the court took great care and was cautious before ordering such relief, and did so guided by its judicial experience and common sense.

This continuing effort to remove the public, the press and their cameras so as to *remove* the controversy from the public's eye, is repugnant particularly so, in the wake of the strong language from *Leigh,* involving these same parties, where the court stated, "[t]he free press is the guardian of the public interest and the independent judiciary is the guardian of the free press." *Id*.

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Reason Seven

The defendants' reliance on *SUWA*[7] to challenge the plaintiff's standing is misguided when not recognizing that the plaintiff's injury is "fairly traceable" to the defendants' final decision. Also, the Second Amended Complaint amply satisfies all Article III requirements of standing.

Also, *SUWA* would be inapplicable should the Third Amended Complaint be allowed to stand as the operative pleading, for the several reasons that follow, which compliment one another. Firstly, the defendants' newly designated Three HMA Bait/Water Trap Plan appears as yet another "final decision" for operations within the Triple B Complex, which through the defendants' own admission within the document defining the Plan, is "tiered" (meaning complimentary) to the Triple B Complex EA. The new Plan, as a final decision, incorporates all conduct and decisions which the defendants employed previously into the new Plan, thus negating, or (using a favorite defense term) "mooting" the defendants' argument.

Secondly, the Three HMA Bait/Water Trap Plan when prohibiting public observation of government activities which occur on public lands and involving management of public resources (America's wild horses), violates laws of the United States where the defendants' defined restrictions clearly run afoul of the basic constitutional right of access of the plaintiff to observe the government activity, as those rights are enumerated in the First Amendment together with its interpretations.[8]

Thirdly, the proposed Third Amended Complaint would supersede the Second Amended Complaint. See, *Forsyth, supra*.

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[7] *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 124 S.Ct. 2373 (2004) ("*SUWA*").

[8] See, U.S. Const., amend I; *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 100 S.Ct. 2814 (1980); *Globe Newspapers Co. v. Superior Court of Norfolk County*, 457 U.S. 596, 102 S.Ct. 2613 (1982); *Press–Enterprise v. Superior Court,* 578 U.S. 1, 106 S. Ct. 2735 (1986); *California First Amendment Coalition v. Woodford,* 299 F.3d 868 (9th Cir.2002); *Leigh v. Salazar*, 377 F.3d 892 (9th Cir. 2012).

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Finally, the government's reliance on SUWA is misplaced. *SUWA* involves a 5 U.S.C. § 706(1) claim for a "failure to act." The Second Amended Complaint, although asserting a "failure to act," does so under 5 U.S.C. § 706(2)(A) and (D) and which includes key language, "not in accordance with law." See, e.g., plaintiff's Second Amended Complaint, Dkt. 42-1, p. 24, ¶ ¶ 81-83. In this regard, paragraph 82 of the Second Amended Complaint states, by example, in relevant part, as follows:

> Defendants' failure and/or refusal to act to enforce the humane laws of the United States as indicated herein, is in fact, agency action defined at 5 U.S.C. § 551(13) (a failure to act), ***that is arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law, and/or is agency action implemented without observance of procedure required by law,*** as is contemplated in the Administrative Procedures Act, 5 U.S.C. §§ 706(2)(A) and/or (D).

Dkt. 42-1, p.24, ¶82. Emphasis added.

In *SUWA,* the Supreme Court held that a claim under § 706(1) (brought under the FLPMA) "can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required* to take," a limitation that precludes a "broad programmatic attack" against an agency. *SUWA*, 542 U.S. at 64 (emphasis in original). The Court, however, also noted a distinction, as an example, that allegations that an agency "fail[ed] to revise land use plans in proper fashion" and "fail[ed] to consider multiple use" (FLPMA as the example) are properly categorized as agency action "not in accordance with law" under § 706(2), rather than "agency action unlawfully withheld." *Id.* at 65.

Plaintiff does not contest the defendants' broad discretion under the Wild Horse Act when managing public lands for multiple use. But, there is no agency discretion involved where the defendants must handle wild horses humanely were humane

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methods are a specifically mandated under the Wild Horse Act. See 16 U.S.C. §1333 (b)(2)(iv)(B), where the *humane* removal of excess wild horses is stated in mandatory, not permissive language. See also, definition of "humane" at 43 CFR § 4700.0-5.

Plaintiff believes where the defendants fail to consider specific methods of humane handling of wild horses before issuing a final decision, that such a claim, consistent with the general allegations found in, by example, paragraph 82 of the Second Amended Complaint (above), does, in fact, encompass action the agency should have considered but failed to consider in their final decision, which conduct would be properly categorized as agency action "not in accordance with law" under Section 706(2).[9]

The real "rub," however, involves the defendants' notion or assumption that *all* of plaintiff's claims emanate from the agency's conduct occurring after the final decision represented by the published EA for the Triple B Complex. Not so. The defendants' actions that caused this court to issue equitable relief on at least three separate occasions, are the unfortunate, concomitant results of an agency that failed in the first instance, to truly consider humane methods of wild horse handling before publishing and then following their final decision, to a dismal result.

The defendants' failure to consider, or even regard humane methods of handling before finalizing their decision, (beyond just providing "lip service" to, minimally recognizing their obligation of "humane" handling from the Wild Horse Act) is commensurate with, and incorporated into the general allegations of the claims asserted in the Second Amended Complaint. See again, the example set forth in paragraph 82 of the Second Amended Complaint. Dkt. 42-1, p.24, ¶82. Such action is properly categorized as agency action "not in accordance with law" under § 706(2) or agency action that is arbitrary and capricious, or implemented without observance of

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[9] Even a Section 701 claim might survive judicial scrutiny where no discretion is involved in the "humane" handling of horses where the clear mandate is to employ "humane" methods, but where the agency's discrete action disregards the law (the Wild Horse Act) that it is required to follow. Such action could conceivably be agency action that is unlawfully withheld in a Section 701 claim.

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procedure required by law, even under the examples provided in *SUWA*. *Id.* at 65.

Reason Eight

The defendants' current motion, just like their previous dismissal motion, is brought to avoid having to turn over documents in discovery that are relevant to the very conduct against which the plaintiff seeks redress, where actions occurring subsequent to the final decision, is proof that the agency never considered or implemented "humane" methods of handling *before* entering its final decision.

Plaintiff contends the defendants' latest dismissal effort is but a discovery motion cloaked in another dismissal motion, a sort of "riddle wrapped in a mystery inside an enigma." The defendants seek protection from producing relevant documents by bringing motions to dismiss to limit what they must produce in discovery.

CONCLUSION

For the stated reasons, plaintiff respectfully requests that the defendants' latest motion to dismiss and their alternative motion for judgment on the pleadings, be denied.

Should the court find the relevant complaint deficient even under "notice" requirements, that where the plaintiff is able to state a viable claim based on the discussions offered above, that she be given leave to amend.

Respectfully June 27, 2013

LAW OFFICE OF GORDON M. COWAN

s/

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CERTIFICATE OF SERVICE
Pursuant to Fed. R. Civ. P. 5(b); LR 5-1

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.

Dated: June 27, 2013

s/
G.M. Cowan

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