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5 Attorney for Plaintiff LAURA LEIGH

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

8 LAURA LEIGH,

9 Plaintiff,

10 **Case No. 3:10-cv-00417-LRH-VPC**

11 vs.

12 KEN SALAZAR, in his official capacity as
Secretary of the U.S. DEPARTMENT OF
13 THE INTERIOR, BOB ABBEY, in his official
capacity as Director of the BUREAU OF
14 LAND MANAGEMENT; RON WENKER in his
official capacity as Nevada State Director of
the BUREAU OF LAND MANAGEMENT, et
15 al.,

16 Defendants.

17 **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

18 Plaintiff LAURA LEIGH seeks a temporary restraining order precluding
19 Defendants from the harmful conduct described herein below.

20 This Motion is made in accordance with Fed.R.Civ.P. 65(b). The Motion is
21 based on the pleadings and papers on file herein, the accompanying Memorandum of
22 Points and Authorities and supporting documents and on such other matters as may be
23 presented before the court.

24 Dated this ___ day of July 2010

25 **RESPECTFULLY SUBMITTED,**
26 **LAW OFFICE OF GORDON M. COWAN**

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28

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

1 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR TEMPORARY RESTRAINING ORDER**

3 Plaintiff LAURA LEIGH submits the following Memorandum of Points &
4 Authorities in support of her Motion for a Temporary Restraining Order:

5 **BACKGROUND**

6 Plaintiff challenges the final decision of the Bureau of Land Management (“BLM”)
7 to drive wild horses by helicopter, during foaling season, from public lands in Elko
8 County. BLM calls this helicopter push the “Tuscarora Gather” (“Gather” or “BLM
9 helicopter Gather”). The BLM helicopter Gather would violate the BLM’s own
10 management standards. The BLM would engage in a prohibited act as is defined in the
11 BLM’s own publications. The BLM’s Gather, scheduled during the foaling period, would
12 place in harm’s way a protected public resource. The BLM’s Gather would contravene
13 U.S. public policy respecting wild horses. The BLM’s Notice of Closure is at **EXHIBIT**
14 **“A”** attached.

15 Plaintiff also challenges the BLM’s decision to exclude the public, the press,
16 journalists or anyone not involved in the Gather, from entering 27,000 acres of public
17 lands where the Gather would occur. The BLM even closed air space there to exclude
18 observation of the Gather by use of aircraft. This broad closure and exclusion of those
19 interested in observing and reporting the BLM’s management of public lands, as
20 practiced, censors fair observation and reporting of the Gather by the press, by
21 journalists and by Plaintiff (also a journalist and writer) of newsworthy matters involving
22 government action on public lands which is of significant public interest. This broad
23 closure and exclusion of the public and press by the BLM results in an impermissible
24 prior restraint of free speech and censoring of the press, of journalists and of the public
25 prohibited by the First Amendment of our Constitution.

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1 **BLM's POOR CHOICES**

2 The BLM's intended course is just plain wrong, it is harmful and it causes
3 irreparable harm. Some reasons why the BLM's conduct is wrong and harmful are as
4 follows:

5 *The Horses and Foaling Season*

- 6 1. The BLM's helicopter Gather runs wild horses off public lands during the
7 recognized foaling period;
- 8 2. The BLM's helicopter Gather would likely
- 9 a. harm, maim or kill unweaned foals,
- 10 b. harm, maim or kill mares (moms) who recently gave birth,
- 11 c. harm, maim or kill soon-to-be birthing mares who are in their final
12 stage of pregnancy;
- 13 3. The BLM's helicopter Gather is prohibited *at this time* by its own published
14 standards expressed in its official management manual, the *Wild Horses*
15 *and Burros Management Handbook* ("BLM Wild Horse Management
16 Handbook" or "BLM Handbook"). The BLM Handbook was recently
17 published June 2010. The BLM Handbook prohibits the BLM from
18 gathering or removing horses by helicopter during the foaling period. The
19 BLM Handbook says this:

20 **4.4.4 Foaling Period**

21 [T]he ***capture of wild horses by using a helicopter***
22 ***to herd the animals is prohibited during the***
23 ***foaling period, which is defined as six weeks on***
24 ***either side of the peak of foaling to assure that***
25 ***young foals are mature enough*** to be able to
26 remain with their band during gather activities. ***This***
27 ***period is generally March 1 to June 30 for most***
28 ***wild horse herds***

EXHIBIT "B" attached. (Emphasis added).

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2 4. Just days before the BLM closed off the helicopter Gather area, observers
3 saw first hand, the following in the Gather area:

- 4 a. Several newly born foals;
5 b. Several unweaned foals;
6 c. Several mares who just recently gave birth and who were nursing
7 newly born foals;
8 d. Several pregnant mares appearing late in their final stage of
9 pregnancy and appear ready to foal any day.

10 The observers' attached Affidavits provide more detail of such horses
11 observed, the date(s) and locations where these young horses and mares
12 were seen. The observers are available to tell the court what they saw
13 before the BLM closed off the Gather area;

14 5. One observer is a wildlife ecologist who has considerable experience in
15 studying and working with wild horses and other species in range habitats.
16 The biologist confirms the health, safety and welfare of the young foals,
17 the mares who recently gave birth and the pregnant mares who are about
18 to foal, would be jeopardized from the BLM's intended helicopter Gather.
19 He confirms the general foaling period is in the range of dates from
20 approximately March to mid-August. The wildlife ecologist confirms the
21 helicopter Gather is premature and within the actual foaling period. The
22 biologist confirms helicopter driving of wild horses who are in this fragile
23 state (i.e. being newly born or having recently given birth, or coming to the
24 end of a pregnancy), would have a difficult time surviving the BLM's
25 helicopter Gather. (See discussion, below);

26 6. The BLM's Gather is contrary to the stated public policy of the United
27 States relative to the management of wild horses on federal lands. The
28 public policy is stated in The Wild Free-Roaming Horses and Burro Act of

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1971 which provides, in relevant part, as follows:

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

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

7. The BLM remains stubbornly steadfast to proceed with its helicopter Gather, just for “plan’s sake,” in spite of the likely resulting tragic consequences of placing in harm’s way newly born foals, unweaned foals, mares who recently gave birth and mares approaching the end of their pregnancies;
8. The BLM’s choice to conduct a helicopter Gather while disregarding true conditions of mares and babies in the BLM’s intended helicopter Gather area, and while disregarding its own standards relative to the foaling period, is arbitrary, capricious, it amounts to an abuse of discretion, it is otherwise not in accordance with law, or it is implemented without observance of procedure required by law.

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1 *Censure of Journalists and Fair Reporting – a Constitutional Infringement*

2 9. The closure of the area from the public including journalists, the press and
3 citizens, amounts to a prior restraint on observation and fair reporting of a
4 newsworthy event having significant public interest;

5 10. The closure effectively censors from the public and from the viewer’s eye,
6 information that is of significant public interest concerning the
7 government’s management of public resources.

8 **LEGAL STANDARDS**

9 **A. Standard of Review Under APA**

10 Under the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*,
11 “[a]gency action made reviewable by statute and final agency action for which there is
12 no other adequate remedy in a court are subject to judicial review.” *Id.* § 704.

13 The APA provides that the reviewing court *shall* “hold unlawful and set aside
14 agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or
15 limitations, or short of statutory right.” *Id.* § 706(2)(c).

16 “To determine if the Secretary has exceeded his statutory authority under 5
17 U.S.C. § 706(2)(c), the Court must engage in the two-step inquiry required by
18 *Chevron.*” *Anna Jacques Hosp. v. Leavitt*, 537 F. Supp. 2d 24, 29-30 (D.D.C. 2008)
19 [referring to *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837
20 (1984)].

21 “If the intent of Congress is clear, that is the end of the matter; for the court, as
22 well as the agency, must give effect to the unambiguously expressed intent of
23 Congress.” *Chevron*, 467 U.S. at 842-43. “[I]f the statute is silent or ambiguous with
24 respect to the specific issue, the question for the court is whether the agency’s answer
25 is based on a permissible construction of the statute.” *Id.* at 843.

26 Applying *Chevron* and the APA, we look to the Wild Free-Roaming Horses and
27 Burro Act of 1971. See, P.L.92-195, 16 U.S.C. 1331 *et. seq.* (The “Wild Horse Act” or
28 the “Act”).

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B. The Wild Horse Act

It is the public policy of the United States of America to protect and preserve wild-free roaming horses. Congress states this policy as follows:

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

The Wild Free-Roaming Horses and Burro Act of 1971,
16 U.S.C. §1331 (Emphasis Added).

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

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

(A) The Secretary shall order old, sick, or lame animals to

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be destroyed in the most humane manner possible;
(B) *The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured* and removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling)

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

The *humane* capture language repeats in mandatory terms.

The *specific issue* here is *not* whether the BLM may proceed with a gather of wild horses. The issue instead, is whether the BLM may proceed with its helicopter Gather when utilizing a method and timing that is *inhumane* to the animals it seeks to capture.

If the BLM's method of capture is determined or considered *inhumane*, in that event the BLM's conduct would appear to be contrary to Congress' expressed intent when it mandated,

The Secretary *shall* cause such number of additional excess wild free-roaming horses
to be *humanely* captured

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

The BLM's method if inhumane, would also be contrary to Congress' expressed, stated public policy that,

wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found,

1 as an integral part of the natural system of the
2 public lands. 16 USC §1331.
3

4 Should the court agree there is a sufficient basis to conclude the method and timing of
5 the gather is contrary to express provisions of Congress, then the court, “must give
6 effect to the unambiguously expressed intent of Congress.” *Chevron*, 467 U.S. at 842-
7 43.

8 **C. Plaintiff’s Contentions re. The Wild Horse Act**

9 *Timing of the Helicopter Gather*

10 Plaintiff contends the BLM’s helicopter Gather as *timed*, together with the
11 employment of driving herds five to ten miles via helicopter, is inhumane to young foals,
12 to mares who recently gave birth, and to those mares who approach the end of their
13 pregnancy. *These* particular horses are not those considered, “old, sick, or lame
14 animals,” although they become sick and lame when they are not mature enough to be
15 driven by the rotor blades of a chopper the distance of several miles in the heat of the
16 Nevada desert. (Today’s expected “high” temperature in Elko should reach 96°).

17 If the BLM concludes that “sick or lame” horses include those who are too young
18 to travel, or those who are not in condition because they recently gave birth, or those
19 who can’t stand the trip because they are carrying a foal and are close to terminating
20 their pregnancy, then Messrs. Salazar, Abbey and Wenker should consider taking
21 lessons in compassion and humanity. Should BLM disregard foals because they don’t
22 recognize them until after they are identified, accounted-for or freeze-branded, in that
23 event the Agency’s philosophy and self-imposed rules are ineffective and contrary to
24 clear Congressional intent.

25 Mr. Craig Downer, a wildlife ecologist who maintains impeccable credentials,
26 concludes this:

27 11. It is not humane in my opinion, to drive by
28 helicopter, foals from the Gather area at this time, when in a

1 fragile state because of their young age. This is because
2 they have soft hoofs and are not able to withstand the sharp
3 rocks from a long drive. They also have developing lungs,
4 muscles and bones and do not have the stamina to run
5 those long distances as do more mature horses. The
6 mares who recently gave birth are in a fragile state and
7 likewise at risk of injury.

8 * * *

9 13. In my experience and from personal
10 observation which spans many years now, it is my opinion
11 that, due to the extreme heat of the midsummer and the
12 jagged lava outcroppings found in these particular wild horse
13 herd management areas (Little Humboldt, Rock Creek and
14 Owyhee which comprises the area of the Tuscarora Wild
15 Horse Gather) and the tender age of many young, it would
16 be cruel to these horses in the difficult rocky conditions and
17 high daily temperatures for the BLM to continue with the
18 above mentioned "Tuscarora" helicopter Gather.

19 Mr. Downer's Declaration is included as a separate document in support of this Motion;
20 and his credentials are stated therein. ("Craig Downer's Declaration"). Plaintiff
21 incorporates this Declaration herein.

22 The Foaling Period

23 Plaintiff contends the BLM's decision to conduct its helicopter Gather during the
24 relevant foaling period is likewise inhumane. The BLM's decision also contravenes its
25 own published rules on gathering these horses.

26 The Actual Foaling Period

27 There is sufficient evidence demonstrating the relevant foaling period continues
28 at least to mid-August. The evidence includes the following:

1 1. Young foals and mares who recently gave birth were seen in the area of
2 the BLM's helicopter Gather just before the area was closed down by the
3 BLM. Laura Leigh's Declaration, filed in support of this Motion, confirms
4 the following:

5 I was in this very Tuscarora Gather area three
6 days the end of May, this year. At that time I
7 personally observed the following: I saw not
8 many horses or signs of horses. I did see at a
9 minimum, 20 horses comprised of three
10 different bands. One was a bachelor band.
11 The other two bands contained mares and
12 babies. Within these two family bands, I saw
13 three mares obviously pregnant. I saw two
14 foals in one band and one in the other band.
15 The foals I saw were less than 30 days old.
16 The pregnant mares I saw appeared to be
17 close enough to be within six to eight weeks of
18 giving birth.

19 Laura Leigh's Declaration, p. 3

20 Plaintiff incorporates her Declaration herein.

21 2. Mr. Craig Downer's Declaration states as follows:

22 7. On Monday, June 21st, 2010, I overflew
23 the Little Humboldt, Rock Creek and Owyhee
24 wild horse herd management areas. These
25 areas are now referenced by the Bureau of
26 Land Management ("BLM") collectively as the
27 Tuscarora Wild Horse Gather area. On this
28 date I observed at least 312 wild horses in 41

1 different bands. I also observed roughly ten
2 times more grazing cattle than wild horses.
3 8. During this flight I personally observed
4 many pregnant wild mares or mares who had
5 recently given birth together with newborn foals
6 at their sides. I saw many more of these
7 mare/foal pairs in the Rock Creek and Owyhee
8 BLM herd management areas than were
9 observed elsewhere.

10 Craig Downer's Declaration, pp.2-3.

11 Mr. Downer also observes this:

12 In my experience and from personal
13 observation which spans many years now, it is
14 my opinion that the typical foaling period for
15 wild horses in this area and in other wild horse,
16 public lands management areas generally
17 spans from early March to mid-August. And,
18 the intended Tuscarora Wild Horse Gather
19 would occur in the natural and normal foaling
20 period for these horses.

21 Craig Downer's Declaration, pp.3-4.

22 *The BLM's Published Foaling Period*

23 As stated previously, the BLM's own management manual (outlined above),
24 defines the foaling period as including the six weeks following June 30th; that the peak
25 foaling period ends June 30 and the foaling period extends six weeks beyond June 30.
26 See, **EXHIBIT "B"** attached.

27 The BLM is content to play semantics at the expense of these protected animals.
28 They claim the wording of the BLM's document is "unfortunate" but that it really means

1 something else.

2 Conclusion re APA

3 Without belaboring the point further, there is sufficient evidence that would lead
4 reasonable persons to conclude the clear, expressed intent of Congress is denigrated
5 and violated by the BLM's choice to conduct a helicopter Gather during the *actual*
6 foaling season of the Tuscarora wild horse gather area. The BLM's conduct ignores not
7 only the actual foaling season, it disregards the typical foaling season, and it disregards
8 its own published "foaling period" so as to conduct a "prohibited" helicopter gather in the
9 area. The BLM's stubbornness in refusing to delay its Gather by about four weeks to
10 avoid the foaling period causes an *inhumane* gather, contrary to the clear, express
11 intent of Congress. Such stubbornness in action should be sufficient to "hold unlawful
12 and set aside agency action . . . found to be . . . in excess of statutory jurisdiction,
13 authority, or limitations, or short of statutory right." *Id.* § 706(2)(c).

14 **THE CONSTITUTIONAL CHALLENGE**

15 Does the closure of public lands by the BLM during its helicopter Gather violate
16 the First Amendment? Does the First Amendment include certain unarticulated rights
17 which protects from censoring or closure, the public, the press, journalists and writers,
18 from first-hand viewing, listening, observing and obtaining newsworthy information of
19 the BLM's helicopter Gather occurring on public lands? Does the BLM's sordid history
20 in having maimed and killed horses in past gathers, make the matter more
21 newsworthy?

22 The First Amendment to the United States Constitution provides that "Congress
23 shall make no law...abridging the freedom...of the press."

24 After a series of mistrials in a Virginia murder case a State trial judge closed all
25 court proceedings to the media and to the public. Two reporters and the local
26 newspaper were ousted from the courtroom. The Richmond Newspaper brought suit
27 challenging the judge's closure of the public forum. The newspaper's writs were
28 dismissed by the Virginia Supreme Court. The issue went from there to the U.S.

1 Supreme Court.

2 In a 7-to-1 decision the Court held that the right of access by the press and
3 public to criminal trials is "implicit in the guarantees of the First Amendment." The Court
4 held the First Amendment encompassed not only the right to speak but also the
5 freedom to listen and to receive information and ideas. The Court also noted the First
6 Amendment guarantees the right of assembly in public places such as courthouses.
7 The Court emphasized that "certain unarticulated rights" were implicit in enumerated
8 guarantees and were often "indispensable to the enjoyment of rights explicitly defined."
9 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814 (1980).

10 *Richmond Newspaper's* ideology of openness and publicity in criminal trials is no
11 less instructive or germane here. The area of the BLM helicopter Gather occurs on
12 public lands to which the public has a right to be. The BLM's "management" of, "living
13 symbols of the historic and pioneer spirit of the West" is an issue of significant public
14 interest. The press, journalists and writers who observe, listen and then report to the
15 public what transpires, is newsworthy. The BLM does not have a stellar record in prior
16 gathers where they have in the past, caused multiple casualties of young foals and
17 other wild horses when using the same method they plan to use in the BLM helicopter
18 Gather.

19 To restrict and close off the BLM helicopter Gather area from the press, from
20 journalists, from writers and from the public, is an impermissible limitation to rights
21 enumerated under the First Amendment to the U.S. Constitution.

22 To close off 27,000 acres of public lands and its airspace without advising well in
23 advance where, when and how the press, journalists, writers and the public might be able
24 to view the BLM helicopter Gather, is an impermissible limitation to rights enumerated
25 under the First Amendment to the U.S. Constitution.

26 To limit the press, journalists, writers and the public access to viewing and
27 observing the actual BLM helicopter Gather itself, which by restrictive rules on distance
28 or through other vague, limiting methods, which effectively shields or censors from the

1 public's view the BLM's actual herding, driving, moving and capture of wild horses from
2 public lands, is likewise an impermissible limitation to rights enumerated under the First
3 Amendment to the U.S. Constitution.

4 The BLM is *not* able to state it maintains a stellar record in preventing injuries
5 and deaths among the wild horses they've herded and gathered previously. This fact
6 makes the BLM helicopter Gather of even greater newsworthy importance to the public
7 interest.

8 The press must have the freedom to observe and then report newsworthy
9 matters including and without limitation, abuses of power by governing authorities,
10 cover-ups of unofficial government action, or the like. The citizenry should be made
11 aware of matters involving public interest. There should be a free exchange of both
12 information and opinion *sans* government hindrance, between the press and the public
13 who are interested recipients of these reports. Even if the news is critical of
14 government action, the First Amendment protects from government interference, the
15 free exchange of that information, of ideas and of opinions.

16 Just like the court proceedings in the Virginia murder trial discussed in *Richmond*
17 *Newspaper*, the BLM's helicopter Gather may not be a "front page," national event.
18 Nevertheless, the BLM's methodology in managing, herding, moving and capturing wild
19 horses from public lands via helicopter is a newsworthy matter. It should be open to
20 public scrutiny particularly where the closure involves public lands, on which the public
21 routinely has access.

22 Broadly closing the Gather area and then not specifically defining well in
23 advance of the event, areas, times, locals from which the press, journalists and the
24 public may view the BLM's helicopter Gather, amounts to an impermissible prior
25 restraint on the ability of the press, of journalists, of writers and of the public to view and
26 document government in action. The plan is in practice, a form of censorship.

27 Whether the Defendants must convince the court that a compelling or substantial
28 government interest is involved, or if the Defendants must merely meet a "balancing

1 test,” neither test is satisfied under these facts.

2 **THE PLAINTIFF**

3 Plaintiff Laura Leigh receives revenues from fair reporting to the public as a
4 journalist on issues involving wild horses and also their management by both private
5 organizations and by governing authorities including the BLM. Her participation has
6 included magazine, internet and television including CNN.

7 Ms. Leigh has on several occasions, been to the areas where the BLM helicopter
8 Gather is to take place. She has also observed and reported on other BLM gathers of
9 wild horses from public lands.

10 Ms. Leigh is also a regarded, talented publisher, artist and illustrator of art. Her
11 more recent works involve horses as her subjects. She is also involved in publishing
12 children’s books. She has completed art projects for significant charitable organizations
13 including by example, the United Way. Samples of her work are available on the
14 internet at www.barndoorstudio.com.

15 Ms. Leigh is also the person in charge on behalf of the Cloud Foundation, of the
16 “Herd Watch” Program. Information concerning the Cloud Foundation is obtained on
17 the internet at www.thecloudfoundation.org. The purpose underlying the “Herd Watch”
18 program is as follows:

19 [t]o create a concise database of information that tracks
20 public lands range health, gather operations and the
21 disposition of American wild equids. The database will be
22 utilized as a tool to educate and inform the public to provide
23 accurate responses in the public process of democratic
24 government.

25 **FED.R.CIV.P. 65**

26 Fed.R.Civ.P. Rule 65 is self-explanatory and for brevity, is not repeated herein.
27 There are certain requirements the court must determine before agreeing to issue
28 injunctive relief. These topics are addressed as follows:

1 **STANDING**

2 Under these facts together with her supporting Declaration, Ms. Leigh has
3 “standing” to bring this claim. At least one other federal trial judge, the Hon. Rosemary
4 M. Collyer of the District of Columbia found such “standing” on much less supportive
5 facts than those provided herein. See, e.g., *Colorado Wild Horse and Burro Coalition,*
6 *Inc. v. Salazar*, 639 F. Supp. 2d 87 (2009)(held, plaintiffs had standing to challenge
7 plan and BLM lacked inherent authority to remove horses under the Wild Horse Act).
8 Ms. Leigh’s Declaration establishes requisite standing.

9
10 **NO ADEQUATE OR SPEEDY REMEDY AT LAW**

11 Plaintiff as a journalist maintains no adequate or speedy remedy at law in being
12 precluded from the area of the BLM helicopter Gather. No action for damages is
13 sufficient; nor would it be timely. No other relief appears prudent except that in equity
14 which allows for injunctive relief.

15 Plaintiff as a writer and illustrator of children’s books addressing management
16 methods of wild horses, maintains no adequate or speedy remedy at law when the
17 BLM’s helicopter Gather alters the children story line from a good story involving good
18 and responsible management practices of wild horses on free ranges. Plaintiff has no
19 desire to illustrate what would likely amount to a grim epitaph of the demise of young
20 foals and mares who recently gave birth, and of pregnant mares, resultant of herding
21 wild horses from public lands during their foaling period. Children, always looking for a
22 good ending to a story, are not likely to appreciate such a dreary, dark aftermath.

23 Plaintiff has no adequate or speedy remedy at law when her Constitutional
24 freedoms are limited by government action. The closure of the BLM helicopter Gather
25 limits her ability as a journalist to visualize, observe and then report what transpires in
26 an event that has public interest and is newsworthy.

27 **IRREPARABLE HARM**

28 Where there is a prior restraint on speech or on the freedom to report

1 government activity, there is always irreparable harm. How does one place a price on
2 an infringement – even just a little infringement – on one’s freedoms caused by
3 improper or illegal interference from government?

4 Ms Leigh would suffer immediate, irreparable harm and injury from being denied
5 the opportunity to engage in her vocations. She is denied access to see, to hear, to
6 view and to report a government agency in action that maintains a history of injuring
7 and maiming or killing the very resource and specie it’s charged with protecting. This is
8 newsworthy material, the BLM knows it and they seek to hide it by simply closing the
9 area.

10 When Ms. Leigh and those similarly situated are effectively censored from
11 providing fair reporting of government in action, she and others similarly situated incur
12 irreparable harm. By the government’s closure, Ms. Leigh and others become limited
13 from engaging in the very freedoms the First Amendment guarantees that it would
14 protect. Her free speech is stymied. The public’s right to know, and Ms. Leigh’s ability
15 to report, how the BLM conducts its Gather, becomes effectively censored when the
16 BLM excludes all from the BLM helicopter Gather area.

17 Plaintiff refers the court to her supporting Declaration which outlines other
18 irreparable harm to her.

19 **SUBSTANTIAL LIKELIHOOD OF PREVAILING ON MERITS OF SUIT**

20 Ms. Leigh maintains a substantial likelihood of prevailing on the merits. She in
21 essence seeks claims for Declaratory Relief and for Injunctive Relief. She contends the
22 BLM is not operating with authority under their own guidelines; and she has expert
23 testimony to support the claims. But, more important is, she’s right!

24 Ms. Leigh’s injunctive relief on constitutional grounds is well-founded. The BLM
25 remains secretive on exactly, where, when and how they would allow visitors to the
26 area to view the Gather. By closing off 27,000 acres including the air space above and
27 then leaving it to the last minute with vague instructions on where to find postings of
28 visitor areas, the BLM excludes the public, journalists, the press and Ms. Leigh from

1 observing and reporting government in action on a hot topic. This is an impermissible
2 stifling of speech. It limits the ability of the press to report on newsworthy matters
3 involving substantial public interest.

4 **TWO FINAL REASONS WHY A TRO IS APPROPRIATE**

5 Publication in the Federal Register

6 The BLM is required to publish its temporary closure order of public lands for the
7 Tuscarora Gather, in the Federal Register. As of this immediate past weekend, no
8 such publication was found by the undersigned. If for some reason the temporary
9 closure order was *timely* filed in the Federal Register, in that event the undersigned did
10 not find it, apologizes for raising the issue, and would appreciate being given a copy of
11 same.

12 Meanwhile, the failure to publish the closure order as required, would cause the
13 prevention of those seeking to view and observe the Gather, illegal and contrary to
14 relevant, existing law.

15 The Gather in Progress

16 The undersigned is informed and believes that as a result of today's activities by
17 the BLM in the BLM helicopter Gather, that they have thus far, killed seven (7) horses.
18 No more is known at this point.

19 **NOTICE TO THE GOVERNMENT**

20 As of this writing the court has yet to issue a Summons for service. However,
21 copies of the filed Complaint and of this Motion were sent electronically to Erik
22 Peterson, Esq., with the U.S. Dept. of Justice in Washington D.C.

23 Attorney Peterson asks that the following be conveyed to the court:

24 Counsel for the Plaintiff has informed counsel for the
25 Federal Defendants that Plaintiff intends to seek a TRO in
26 this matter, and the Federal Defendants stated that they
27 intend to file a responsive brief and wish to be heard on this
28 matter before the Court issues a ruling.

1 **CONCLUSION**

2 The undersigned conveyed to Trial Attorney Peterson, that the Plaintiff would
3 “stop the press” and *not* file suit if the Defendants agreed to postpone the gather to
4 mid-August. This “olive branch” was refused, forcing suit and this motion to be filed.

5 For reasons discussed Plaintiff respectfully requests a Temporary Restraining
6 Order issue precluding the BLM’s intended, described conduct of the Tuscarora Gather,
7 until such time as the court schedules a hearing on a preliminary injunction, based on
8 the preliminary finding that the Tuscarora Wild Horse Gather is in, “excess of statutory
9 jurisdiction, authority or limitations, or short of statutory right.” 5 USC §706(2)(C).

10 **COUNSEL CERTIFICATION**

11 In accordance with Fed.R.Civ.P., as counsel for Plaintiff, the undersigned hereby
12 certifies he personally spoke with Defendants’ counsel Mr. Petersen, that this Motion
13 would be sought shortly; that the undersigned provided Defendants’ counsel Mr.
14 Petersen a courtesy copy of the Complaint before the weekend; and the undersigned
15 provided by electronic service, a copy of this Motion to Mr. Petersen.

16 Dated this 12th day of July 2010

17 RESPECTFULLY SUBMITTED,
18 LAW OFFICE OF GORDON M. COWAN

19 /S/
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Gordon M. Cowan Esq. (SBN 1781)
Attorney for Plaintiff LAURA LEIGH
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CERTIFICATE OF SERVICE

[Pursuant to Fed. R. Civ. P. 5(b); LR 5-1; Section IV of District of Nevada Electronic Filing Procedures]

I certify that I am employed at 1495 Ridgeview Drive, #90, Reno, Nevada, 89519; and, on this date I served the foregoing document(s) on all parties to this action by:

Electronic service:

Erik Petersen, Esq. erik.peterson@usdoj.gov

Placing an original or true copy thereof in a sealed envelope with postage prepaid in the United States Mail at Reno, Nevada, following ordinary business practices

Erik Peterson, Esq.
U.S. Dept. of Justice
Wildlife & Marine Resources Section
Ben Franklin Station
P.O. Box 7369
Washington, D.C. 20044

Overnight or hand delivery to:
Erik Peterson, Esq.
U.S. Dept. of Justice
Wildlife & Marine Resources Section
601 D Street, N.W., Room 3909
Washington, D.C. 20004

Personal delivery to:
Office of the U.S. Attorney
100 W. Liberty St., Suite 600
Reno, NV 89501

Facsimile to:
Erik Peterson, Esq. 202 305 0275

DATED this 12th day of July 2010

/S/

G.M. Cowan