

1 GORDON M. COWAN, Esq.
SBN# 1781
2 Law Office of Gordon M. Cowan
1495 Ridgeview Drive, #90
3 Reno, Nevada 89519
Telephone (775) 786-6111
4

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

16 Defendants.
17 _____/

18 **REPLY BRIEF IN SUPPORT OF**
MOTION FOR RECONSIDERATION OF DENIAL OF PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE (DOC 36), BASED ON
19 **NEWLY DISCOVERED EVIDENCE, AND TO CORRECT**
MANIFEST ERROR OF FACT AND TO
20 **CORRECT MANIFEST INJUSTICE**

21 The BLM would not reveal or publicly document all Owyhee horse deaths until,
22 resultant of the Plaintiff's range expert's discovery, photos of more corpses were publicly
23 revealed. Only then did the BLM "fess up" to these deaths. It is this secretive,
24 unreported "behind closed doors" activity, spun favorably by the BLM to the public, after
25 the public and journalists were shoved back from view, that offends Constitutional
26 notions of free press and speech. It offended and violates Laura Leigh's rights as well.

1 **What's at Stake**

2 If what is important to the court is to protect First Amendment freedoms, then the
3 core of that Order is found and stated as follows:

4 The court is cognizant of the public interest in this matter and
5 of the right of the public and press to have reasonable access
6 to the gather under the First Amendment.

7 *The Hon. Larry R. Hicks, July 16, 2010, Order (Doc 18).*

8 Thirty-nine years past, a noted jurist wrote the following:

9 The Press was protected so that it could bare the secrets of
10 the government and inform the people. Only a free and
11 unrestrained press can effectively expose deception in
12 government. And paramount among the responsibilities of a
13 free press is the duty to prevent any part of the government
14 from deceiving the people.

The Hon. Hugo Black, 1971

15 From *New York Times Co. v. United States*,
16 403 U.S. 713 (1971) (the Pentagon Papers case)

17 ***The Evidence - Private Property Access***

18 The Hon. Larry R. Hicks told the government defendants to lift the public lands
19 closure. The judge allowed the government to impose safety rules but with the core
20 concept in mind that “the right of the public and press to have reasonable access to the
21 gather” is important. In the aftermath, public access never occurred in Owyhee.

22 There is much discussion about access to private property. The government now
23 openly admits (only when faced with a recorded telephone message saved by Ms.
24 Leigh) that they obtained permission from the land owner to allow press in the trap area.

25 ***This confirms the government defendants maintained control over who enters and***
26 ***who does not enter this area.*** But the BLM continued to round up Owyhee horses in
27 two more sessions thereafter while refusing Plaintiffs, or press or the public’s entry.

28 The government blames their inability to provide access because they needed

1 time to come up with a policy for access. Alan Shepard alludes to new rules. If there
2 are rules imposed, then where are the rules outlining parameters of public or press
3 viewing? Why are they not before the court? Why is there lacking a policy outlining
4 specific standards for providing reasonable access to view these roundups? Is it
5 because such rules or policy do not exist?

6 Access to “private lands” however is not central to the focus. The focus is what
7 the government defendants accomplished *on public lands* after the court issued its
8 Order lifting the land closure.

9 10 ***The Evidence - The BLM Road Block Incident***

11 The road block incident was discussed in the prior Motion. The court however,
12 didn’t indicate that it took into account the Declaration of Laura Leigh and Deniz Bolbol
13 of what transpired at this location.

14 Regarding the described showdown on the range occurring July 17, 2010 when
15 Laura Leigh and her two friends were looking to find and then observe the Owyhee
16 gather, there is much verbal exercise of what occurred there, or how much of the road
17 the BLM took up, or how much the BLM assisted the Plaintiff. The government
18 defendants apparently contend the incident didn’t happen or that the government
19 defendants had not blocked the road, or that they happened to be in the vicinity when
20 the Plaintiff and her traveling companions arrived, or that it was really a non-event.

21 A picture paints a thousand words. A video of what transpired throughout the day
22 (July 17, 2010) including the confrontation on the range, is found at the following link:

23 <http://www.youtube.com/watch?v=5A5UVRkArOs>

24 Here are the facts without color regarding the roadblock which the BLM thus far,
25 denies, occurred:

- 26 1. The BLM is waiting on the road for the women. Ranger Reader (BLM Law
27 Enforcement) advises that a Sheriff Deputy is coming up the road to “talk
28 to you.” (Video clip at 3:30 min). Clearly he wants the women to wait for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- the Sheriff Deputy;
2. Ranger Reader (BLM Law Enforcement) then shoves back the camera of Deniz Bolbol (Video clip at 3:38 min);
 3. Ranger Vanderpool (BLM Law Enforcement) appears next to the women’s vehicle stating, “everything beyond this point is private property.” (Video clip at 4:10 min.). He repeats this geographical instruction. (Video clip at 4:18 min.). This occurs before the Deputy Sheriff arrives;
 4. The position of BLM vehicles and width of the road are depicted. (Video clip at 4:30 min.). Compare Reader’s and Vanderpool’s Declarations stating, paraphrased, their vehicles took up two-thirds of this road with “with sufficient room for another vehicle to pass in the opposite direction.” (Vanderpool Declaration, para. 5, Doc. 30) and Reader’s Declaration, para. 10, Doc 29). Noteworthy is that both of these “spontaneous” Declarations are identical, word-for-word, from paragraph 9 onward in Ranger Reader’s Declaration, compared with paragraph 4 onward of Ranger Vanderpool’s Declaration, with the exception of transpositions of each other’s names);
 5. When Ranger Reader moves his truck, the road remains blocked by both Ranger Reader’s truck and Deputy Ames’ Sheriff’s vehicle. And as promised by Ranger Reader, Deputy Ames arrives. (Video clip at 4:55 min.);
 6. Deputy Ames moves to the passenger side of the women’s vehicle and states, “right here is the edge of private property,” pointing to the edge of the driver’s side door of the women’s vehicle. (Video clip at 4:55 min.). This is the same Deputy who advised earlier that, “I have never been out there.” (Video clip at 2:40 min.). And, “I don’t know if they’re out this way or out that way” (pointing), implying he doesn’t know his way around out on the BLM range. (Video clip at 2:48 min.). And, when asked how *he* (Deputy Ames) would know if the women were on “private property” and

1 subject to arrest, Deputy Ames states, "I'm gonna meet with the people
2 from the BLM. They're gonna contact the land owner. Then we'll know."
3 (Video clip at 3:23 min.);

4 7. Deputy Ames says, "I'm just letting you know this is the edge of private
5 property." (Video clip at 5:14 min.). "You can't trespass on somebody
6 else's property." (Video clip at 5:16 min.). Deputy Ames then walks away
7 after the women are asking him to define property boundaries which if
8 crossed, would cause the women to be arrested;

9 8. The Deputy Sheriff's vehicle is then depicted taking up the bulk of the
10 roadway, contrary to the notions left by Rangers Reader and Vanderpool's
11 Declarations about room to pass with their *two* vehicles in the roadway.

12 9. Deputy Ames confirms the landowner had not contacted him. Rather, the
13 landowner is in contact with the BLM. (Video clip at 5:09 min.). This
14 provides the women the clear impression the BLM is in charge of whether
15 they would be arrested or not that day, that the BLM is in charge and not
16 the Sheriff's Department or the land owner;

17 10. Ranger Vanderpool then changes the story when being questioned further.
18 He now states the private property line is about 500 yards down the road.
19 (Video clip at 5:42 min.);

20 11. The women and Plaintiff have the impression that what had been preached
21 to them repeatedly since 4:00 a.m. (re. private property, trespass and
22 arrest), that the probable eventuality of being arrested was unfolding
23 before them on the range. (See e.g., Video clip at 1:21 min. and at 1:30
24 min.);

25 12. At this point in the day, it was clear Deputy Ames was present at the
26 request of the BLM, not the property owner, and that Deputy Amens was
27 responding at the instance of BLM officials. The women retreat for fear of
28 being arrested from undefined property boundaries and gamesmanship of

1 the BLM.

2 The video segment is also provided to the court
3 in a DVD disc, labeled **EXHIBIT "I"**.

4 The Supplemental Declaration of Laura Leigh confirms the foregoing. See
5 **EXHIBIT "F"** attached. Plaintiff lays an admissible foundation for the video clip's
6 inclusion in terms of authentication, relevance, accuracy and truthfulness. The
7 statements made by BLM officials on the tape and confirmed by Ms. Leigh's testimony
8 are either non-hearsay admissions by party opponents, or statements against interest,
9 or are not otherwise "hearsay."

10 The information by all officials including Ranger Vanderpool that private property
11 is at the edge of the vehicle in which the women were traveling, is false. The conflicting
12 information provided thereafter by Ranger Vanderpool (that private starts some 500
13 yards down the road), is likewise false.

14 Attached is an official BLM Map of the area in question. Laura Leigh's
15 Declaration sets the foundation for this map. She received it from a BLM official who
16 advised it was newly created by the (BLM). Ms. Leigh states she placed a black arrow
17 on the map to designate where she and her companions were located when they
18 encountered the BLM roadblock.

19 This map, attached as **EXHIBIT "H"**, demonstrates the following:

- 20 1. The location where the women were stopped by the BLM roadblock, was in
21 fact, a place on public property;
- 22 2. The location where the women were stopped by the BLM roadblock, was in
23 fact, a place on a public road;
- 24 3. The location where Ranger Vanderpool states the public road ends and
25 private road begins is false. The public road according to the official map,
26 continues as BLM Road #1232. The road leading to the horse trap zone or
27 horse holding pens, branches off the same public road on which the
28 women were traveling. But, the road remains *public* in all respects, as

1 BLM Road #1232 for many miles thereafter, in their intended direction of
2 travel;

3 4. The road branching off the public road is private and presumably would
4 have been marked with a “no trespassing” sign. The Plaintiffs never got
5 that far because of the false information provided them by both BLM
6 officials and Sheriff’s officials;

7 5. Never does the road on which the women were traveling that day (July 17,
8 2010) turn into a private road.

9 See **EXHIBITS “F” and “I”** attached.

10 Laura Leigh’s Declaration in support of this video and map is attached. Her
11 Declaration authenticates the video clip and map. The map is an official document of the
12 BLM and subject to a hearsay exception, that is *if* hearsay is truly an issue, which it’s
13 not.

14 The statements by BLM Rangers Vanderpool and Reader are admissions by a
15 party opponent and accordingly non-hearsay. These individuals *falsely* advised the
16 women they were either about to cross private property or that the road turned private in
17 a few hundred yards. This evidence is relevant to facts in issue. This information is
18 likewise relevant where it calls into question the veracity of witnesses (a subject *always*
19 in issue).

20 The only Declaration the Defendants provide with their Opposition to this Motion
21 is that of Alan Shepard. But, Mr. Shepard was never at the roadblock. Mr. Shepard was
22 not at the BLM field office. Mr. Shepard was not at the road block when the plaintiff and
23 companions were stopped by BLM Rangers Reader and Vanderpool and then by Sheriff
24 Ames. No Defendants’ representative is able to dispute what is clearly depicted in this
25 video clip. The video clip clearly contravenes BLM Rangers Vanderpool’s and Reader’s
26 recitation of what transpired on the range that day.

27 The BLM acknowledges earlier in the day (July 17, 2010) they would, “certainly
28 respect the order of the court and we will follow it as we understand it.” See BLM’s Field

1 Office Manager, David Overcast (Video clip at 0:01 min.). Yet, the BLM's own conduct
2 occurring on *public lands* later in the day contravenes the court's Order. The road block,
3 the refusal of the BLM to assist in directions, the false statements concerning private
4 property boundaries, the threats of arrest were all impediments to the Plaintiff's
5 continued travel *on public lands, on public roads*, toward the area near where Owyhee
6 horses were being rounded up.

7 There is no credible, concrete evidence to rebut that the BLM stopped the women
8 and Plaintiff on public lands, on a public road, which continued "public," contrary to their
9 specific representations to them. Once again, BLM Ranger Vanderpool was the first
10 individual to tell the Plaintiff and her traveling companions they were right on the border
11 of private property. Deputy Ames then arrives and enforces the same geographical
12 location. The road is confirmed by BLM's own document (the map), that the road on
13 which the plaintiff and friends traveled, was and remains a public road. The
14 conversations on the subject, on video, speak for themselves.

15 The video clip and the official BLM map clearly demonstrate sufficient evidence
16 that meets the "clear and convincing" standard. It contravenes the vague contentions
17 offered by BLM employees.

18 How is all this relevant? There is absolutely no evidence indicating the BLM
19 roadblock was in accordance with some newly imposed rules or guidelines that
20 regulated public access to public lands, somehow made in compliance with the court's
21 new Order. To the contrary, the Rangers contend they just happened to be there at the
22 time. To the contrary, the Defendants suggest they provided two viewing days several
23 days after Owyhee concluded, to comply with the court's Order. This too is nonsense
24 where the scheduled date for the two scheduled viewing days after Owyhee, were
25 scheduled months prior to when the court issued its July 16 Order. There were in fact,
26 *no accommodations* made for public or press viewing or public or press access to
27 Owyhee or for that matter, anywhere else, as the result of the court's Order. Any
28 testimony to the contrary is not supportable.

1 The burden of the defendants, demonstrating they have performed " 'all
2 reasonable steps within their power to insure compliance' with the court's orders," is
3 clearly not established. See, *Stone v. City and County of San Francisco*, 968 F.2d 850,
4 856 (9th Cir.1992), *cert. denied*, 506 U.S. 1081, 113 S.Ct. 1050 (1993) (quoting
5 *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir.1976)). The Defendants
6 instead, placed numerous impediments in the way of Plaintiff and her friends to
7 discourage them, to scare them, to intimidate them from traveling further on public lands,
8 to view wild horses being captured by the BLM. This embarrassing and near lawless
9 conduct is the antithesis to taking, "all reasonable steps *within their power* to comply with
10 the court's Order.

11
12 **Evidence Causing the Lifting of the Injunction – Alan Shepard vs. Katie Fite**

13 Mr. Shepard hints that his knowledge of the range is significant. In truth, no
14 testifying witness thus far, has more knowledge of this specific area, more observation
15 and experience in this area, or educational background relative to the field work and
16 observations there, than does Ms. Katie Fite. Katie Fite was collecting range data in
17 Owyhee long before Shepard was transferred to Nevada from Wyoming. Ms. Fite's
18 Supplemental Declaration is at **EXHIBIT "G"** attached.

19 From a credibility standpoint, Ms. Fite doesn't have a stake in the outcome, nor
20 does her employer. Conversely, Mr. Shepard is a BLM employee and everything is at
21 stake.

22 Ms. Fite's supporting Declarations are important in that they confirm there was no
23 rangeland emergency that caused the court to lift its injunction in the first instance. A
24 closer look at Mr. Shepard's most recent Declaration is revealing.

25 **What Shepard Said in Court versus What is Said Currently**

26 The testimony of Mr. Shepard caused the court to confront a "classic Hobson's
27 choice." Shepard told the court on cross exam by Plaintiff's counsel, there is "no water,"
28 "no fences," "no cows." The clear impression left by all in the courtroom following his

1 court testimony was that an unprecedented condition existed on the range that had not
2 been anticipated, and that no water was available to Owyhee HMA horses.

3 In his first Declaration against this Motion and *after* “water,” “horses” and “cows”
4 are found and documented within the Owyhee HMA, for the first time, Shepard *clarifies*
5 what he told the court previously. Shepard clarifies by stating there are just two
6 meadows within the Owyhee HMA, not the entire HMA, where horses are located; and
7 the horses are running out of water at those two locations. It remains clear, Mr. Shepard
8 never explained these new facts previously until after he was confronted with evidence
9 (*vis-a-vis* Katie Fite photos) of “water,” “fences,” “cows” within the Owyhee HMA.
10 Shepard had the opportunity to clear the air. He never did.

11 Mr. Shepard’s next Declaration, filed with the government’s opposition to this
12 Motion, includes even more “waffling” when *more* water is found and revealed by more
13 photos from Katie Fite. Now Mr. Shepard (Doc 50-1) says this:

14 Although the horses could have traveled to farther (unfenced)
15 water sources, such as going the 8-10 miles to the Owyhee
16 River, ***the wild horses were not moving to those waters.***

17 (Shepard, para. 7, Doc 50-1)(Emphasis).

18 [b]ased on my personal knowledge of the wild horses and
19 ***their failure to move to alternative water sources*** in the
20 days leading to the emergency gather operations.

21 (Shepard, para. 9, Doc 50-1)(Emphasis).

22 The impression given by Mr. Shepard in this testimony is, the horses are not moving,
23 they would die if not physically moved by helicopter, and the horses would never move
24 even when finally running out of water at those two locations. He acknowledges the
25 horses would move as far as ten miles to water, just not at this time.

26 Then, Mr. Shepard *modifies* this testimony, stating the following:

27 Ms. Fite is correct in noting the wild horses can travel the 8-
28 10 miles from the Star Ridge Pasture to the Owyhee River to

1 access water. However, when BLM initiated its gather
2 operations July 10, 2010, and based on later reconnaissance
3 flights, *the wild horses were not traveling to the river in any*
4 ***significant numbers to access water***

5 (Shepard, para. 10, Doc 50-1)

6 When he conveys, “*in any significant numbers,*” what does this mean? This is
7 new. It’s *now* revealed that there *are* horses traveling to the Owyhee River from the very
8 location where Shepard insists previously, they are not traveling from, to access water.
9 And, he never gives this information to the court July 15 at the hearing, that horses were
10 not traveling to the river “in any significant numbers.” In fact, he didn’t even tell the court
11 there was a river nearby.

12 Which is it? Are they traveling or not? What’s a “significant number”? Where is
13 the scientific data? The herd counts? How many in fact, accessed the Owyhee River
14 from the Star Ridge pasture? And, why did he not make this statement previously when
15 given the opportunity in open court?

16 Shepard’s testimony waffles on the subject; yet it is offered as credible evidence
17 outlining what was about to transpire on the range.

18 The important questions are these: Why did he not tell the court July 15, there
19 was water in other areas? Why did he not tell the court July 15 there were only two
20 specific areas involved in the Owyhee HMA? Why did he not tell the court July 15
21 horses were in fact, moving from specific areas back to the Owyhee River and that yes,
22 they could travel that far; and yes, there was a flowing river nearby. (And by the way,
23 how far is it really from Star Ridge to the So. Fork of the Owyhee River compared with
24 how far the BLM helicopter drove them from Star Ridge to private property by Desert
25 Ranch Reservoir to be rounded up? And also, why didn’t they drive them to natural
26 water, the River, so the horses could recover in their natural environment before moving
27 them)?

28 Plaintiff respectfully submits, on balance, Katie Fite’s testimony is solid while

1 Shepard's testimony vacillates inappropriately. Mr. Shepard is compromised.

2

3 ***Miscellaneous Contentions***

4 *Katie Fite's Declaration*

5 Defendants contend Ms. Fite's first declaration is filled with "hearsay." What
6 portion specifically are hearsay. Was it her statements of personal observations? Her
7 discussions of her personal experience in this very geographical region? Are her photos
8 hearsay? Are her opinions hearsay or reliant on hearsay? As the court is aware, expert
9 opinions are not hearsay. Experts can also rely on hearsay to formulate opinions. But
10 the bulk of the testimony by Katie Fite, is based nearly entirely on first-hand knowledge.
11 Where is the purported hearsay?

12 The government defendants make no effort to raise or distinguish what portions
13 of Ms. Fite's Declaration are inadmissible hearsay. It is instead a desperate ploy to cast
14 a shadow over the tremendous work Ms. Fite conducts on the range. The court (and Mr.
15 Shepard) would learn a great deal of the Owyhee range if she were asked to testify.
16 She is available as a witness for this purpose.

17

18 *Should have brought up "no water emergency" in the first instance*

19 The government defendants contend the Plaintiff should have raised the issue
20 that there was not a water emergency in Owyhee, in the first instance. So soon they
21 forget that the area was closed from public observation until July 16. When Ms. Fite
22 came to the area, after the court Order, public land closure signs were still posted after
23 July 16. As a responsible citizen, unsure of whether it was appropriate to proceed, she
24 chose to retreat and honor the government signs. She did not cross into the area.
25 When she returned more than a week later, the "closed" signs were down and for the
26 first time, she was able to document and record evidence that there was never an
27 emergency existing on the range.

28

1 The Plaintiff should “take a hike”

2 The Defendants contend the plaintiff and her traveling companions were able to
3 access *some* area remotely by taking a two mile hike into the area. This is not really
4 germane to the current discussion.

5 Clearly, where the women were nervous from being arrested because of a “cat
6 and mouse” game being played out on the remote range by the defendants over what
7 was public land vs. private lands, they were taking their chances when venturing on foot
8 into an area that was not clearly accessible via public lands.

9 This defense argument doesn’t address what occurred on *public lands* where the
10 Plaintiff and her traveling companions could have traveled much closer to the trap sites
11 *on public roads, on public lands*, but were held at bay and intimidated by BLM and
12 Sheriff officials to retreat from undefined property boundaries when confronted by BLM
13 employees at the road block.

14

15 Shepard’s Conclusion of What the Contractor Saw

16 Mr. Shepard opines the BLM was able to gather a significant number of horses
17 the first day of gather (more than 200 horses in a the short span of a couple of hours)
18 because this is how the contractor found them, in a large herd. Where is the
19 contractor’s testimony to this fact? Was Shepard on board with the pilot when this all
20 occurred? Why has the contractor not provided a declaration or affidavit supporting this
21 purported fact. This statement (at paragraph 15, Doc 50-1) is an unsubstantiated
22 conclusion apparently based on something *other* than Mr. Shepard’s first-hand
23 observations. It is classic “hearsay.” Paragraph 15 of Shepard’s Declaration is
24 defective and should be stricken.

25 Opinions by Shepard based on Scientific Notions

26 Mr Shepard provides several, opinions purportedly based on scientific notions.
27 These opinions do not comport with the acceptable level of reliability as is required by
28 the of cases we reference as having shaped the *Daubert* Standard. See, *Daubert v.*

1 *Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993); *Kumho Tire*
2 *Co. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167 (1999). (See also, Judge Kosinski's
3 opinion on remand in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 43 F. 3d 1311 (9th
4 Cir. 1995)).

5 Mr. Shepard never provides the court with the basic first step in *Daubert* which is
6 the "scientific knowledge" supporting his opinions. He recites none other than his
7 purported "gut" feeling based on vague personal reflections that horses were in jeopardy
8 and would not move from drying water holes. His gut feeling is in fact, contradictory to
9 what historically transpires there on the range where these same water holes become
10 dry. Shepard even admits this. It is also contradictory to his statement that *some*
11 horses did in fact, move to the River. He provides no basis or background in science,
12 except that the horses were staying at this water hole which was unusual; and this fact
13 caused him to conclude the horses would not move. (Although, again, he counters his
14 testimony later admitting some were moving to water).

15 A *Daubert* analysis is extensive and not necessary here. It's clear however, Mr.
16 Shepard's opinions fail to pass even the very first, basic, "scientific knowledge" test
17 required in a *Daubert* exercise. Mr. Shepard's conclusions should therefore, be stricken
18 in their entirety.

19

20 ***Final Analysis***

21 In the final analysis, the several excuses or "back-peddling" exercises of the
22 defendants would not have been necessary here if the government defendants had just
23 been square with the court at the hearing July 15. Instead, they came up with a
24 purported "emergency," with last minute surprise witnesses, and with a document on
25 which the ink was still wet, that they just completed. They took unfair advantage of the
26 Plaintiff and the court.

27 The Plaintiff's Motion is not just based on new evidence. It was clear from the
28 prior order that the court may not have considered what occurred on the range (the

1 roadblock confrontation) which is *now* revealed clearly to have occurred on public lands.
2 None of this was discussed or acknowledged by the court. It is also clear that manifest
3 injustice may have prevailed should the facts of what occurred at that location, not have
4 been made clear to the court.

5 The conduct of the government defendants on the range is disgraceful and is
6 contrary to the Order of the court which required the government defendants to remove
7 the closure.

8 ***A party disobeys a court order when it "fails to take all the reasonable steps***
9 ***within [its] power to insure compliance with the [court's] order."*** *In re Crystal*
10 *Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir.1987)(Emphasis added).

11 If what transpired on the range is fair to the Plaintiff and reasonable conduct by
12 the government defendants and the defendants took, "all the reasonable steps within its
13 power to insure compliance with the court's order," and further, if the defendants'
14 conduct fostered, "the public interest . . . and of the right of the public and press to
15 have reasonable access to the gather under the First Amendment" (Order Doc 18), if
16 the court believes this, then the court should rule in the government defendants' favor.

17 If however, the conduct does not satisfy these notions, then the government
18 defendants violated the order and denigrated the Plaintiff's Constitutional rights. In that
19 event, the government defendants should be admonished in a stern written, published
20 opinion. Once again, the Plaintiff is not looking for sanctions which would elevate the
21 "contempt" to a criminal matter.

22 For the reasons stated, Plaintiff respectfully requests the court reconsider its
23 motion and issue a civil contempt citation.

24 Dated this 20th day of September 2010

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

27 /S/

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS

- Exhibit F Supplemental Declaration Laura Leigh of 19 Sep. 2010
- Exhibit G Supplemental Declaration Katie Fite 20 Sep. 2010
- Exhibit H Official BLM Map printed after the Owyhee roundup
- Exhibit I DVD of referenced video clip

CERTIFICATE OF SERVICE

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

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
Greg Addington	greg.addington@usdoj.gov
Ayako Sato, Esq.	ayako.sato@usdoj.gov

DATED this 20th day of September 2010

/S/

G.M. Cowan