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Attorney for Plaintiff LAURA LEIGH

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAURA LEIGH,

Plaintiff,

vs.

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

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

Defendants.
_____/

MOTION FOR RECONSIDERATION OF DENIAL OF PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE (DOC 36), BASED ON NEWLY DISCOVERED EVIDENCE, AND TO CORRECT MANIFEST ERROR OF FACT AND TO CORRECT MANIFEST INJUSTICE

Plaintiff moves for reconsideration of the denial of Plaintiff's Motion for Order to Show Cause (Doc 37 entered July 27, 2010). The motion is made on the grounds that (1) Plaintiff presents newly discovered evidence of the Defendants' violation of the court's order (Doc. 18), (2) the court appears to have incorporated erroneous facts causing a court ruling based on a manifest error of fact, and (3) manifest injustice would occur were the current order to stand unreflected of the foregoing.

Should the court deny relief, Plaintiff respectfully requests the court modify its denial order (Doc 37) by including permission allow review of same in accordance and

for the reasons stated in 28 U.S.C. 1292(b).

This Motion is based on the Plaintiff's briefs, supporting papers, exhibits and Declarations on file with the court.

Dated this 10th day of August 2010

RESPECTFULLY SUBMITTED,
LAW OFFICE OF GORDON M. COWAN

/S/

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION OF DENIAL OF PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT

Relevant Facts

The court issued its first of rulings on TROs in an Order entered July 16, 2010 (Doc. 18). The Order provides in relevant part the following:

> Plaintiff Leigh is a journalist and author who reports on wild horses and their management by private and government agencies. Leigh has attended and observed previous gathers conducted by the BLM in other HMAs in northern Nevada. On July 9, 2010, Leigh filed a complaint against defendants challenging the decision of the BLM (1) to use helicopters to gather the horses while there are pregnant mares and young foals in the herds, and (2) to close 27,000 acres of public land thereby excluding the public and the press from observing the gather in violation of the First Amendment. Doc. #1. . . .
>
> As to Leigh's First Amendment challenge to the closure of public lands during the gather, the court shall grant Leigh's temporary restraining order. Leigh argues that a

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blanket closure of 27,000 acres of public land on which the Tuscarora Gather is going to take place ***is a prior restraint on her First Amendment rights because she will be unable to observe and report on the health of the horses and the BLM's management of the gather. The court agrees*** and finds that she has made a sufficient showing of probable success on the merits to warrant granting the motion. As such, the court enjoins the blanket closure of public land access during the gather and shall lift the closure as written with regard to land access.

The court is cognizant of the public interest in this matter and of the right of the public and press to have reasonable access to the gather under the First Amendment. The court is also acutely aware of the competing interest expressed by the BLM, namely protecting the health and safety of the public, its employees and agents, and the horses during the gather. As such, the BLM is entitled to enact reasonable restrictions on public access. However, ***the court finds that the blanket closure as written, in so far as it relates to land access, is unconstitutional because it prevents the public from observing the gather, even in such a way as to not interfere with the gather. Therefore, the court's ruling is limited only to the blanket closure as it is now written and not to the BLM enacting a more reasonable closure which would preserve and honor the First Amendment rights of the public*** while still satisfying the health and safety responsibilities imposed on the BLM. . . .

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Order, Doc. 18. (Emphasis)

On July 27, 2010 (Doc. 37) the court entered its Order denying Plaintiff's requested relief. The court stated the following:

> Here, Leigh alleges that defendants violated the court's July 16, 2010 order by restricting her access to the gathering activities and by not seeking approval for her presence at gathering activities taking place on private land ***over which the BLM does not have control.***
>
> Initially, the court notes that ***Leigh has not established by clear and convincing evidence that the BLM prevented her from accessing any of the public lands that were the subject of the initial blanket closure that was enjoined and lifted by the court.*** Further, in the order the court noted that the BLM is entitled to enact reasonable restrictions on public access to protect the health and safety of the public, its employees and agents, and the horses during the gather. *See* Doc. #18. ***In compliance with that order, the BLM*** began removing public closure signs from the area, retracted the public closure notice, and ***issued notice of public observations days for July 23, 2010 and July 24, 2010, for which the public could observe certain gather activities*** and holding facilities that were taking place on public land. There is no clear and convincing evidence that the BLM's actions were not in compliance with the court's order. Accordingly, the court finds that Leigh has not established that defendants' violated the court's order.

Order, Doc. 36. (Emphasis added)

New evidence and also previously offered evidence the court did not indicate it

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considered, demonstrates the following:

1. On July 17, 2010, after the court's Order of July 16, 2010 (Doc. 18), ***the Defendants, using U.S. government official vehicles, intentionally set up a road block precluding Plaintiff from traveling further on a public road located on public lands*** near the Owyhee HMA gather site. At the time of this ***public lands blockade***, the Defendants were specifically aware of the court's order requiring the opening of public lands. The Defendants indicated the gather site was roughly five (5) miles further down the road past where the Defendants said private property began (where they blocked the road with their vehicles). BLM officials also conveyed private property really started about 500 more yards down the road. This chosen conduct by the Defendants directly clearly violates both the letter and spirit of the court's Order (Doc. 18). See Declaration Laura Leigh at **EXHIBIT "A".** See Deniz Bolbol's Declaration at **EXIHBIT "B";**
2. The BLM maintained nearly exclusive control over those to whom access was granted, over the very property on which they chose to set the wild horse trap at the Owyhee HMA. See Declaration of Laura Leigh at **EXHIBIT A**. Whether on public or private property, the preclusion of Plaintiff from the area ***while the Defendants were in control of the land*** is in direct contravention of the court's Order (Doc. 18);
3. The ***BLM admits they in fact, obtained permission from the landowner to allow Plaintiff in the area during the Owyhee HMA gather.[1] The Defendants further admit they nevertheless chose to preclude Plaintiff from viewing the Owyhee HMA gather.*** The landowner was accordingly, not involved in keeping Plaintiff from entering the Owyhee HMA trap site while the Owyhee HMA gather continued. Any Declarations

[1] This references the owner of the private land where the Owyhee HMA horse trap was set).

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to the contrary are sheer folly. It turns out it was ***the BLM's choice to preclude Plaintiff*** from the area. This choice was in direct contravention of both the letter and spirit of the court's Order (Doc. 18). See Declaration David Overcast (BLM employee) July 23, 2010, paragraph 13, Doc. 27, wherein Mr. Overcast states the following:

> This Monday morning July 19th, the landowner's ranch foreman after speaking with the ranch owner's authorized representative, said the BLM could escort credentialed media representatives over the private lands to observe the gather. The BLM is trying to determine a process on how to fairly extend the offer to the media. Doc. 27.

See Laura Leigh Declaration (Doc. 19-2), paragraph 26, pp. 6-7, providing the following:

> Approximately 20 minutes after concluding this conversation with Mr. Miller, I received a call from him . . . . indicating that in order to facilitate my observation of the Gather, that the "Solicitor" [Solicitor General's office] needed to approve my admission and that since I was actively engaged with the Solicitor (perhaps because of this litigation), that this (my approval to gain access) was *not* likely to occur.
>
> Doc 19-2, par. 26, pp. 6-7. (Bracketed section added).

A representative of the Solicitor General's Office was physically present at Defense counsel's table during the July 15 hearing. Although Justice Elena Kagan (the *then* Solicitor General) was in Senate

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confirmation hearings at the time, her office was well aware of this suit and clearly was aware of the court's order.

Ms. Leigh maintains Mr. Miller's voice recording of this admission left on her phone answering messages. She preserved the message for the court, to play at a hearing should the court determine it useful for deciding the issues presented here. The message is kept verbatim for the court to here and receive in evidence. See Laura Leigh's Declaration at **EXHIBIT A** attached.

Meanwhile, ***Mr. Miller's statement is an admission of a party opponent, it's non-hearsay and clearly admissible***;

4. Following the court's Order (Doc. 18) the Defendants chose to make *no* accommodations whatsoever to modify their plan to allow public access to view the Owyhee HMA gather. The Defendants continued gathering in the Owyhee HMA ***four days*** after the court's Order (Doc 18). Under these facts the Defendants contravened both the spirit and letter of the court's order (Doc 18). The following facts are key to this issue:

   a. When denying Plaintiff's OSC relief, the court stated, ***"[I]n compliance with that order, the BLM . . . issued notice of public observations days*** for July 23, 2010 and July 24, 2010, for which the public could observe certain gather activities. ***Not true. These dates had already been selected and publicly announced well before these gathers commenced. Moreover, neither of these dates allowed public observation of the Owyhee HMA gather***. The Defendants accordingly, did not issue a notice of public observation days, "in compliance with that order." (Doc. 18);

   b. The Defendants *never* modified their plan which completely excluded the public from observing their Owyhee HMA gather. ***The Defendants gathered in Owyhee HMA four days after the court***

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issued its order (Doc. 18). The Defendants succeeded, in spite of the court's order, from blacking out their activities completely from public scrutiny;

c. Even the court recognizes the Owyhee HMA wild horse gather was a separate and distinct event from other Tuscarora area gathers. Each was a separate and distinct gather;

d. The Owyhee HMA gather caused more horse deaths (34+ admitted by the Defendants as of this writing) than any other gather in Tuscarora;

e. The Owyhee HMA gather was the one garnering the most public interest and raised the most controversy (among the three gathers) because:

i. The Defendants intended to shut out the public completely from observing the Owyhee HMA gather;

ii. The Defendants intended to gather significantly more horses from the Owyhee HMA than from the other two HMAs;

iii. The Defendants contended they were faced with a precedence-setting "emergency" which threatened the extinction of 75% of the Owyhee HMA herd;

f. The Defendants justified the Owyhee HMA gather contending an "emergency" situation had arisen. The Defendants claimed 75% of the Owyhee HMA wild horses would perish if the court didn't immediately lift the court-imposed injunction. This made the Owyhee HMA gather even more newsworthy and more important to the public to have independent observation and independent reporting of the Owyhee HMA gather. Even the court recognized it was presented with "a classic Hobson's choice."

Denial of all public access to the Owyhee HMA gather amounted to a prior

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restraint on the Plaintiff's First Amendment rights as was recognized by this court. Denial of all public access to the Owyhee HMA was in direct contravention of the court's Order (Doc. 18).

5. New evidence suggests the Defendants pre-gathered or hazed or moved horses prior to the published dates of the three gathers. If this occurred, then gathering occurred in direct contravention of the BLM's own published requirements precluding gathering of horses within the foaling period;

6. The court lifted the injunction when faced with a purported "emergency" that 75% of the Owyhee HMA herd would be lost if the court kept the injunction in place. New, compelling evidence suggests ***this "emergency" contention and lack of water was never real.*** Water was available to the horses in the same area from which the Defendants conducted the Owyhee HMA gather. Attached photos show horses which escaped the Owyhee HMA July gather, finding their way to the South Fork of the Owyhee River, to water. These are taken by Katie Fite July 25 and 26, 2010. See Katie Fite's supporting Declaration at **EXHIBIT C** attached;

7. The court lifted the injunction when faced with a purported "emergency" that 75% of the Owyhee HMA herd would be lost if the court kept the injunction in place. New evidence demonstrates water and forage conditions existing on the range in that specific area during the Owyhee HMA gather in July, were no different from typical range conditions found there in previous years. The horses nevertheless exist and survive on these same rangeland conditions.[2]

[2] This new evidence should not be confused with Plaintiff's contention asserted previously when Plaintiff discovered water, fences and cows near the trap zone after the gather was over, contrary to Mr. Alan Shepard's testimony to the court. Plaintiff continues to support

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8. After a public interview with Sue Cattoor[3] completed August 4, 2010, Horseback Magazine conveyed the following, relevant information:

> Cattoor acknowledged that the Owyhee River has running water, and during the roundup an Idaho group was camping on its banks – and even fishing.
>
> "They were just a little ways up from where the horses trail down to the river. It's almost like a miniature Grand Canyon. This particular spot of where the trail goes down in the canyon is where the horses go to water," Cattoor said.
>
> Cattoor also said that there are other trails leading to the river that would have been available to the horses, but "the horses aren't using those trails. They are only using this one.
>
> A lot of those horses didn't know that trail was there because a lot of the horses we captured in this HMA were young horses."[4]

This statement is either an admission by an authorized representative of a party opponent or a statement against interest imputed to the Defendants, and is admissible. This statement clearly demonstrates an abundance of water was always present and available to horses in the Owyhee HMA in the particular gather site of the Defendants.

The statement by Ms. Cattoor is the antithesis of what was

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[3] Ms. Cattoor is the principal of the BLM's chosen, "no bid" helicopter "gather" contractor.

[4] See Article, *Plenty of Water at Nevada Roundup – And Dead Horses Too*, , Horseback Magazine Online (August 4, 2010), as an attached **EXHIBIT E**.

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conveyed to the court July 15, 2010 when the Defendants told the court, (paraphrased), "there's no water" and "the horses are dying from water starvation."

9. Plaintiff presents new evidence and photographs suggesting strongly there was no natural emergency in Owyhee HMA at all; that there was nothing out of the ordinary from how the range is customarily found in years past during this time of year. In the specific areas where the Defendants claimed there was no water, the Owyhee River continues to run freely as it did earlier in July when the Defendants claimed there was an emergency necessitating an immediate gather. The attached photos of the area where there was purportedly (by BLM) "no water," shows water. Where the Defendants claim horses would not use the river or did not have access to the river, the attached photos depict a different story. These photos taken just days following the Owyhee HMA gather show horses (that escaped the Owyhee HMA gather) effortlessly reaching the South Fork of the Owyhee River, to take a casual drink.[5]

Legal Principles - Motion to Reconsider

The Court has discretion to reconsider and vacate an order. *Barber v. Hawaii,* 42 F.3d 1185, 1198 (9th Cir.1994); *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 396 (9th Cir.1992). "The purpose of a motion for reconsideration is to correct manifest errors of law *or fact* or to *present newly discovered evidence*." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3rd Cir.1985), *cert. denied*, 476 U.S. 1171, 106 S.Ct. 2895, 90 L.Ed.2d 982 (1986).

Although no judgment has been entered in the case, Fed.R.Civ.P. 59(e) nevertheless appears instructive. Under Rule 59(e) a motion to amend is appropriate

[5] See photos attached taken by Katie Fite July 23, 2010. See Katie Fite Declaration at **EXHIBIT C**.

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(1) to correct, "'manifest errors of law or fact upon which the judgment is based;' " (2) where the movant presents "'newly-discovered or previously unavailable evidence' " (3) " 'to prevent manifest injustice' "; or (4) where there has been an " 'intervening change in controlling law.' " *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir.2003).

Legal Principles - Contempt

A district court has the inherent authority to enforce compliance with its orders through a civil contempt proceeding. *International Union, UMWA v. Bagwell*, 512 U.S. 821, 827-28, 114 S.Ct. 2552 (1994).

A contempt sanction is considered civil if it "is remedial, and for the benefit of the complainant." *Id.* A contempt fine is considered civil and remedial if it either "coerce[s] the defendant into compliance with the court's order, [or] ... compensate[s] the complainant for losses sustained." *United States v. United Mine Workers*, 330 U.S. 258, 303-304, 67 S.Ct. 677 (1947).

A party disobeys a court order when it "fails to take all the reasonable steps within [its] power to insure compliance with the [court's] order." *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir.1987)(Emphasis added). In deciding whether to impose a civil contempt sanction, a district court should consider the following factors: the harm from non-compliance; the probable effectiveness of the sanction; the contemnor's financial resources and the burden the sanctions may impose; and the contemnor's willfulness in disregarding the court's order. *United Mine Workers*, 330 U.S. at 303-304.

The moving party must demonstrate by clear and convincing evidence that the contemnor violated the court's order. *In Re Dual-Deck Video Cassette Recorder Antitrust Litig.,* 10 F.3d 693, 695 (9th Cir.1993) (citing *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.,* 689 F.2d 885, 889 (9th Cir.1982)); *Balla v. Idaho State Bd. of Corrections,* 869 F.2d 461, 466 (9th Cir.1989). The burden then shifts to the respondents to

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demonstrate that they have performed " 'all reasonable steps within their power to insure compliance' with the court's orders." *Stone v. City and County of San Francisco,* 968 F.2d 850, 856 (9th Cir.1992), *cert. denied*, 506 U.S. 1081, 113 S.Ct. 1050 (1993) (quoting *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir.1976)).

Discussion - Access to Owyhee HMA Gather

The court assumed the defendants somehow, "substantially complied" with the Order. Substantial compliance however, is available only where the Defendants made, "***every reasonable effort . . . to comply***." *Go-Video, Inc. v. Motion Picture Ass'n of America*, 10 F. 3d 693, 695 (9th Cir. 1993).

Plaintiff is not here to rehash or reargue the point. A better approach to finding what's right while avoiding manifest injustice, is to ask simple questions, such as these:

1. Is blocking a ***public road located on public lands*** with official BLM vehicles, to prevent the Plaintiff from traveling further ***on a public road located on public lands*** toward the Owyhee HMA horse trap area[6] an example of providing "every reasonable effort to comply with the order mandating the Defendants to dissolve the blanket closure of public lands? (See order, Doc. 18)?

2. Is blocking a public road located on public lands with official BLM vehicles ***five miles from the Owyhee HMA horse trap site*** [7] an example of a, "reasonable closure which would preserve and honor the First Amendment rights of the public" (order, Doc. 18)?

3. Is denying the public completely from all access to all gather activities occurring at the Owyhee HMA [8] an example of a, "reasonable closure which

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[6] See Declaration of Laura Leigh at **EXHIBIT A**. See Declaration of Deniz Bolbol at **EXHIBIT B**.

[7] See Declaration of Laura Leigh at **EXHIBIT A**. See Declaration of Deniz Bolbol at **EXHIBIT B**.

[8] See Declaration of Laura Leigh at **EXHIBIT A**.

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would preserve and honor the First Amendment rights of the public" (order, Doc. 18)?

4 When Defendants received permission from the landowner to allow Plaintiff in the area during the Owyhee HMA gather[9] but left the *final* decision of Plaintiff's access onto the land, in the hands of the Defendants' own Solicitor General's Office (i.e. *not* the landowner) who in turn, chose not to provide Plaintiff access,[10] is this an example of the Defendants making, "every reasonable effort" to comply with the order? See, *Go Video* at 695. Is this an example of the Defendants taking, "'all reasonable steps within their power to insure compliance' with the court's orders?" See, *Stone v. City and County of San Francisco,* 968 F.2d 850, 856 (9th Cir.1992), *cert. denied*, 506 U.S. 1081, 113 S.Ct. 1050 (1993).

United Mine Workers suggests the following criteria when determining the appropriateness of citing contempt:

The harm from non-compliance

Sammartano v. First Judicial District Court, in and for County of Carson City, 303 F.3d 959 (9th Cir. 2002) is among a long line of cases confirming the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury for purposes of the issuance of a preliminary injunction.

The Defendants blacked out completely from the public and press, their gather activities in Owyhee HMA. What the public is left with is the Defendants' "public relations" spin on what transpired. No independent observation or assessment was allowed.

Plaintiff is not only harmed financially in having lost a story of how the Defendants

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[9] See Declaration David Overcast (BLM employee) July 23, 2010, paragraph 13, Doc. 27. See Laura Leigh Declaration (Doc. 19-2), paragraph 26, pp. 6-7.

[10] See Declaration David Overcast (BLM employee) July 23, 2010, paragraph 13, Doc. 27. See Laura Leigh Declaration (Doc. 19-2), paragraph 26, pp. 6-7.

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conducted a gather in which they killed 34+ horses while those horses were under the Defendants' custody and control. Plaintiff must defend a new incredible story the Defendants (through their chosen contractor Ms. Sue Cattoor) convey that these horse deaths were somehow the fault of the Plaintiff, not the Defendants, because the Plaintiff caused this court to issue a temporary injunction; and, that delay caused these horses to die. Plaintiff finds difficulty in defending against such incredible stories where the Defendants in this instance were handed the "exclusive" over the content of what can be published relative to the Defendants' own activities. The Defendants succeeded in this instance in self-regulating themselves while pushing blame for 34+ horse deaths to others. Plaintiff suffers harm from these unfortunate comments.

The probable effectiveness of the sanction

An effective sanction is within the province of the court. If the court is looking for suggestions, an effective published memorandum decision might include a finding that the Defendants' use of private lands, in part or in whole, to conduct wild horse gather operations amounts to an impermissible choice on the Defendants' part to interfere with the Plaintiff's and the public's and press' First Amendment rights of free speech and free press and the right to observe and report on government in action. An additional finding that appears effective is to declare the gathering of wild horses by the Defendants a matter of significant public interest.

The contemnor's financial resources and the burden the sanctions may impose

Plaintiff assumes with recent spending bills having been passed through Congress, that the financial resources of the Defendants would not bear a monetary sanction. Nor would the Defendants likely pay it.

Plaintiff seeks a remedy which provides her reasonable access to closely monitor and observe wild horse gathers conducted by the BLM.

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The contemnor's willfulness in disregarding the court's order

Plaintiff refers the court to the discussions above and to the attachments.

Discussion - The Defendant's Evidence of an "Emergency" Which Caused the Court to Deny Plaintiff's TRO is Clearly Unsupported

The attached photos, the discussion in Katie Fite's Declaration and admissible statements from the BLM's chosen contractor (who conducts helicopter gathers of wild horses, Ms. Cattoor), clearly denigrates any notion that a non-manmade "emergency," existed when the Defendants claimed such at the hearing July 15, 2010.

The Defendants claimed there was no water in the Owyhee HMA. To the contrary, the South Fork of the Owyhee River, ***the specific place where gather activities occurred in the Owyhee HMA and where the "emergency" was claimed***, is shown in photos to be miraculously flowing deep and steady just days after the so-called "emergency" gather was completed. Horses are seen days following the "emergency" gather, using well developed trails to the Owyhee River. See Katie Fite photos attached.

Ms. Katie Fite's admissible testimony demonstrates her personal observations of the area which directly contradicts any notion that an "emergency" claimed for lack of water, existed there. See Katie Fite's photos, attached. See Katie Fite's Declaration at **EXHIBIT C**.

Ms. Katie Fite's admissible testimony provides her personal account of the area and her opinions as a biologist and conservation ecologist that the range there is no different from how its existed there several years; yet, horses survive there. See Katie Fite's Declaration at **EXHIBIT C**.

Although the Defendants claimed at the hearing there was no water in the Owyhee HMA the Defendants' own "Interim Report" dated July 15, 2010 (the one provided counsel at the conclusion of the hearing July 15, 2010) acknowledges there's water there. The report states the following:

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> Water is the limiting factor within the two pastures of the Owyhee HMA where wild horses are currently without water. The option of moving the horses by helicopter toward the river and (*sic*) then finding and using the pipeline crossing trail to access the river could place undue stress on the horses, with an uncertain probability that the horses would actually go to the river and drink. Once the horses reach the trail and due to the pressure from the move, the horses not familiar with the trail area very likely to turn back without attempting to go down the trail.
>
> From Defendant's Interim Report of July 15, 2010[11]

Katie Fite's photos clearly demonstrate the Defendant's assumptions that horses would not use the river for water, are false, incompetent and completely unsupported. See Katie Fite's photos at **EXHIBIT D-1, D-2, D-3, D-4** and Katie Fite's Declaration at **EXHIBIT C**.

Without belaboring the point, on balance of the testimony offered in Declarations, the Plaintiff's supporting evidence is factual and concrete compared with the Defendants' unsubstantiated opinions and conclusions.

In contrast, Katie Fite has the credentials and considerable first hand knowledge of range conditions existing, specifically, in the Owyhee HMA. When Ms. Fite travels to the Owyhee HMA to assess the rangeland there, and when she compares her observations and findings with what she personally observed there in past research trips, only to be left with the pointed question, "where's the emergency," one must question what truly transpired there.

When the Defendants effectively blacked out all activity in Owyhee during their

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[11] The court is aware Plaintiff's counsel was handed this document at the conclusion of the hearing and was never provided an opportunity to address any portion of its contents.

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gather and coupled with what Katie Fite and Laura Leigh discovered, the conclusion compellingly follows that there was no true emergency except for perhaps an emergency that was manmade or caused by the Defendants themselves.

Plaintiff respectfully requests the court reconsider its motion and issue a civil contempt citation.

Dated this 10th day of August 2010

RESPECTFULLY SUBMITTED,
LAW OFFICE OF GORDON M. COWAN

/S/

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

EXHIBITS

Exhibit A	Declaration Laura Leigh
Exhibit B	Declaration Deniz Bolbol
Exhibit C	Declaration Katie Fite
Exhibit D-1	Katie Fite Photos 1
Exhibit D-2	Katie Fite Photos 2
Exhibit D-3	Katie Fite Photos 3
Exhibit D-4	Katie Fite Photos 4
Exhibit E	Horseback Magazine Article

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:

X Electronic service:

Erik Petersen, Esq.	erik.peterson@usdoj.gov
Greg Addington	greg.addington@usdoj.gov
Ayako Sato, Esq.	ayako.sato@usdoj.gov

DATED this 10th day of August 2010

/S/

G.M. Cowan

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