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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
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 **DECLARATION OF LAURA LEIGH**

19 I, LAURA LEIGH, do hereby swear, under penalty of perjury under the laws of
20 the State of Nevada and of the United States of America, that the foregoing is true and
21 correct:

22 1. I am the Plaintiff in the above-captioned matter. I am personally familiar
23 with the facts set forth herein except for those facts stated on information and belief and
24 as to those facts, I believe them to be true. I submit this Declaration in support of the
25 Plaintiff's Motion for Order to Show Cause, etc.

26 2. Most all conversations with myself present and which are discussed
27 herein below were recorded on video, which I am able to provide the court on its
28 request.

1 3. On July 16th I left Reno at 10 pm to head to the Elko BLM district after
2 making requests for the protocol to attend the gather. Those requests for information
3 were not responded to by the time of my departure. As the likelihood that the Owyhee
4 HMA gather, where the BLM is claiming an unprecedented emergency on public land,
5 could end before any protocol ever arrived from the BLM I drove to the district office in
6 Elko, Nevada. My friends, Elyse Gardner, Deniz Bolbol, and I, arrived at the field office
7 at 4 a.m. on the 17th as personnel were leaving there for the field, pre-dawn.

8 4. We met David Overcast the BLM Tuscarora Field office manager
9 departing the parking lot in his truck. I approached and introduced myself as David and
10 I had spoken several times in the last month. I asked if there was gather activity
11 occurring that day and if any arrangements were being made for public access. He
12 replied that no arrangements were being made that he knew of.

13 5. Mr. Overcast then contacted the BLM District Manager, Mr. Ken Miller
14 who agreed to assist us.

15 6. I offered Mr. Miller that I could modify my request of access to the Gather,
16 to simply observing those horses already brought in from the Gather, rather than
17 observing the actual Gather itself. I am informed and believe the emergency painted by
18 the BLM of the immediate need to remove horses because of the BLM's stated drought
19 emergency, created a real concern to the public and if I could just see the horses in
20 holding I would consider this a good effort.

21 7. Following discussion with Mr. Miller he suggested I call my counsel and
22 that he would call his counsel, to discuss the matter. I called my attorney and left a
23 voice mail. Ken Miller called the Elko County Sheriff's Office.

24 8. When the Elko Sheriff's Deputy arrived, I explained the issue to her. The
25 Deputy concluded the situation did not warrant her presence and she left.

26 9. Thereafter, Mr. Miller showed what he claimed was a letter from the
27 private landowner saying they did not want the public on their property. At first, Mr.
28 Miller suggested I obtain a copy of the letter from a Freedom of Information Act request.

1 He ultimately shared the content of the letter. I am informed and believe my counsel is
2 prepared to make the photograph we took of this letter, available to the court in private
3 or what is referenced as "in camera." A review of the letter clearly provides permission
4 for two members of the public (veterinarian observers chosen by the BLM) to attend the
5 Gather operations on private land.

6 10. Mr. Miller gave us a map which did not clearly define or demark public
7 versus private roads. He provided us direction to locate the initial entrance to BLM
8 land.

9 11. As I attempted to gain access on my own to the location of the Gather and
10 without being provided rules or any indication of how best to proceed, I experienced
11 encounters throughout the day with representatives of the Elko County Sheriff's office,
12 Rangers and also BLM personnel.

13 12. We were pulled over in the range and advised in no uncertain terms, if we
14 went on private property we would be promptly arrested.

15 13. In an attempt at avoiding arrest, I showed the officer the intended route on
16 a map I had with me, on which I was intending to travel. I asked his assistance in one
17 area where it would be difficult to navigate or determine where private lands vs. public
18 lands started, or ended, or crossed over the roads. The officer claimed he did not know
19 the area although he stated he was proceeding to meet BLM personnel at a certain
20 location. I asked if we could follow him so we could ask BLM personnel in the field how
21 to navigate the area in order to comply with any rules or regulations they put in place for
22 observers of the gather. The Sheriff's Deputy replied that he did not know where the
23 BLM personnel (he was headed to meet) were located. On inquiring whether the officer
24 could call on the radio to find this out, the Deputy replied he had no radio, although
25 moments earlier he said he was capable of radio communications with the landowner to
26 facilitate my arrest were we to trespass. This interaction of my asking for assistance so
27 I could comply with his directives to avoid arrest and to find the Gather, were met with
28 his not being able to help.

1 14. Although I was not able to find or enter the Gather area or the catch pens
2 I did find several conditions existing on public lands that were contrary to the conditions
3 to which Mr. Alan Shepard, a BLM employee, provided to the court during the TRO
4 hearing. I recall Mr. Shepard being asked by Mr. Cowan, paraphrased (and not with
5 benefit of transcript in hand), the following:

6 Q. Was there water there? (Referring to Owyhee gather areas).

7 A. No.

8 Q. Were there fences there or gates precluding horses from obtaining water?

9 A. No.

10 Q. Were there cattle there?

11 A. No.

12 15. In contradiction to Mr. Shepard's testimony, I personally observed
13 significant water in the area, clearly located on public and not private lands. I observed
14 cattle in the area on public lands. I personally observed fencing in the area which
15 prevented horses from gaining access to water on public lands.

16 16. I am informed and believe that, if the drying up of normal wild horse
17 watering holes was in fact taking place and was causing an emergency issue on public
18 lands, that openings in fences could have been effected to accommodate these horse
19 bands during this purported emergency, again, as a temporary measure rather than
20 pushing fragile horses for the sake of a gather.

21 17. I met an individual who works for one of the ranches. He informed us that
22 the fenced water sources were not an issue for other wildlife (antelope) because they
23 could gain access irrespective of fencing, although horses could not gain access
24 through this fence. This same man advised they received less snow this past winter
25 when compared with the previous winter. This same man then offered to guide us
26 through the area I had been concerned with entering for fear of arrest. He advised his
27 belief that the road on which we would proceed with his guidance, was a "county road"
28 and not a private road. Also there were no markings indicating one way or the other,

1 whether the road was a county road or a private road.

2 18. I personally observed the Desert Ranch Reservoir. It maintained
3 significant water. This reservoir is located on public lands and is within the designated
4 Owyhee Herd Management Area ("HMA"). This water was fenced off and cattle were
5 present. I am informed and believe because of conversations with one BLM employee,
6 that the BLM trap site for trapping wild horses during the Gather was about four to five
7 miles from this particular reservoir.

8 19. I observed no horses or dead horses during our visit, I observed very little
9 horse droppings that were not new.

10 20. When I was finally able to approach the trap site both a Ranger and Mr.
11 Randy Reader, a BLM employee, were waiting to tell us we could proceed no further.
12 The interaction with them was intimidating to me. I felt we could be arrested at any
13 moment which scared me. We asked questions to define and confirm our location and
14 the fact we were not allowed in. We asked if the road on which we traveled was a
15 "county" road. They replied that the BLM did not know the answer to the question. We
16 left the range because we were so intimidated.

17 21. I was repeatedly told that the private landowner did not want the public
18 present through out conversations. I asked BLM personnel if they could contact the
19 landowner to ask if he would facilitate my entrance. I offered that I would be satisfied if
20 I were merely given a chance to see the catch pens with the gathered horses, foregoing
21 the opportunity to see the actual gather in progress. I asked the BLM employees to
22 convey this to the landowner to which they indicated they would make an attempt at
23 doing so.

24 22. I conveyed the day's activities to my counsel. I am informed and believe
25 on Sunday, July 18, that my counsel contacted Mr. Erik Petersen. I am informed and
26 believe Mr. Cowan provided Mr. Petersen with my cell phone number (with my
27 permission) and requested that, should Mr. Petersen so desire, that he could provide
28 my cell phone number to his respective clients so as to remove lawyers and third

1 parties and to perhaps expedite the accommodation of me to the Gather area and to
2 resolve short of court involvement, the situation described herein.

3 23. On July 18, 2010, I received a call from Ken Miller, District manager of
4 BLM, on my cell. Mr. Miller said that the landowner would allow me to visit but was
5 concerned about liability and if the BLM would assume my liability, that I could enter
6 and witness the Gather. Mr. Miller then conveyed the BLM was not willing to accept
7 that responsibility.

8 24. I replied to Mr. Miller that the BLM was apparently accepting that
9 responsibility for the two veterinarians to observe who were identified in the letter sent
10 them by the landowner. I replied that at the previous gather in Calico that the BLM
11 brought the public out to view and limited their access to certain areas and for limited
12 periods of time. I offered Mr. Miller that I could follow that same protocol or whatever
13 protocol the BLM imposed when clearing others to enter the Gather area. Mr. Miller
14 then stated I should call Debbie Collins whom, I am informed and believe, is a public
15 relations employee of the BLM, so as to determine the process and then apply for
16 admission to the Gather area. I was under the impression that this process would take
17 several days. I had been in contact with the BLM on multiple occasions prior to this
18 Gather, to obtain access for observing this Gather. I am informed and believe I was
19 already on a list of persons allowed in the Rock Creek gather.

20 25. I then reminded Mr. Miller that Owyhee would most likely complete by
21 tomorrow and that Owyhee was a separate Gather from Rock Creek as had likewise
22 been recognized by Judge Hicks. Mr. Miller replied he would see what he could do and
23 I asked that he call me back to leave Debbie's telephone number for me on my voice
24 mail.

25 26. Approximately 20 minutes after concluding this conversation with Mr.
26 Miller, I received a call from him. I did not answer the phone as we had agreed
27 because I assumed he was merely leaving me Ms. Collins' phone number. Rather than
28 leave a phone number I received a voice mail message indicating that in order to

1 facilitate my observation of the Gather, that the "Solicitor" needed to approve my
2 admission and that since I was actively engaged with the Solicitor perhaps because of
3 this litigation, that this (my approval to gain access) was *not* likely to occur. He did not
4 identify the "Solicitor" or provide his or her contact information.

5 27. I am informed and believe the BLM allowed or has arranged to allow at
6 least one journalist or news person into the Owyhee Gather area to observe, although
7 they never accommodated my access in any respect.

8 THIS DECLARATION under penalty of perjury under the laws of the State of
9 Nevada and of the United States is made this 19th day of July 2010 in Elko County,
10 Nevada.

11 /S/

12 _____
Laura Leigh, Declarant