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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,

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

10 vs.

11 KEN SALAZAR, in his official capacity as
12 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 **DECLARATION OF NENA WINAND, DVM**

18
19 I, NENA WINAND, 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 personally familiar with the facts set forth herein except for those
23 facts stated on information and belief and as to those facts, I believe them to be true. I
24 submit this Declaration in support of the Plaintiff's Second Motion for Temporary
25 Restraining Order and First Motion for Preliminary Injunction.

26 2. I am a veterinarian and have been active in the profession since 1986. I
27 graduated from Iowa State University in 1986 and have resided in upstate New York in
28 Syracuse where my practice is located since that time. I am a licensed veterinarian in

1 New York. Throughout my career my interest and emphasis has been in large animal
2 medicine. Following veterinarian school I completed my residency in pathology at a
3 leading veterinary teaching University here in New York prior to obtaining my Ph.D.
4 Over the past 10 years I have focused on equine veterinary medicine and veterinary
5 medical research on essentially a full-time basis. I am also a life-long equestrian, own
6 ride and compete horses in several disciplines, and manage my own horse farm. My
7 practical experience is typical of most large animal veterinarians with expertise in
8 horses, and additionally I have substantial research experience in neuromuscular and
9 musculoskeletal disorders that have relevance in terms of equine exercise physiology,
10 the dynamics of stress, injuries resulting from exercise and stress to horses including
11 near-term pregnant mares, mares who recently gave birth and to young foals.

12 3. I am informed and believe the Rock Creek and Little Humboldt gathers:

13 a. would take place in elevated temperatures, dry conditions at moderate
14 altitude in July;

15 b. would cause horses to be driven by helicopter in these conditions;

16 c. would cause new born foals and foals under three months and their
17 mares to be driven and gathered in these conditions;

18 d. would cause pregnant mares nearing the completion of their term, to be
19 driven and gathered in these conditions;

20 e. would cause these mares and babies and pregnant mares to be driven
21 into holding pens where they stay in mass for an undetermined period
22 before the majority are shipped off to other holding facilities the BLM
23 operates.

24 4. I am informed and believe the BLM gather at Owyhee HMA that just
25 recently concluded,

26 a. resulted in the death of at least twenty (20) horses, a number of them
27 seemingly not yet documented, including young foals and mares;

28 b. resulted in a veterinarian hired by the BLM, the credentials of whom I am

1 not familiar, to submit statements contained in an official BLM report
2 dated July 15, 2010, that blamed the death of these horses on conditions
3 existing in their habitat on the range previous to this gather;

4 c. resulted in the veterinarian hired by the BLM to further imply in the same
5 report that the observed deteriorated health of the gathered horses and
6 deaths of several were not from the gather activity itself;

7 5. I read the reports of the veterinarians contained in the recently published
8 BLM report dated July 15, 2010. Without making a credibility judgment of those who
9 conveyed the foregoing, I am not able to agree with such findings. To the contrary, to a
10 reasonable degree of veterinary medical certainty, I believe the following:

11 a. Those horses having died of water intoxication could have been
12 prevented by those who prepared for and managed the gather. When
13 horses are significantly exercised they need time to cool down before they
14 are introduced to water. To allow a horse to drink all the water it desires
15 after being exercised significantly, can precipitate colic symptoms and
16 electrolyte imbalance that can endanger the life of the horse, the latter is
17 also true of chronically dehydrated horses that are not rehydrated
18 gradually, which appears to be the very condition the veterinarian reported
19 in the July 15, 2010 findings. With proper care, and even a bit of common
20 sense, this is avoidable and doesn't occur. In my experience most
21 competent horse owners and handlers are fully aware that a horse must
22 cool down before being allowed to drink. Horses could also "tie up" from
23 being heavily and abruptly exercised in this manner. Tying up, a condition
24 known as exertional rhabdomyolysis is oftentimes caused by overexertion
25 (meaning, exceeding current conditioning levels) or exercising in hot
26 conditions to the extent it creates electrolyte imbalances, among a couple
27 of other causes. This is a painful process caused when the large muscle
28 groups are overworked, resulting in muscle cell necrosis which causes

1 myoglobin to enter the blood stream. Dark urine is caused by this process
2 and if not treated can cause kidney damage and ultimately death. Horses
3 with severe cases must be provided prompt intravenous fluids to reduce
4 kidney damage and to bring electrolytes back in balance. Again, these
5 conditions are due to over exertion, particularly in relative hot conditions;

6 b. If it were true that horses were dehydrated prior to the gather, that it would
7 have been humane and appropriate to reintroduce those horses back to
8 water, gradually, until such time as they were sufficiently hydrated to
9 endure the significant push caused by a helicopter gather;

10 c. that pushing the animals, having been driven via helicopter over the
11 distances they traveled, at the more rapid gate they would otherwise travel
12 in such environmental conditions, in environmental conditions which
13 included elevated summer temperatures, and where the condition of many
14 of the gathered horses improved rapidly following the gather, all lead me
15 to compellingly conclude to a reasonable degree of medical certainty, that
16 the deaths and injuries to these horses were substantially due to the
17 gather itself, the manner in which the horses were driven during the gather
18 and in their having to negotiate the environmental conditions existing
19 there at the time. And, it is my further opinion to the same degree of
20 reasonable medical certainty that the conditions existing on the range
21 prior to the gather, were not causative in injuring and killing those horses
22 who perished on the dates of the gather. The uncontroverted fact
23 remains that nearly *all* horses who reportedly perished, did so during the
24 process of gather itself or immediately thereafter while the horses were in
25 the custody of the BLM, but not before.

26 6. As a respected equine veterinarian it is my opinion that if it is the intent of
27 the BLM to gather wild horses in the Rock Creek and Little Humboldt HMAs, in the
28 same fashion (i.e. driving them with aid of helicopter), with the same or similar

1 environmental and range conditions as existed during the Owyhee gather, that to do so
2 would be inhumane and should be unnecessary in a properly managed HMA.

3 7. It is my professional opinion to a reasonable degree of medical certainty
4 that to drive foals three months or less in age at elevated paces via helicopter and to
5 drive mares who had recently given birth, and to drive pregnant mares who are in their
6 final weeks of pregnancy, and also when summer temperatures are elevated or are
7 expected to be elevated at any given point in the day, is simply inhumane, irrespective
8 of their hydrated state.

9 8. It is my opinion that the Fall seasonal months provide a much more safe
10 and cooler environment, in which to drive wild horses; and it is also at a time when the
11 majority of foals born in the foaling season are more mature, have better stamina, and
12 are better able to withstand the rigorous method by which the BLM chooses to employ
13 when driving and gathering these horses.

14 9. To be clear, it is my professional opinion, to a reasonable degree of
15 veterinary medical certainty, that it would be inhumane to drive or compel foals under
16 three months of age, or a mare that has recently given birth, to move (trot) any
17 substantive distance, particularly where temperatures are elevated in a dry
18 environment. "Substantive distance" in this instance means distances such as those
19 being used to gather Mustangs in the ongoing Nevada gathers. I am unaware of
20 circumstances that would lead any competent veterinarian to recommend moving foals
21 and mares as described above, a distance of roughly eight miles as, I am informed and
22 believe, has been completed in Owyhee and which is contemplated in Rock Creek.

23 10. It is my professional opinion, to a reasonable degree of medical certainty,
24 that such activities are not management practices I, or in my opinion, my competent
25 colleagues, would recommend or employ for domestic horses; and such activities are
26 neither best-management practices nor humane practices, nor do they consider the
27 health and safety of such horses.

28 11. It is my further opinion that such practices as described, would be

1 controversial at best, by many professionals in my field of work. the lack of controlled
2 reintroduction of water to these dehydrated, overheated recently stressed horses and
3 the failure to use commonsense horsemanship by letting them drink ad lib under these
4 conditioned caused unnecessary deaths by water intoxication. It is my opinion that this
5 constitutes negligent management and that had expert or even common sense
6 management prevailed a plan for gradual rehydration would have been instituted before
7 the gather was in progress, not after the initial wave of deaths. I further believe that
8 leaving animals in this condition without overnight monitoring was a lapse of
9 professional judgment.

10 THIS DECLARATION under penalty of perjury under the laws of the State of
11 Nevada and of the United States is made this 22nd day of July 2010 in New York.

12 /S/

13 Nena Winand, DVM, Declarant
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