



1 BLM (1) to use helicopters to gather the horses while there are pregnant mares and young foals in  
2 the herds, and (2) to close 27,000 acres of public land thereby excluding the public and the press  
3 from observing the gather in violation of the First Amendment. Doc. #1. Along with her complaint,  
4 Leigh filed her initial motion for a temporary restraining order seeking to prevent the BLM from  
5 conducting Tuscarora Gather and having the closure lifted. Doc. #3.

6 On July 15, 2010, the court heard oral argument on Leigh's motion. During the hearing, the  
7 court expressed its concerns regarding both the Tuscarora Gather and the closure of public lands.  
8 Subsequently, on July 16, 2010, the court issued an order granting in-part and denying in-part  
9 Leigh's initial motion for a temporary restraining order. Doc. #18. The court granted the motion in  
10 so far as it related to the BLM's blanket closing of public lands during the Tuscarora Gather  
11 finding that Leigh had made a sufficient showing that she was likely to succeed on her First  
12 Amendment claim against the blanket closure. *Id.* The court denied the motion as to Leigh's  
13 challenge of using helicopters to effectuate the Tuscarora Gather in the Owyhee, Rock Creek and  
14 Little Humboldt HMAs finding that Leigh had not made a showing of her probable likelihood of  
15 success on the merits. *Id.*

16 Thereafter, Leigh filed the present motion for an order to show cause why defendants  
17 should not be held in contempt arguing that defendants violated the court's July 16, 2010 order by  
18 precluding Leigh from viewing the gather by conducting the gather on private land and by not  
19 seeking permission for Leigh's presence from the private land owner. Doc. #19.

## 20 **II. Discussion**

21 Pursuant to Title 18, United States Code, Section 401, a court may hold a party in civil  
22 contempt for failure to comply with or violates a court order. 18 U.S.C. § 401(3). A party violates a  
23 court order when "it fails to take all the reasonable steps within [its] power to insure compliance."  
24 *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987). A party seeking an  
25 order of contempt has the burden to show, by clear and convincing evidence, that the opposing  
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1 party violated a specific and definite order of the court. *FTC v. Affordable Media*, 179 F.3d 1228,  
2 1239 (9th Cir. 1999).

3 Here, Leigh alleges that defendants violated the court's July 16, 2010 order by restricting  
4 her access to the gathering activities and by not seeking approval for her presence at gathering  
5 activities taking place on private land over which the BLM does not have control. *See* Doc. #19.

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

17 As to Leigh's argument that the BLM should have sought the private landowner's  
18 permission to bring her to observe the gather, which the BLM sought and received for certain  
19 personnel and independent veterinarians, the court finds that there was no such requirement in the  
20 court's July 16, 2010 order. The court's previous order lifted the blanket closure of public land.  
21 Doc. #18. The order did not require the BLM to make any accommodations for Leigh to observe  
22 any gather activities that were taking place, or were going to take place on private land. The court's  
23 concern was with a violation of Leigh's First Amendment rights by restricting her access to public  
24 land. Further, the court order made no mention of gather activities on private land nor required the  
25 BLM to provide unfettered access to gather activities which did not take place on public land.

1 Therefore, Leigh has not established by clear and convincing evidence that defendants have  
2 violated the court's July 16, 2010 order. Accordingly, Leigh's motion for an order to show cause  
3 shall be denied.

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5 IT IS THEREFORE ORDERED that plaintiff's motion for an order to show cause  
6 (Doc. #19) is DENIED.

7 IT IS SO ORDERED.

8 DATED this 27th day of July, 2010.

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12 LARRY R. HICKS  
13 UNITED STATES DISTRICT JUDGE  
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