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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

PEGASUS EQUINE * Docket No. 2:17-CV-980
GUARDIAN ASSOCIATION *
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VERSUS * January 30, 2018
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U.S. ARMY, ET AL * Lake Charles, Louisiana

REPORTER'S OFFICIAL TRANSCRIPT OF HEARING ON
MOTION FOR PARTIAL PRELIMINARY INJUNCTION
HELD BEFORE THE HONORABLE KATHLEEN KAY,
UNITED STATES MAGISTRATE JUDGE

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1 request to expand the administrative record that was
2 considered below.

3 I'm not sure exactly how we are going to handle
4 this. What I do not want is a -- basically, just a
5 free-for-all where we put in all kinds of information
6 that really has no bearing on what the ultimate issues
7 are. And what the ultimate issues are, for purposes of
8 today, is strictly whether there should be issued a
9 preliminary injunction. We, obviously, are not here for
10 a trial on the merits although the merits are a factor
11 to be considered when considering whether or not an
12 injunction should be issued. So I'm going to try very
13 hard not to interrupt anybody, but at the same time I'm
14 going to try to stay on a course that is designed to get
15 us through this proceeding as efficiently as possible
16 and, you know, obviously, considering all the factors
17 that are pertinent but also not going where we need not
18 go given what's before the Court here today.

19 I believe everybody is aware of what factors must
20 be proven in order for a preliminary injunction to be
21 issued. I don't think there's any dispute as to what
22 those factors are, nor should there be, because it is
23 very clear what those factors are. That being the case,
24 however -- well, it is also true that all four of the
25 elements must be proven before preliminary injunction

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1 should issue. So my thought at this moment is for us to
2 take the factors one by one because should the plaintiff
3 fail on any of these factors then we can stop. But
4 again, I'm a little -- I don't want to preclude the
5 plaintiff from being able -- having an opportunity to
6 establish what they think is pertinent, but I still want
7 to stay on track too.

8 So let's start with the extent to which the
9 plaintiff would be harmed if this preliminary injunction
10 were not issued. I'll allow -- let's just talk about it
11 on the record first before we get into any evidence that
12 might support that element of the plaintiff's burden to
13 establish in order to obtain a preliminary injunction.
14 Ms. Lee.

15 MS. SMITH-SAWKA: Good morning, Your Honor,
16 opposing counsel. My name is Ashlyn Smith-Sawka with
17 the Tulane Environmental Law Clinic. If the injunctive
18 relief is not issued, there's a substantial threat that
19 the Army's horse elimination program will irreparably
20 and immediately injure the plaintiff, the Pegasus
21 members. These injuries cannot be remedied by monetary
22 damages and will render final judgment useless.

23 THE COURT: Okay. I've read the briefs. What I
24 want to know is what evidence do you have or what
25 evidence would the plaintiff adduce to suggest that the

1 plaintiff, not the individual horses by the way, the
 2 plaintiff, how the plaintiff is going to be
 3 substantially or irreparably harmed if I should refuse
 4 or the district court should refuse to issue a
 5 preliminary injunction. I know what the law is. Tell
 6 me what the facts are.

7 MS. SMITH-SAWKA: Well, as far as our NEPA claim,
 8 we have experts -- we have a veterinarian coming in to
 9 explain the stress and harm to the horses and --

10 THE COURT: Okay. Okay. Let's stop right there.
 11 My role, as I understand it, is to focus on whether the
 12 proper procedure was followed by the Army. I don't
 13 know -- you correct me if I'm wrong, but I know of no
 14 authority I have or any basis for me to consider any
 15 harm that may or may not be caused to any one particular
 16 horse through the Army's stated process of doing what
 17 they are intending to do. The question is, as I see it,
 18 did the Army follow the appropriate -- the proper
 19 procedure to formulate the plan that they have
 20 formulated. Right? Isn't that what the focus is?

21 MS. SMITH-SAWKA: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. SMITH-SAWKA: We submit that the answer to that
 24 question is no, the Army did not establish baseline
 25 information as is required under NEPA. It did not --

1 THE COURT: We're not going to the merits yet.
2 Right now I'm focusing strictly on harm, irreparable
3 harm that would be suffered by the plaintiff if the
4 district court should determine it would not issue a
5 preliminary injunction.

6 MS. SMITH-SAWKA: May I have a moment to confer?

7 THE COURT: Okay. We're not going to be doing this
8 all day. Okay. We're not going to be doing this all
9 day. This is a hearing. I understand that you're a
10 student, but this is a hearing and we are not going --
11 this isn't a tutorial session. This is a real live
12 hearing. So I'll allow you to confer, but that's not
13 going to -- that's not going to be the normal course for
14 the day. Okay. Go ahead.

15 MS. SMITH-SAWKA: Yes, Your Honor.

16 MS. HALL: Your Honor, is it all right if I take
17 over for Ms. Smith-Sawka?

18 THE COURT: Yes.

19 MS. HALL: Your Honor, the harm to the plaintiff,
20 we will be presenting the testimony of Mr. Rickey
21 Robertson. He is a board member and member of Pegasus
22 and, also, he will be testifying as to the harm to him
23 as a member both under the National Historic
24 Preservation Act and under NEPA, the Army's failure to
25 consult under the National Historic Preservation Act as

1 required by the law, and under the National
2 Environmental Policy Act, the failure of the Army to
3 consider baseline information, to consider significant
4 environmental harms which include harm to the horses
5 which are part of the environment, and they never
6 considered that environmental harm.

7 THE COURT: All of the horses or one horse in
8 particular?

9 MS. HALL: In general, all of the horses. They did
10 not -- they considered the harm to the horses of the --
11 only the no action plan, but they did not consider the
12 harm to the horses of the horse elimination plan.

13 THE COURT: Okay. Well, I'm still having a hard
14 time understanding -- and, you know, forgive me for
15 being ignorant; but I'm having a very hard time
16 understanding when the underlying cause of action is a
17 claim that the Army has failed to follow proper
18 procedures to come up with this course of action. And
19 I'm reading everything that's being given to me. What
20 I'm seeing is I'm actually being asked to tell the Army
21 how to do what it needs to do according to how your
22 group says it needs -- don't interrupt me -- according
23 to how your group says it needs to be done. That's what
24 I'm reading when I read all of this information that's
25 given to me, and I don't think that that's what my role

1 is at all.

2 This is a review of an administrative proceeding.
3 I mean, this is the first time I've done it in the
4 context of this type of administrative proceeding; but
5 we deal with administrative proceedings all the time.
6 And we don't get into the weeds, so to speak, of what
7 the particular -- you know, I mean, basically, our
8 review is were they arbitrary and capricious; and that's
9 the review on the merits. Okay. And that's what we get
10 to after, I think, we consider, you know, what harm is
11 going -- what irreparable harm is going to be suffered
12 to this group when, according to the information that
13 I've seen presented by the Army, it's going to take
14 three years for the entirety of the population to be
15 moved. So -- and I can assure you it's not going to
16 take three years for this matter to get to trial. And
17 so where is -- where's the irreparable harm?

18 MS. HALL: Well, Your Honor, to go back to the
19 first point that you were making, what we are asking the
20 Court to do is to remand to the Army to consider the
21 harm to the horses, not for the Court to instruct the
22 Army on how that should go but, rather, that they should
23 have considered that. And so the harm to the plaintiffs
24 are: Mr. Rickey Robertson lives right on the -- just on
25 the edge of the base at Peason Ridge, and he regularly

1 takes people out onto the base as part of tours and
2 shows them the horses and visits with -- you know, sees
3 the horses, has grown up with the horses. And to watch
4 them be eliminated harms him both -- it harms his
5 community, which these horses are related to the
6 heritage community that he is part of, and also that his
7 mother, his family, everyone grew up with these horses.
8 It will affect his family and his community at Peason to
9 watch these horses be eliminated and to watch them be
10 harmed in the process.

11 And the affect on the environment does go a little
12 broader than just the affect to the horses. We do have
13 some testimony today that shows that the Army failed to
14 consider the affect on the environment of having the
15 horses there. They interact with the environment and
16 they are part of the management of the open fields at
17 the base.

18 THE COURT: If I were to allow you to put on all
19 the evidence that you want to put on today, how long is
20 it going to take?

21 MS. HALL: We have five witnesses. We intend for
22 Mr. Robertson to be about, depending on how much -- he's
23 already put on evidence in the record so he may be --

24 THE COURT: I know. So why does he need to
25 testify?

1 MS. HALL: He may be 15 minutes.

2 THE COURT: Why does he need to testify beyond what
3 has been put in the record already?

4 MS. HALL: To identify Exhibit N and explain it.

5 THE COURT: Is that the one that just got filed
6 yesterday?

7 MS. HALL: No. That's -- that was filed with the
8 original preliminary injunction to explain how the
9 horses are different in different areas of the fort.

10 And then all of our other witnesses should be about
11 15 minutes each.

12 THE COURT: All right. Have a seat. Let me hear
13 from the Government real quick. All right. So I've
14 read your memos. I've read your opposition to expanding
15 the administrative record. I'm not seeing anything in
16 response to what was filed yesterday; but in all
17 fairness to you, it was just filed yesterday. I don't
18 know that that has any bearing on what we're doing here
19 today. I would love to keep this short, concise and to
20 the point; but to be honest, I'm really having a
21 difficult time with this because I really don't
22 understand how I am supposed to, through a hearing on a
23 preliminary injunction as opposed to a trial on the
24 merits, wade through this information to determine
25 whether the Army acted in compliance with what appears

1 to me to be two procedural statutes that really don't
2 provide any substantive relief and then what I'm
3 supposed to do with it after that. If it takes as long
4 as the plaintiff suggests, though, my inkling would be
5 just let it in and let me think about it and consider
6 it. What does the Government say?

7 MS. WALKER: I think Your Honor is correct, first
8 of all, about the focus of this actual proceeding, that
9 it is based on plaintiffs' challenge to the agency's
10 decision under two procedural statutes. What plaintiffs
11 are actually trying to challenge here today and I think
12 what the majority of the witnesses that they will
13 present will try to challenge will be decisions that
14 have already been decided by the Eastern District of
15 Louisiana and by the -- affirmed by the Fifth Circuit as
16 to the nature of the horses at Fort Polk and Peason
17 Ridge. That's not an issue that is actually before this
18 Court, but I think that's what they're primarily focused
19 on.

20 THE COURT: And are you suggesting with respect to
21 that one issue, the characterization of the horses,
22 basically, correct?

23 MS. WALKER: Yes, Your Honor.

24 THE COURT: Is there some issue of preclusion here?

25 MS. WALKER: Yes, Your Honor. I think it's more a

1 matter of the issue has already been decided. The
2 matter's already decided. The nature of the horses as
3 being possibly wild horses or whether or not the Wild
4 Free-Roaming Horse and Burros Act applies has
5 affirmatively been decided and affirmed by the Fifth
6 Circuit.

7 THE COURT: Okay. Now, the Eastern District case
8 was when?

9 MS. WALKER: That case was filed in 2000, I
10 believe, Your Honor, and it was --

11 THE COURT: When was it concluded?

12 MS. WALKER: -- affirmed, I think, in 2002.

13 THE COURT: 2002 it was affirmed by the Fifth
14 Circuit?

15 MS. WALKER: Fifth Circuit.

16 THE COURT: And in the Eastern District case they
17 determined that the horses at Fort Polk were not wild
18 horses? Is that the right terminology?

19 MS. WALKER: Yes, Your Honor.

20 THE COURT: I'm going to apologize in advance if I
21 screw up some of the terminology because it is pretty
22 specific, and probably this will be the last time I'll
23 ever have to think about it so I'm kind of grappling
24 with it but -- so in part of the Eastern District case,
25 it's the Government's contention that the Eastern

1 District already concluded that the actual horses at
2 Fort Polk in 2002 were not wild horses.

3 MS. WALKER: That is correct, Your Honor. They
4 determined that they were trespass horses that had -- or
5 trespass livestock that had roamed from neighboring
6 ranches and farms and just were on Fort Polk's land and
7 the forestland, which did not make them wild horses
8 under the statute.

9 THE COURT: All right. Well, go ahead and have a
10 seat. I'm just going to let the plaintiff proceed, and
11 I'll rely on you to -- I mean, I'm going to try as best
12 I can to keep it focused. I do understand that you do
13 have student attorneys involved and you do want to give
14 them an opportunity to have a courtroom experience, and
15 I appreciate that. I'm sure when I was in law school
16 I'd have loved to have the chance to do the same. But I
17 don't want that to unnecessarily prolong what we're
18 doing here today either. Okay. So that having been
19 said, go ahead and have a seat and let's just get going.
20 Okay.

21 MS. SMITH-SAWKA: Your Honor, Pegasus would like to
22 call Dr. Thomas F. King to the stand.

23 MS. WALKER: Your Honor, I would like to make sure
24 our objection is preserved to the witnesses that are
25 being called by the plaintiff.

1 THE COURT: Okay. Go ahead and state for the
2 record the substance of your objection.

3 MS. WALKER: Would you like me to do it for each
4 witness?

5 THE COURT: Well, identify the witnesses that you
6 would do it for and so you can just have it on the
7 record and then it won't be necessary for you to --
8 would this be any witness, all witnesses?

9 MS. WALKER: Consistent with our motion to exclude
10 the expert testimony for witnesses at the preliminary
11 injunction hearing, we would object to those witnesses
12 offered to present expert testimony as well as witnesses
13 that are not being offered to show either irreparable
14 harm or standing of the plaintiff.

15 THE COURT: Okay. I did review the motion. I
16 found it a little difficult to rule on it without,
17 basically, hearing what they had to say. So that's
18 fine. We've noted your objection. It's in documentary
19 form on the record and now on the verbal record. So
20 let's go.

21 MS. HALL: Your Honor, if I may just a moment,
22 there is one additional argument that we would like to
23 make to the motion that was filed yesterday; but we can
24 do that on paper after the hearing if you'd like.

25 THE COURT: All right. Okay. I do want to avoid,

1 Section 106 process under the National Historic Preservation
2 Act. I was responsible for overseeing the staff that
3 interacted with federal agencies nationwide in carrying out
4 their responsibilities under Section 106. I was responsible
5 for working on the regulations that guide agencies in their
6 compliance with Section 106. And I was responsible for
7 writing a whole bunch of federal guidelines and standards and
8 regulations, notably National Register Bulletin 38 dealing
9 with traditional cultural properties.

10 Since leaving the Government in 1989 I have worked as a
11 private consultant consulting with a variety of agencies
12 including the Department of Defense, Department of Veterans
13 Affairs, a variety of others as well as Indian tribes and
14 local people, helping deal with Section 106 compliance. And
15 I've written a dozen or so books on the subject.

16 MS. SMITH-SAWKA: Your Honor, I would like to
17 tender Dr. Thomas F. King as an expert in historic
18 preservation, specifically on identifying historic
19 landscapes and historic properties that may be eligible
20 for inclusion on the National Register of Historic
21 Places. Further, he's an expert on standard government
22 practices under the National Historic Preservation Act,
23 specifically Section 106.

24 THE COURT: Any objection? Would you like to
25 traverse on his qualifications?

1 MS. WALKER: No, Your Honor. I'm sure Mr. King has
2 a lot of wonderful qualifications. I think we just
3 object to actually entering the expert testimony.

4 THE COURT: So you're not going to object to his
5 expertise. You just object to consideration of his
6 testimony as being outside the administrative record; is
7 that right?

8 MS. WALKER: Right, outside the administrative
9 record and inappropriate to present --

10 THE COURT: Irrelevant for purposes of today.

11 MS. WALKER: Yes, Your Honor.

12 THE COURT: Okay. Over your objection, I'm going
13 to allow the testimony; but I am -- but again, whether
14 this extra administrative record information is to be
15 considered has yet to be determined. All right. Go
16 ahead.

17 MS. SMITH-SAWKA: Your Honor, as to the objection,
18 Dr. King's testimony is relevant to all four elements
19 of --

20 THE COURT: I just said I'm going to let him
21 testify so it's really not necessary to go into that.

22 MS. SMITH-SAWKA: Yes, Your Honor.

23 BY MS. SMITH-SAWKA:

24 Q. Dr. King, have you reviewed the testimony of Rickey
25 Robertson that was submitted to this Court in support of the

1 plaintiff's motion for preliminary injunction?

2 A. Yes, I have.

3 Q. Have you interviewed Rickey Robertson personally?

4 A. Excuse me?

5 Q. Have you interviewed him personally?

6 A. I've spoken with him on the phone.

7 Q. And have you reviewed other documents relating to
8 the history of Fort Polk?

9 A. Yes, a variety of documents including those
10 produced by the Army.

11 Q. Can you describe these documents?

12 A. There are a number of histories of Fort Polk. I
13 can't recall their names off the top of my head, but most
14 recently I've reviewed the Army's Integrated Cultural
15 Resource Management Plan, ICRMP, for Fort Polk and the
16 surrounding area.

17 Q. And have you reviewed other documents relating to
18 this litigation?

19 A. Oh, some, yes.

20 Q. Specifically which documents?

21 A. I'm sorry. I'm having trouble hearing you.

22 Q. Well, have you reviewed the documents relating to
23 this preliminary injunction?

24 A. Yes.

25 Q. Can a landscape be eligible for inclusion on the

1 National Register of Historic Places?

2 A. Yes.

3 Q. Can you please explain.

4 A. Well, landscapes are often the kinds of areas that
5 people are most concerned about. The National Historic
6 Preservation Act was substantially enacted in order to reduce
7 the tendency of government agencies to run roughshod over the
8 interests of local parties. And often landscapes are the
9 things that people relate to most heavily, most seriously. I
10 think you have an example of that here where you have the
11 heritage families organized around their relationship to the
12 landscape that they and their ancestors have valued and
13 treasured that they no longer can occupy but they still
14 interact with in meaningful ways. So landscapes are
15 regularly found eligible for the National Register, usually
16 as districts. The National Register of Historic Places can
17 recognize district sites, buildings, structures, and objects
18 as eligible for the register; and landscapes are most often
19 found eligible as districts.

20 Q. And, in your opinion, is Peason Ridge and part of
21 Fort Polk a landscape that may be eligible for inclusion?

22 A. They certainly appear to be. It's something that
23 should be investigated.

24 Q. And what role do the horses living on Peason Ridge
25 in Fort Polk play in this landscape?

1 A. Well, the National Park Service's definition of a
2 cultural landscape includes the wildlife and domestic animals
3 thereon. That's a quote. And, pretty clearly, the horses
4 here are -- whether they're exactly wildlife or domestic
5 animals I couldn't testify; but they are thereon. And they
6 are perceived by the people who care the most about the
7 place, the heritage families, as an integral part of that
8 landscape.

9 Typically, we recognize animals as contributing elements
10 to a cultural landscape. So, for example, there's a large
11 area in I believe it's Wyoming, the Green River Drift, which
12 is a cattle drive area along a long, linear cattle drive.
13 And the property that's eligible is the landscape across
14 which this drive takes place, but landscape would be
15 effectively meaningless if it were not for the cattle and
16 horses involved in driving the cattle across the landscape.
17 So in that way an animal can be a contributing element to a
18 historic landscape, a cultural landscape; and that's what
19 appears to me to be the case here.

20 Q. Can animals, wild or domestic, be eligible for
21 inclusion on the National Register?

22 A. Well, that's an interesting question. In the case
23 of *Dugong v. Rumsfeld* where I was an expert witness for the
24 plaintiffs, the Court found that -- well, we didn't ask the
25 Court to find that the animals were eligible. We asked the

1 Court to find that the landscape, in that case a bay in
2 Okinawa, would be eligible for the National Register if it
3 were in the United States and that the dugongs who feed on
4 the landscape contributed significantly to the cultural value
5 of that landscape. The Court, quite on its own, opined that,
6 well, you know, maybe animals could be eligible for the
7 National Register, which I thought was a very interesting
8 idea. And I took it up with the officials in charge of the
9 National Register and the response was, oh, my God, what
10 next; and the National Park Service has never addressed the
11 problem.

12 I am in the process of working on a case where we will
13 confront the National Park Service with a potentially
14 eligible animal and we'll see what happens, but at the
15 present time it is the Park Service's position that animals
16 per se are not eligible for the National Register. You can't
17 have an eligible cow. You can't have an eligible horse. But
18 animals can be important, absolutely definitive elements that
19 contribute to the cultural significance of and the National
20 Register eligibility of a cultural landscape.

21 Q. And how do you think that permanently eliminating
22 the horses from Peason Ridge would affect the eligibility of
23 that landscape?

24 A. How would removing the horses affect the
25 eligibility?

1 Q. Yes.

2 A. Well, presumably, it would remove an important
3 element that the people who value the property, the heritage
4 families, view as very, very significant. The problem here
5 is that the Section 106 process is a consultative process.
6 It's one in which you sit everybody down together and you
7 negotiate, you try to reach an agreement about what is
8 important and what ought to be done about whatever effects
9 will occur on it. That's where I think there's a phony
10 distinction that's made between --

11 THE COURT: A what, now?

12 A. -- a procedural statute and a --

13 THE COURT: Excuse me, sir. You said a what, a
14 phony?

15 THE WITNESS: Phony.

16 THE COURT: Phony?

17 THE WITNESS: Yeah.

18 THE COURT: As in not real?

19 THE WITNESS: As in not real.

20 THE COURT: Okay. Go ahead.

21 A. -- distinction between procedural and substantive.
22 And people have been bringing it up a lot lately and saying,
23 effectively, that NEPA and Section 106 are merely procedural
24 and, therefore, need not -- you don't really need to pay as
25 much attention to them. Well, yes, they're procedural; but

1 they're procedural to accomplish purposes. And the
2 purposes -- it is true that the National Historic
3 Preservation Act does not say thou shalt not destroy historic
4 horses or historic houses or historic landscapes or anything
5 else; but it does say that you've got to go through a
6 rational, nonarbitrary, noncapricious process of consultation
7 to decide what is important and what effects you will have
8 and what can be done about them. And that's what the whole
9 106 -- Section 106 process is about.

10 And so my expert opinion on what the impact of removing
11 the horses are is essentially meaningless. You arrive at
12 what the impacts will be and what can be done about them
13 through consultation among parties with disparate interests,
14 and I'm really not a party. I'm just a supposed expert.

15 BY MS. SMITH-SAWKA:

16 Q. Have you ever coordinated or conducted consultation
17 on behalf of a government agency regarding the National
18 Historic Preservation Act and Section 106?

19 A. On behalf of government agencies?

20 Q. Yes. Have you ever coordinated -- helped
21 coordinate a plan for them to consult parties?

22 A. Sure.

23 Q. Can you please explain.

24 A. Excuse me?

25 Q. Can you give me examples of times that you've --

1 A. Well, I mean, I worked for 10 years with the
2 Advisory Council on Historic Preservation essentially working
3 with federal agencies to facilitate their compliance with
4 Section 106 and make sure that they were in compliance with
5 Section 106. And since then I've consulted with a variety of
6 agencies. One that comes to mind is I worked for a time for
7 the General Services Administration and we had the case of
8 the African burial ground in New York City where the General
9 Services Administration had, without thinking through --
10 thinking things through and without really complying very
11 well with Section 106, plowed into a massive burial ground
12 from the colonial era of African Americans, enslaved
13 African --

14 THE COURT: Let me just interrupt you real quickly.
15 Okay. Ms. Lee, I'm not really -- you'd indicated it'd
16 be 15, 20 minutes. We're already 20 minutes into this
17 and I don't think we've gotten to the meat of the point
18 here. And again, I don't want to -- no comment intended
19 with respect to the information being offered by the
20 witness. In fact, I would be fascinated if we had
21 plenty of time to go into all of this. But what I'm
22 interested in is what is before the Court today. Okay.
23 And I'm speaking to you as the supervising attorney.
24 Okay.

25 MS. SMITH-SAWKA: Yes, Your Honor.

1 BY MS. SMITH-SAWKA:

2 Q. Based on your personal experience, did the Army
3 undergo a standard historical analysis as required by the
4 National Historic Preservation Act?

5 A. It appears that the Army short-circuited the
6 Section 106 process in a couple of ways. One was that it
7 decided unilaterally without much discussion with anybody
8 that the removal of the horses would -- had no potential to
9 affect historic properties. Now, that's an understandable
10 position; but it is, I think, a questionable one in the face
11 of all the public concern, particularly by the heritage
12 families. The other thing they did was to treat -- and it's
13 related. They treated what they call cultural resources
14 pretty much solely as archaeological sites.

15 Now, the National Historic Preservation Act is about
16 historic properties, all kinds of historic properties,
17 including but not limited to archaeological sites. And the
18 Army treated, quote, unquote, cultural resources, which is
19 sort of a made up term that's not really in the law, as
20 archaeological resources plus a few other things, historic
21 documents, mosaics, and so on, but left out any consideration
22 of cultural landscapes, whatever.

23 Q. Are you familiar with the memorandum *Historical*
24 *Origins of Trespass Horses at Peason Ridge* written by
25 Frederick Adolphus?

1 A. Yes.

2 MS. SMITH-SAWKA: Your Honor, may I approach the
3 bench and offer what is marked in the administrative
4 record as Bates No. JRTC-E-00306?

5 THE COURT: If it's in the administrative record,
6 is it not already part of the record?

7 MS. SMITH-SAWKA: Excuse me?

8 THE COURT: If it's part of the administrative
9 record, is it not already in the record?

10 MS. SMITH-SAWKA: Yes, Your Honor.

11 THE COURT: So is there a need to offer it as
12 evidence if it's already in the record?

13 MS. SMITH-SAWKA: Your Honor, I didn't intend to
14 offer it as evidence, just so you would have it as a
15 reference.

16 THE COURT: I've got the record.

17 MS. SMITH-SAWKA: Thank you. I offer it.

18 MS. WALKER: Your Honor, may I just see what she's
19 showing the witness.

20 THE COURT: Sure. And if you would, state for the
21 record what it is -- by page number from the record what
22 it is you've given the witness.

23 BY MS. SMITH-SAWKA:

24 Q. Dr. King, do you recognize this document?

25 THE COURT: Hello. Could you please state for the

1 record --

2 MS. SMITH-SAWKA: Oh, me. Yes, Your Honor. This
3 is EFC number -- Document 54-2 filed on January 23rd and
4 it is recorded in the administrative record as Bates
5 No. JRTC-E-00306.

6 THE COURT: Thank you.

7 BY MS. SMITH-SAWKA:

8 Q. Dr. King, do you recognize this document?

9 A. Yes, I do.

10 Q. And what is this document?

11 A. Well, this is a memorandum from the director of
12 human resources at Fort Polk on, quote, the historical
13 origins of the trespass horses at Peason Ridge. And it's
14 signed by Frederick R. Adolphus, who is the director of the
15 Fort Polk Museum.

16 Q. Do you agree with the conclusions made by
17 Mr. Adolphus in this memorandum?

18 A. No, but I have to say that I am not an expert on
19 the horses at Fort Polk or Peason Ridge. I can only comment
20 on it as a -- if I were reviewing this as the Army, as the
21 Army's consultant, let's say, I would certainly have a lot of
22 questions about the conclusions.

23 Q. And is this analysis a standard type of analysis
24 that is conducted by a historian or preservation expert?

25 A. I don't think there is any standard. You review

1 all kinds of materials in the course of a Section 106
2 consultation.

3 Q. And what credentials would an individual have to be
4 the director of a museum?

5 A. I have no idea in this case. It -- there are no
6 particular formal standards nationwide.

7 Q. Well, in your opinion, does this document and the
8 document you mentioned earlier, the International (sic)
9 Cultural Resource Management Plan, do these -- are these
10 adequate to comply with the National Historic Preservation
11 Act Section 106?

12 A. Well, documents cannot comply with Section 106
13 because Section 106 is not about documents. It's about
14 people consulting and trying to reach agreement, and that's
15 what we don't see here. So would this be a document that
16 would be entered into a Section 106 consultation? Sure. It
17 would be brought up as the Army's argument against being
18 serious about the horses. It is not something that I would
19 accept if I were supervising a case like this for the
20 advisory council, or as a consultant for the Army for that
21 matter. It's not something that I would accept as
22 authoritative.

23 Q. In your opinion, how does preserving historic
24 resources serve the public interest?

25 A. People construct their identities around their

1 heritage, based on their heritage; and historic properties,
2 historic resources, are a very important element of that
3 heritage, not the only element. Other elements are important
4 too, but historic resources are a very important part of that
5 construction of identity. And when people lose big chunks of
6 the things that they view as sustaining their cultural
7 identity, that is damaging to them; and there's a lot of
8 literature on the kind of psychological damage that that
9 causes. So that's the basic reason that there is a public
10 interest in the preservation of historic places.

11 Q. And last question. If the Army reaches out to you
12 about their horse elimination plan in the future, would you
13 be willing to consult with them?

14 A. If the Army reached out to me and wanted to consult
15 about the horses, I'm always happy to talk to anybody. I'm
16 easy.

17 Q. Thank you, Dr. King.

18 A. Thank you.

19 MS. SMITH-SAWKA: I tender.

20 THE COURT: Cross?

21 MS. WALKER: I just have a few questions for you.

22 THE COURT: If you wouldn't mind, get up to the
23 podium, please.

24 **CROSS-EXAMINATION**

25 **BY MS. WALKER:**

1 Q. Dr. King, did you review the environmental
2 assessment done by the Army for its decision related to this
3 case?

4 A. Yes.

5 Q. Did you review the entire administrative record
6 that the Army prepared?

7 A. Now, I could not say for sure that I did that.

8 Q. Okay. I will show you here what's been provided to
9 the Court as the administrative record index. You can see it
10 on, I guess, this monitor.

11 THE COURT: Now I need binoculars. No, I'm
12 kidding. I actually have my own screen.

13 A. I do remember looking at that table.

14 BY MS. WALKER:

15 Q. Do you remember if you reviewed all of the
16 documents that were included in the table?

17 A. No, I did not review all of the documents.

18 Q. Okay. How much time did you spend preparing your
19 opinion in this case?

20 A. Oh, I don't keep track of my hours when I'm doing
21 pro bono work; but I would guesstimate something on the order
22 of 40 to 60 hours.

23 Q. And you did all of this pro bono?

24 A. Yes.

25 MS. WALKER: No further questions, Your Honor.

1 THE COURT: Any followup?

2 MS. SMITH-SAWKA: No, Your Honor.

3 THE COURT: You can step down. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Next.

6 MS. SKOPEC: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. SKOPEC: I would like to call Rickey Robertson
9 to the stand.

10 **RICKEY ROBERTSON,**
11 after being first duly cautioned and sworn to tell the truth,
12 the whole truth and nothing but the truth, did testify on
13 oath as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. SKOPEC:**

16 Q. Would you please state your name.

17 A. My name is Rickey Robertson.

18 Q. How are you involved with Pegasus?

19 A. I am a member of the Pegasus board and I'm also a
20 Peason Ridge heritage family member.

21 MS. SKOPEC: Your Honor, may I approach and offer
22 what plaintiffs previously filed under our preliminary
23 injunction Exhibit N or ECF No. 4314.

24 THE COURT: What is it?

25 MS. SKOPEC: Exhibit N.

1 THE COURT: I know, but what is Exhibit N?
2 Unfortunately, I don't have access to the record here on
3 the bench.

4 MS. SKOPEC: They're five color photographs.

5 THE COURT: Oh. Any objection?

6 MS. WALKER: No, Your Honor. We object to the
7 documents, but we don't object to her showing them at
8 this time. We filed our motion to strike all of these
9 documents so we have our standing objection to this
10 testimony and to the document.

11 THE COURT: Correct. Okay. Thank you. Go ahead.

12 MS. SKOPEC: May I approach the witness and give
13 him a copy?

14 THE COURT: Yes. Go ahead.

15 BY MS. SKOPEC:

16 Q. Okay. Mr. Robertson, I'm going to have you look at
17 a few photographs.

18 A. Okay.

19 Q. Can you take a look through and then let me know
20 when you're ready.

21 A. All right. I've got them right here.

22 Q. Do these pictures fairly and accurately reflect
23 what you've seen before?

24 A. Yes, ma'am, this first picture does. Look like
25 Peason Ridge horses.

1 Q. One moment, Mr. Robertson.

2 A. Ma'am?

3 Q. Have you seen these pictures before?

4 A. Just briefly.

5 Q. When?

6 A. I got them over the computer and don't know. Some
7 of these I may have taken myself because I love to take
8 pictures of Peason Ridge horses.

9 Q. What are they? Can you describe them?

10 A. The Peason Ridge horses?

11 THE COURT: Are you asking him to describe the
12 horses or the pictures?

13 MS. SKOPEC: The pictures.

14 A. Okay. This first picture is a little family group
15 of horses. You know, the horses up on Peason Ridge, that's
16 the horses I have contact with, they have a family group just
17 like we have families. There will be a stallion and a few
18 mares and the colts. And that horse little group is a
19 family. And this first picture here, that's a family group
20 of horses.

21 This next one, that's a stallion. That's one of the
22 stallions that is over one of the family groups. That's one
23 of the wild horses.

24 The next one is a picture of one of the horses out on
25 the -- out on one of those sand hills up there in the sage

1 grass.

2 Let's see. This next one, that's a piney woods horse.
3 That's what we call them, what we call the wild horses.

4 This last picture that you got here with them gray
5 horses and kind of dappled horses, them not the wild horses
6 of Peason Ridge. Those there are something else. You don't
7 see a gray horse on Peason Ridge. Their characteristics is
8 different. These horses on Peason Ridge, they -- they're all
9 of a different color or size. You can look at them. Ain't
10 no gray horses on Peason Ridge. Unless somebody just went
11 and put some up there, there ain't none up there.

12 BY MS. SKOPEC:

13 Q. So, Mr. Robertson, if we were calling the
14 photographs No. 1, 2, 3, 4 and 5, which numbers would be what
15 you consider wild horses?

16 A. Well, the first four of them. And the last one,
17 that's some kind of domesticated horses that's been turned
18 loose.

19 Q. And which would you consider domesticated?

20 A. Them gray looking horses, that group there, the
21 last picture.

22 Q. No. 5?

23 A. Yes, ma'am.

24 Q. Thank you.

25 MS. SKOPEC: Your Honor, we offer Exhibit N into

1 evidence.

2 THE COURT: All right. I'm going to withhold
3 ruling on the admissibility until I determine whether,
4 in fact, they are. But they've been offered, the
5 objection's been noted, and we'll make our ruling when
6 we rule on the preliminary injunction.

7 MS. SKOPEC: Thank you, Your Honor.

8 THE COURT: Thank you.

9 BY MS. SKOPEC:

10 Q. How will it affect you if the Fort Polk horses are
11 eliminated?

12 THE COURT: Say that again.

13 BY MS. SKOPEC:

14 Q. How will it affect you if the Fort Polk horses are
15 eliminated?

16 A. I'm one of the Peason Ridge heritage family
17 members. Our families first started settling Peason Ridge
18 and all that country out there. We can go back to about
19 1818, is when they started coming in there. And they brought
20 their livestock with them. The livestock that they brought,
21 that was essential to them.

22 Q. And how will --

23 A. They settled out there and they had their own
24 settlements. There was a total of 29 what we call
25 homesteader families, and they was 35 sharecropper families

1 that lived on Peason Ridge. Their livestock was so precious
2 to them that they set aside 16 sections of land just for the
3 livestock. And those livestock, they grazed there. They
4 didn't build no houses. Nobody trespassed or nothing. That
5 was a special place. Those horses and cattle and things were
6 part of my heritage.

7 Q. And how will it affect your family if they're
8 eliminated?

9 A. After the Army came in after the 1941 maneuvers and
10 they took all these home places that I'm talking about,
11 everybody had to leave. They loaded up what little stuff
12 they got in an old wagon or if they had an old vehicle and
13 they had to leave everything there. There is no structures.
14 There is -- the Army destroyed all the houses, all the corn
15 cribs, the barns and everything else. There is nothing for
16 us to go back and see. There is one thing of my history and
17 my culture and my heritage that's left and that's them horses
18 right there. I can relate to them. I relate to the land
19 that my ancestors, they worked. I've got a special feeling
20 for the land and I've got a special feeling for them horses
21 right there. They're free. They're part of Louisiana
22 history, American history, and they're my heritage.

23 Q. Thank you.

24 MS. SKOPEC: Your Honor, I would like to approach
25 and offer Exhibit R, a memorandum from the Army that is

1 currently in the administrative record.

2 THE COURT: Okay. Well, it's already in the
3 record.

4 MS. SKOPEC: Yeah. I would like him to --

5 THE COURT: If you would like the witness to review
6 it, that's fine.

7 MS. SKOPEC: Right.

8 BY MS. SKOPEC:

9 Q. Mr. Robertson, have you seen this document before?

10 A. Yes, ma'am.

11 Q. What is it?

12 A. It's some type of a memorandum, Department of the
13 Army memorandum, that was written by Frederick Adolphus.

14 THE COURT: Just one second. Could you identify
15 for the record where in the record that document is
16 found?

17 MS. SKOPEC: I have the number for it.

18 THE COURT: State it on the record, please.

19 MS. SKOPEC: JRTC-E-003206.

20 THE COURT: Thank you.

21 MS. SKOPEC: Thank you.

22 BY MS. SKOPEC:

23 Q. Mr. Robertson, will you read Bullet Point A out
24 loud for me.

25 A. Bullet Point A?

1 Q. On page one.

2 A. (Reading) Local Peason area historian, Mr. Rickey
3 Robertson. Mr. Robertson stated that the trespass horses
4 descend from the horses of the Spanish conquistadors; a Los
5 Adeas colony; transient, presettlement era Indians; early
6 19th century settlers; Civil War military; and most notably
7 World War II era U.S. Army Calvary. Mr. Robertson did not
8 substantiate these claims with historical citations which led
9 me to discount theory about the origins of the horses.

10 Q. Did the Army curator ever contact you while writing
11 this article?

12 A. No, ma'am, he didn't; but I can tell you where --
13 how he wrote that. I was -- me and my wife was helping him
14 get the new Fort Polk Museum together. They had got a new
15 museum down there, was moving out of that old hatch building
16 that was about to fall down as a museum, and he was running
17 out of time on getting displays and different things done.
18 And out of the goodness of our heart, because we've always
19 had a very good working relationship with the Army and Fort
20 Polk, we went down there and helped him with his displays and
21 we got to talking about the horses. Well, I don't carry no
22 library in my shirt pocket. Me and him, this was just a
23 conversation amongst one another.

24 Q. Did he ever approach you to get your citations
25 before writing in the article that --

1 Polk proper are domesticated horses."

2 A. That was in those photographs that I talk about.

3 Q. So you haven't observed the horses on Fort Polk at
4 all?

5 A. I've been down through there and I've seen some out
6 by the road. I ain't got out and fooled with those horses.

7 Q. Okay. So those are the horses that are
8 domesticated that you've seen?

9 A. Yes, ma'am.

10 Q. Okay. You've also had an opportunity to comment
11 when the Army was making its decision in this case, correct?

12 A. Yes, ma'am.

13 Q. I will show you here on the projector
14 JRTC-B-000280. It's a letter dated August 12, 2015. Do you
15 recognize this letter?

16 A. Yes, ma'am. I tried to get it to Fort Polk twice,
17 and I had to lay that in General Brito's hands.

18 Q. Right. And the Army did receive it?

19 A. Yes, ma'am, he did.

20 Q. You provided several attachments as well with this
21 letter, right?

22 A. Yes, ma'am.

23 Q. And in this letter you stated your concerns about
24 the horses?

25 A. Yes, ma'am. I got concerns about it. You know --

1 Q. I'm just asking if you stated those in the letter.

2 A. Uh-huh. Yeah.

3 Q. And you also stated your belief about the horses
4 being historic, correct?

5 A. Yes, ma'am.

6 Q. You also commented on the Army's environmental
7 assessment, correct?

8 A. Yes, ma'am.

9 Q. And here at JRTC-B-000892 is a comment that you
10 submitted concerning the horses of Peason Ridge and Fort Polk
11 to the Army's final environmental assessment and their draft
12 finding of no significant impact; is that correct?

13 A. Yes, ma'am.

14 Q. And again, you restated your concerns about the
15 horses?

16 A. Yes, ma'am.

17 Q. And as well as your concerns about their historic
18 nature?

19 A. Uh-huh.

20 Q. In addition, if we look at a document that's
21 JRTC-G-000439, this is one of the Army's engagement
22 notifications and the timeline. There at the top it says 5
23 July, Rickey Robertson, meet private. Does that indicate
24 that you met one-on-one with General Brito before he made his
25 decision regarding the horses and had an additional chance to

1 express your opinions?

2 A. We were supposed to meet one-on-one, but he had an
3 attorney sitting there.

4 Q. Yes.

5 A. Me and my wife didn't. It was supposed to have
6 been the way we do it in the country. We look one another in
7 the eye and, you know what, we work out a problem. That was
8 our meeting. We sure had one.

9 Q. So yes, you met with General Brito as well as Ken
10 Brown, correct?

11 A. Yes, ma'am.

12 Q. And I believe you met for an hour; is that correct?

13 A. We'll say it was maybe that long. Enough to drink
14 a good cup of coffee.

15 Q. And you again had a chance to express your concerns
16 about the horses before the Army made its decision?

17 A. Yes, ma'am, sure did --

18 Q. No further --

19 A. -- and I appreciated that.

20 MS. WALKER: No further questions, Your Honor.

21 THE COURT: Any followup?

22 MS. SKOPEC: No, Your Honor.

23 THE COURT: Okay. You can step down. Thank you,
24 Mr. Robertson.

25 THE WITNESS: Thank you, ma'am.

1 MS. SMITH-SAWKA: Your Honor, Pegasus would like to
2 call Ms. Stacey Alleman to the stand.

3 STACEY ALLEMAN-McKNIGHT,
4 after being first duly cautioned and sworn to tell the truth,
5 the whole truth and nothing but the truth, did testify on
6 oath as follows:

7 DIRECT EXAMINATION

8 BY MS. SMITH-SAWKA:

9 Q. Please state your name for the record.

10 A. It's Stacey Alleman McKnight. I'm now married.

11 Q. How long have you been working with horses?

12 A. Over 30 years.

13 Q. Can you please describe your past employment
14 relating to horse care and rescue.

15 A. Currently, I am the director of St. Landry Parish
16 Animal Control. I've been their director since February
17 of 2015.

18 Q. And can you please describe your past employment.

19 A. Yes. I have worked with as many as LSART Code 3,
20 ASPCA, Humane Society of United States primarily in animal
21 rescue, rehab and relocation. Primarily, my goal has always
22 been to rescue. I'm very fortunate where I landed. I make a
23 different impact every day.

24 Q. And do you hold any certifications, state or
25 otherwise?

1 A. Yes, ma'am. Through the ASPCA, I hold large animal
2 sheltering and intake. Through the ASPCA, I also am
3 certified in veterinary forensics. I am certified through
4 them in animal cruelty, equine cruelty, and wildlife rehab.
5 The Code 3, which is the largest firm we have for national
6 disaster as far as preparing animals, I am certified in
7 animal cruelty investigation and equine cruelty
8 investigation. I'm also certified through NACA, which is
9 your National Animal Control Association. And I also hold a
10 degree with Colorado State University.

11 Q. Thank you.

12 MS. SMITH-SAWKA: Your Honor, we would like to
13 tender Ms. Stacey Alleman as an expert in horse rescue
14 and relocation in the State of Louisiana.

15 THE COURT: Any objection to her qualifications?

16 MS. WALKER: No objections to her qualifications,
17 Your Honor.

18 THE COURT: So just with -- as with the other
19 witnesses, I'm going to allow her to testify as offered
20 but I am not currently ruling on whether her testimony
21 will be considered in the request for preliminary
22 injunction. Okay.

23 MS. SMITH-SAWKA: Thank you, Your Honor.

24 BY MS. SMITH-SAWKA:

25 Q. Ms. Alleman, have you reviewed the Army's

1 environmental assessment?

2 A. I did look through it, yes, ma'am.

3 Q. Have you reviewed the Army's course of action
4 No. 7?

5 A. I don't want to say for one hundred percent I have
6 looked at that exact one if you would quiz me on it. I did
7 read through it. Of course, I have a full-time job. But in
8 scanning through it, I did note a lot of things that would be
9 very hard for any one rescue group to uphold to assist them
10 probably proper in the placement and moving of these horses
11 as well as the endangerment it would cause to some of these
12 horses.

13 Q. Under their course of action No. 7 the Army states
14 they will adopt, give away, sell, cycle four step, and
15 relocate. What does the term "give away" mean in the
16 equestrian community?

17 A. For me, the way I would take it, it's any time you
18 actually allow anyone to come forward and you give them an
19 animal free of charge.

20 Q. And what sort of -- how are animals that are given
21 free of charge or given away usually treated?

22 A. The same way the term truly means, with absolutely
23 no respect. If -- we've learned through a cultured community
24 that anything that is so freely given is very rarely taken
25 with the highest respect. And what some of these people are

1 not going to understand is that this isn't a tame horse, you
2 can put a halter on it and lead it home. They may not even
3 have proper fencing. What happens to one of these horses
4 that are given away and they're put in Lake Charles and they
5 head out for Beaumont because their home sensor is to go back
6 home? They have a herd mentality. They also are farmed
7 family units amongst themselves. It will be detrimental to
8 each individual animal as well as who's going to take
9 responsibility. I understand from what little I read there's
10 no contracts. There's no check and balance. No one's going
11 to go and see where these horses go.

12 When the Federal Bureau of Land Management assessed
13 this, when they started adopting out mustangs, the first
14 thing they noticed was the damage they did to these mustangs.
15 These horses ran through trailers. They broke their legs.
16 They were corralled. They went through fences. What they
17 endured was screaming and yelling of animals. It was the
18 most barbaric thing that even some of the people that
19 originally set out to do this have actually quit their job
20 because they felt there was no desire in them, and yet at one
21 point they were giving away these animals.

22 I have numerous photos, if anybody would ever go to my
23 Facebook page for my parish, where we show you what give away
24 ends. We've had some very high profile horses like Dr. Drip,
25 who won the Magnolia Stakes, who was one of the most

Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana

1 incredible stakes racers that we know of, and he was given
2 away. He was found in a field covered in maggots.

3 MS. SMITH-SAWKA: Your Honor, I would like to --
4 may I give you a copy of the plaintiffs' previously
5 marked Exhibit S? This was filed yesterday, I believe.

6 THE COURT: I don't need a copy.

7 MS. SMITH-SAWKA: Thank you.

8 THE COURT: I mean, I have a copy available to me.

9 MS. SMITH-SAWKA: May I approach the bench?

10 THE COURT: What are you going to do --

11 MS. SMITH-SAWKA: Give my witness a copy of the
12 photo so she can explain.

13 THE COURT: Okay. Is this the offering from
14 yesterday? Is this what was filed yesterday?

15 MS. SMITH-SAWKA: Yes, ma'am.

16 THE COURT: Well, the Government objected to the
17 offering. I'm inclined to sustain their objection just
18 strictly on the lack of notice. I mean, they only were
19 given -- it was only produced yesterday. Well, let me
20 give the Government an opportunity to make their
21 argument. On this particular offering separate and
22 apart from the others which -- I would imagine this
23 offering would be subject to the same objection made
24 with any extra administrative record offering. Am I
25 correct there?

1 MS. WALKER: Yes, Your Honor.

2 THE COURT: All right. Do you have an additional
3 objection with respect to this offering?

4 MS. WALKER: Yes, Your Honor, in addition to the
5 lack of notice as these were just produced. And I
6 understand for some reason plaintiffs said they just
7 received the photographs. They are not relevant to this
8 case, Your Honor. They're not relevant to the horses at
9 Fort Polk. And I don't think there's a proper
10 foundation to introduce them into this case for today's
11 specific purpose of a hearing.

12 THE COURT: Okay. Let me ask you this. Are these
13 photographs that this witness provided to you?

14 MS. SMITH-SAWKA: Yes, Your Honor.

15 THE COURT: Are there any photographs of any horse
16 from Fort Polk?

17 MS. SMITH-SAWKA: No, Your Honor.

18 THE COURT: Then I'm going to sustain the
19 objection.

20 MS. SMITH-SAWKA: Yes, Your Honor.

21 THE COURT: Both -- for two reasons, one, lack of
22 notice and, two, lack of relevance.

23 BY MS. SMITH-SAWKA:

24 Q. Based on your experience relocating horses, what do
25 you think is the likely outcome for the horses at Fort Polk?

1 A. The thing would be what would be their course of
2 vetting for whoever was going to take them. Would Fort Polk
3 take on the responsibility of asking these 501's to step
4 forward and have them properly vetted? Would they reach out
5 to the IRS and see if these individual 501-C3's are in good
6 marking standards? What would be the course of vetting?

7 One of the oddest things, when you hear the term
8 trespassing horses you automatically feel that these are
9 horses that if they've been in the state of Louisiana they
10 would be trespassing with microchips already in them for the
11 State of Louisiana has implemented all horses should be --
12 they should carry a microchip, brand or tattoo on them. So
13 the majority of these trespassing horses should already
14 preexist to have some of these issues. From there you would
15 need some sort of individual identity, no different than if
16 you're selling used cars. Each car should have a make, a
17 model, a color, a title. This would be one of the most
18 strongly suited things to previously get them going into a
19 rescue. In other words, just by a photo, even if you look at
20 some of the photos posted, it's hard to tell if it's a bay,
21 it's a gray, it's a Sorrel. So permanent identification
22 would be extremely significant.

23 One of the biggest things Fort Polk could offer is some
24 sort of permanent identification. If maybe they would invest
25 in a freezer brand, maybe at later times we could continue to

1 follow these horses on the outside. Most, if you notice, the
2 wild horses and donkeys that go through the Federal Bureau of
3 Land Management have a long tattoo freezer burn down the side
4 of their neck. It allows people to continually follow these
5 animals.

6 There is no true way to know what does go on. If you
7 look at their chain of how they're sending them out to
8 rescue, they're sending them -- if one rescue group can't
9 take them all, then they get knocked off the list and you go
10 down and you go down and you go down. The list is so small
11 that some of the larger groups haven't even had a chance get
12 on their list or present their case of what they would want
13 to do to assist these horses. I think there's bigger
14 national groups that would want to come in; but at the same
15 time, they would also want to know how long have these horses
16 been on the property, what was their herd they were with, who
17 were they migrating with, whenever they pulled the horses
18 were they taking the whole family unit or was that family
19 unit being busted up. Because some of these stallions will
20 maintain a herd with their grandparents still attached to it
21 and they become a provider for the entire herd, and they're
22 actually going to form and make the herd migrate where they
23 need it to go if not for protection of the elders, for
24 protection of their mares and foal.

25 Q. Apart from where these horses will eventually end

1 up, are there any other reasons you can see, based on the
2 plan, that these horses may not be treated humanely?

3 A. There's no way they can be treated humanely.
4 There's never been determined how they would actually catch
5 them, herd them, migrate them and move them. Me personally,
6 I've never seen or watched. I hope it's done really well for
7 the sake of these horses. But wild horses aren't going to
8 just go in willingly. So, I mean, are they tranquilized?
9 Are they shot? Are they euthanized in the field? Over
10 250,000 acres, a lot of things can go wrong. I don't truly
11 know. What I do know, the little that we do see on the
12 outside is not really what I would want to see the U.S.
13 Army -- the care that they could have provided for these
14 animals.

15 Q. At one point in the Army's plan they mentioned they
16 would reach out to kill buyers. Can you -- or -- and that
17 they would go to auction. Do you have experience and
18 knowledge of these horse auctions?

19 A. Well, with my job personally, I do make a lot of
20 auctions. Number one, I'm looking to see how I'm going to
21 move my horses. From February the 15th of 2015 to today
22 present, we've had to deal with 800 horses. These are
23 walking in my parish. These definitely are trespassing
24 horses. And for me, I want to know what is the best market
25 for these horses. Number one, I'm looking out for my parish.

1 Number two, I'm looking out for the livestock. What we have
2 noticed is the number one buyer is the meat buyer because he
3 can afford to go over the regular homeowner that is limited
4 to their funds that might be looking to get their child their
5 next horse.

6 But with -- again, even if that was the outcome, how
7 would we really know they were a Fort Polk horse? There is
8 no permanent identification to these horses. They're just
9 ran through, corralled, and truly dumped on the next person.
10 What happens to the down horse? Is there any document to the
11 horses that were down in the pasture? Are there any
12 documentation over truly how many horses anyone is looking
13 at? Is there any documentation as to herd groups, where
14 they're at, where they migrate, how many's in a herd, how
15 many comingle, any coloring, any age, any foaling pattern?
16 Is there anything that we could look to assess the true
17 situation?

18 Q. How feasible is it to gain this information?

19 A. It shouldn't be overly hard. I'm predicting the
20 U.S. Army has some sort of heat sensors that could document
21 through a flyover approximately how many are there, but you
22 would think from the time span that they've known the horses
23 to today present they should have been able to photo
24 document. I mean, you could get, roughly, assessments
25 through photos.

1 Even in major fires, we still have to know
2 approximately, if it's going home owner to home owner, how
3 many horses are out there, cattle, livestock, sheep. These
4 are things people do in a five minute notice when we know
5 that there is a disaster aboard and we've been loaded up to
6 go into another state or another town. If I load up with the
7 Humane Society, all they're going to give me is an address.
8 That's where I'm to go. And whenever I ask how many, that's
9 for me to find out. And I do understand it's hard and I do
10 understand that they have a lot more at stake besides just
11 these horses, but for the time span they've had them they
12 should have been able to document some sort of idea of herds.

13 I've heard it said that they've already gotten rid of 2
14 or 300. The original estimate, I think, was 700 head of
15 horses. So that means there's only 500 left. Is there any
16 true number for them to how many have been sold? Where did
17 they go? If for my parish, when I sell a horse, move a
18 horse, we don't give away or adopt horses in St. Landry
19 Parish, but I have to document back for my parish president
20 an entire list, what it looked like, its microchip number,
21 its brand or tattoo, and what was the exit, where did it go.
22 I'm responsible for that.

23 Q. How many accidents with horses would you estimate
24 occur in your parish each year?

25 A. In my parish?

1 THE COURT: That's not relevant to what we're
2 talking about. We're talking about Fort Polk.

3 MS. SMITH-SAWKA: Well, Your Honor, I'm going to
4 compare it with the number of accidents documented in
5 the administrative record.

6 THE COURT: Still, what does that have to do with
7 what we're talking about? I'm just asking. What does
8 it have to do with what we're talking about?

9 MS. SMITH-SAWKA: Well, it leads into the issue of
10 there weren't enough alternatives considered under NEPA.

11 THE COURT: How would the number or nature of
12 horse -- accidents involving horses in St. Landry Parish
13 have anything to do with the plan enacted by the Army to
14 dispose of horses on Fort Polk?

15 MS. SMITH-SAWKA: Well, it will help demonstrate
16 that the threatened harm to the plaintiff outweighs the
17 threatened harm to the defendant should this injunction
18 be issued.

19 THE COURT: And how does it do that?

20 MS. SMITH-SAWKA: By maintaining a status quo
21 currently.

22 THE COURT: How does her information do what you
23 suggest it would do? How does it do that?

24 MS. SMITH-SAWKA: It demonstrates that,
25 comparatively, these horses have not -- in the opinion

1 of an expert, these horses have not been as big a
2 problem as -- it has not been that big of a problem;
3 whereas, to the heritage families and the plaintiffs it
4 will be extremely detrimental should they lose the
5 horses.

6 THE COURT: I don't understand how accidents in
7 St. Landry Parish have any bearing on what happens in
8 Fort Polk.

9 MS. SMITH-SAWKA: Your Honor, I'm happy to move on
10 to a new question.

11 THE COURT: No. If you can explain to me some
12 connection between the two, I'll be happy to let you go.
13 I just don't see any connection at all and I haven't
14 heard anything that would connect it.

15 MS. SMITH-SAWKA: Well, Your Honor, I think in this
16 case it's just establishing baseline information about
17 what these horses have been doing and --

18 THE COURT: The horses in St. Landry Parish?

19 MS. SMITH-SAWKA: Well, to establish baseline
20 information about the Fort Polk horses one would compare
21 it to other parishes or else the baseline information is
22 not useful, if it's not -- if it's not compared to other
23 situations.

24 THE COURT: Personally, I don't see what one has to
25 do with the other; but go ahead. I mean, I don't see

1 what her experience with horses and accidents in
2 St. Landry Parish has to do with horses and accidents at
3 Fort Polk. But go ahead.

4 BY MS. SMITH-SAWKA:

5 Q. And how many accidents would you estimate occur in
6 your parish each year?

7 A. We probably have one major accident a month, be a
8 stray horse, you know, walking down the road. In this case,
9 I believe that people literally come and turn them loose.
10 You know, they can't afford to feed them. I have a racetrack
11 in my parish, Evangeline Downs, so I see a ton of give away
12 horses. Unfortunately, when these people can no longer take
13 care of them, they turn them loose via crawfish pond beside
14 the road, the -- you know, even an animal that is in a fenced
15 yard can still get out. So we probably handle one a month.
16 Oftentimes it's cattle. It's not always horses. So I would
17 tell you about 12 a year. This is handled through the
18 St. Landry Parish Sheriff and the state troopers.

19 Q. And how does this compare with the number of
20 incidents reported in the administrative record?

21 A. When I looked at their records, it was
22 approximately 21 accidents that they had struggled for, I
23 think, over a 10-year basis. So that's a pretty light load
24 if that's all the damage that these horses could, you know,
25 come up with. I also did take note that they said that there

1 was manure around residential places where their -- I guess
2 their folks with the Army domicile at. What was very ironic
3 is there was no boundary fence to actually keep these
4 children and the people there from running into the road
5 site. Most places where people live, even on barracks, have
6 some sort of primary fencing that we deal with. So for me,
7 that wasn't -- it is horrible any time that you place an
8 animal over a human life, that they jeopardize a human; but
9 it wasn't the most horrific number that I see or what we deal
10 with in my parish.

11 Q. In your opinion, does the Army's current plan
12 address the problem of people dumping horses on the property?

13 A. No, and the sad part is we can't control it even in
14 my parish. I'm sure they can't control it. They have over
15 260 something thousand acres. I'm sure it is, to some
16 degree, impossible for them to control who does dump. But
17 again, when these horses are corralled a simple scanner will
18 tell you if these horses were microchipped. We have so much
19 technology today. We have scanners that come on a 4-foot
20 wind so you don't have to get in close proximity. You can
21 actually scan at a safe distance. That microchip would
22 pretty much, though, tell you if the horse is at least --
23 they may never track you back to an owner, but that microchip
24 will tell you were they really trespassing and dumped there
25 or were they just, you know, foals produced there on their

Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana

1 property.

2 Q. Are there benefits to managing horses on a property
3 that size?

4 A. I'm sure there are because you could actually
5 follow the ecosystem that these horses do control and help,
6 even down to the manure of these horses. As they migrate
7 through the rain, they reseed and they help the ground
8 support. The most incredible thing about horses is we learn
9 a lot about humanity itself because horses actually maintain
10 and take care of one another, unlike some families that we
11 deal with every day in my parish and throughout the state,
12 throughout the world. So the one thing that they could be
13 attributed to is to take care and see the -- how the animals
14 migrate from one field to another, how they've actually
15 maintained and kept the weeds down, the china ball trees that
16 will eventually take over once these horses -- if they do go
17 through with their plan, they will have -- they'll rather
18 have to tractor and buy farm equipment to start cutting,
19 plowing and taking care. At moment present these horses are
20 doing that service for them. They're actually grazing and
21 eating and they're taking care, you know, down to even the
22 birds, the cranes that come in. These are migratory birds
23 that come in and do follow these horses. They eat the bugs
24 on them. You know, it's a lot bigger than just the horses.

25 Q. Based on your experience, what -- can you estimate

1 the percentage of horses at auction that end up being sold to
2 kill buyers?

3 A. That was actually done for us. Every year they
4 usually -- through California, U.C. Davis, they try to run
5 numbers. So does other firms. They normally estimate right
6 now through the southern states, which is, you know, bigger
7 than just us, that it's 85 percent.

8 Q. And how much do these horses usually sell for at
9 auction?

10 A. Pennies on the pound. An average horse right now
11 at Dominique's Sale Barn, which is just an average wholesale
12 auction house, they bring between one and six cents on the
13 penny. So a kill buyer for an average horse is looking at
14 probably, you know, 30 or 40 bucks. And they turn around,
15 load them up, and they send them out to a killer buyer that
16 probably gives them about 3 to 400; but they have to truck
17 them all the way to Mexico now.

18 The issue will be these stallions. If the stallions
19 leave intact, they can't go into an auction house, nor will
20 cancerous horses. The U.S. Department of Agriculture
21 enforces that no injured, down or stallion can be sold at an
22 auction house even though it does -- one does pass through
23 there. We just -- we add fact to that. We took care of a
24 mare who was covered in cancer, sold at our sale barn for
25 \$15. That's another serious issue. What's going to happen

1 to the medically needy horses that they come in and put into
2 these pens? Will there be any treatment for these injured
3 horses?

4 Q. If the Army had consulted you about alternatives to
5 a complete elimination or methods to ensure a more humane
6 roundup procedure, would you have made similar suggestions as
7 you made today?

8 A. I would think so; but one of my biggest things I
9 would have asked them would have been to actually make these
10 horses their own council, take people that truly have worked
11 amongst these horses for years, that have dedicated more than
12 30 years of their life, to try and sit down and make a plan.
13 To send out horses to a killer buyer or have killer buyers
14 assist you in rounding up pretty much says the outlook is
15 pretty bleak for the horse. It doesn't come from much care.
16 The U.S. Army should be big enough and strong enough that
17 they could have reached out to more to do better. You know,
18 my thought is my son served in the Marines; and I sent him
19 off to be better, to be more. I don't think my son today
20 would sit here and say that this was even a fair assessment
21 these horses were given.

22 Q. Thank you, Ms. Alleman.

23 A. You're welcome.

24 **CROSS-EXAMINATION**

25 **BY MS. WALKER:**

1 Q. Good morning, Mrs. McKnight.

2 A. Good morning.

3 Q. I just have a few questions.

4 A. Yes, ma'am.

5 Q. Have you ever been to Fort Polk?

6 A. No, ma'am.

7 Q. You talked about what -- humane treatment and care
8 of the animals. You're aware that Louisiana actually has law
9 that requires that the animals are treated humanely and, when
10 they are held, being cared for with proper food and water and
11 those types of things?

12 A. What law are you referring to?

13 Q. It is --

14 A. If you're referring to R.S. 14102, which is animal
15 cruelty, it does stipulate that but under different terms.
16 Louisiana Department of Agriculture did put into place a
17 sheltering act.

18 Q. It's actually in the --

19 THE COURT: Title 14 is criminal statutes.

20 THE WITNESS: Correct. Yes.

21 THE COURT: So that would be a crime for treating
22 an animal inhumanely?

23 THE WITNESS: Yes, ma'am. That's what mostly does
24 refer to animals being taken care of, is R.S. 14102.

25 BY MS. WALKER:

1 Q. Right. But under the agricultural section,
2 Title 17, Part 21, Section 2103, are you familiar with that
3 statute?

4 A. Not the exact notes, no, ma'am; but that's why I
5 asked was it through the Department of Ag.

6 Q. Right. So under that -- okay. So you're not
7 familiar with that --

8 A. No, ma'am.

9 Q. -- law requiring humane treatment of animals?

10 A. I just asked were you referring to the Department
11 of Agriculture or were you referring to R.S. 14102. You then
12 just stipulated you were referring to the Department of
13 Agriculture.

14 Q. Right. We have a record so you don't have to
15 repeat it, but if you could just answer my question. You're
16 not familiar with the Department of Agriculture's law
17 requiring the humane treatment of animals?

18 A. Yes, ma'am, I am. I was asking --

19 Q. You are?

20 A. -- were you referring to --

21 Q. No. I'm sorry.

22 THE COURT: Okay. Stop. You guys are talking over
23 each other and the court reporter has to get the
24 testimony or the words spoken by each of you. If you
25 ask a question, let her answer. If she's asking a

1 question, please don't interrupt. And let's take it one
2 at a time. Go ahead and go.

3 BY MS. WALKER:

4 Q. I'm confused. So let's just answer very clearly
5 yes or no and that's it.

6 A. Yes, ma'am.

7 Q. Are you aware of the Department of Agriculture's
8 law requiring -- in Louisiana, requiring the humane treatment
9 of animals?

10 A. Yes, ma'am.

11 Q. Okay. Are you a member of plaintiffs' organization
12 Pegasus Equine Guardian Association?

13 A. No, ma'am.

14 Q. And were you aware of the Army's decision-making
15 process at Fort Polk when they were undergoing environmental
16 review analysis in 2015 and '16?

17 A. No, ma'am.

18 Q. So you did not participate in that process,
19 correct?

20 A. Correct.

21 Q. No more questions.

22 A. Thank you, ma'am. And sorry.

23 THE COURT: Any followup?

24 MS. SKOPEC: No, Your Honor.

25 THE COURT: Okay. You can step down. Thank you.

1 Any more witnesses?

2 MS. SKOPEC: Yes, Your Honor. Your Honor, I would
3 like to call Jennifer Pfaff to the stand.

4 **JENNIFER PFAFF,**
5 after being first duly cautioned and sworn to tell the truth,
6 the whole truth and nothing but the truth, did testify on
7 oath as follows:

8 **DIRECT EXAMINATION**

9 **BY MS. SKOPEC:**

10 Q. Would you please state your full name.

11 A. Jennifer Ann Pfaff.

12 Q. Are you involved with Pegasus?

13 A. No.

14 Q. Are you involved with any animal welfare groups?

15 A. I work with Freedom Reins Ranch and Rescue.

16 Q. Who are they?

17 A. We are the ones right now who are managing all of
18 the wild horses. We are the ones who are taking care of
19 them.

20 Q. What is your background with horses?

21 A. I've been around horses since I was in diapers. My
22 family's raised BLM mustangs. We've adopted BLM mustangs out
23 of the wild. And I currently have three Fort Polk horses on
24 my property.

25 Q. What is your daily interaction with horses?

1 A. I go to work during the day. When I come home I'm
2 with my horses until dark time, sometimes even later. I
3 spend my weekends training.

4 Q. And what is your experience with horses from Fort
5 Polk?

6 A. Such as?

7 Q. Do you own any?

8 A. Yes, I own three of them. And when the horses are
9 brought to the lot on Fort Polk, we are the group that picks
10 them up. We move them. We sort them into what is left over
11 of their family units. I help transport them to our fosters
12 who care for them. I myself have adopted them. We take care
13 of them while they're on the lot being sorted. We're the
14 ones who bring out the vets to have them microchipped out of
15 our own pockets. We have them gelded.

16 Q. What condition were your Fort Polk horses in when
17 you adopted them?

18 A. My Fort Polk horses are in terrible condition.
19 They have a body scale of about two right now, which is
20 emaciated. We are currently dealing with an outbreak of what
21 is believed to be strangles. It tested by our local
22 veterinarian and will be followed up by the state
23 veterinarian within the next few days, which has now carried
24 this disease to my domestic horses, which I have pregnant
25 mares on my property who have now been exposed to this

1 disease.

2 MS. SKOPEC: Your Honor, I would like to approach
3 and offer three photographs that are not already in the
4 record.

5 THE COURT: They are not in the record?

6 MS. SKOPEC: I would like them to be demonstrative
7 evidence and not enter them into the record and merely
8 have the witness describe them.

9 THE COURT: Has the Government even seen these
10 pictures?

11 MS. WALKER: No.

12 MS. SKOPEC: They do depict horses that are at Fort
13 Polk.

14 THE COURT: You never provided them to the
15 Government before just now?

16 MS. SKOPEC: We just got them before we came here.

17 THE COURT: What's the position of the Government?

18 MS. WALKER: Your Honor, we object to the pictures.
19 Again, this is not relevant to the actual issue why
20 we're here today. And we would object in addition to,
21 like, again, the late notice of providing the pictures
22 today, that they're just not relevant.

23 THE COURT: Whether they're relevant or not, you
24 know, fairness and due process does mandate that the
25 opposing party be given an opportunity to see the

1 evidence before they are here in the hearing; and I
2 don't think it's either fair nor in furtherance of due
3 process to expect them to be able to respond to it when
4 it's just been presented to them. So I'm going to
5 sustain the objection.

6 MS. SKOPEC: Thank you, Your Honor.

7 BY MS. SKOPEC:

8 Q. How would you define a wild horse based on your
9 impressions?

10 A. A wild horse is defined as a non-domesticated
11 animal that has not been handled by humans.

12 Q. And how many domesticated horses have you seen out
13 at Fort Polk?

14 A. Every horse that I've had come through my hands,
15 and I have had my hands on all of the horses from the
16 December and January roundups, there's not been one
17 domesticated horse in there.

18 Q. Have you actually been out and observed the Fort
19 Polk holding pens?

20 A. Yes.

21 Q. And how did they look?

22 A. The hay was not anything that I would ever give to
23 my horses. You could smell the mold and mildew on it.
24 They're big, huge round bales that are on the ground and not
25 covered by anything, open to the elements, rain. A round

1 bale of that size, it does not take long to produce the mold
2 and mildew which will also cause intestinal issues with a
3 horse. Colic is a very deadly disease to a horse, and
4 that's -- the horses know when they smell that not to eat the
5 hay. I saw the horses when they came in and they were in
6 okay condition, and by the time we received them they were
7 emaciated.

8 Q. How did the horses behave when you were out there
9 at the holding pen?

10 A. Horses suffer from depression just as a human does.
11 When a horse is suffering from depression you can tell. They
12 just kind of stand in one place, their heads low, they don't
13 eat, they don't drink. And that's exactly what I observed.

14 Q. Have you noticed any horses in particular that are
15 not faring well or that have medical issues that needed to be
16 treated?

17 A. We've had several of them. We had -- out of the
18 group of December, we had a horse come in whose jawbone was
19 exposed. We've had a vet come out, out of, again, our
20 funding, and had that horse taken care of and is now healed.
21 I have a horse on my property right now that came to me with
22 a large laceration over her eye. Her eye was swollen shut.
23 She had mucus coming from her nose, who just as of last
24 night -- that's what the pictures were, just of last night
25 had some abscesses underneath her chin that ruptured; and

1 that's what the strangles is. So it was late last night,
2 about 6 o'clock, when I got home that I found her abscesses.

3 Q. Have you ever ridden out or driven out to Fort Polk
4 and actually observed the horses?

5 A. Yes.

6 Q. When was that?

7 A. It was December 24th.

8 Q. How did you come to see them?

9 A. My husband and I and my two children wanted to go
10 out and see the wild herds because we'd just taken in the
11 group of the December Fort Polk horses. We wanted to go out
12 and kind of observe them this time so that maybe we could put
13 some family units together and know who was coming in, who
14 belonged together, before we sent them out to our foster
15 homes.

16 Q. And what did you encounter when you were out on
17 Fort Polk?

18 A. When we got there we encountered the gentleman that
19 Fort Polk has hired to round up the horses. He was sitting
20 in the back of a truck with a dart gun.

21 Q. Who was that?

22 A. Jacob Thompson. He was sitting --

23 Q. You talked to him?

24 A. Yes, ma'am. We drove up and we ignored him. We
25 drove over to take pictures of the horses. Jacob Thompson

1 then approached our truck in his truck, still sitting in the
2 back of his truck holding onto his dart gun. He asked my
3 husband who we were and what right we had to be out there.
4 We had filled out our paperwork that we needed to that
5 required to be out there. There was no training. We checked
6 the training schedule. We had everything we needed to be on
7 the property. We were then told by Jacob Thompson that he
8 was the one who had the right to be out there and we wouldn't
9 be out there.

10 So I took a few more pictures. We drove away looking
11 for the larger band of horses. This band was only about 30
12 at this point. He'd already had a bunch of them in his
13 trailer. We drove away, and when we came back we saw a game
14 warden that we tried to flag down to see where we could go to
15 view the rest of the horses. At that time the game warden
16 flipped on his lights, pulled us over, came and asked for our
17 military I.D. cards, asked what unit my husband was with,
18 took my husband behind he's truck and told my husband that if
19 we do not leave the area immediately he's going to confiscate
20 my camera. So at that point we went to go leave. We had to
21 drive by Jacob Thompson to leave. At that point the dart gun
22 was nowhere to be seen and there were feed buckets out now.

23 Q. Had you ever met Jacob Thompson before that
24 encounter?

25 A. I had not met him before, no.

1 Q. Had you ever seen a dart gun employed while herding
2 or rounding up horses?

3 A. That day I did.

4 Q. Is that common practice?

5 A. No.

6 Q. Can your nonprofit, Freedom Reins, accept Fort Polk
7 horses?

8 A. We have accepted so many of them at this point, now
9 that we have a case of strangles, every foster that we have
10 available is now quarantined which means no horses can come
11 in or out of our property for the next 30 days.

12 Q. What other problems are you running into while
13 trying to adopt them out?

14 A. These are wild horses. You cannot walk up to them
15 and put a halter on them and walk them anywhere. They are
16 not domesticated. They don't know people. They have a fear
17 of people. And some of them, when you take a stud out of the
18 wild who's used to protecting his family, they can become
19 aggressive. Another issue that we're having is we have
20 gotten several baby horses in that don't have mothers.

21 Q. How do you deal with that?

22 A. We do the best we can. We try to feed them on our
23 own. We make them mashes. Some of them, we have to give
24 them formulas. We don't have the mothers to provide for
25 these babies. They're not being rounded up in family units.

1 It's just whatever ones he can catch and put in his trailer
2 at that moment.

3 Q. Thank you.

4 MS. SKOPEC: Your Honor, I tender the witness.

5 THE COURT: Okay.

6 **CROSS-EXAMINATION**

7 **BY MS. WALKER:**

8 Q. Ms. Pfaff -- is it Pfaff?

9 A. Yes, ma'am.

10 Q. What was the organization you said you were a part
11 of that's been involved in rounding up and caring for the
12 Fort Polk horses?

13 A. We care for the horses. We are Freedom Reins Ranch
14 and Rescue. We're underneath Lulu who you guys have given
15 the contract to to care for the horses. She's not involved
16 in the horses at all.

17 Q. I'm sorry. Who is Lulu?

18 A. Lulu Brewer. She's at the top of your list of
19 501-C3's.

20 Q. Lulu Brewer is an individual. What 501-C3 is she a
21 part of?

22 A. I don't know what her 501-C3 name is.

23 Q. Okay.

24 A. We approached her and asked her to take care of the
25 horses because we have the experience with wild horses.

1 Q. So have you been in communication with anyone from
2 Fort Polk explicitly or from the Army?

3 A. There was a gentleman that came out to the
4 fairgrounds when we were doing our last sorting that was from
5 Fort Polk JAG office.

6 Q. But you're not picking up horses from Fort Polk?

7 A. Freedom Reins Ranch is absolutely picking up horses
8 from Fort Polk. We pick them up from the roundup pen.

9 Q. I'm sorry. You are personally?

10 A. Yes, ma'am, I have.

11 Q. Okay. So who have you been in contact with when
12 you pick up the horses?

13 A. It's Lisa Alexander, is the one I work under.
14 She's with Freedom Reins Ranch and Rescue.

15 Q. At Fort Polk?

16 A. At Fort Polk, I can't remember the gentleman's
17 name. He works over at the JAG office. I'm sure you guys
18 know who he is.

19 Q. You said Lisa Alexander is the person you work for?

20 A. Work with, yes.

21 Q. Work with.

22 MS. WALKER: No further questions, Your Honor.

23 THE COURT: Any followup?

24 MS. SKOPEC: No, Your Honor.

25 THE COURT: You can step down. Thank you. Any

1 more witnesses?

2 MS. SKOPEC: We have one more. Your Honor,
3 plaintiff would like to call Dr. Brendan Batt to the
4 stand.

5 THE COURT: What's the last name?

6 MS. SKOPEC: Batt, B-A-T-T.

7 **TIMOTHY BRENDAN BATT,**
8 after being first duly cautioned and sworn to tell the truth,
9 the whole truth and nothing but the truth, did testify on
10 oath as follows:

11 **DIRECT EXAMINATION**

12 **BY MS. SKOPEC:**

13 **Q.** Will you please state your whole name for the
14 record.

15 **A.** My name is Timothy Brendan Batt.

16 **Q.** What is your occupation?

17 **A.** I'm a veterinarian with the emphasis on equine.

18 **Q.** What is your educational background?

19 **A.** I graduated from LSU Veterinary School in 2015.

20 Since then I've been in private practice, worked under a
21 number of employees (sic), and now own my own private
22 practice with my brother in New Orleans where we -- in
23 relevance to this case, we are pretty much the sole equine
24 ambulatory emergency vets between New Orleans and Mississippi
25 and south to Belle Chase and west of Baton Rouge. There's

1 very few -- in my area, very few equine veterinarians that do
2 ambulatory emergency calls.

3 Q. Do you have any prior equine experience before
4 founding your own practice?

5 A. Yeah. I -- in veterinary school I worked in a
6 theriogenology lab, reproduction of horses. I have personal
7 experience with breaking my own quarter horse. I've spent
8 most of my life around horses. When I graduated school I
9 joined a mixed animal practice where I was the equine
10 veterinarian. Since then I've developed my own practice.

11 Q. What is your daily interaction with horses?

12 A. It varies. Besides seeing my personal horse every
13 day, I usually see an average of three to five equine
14 patients a day. Those numbers are averages.

15 Q. Prior to the hearing today, did you review
16 Dr. Bruce Nock's declaration related to wild horse physiology
17 and stress?

18 A. I did.

19 Q. And are the things that he wrote consistent with
20 your impression of horse physiology?

21 A. For the most part, yes. When he references
22 hormonal changes that are involved in stress, he's very
23 accurate in describing how cortisol and other stress hormones
24 can have physiologic effects on equines.

25 Q. Can you elaborate?

1 A. Because horses are prey animals, any interaction
2 outside of their normal -- you know, their normal
3 environment, especially wild horses or horses that have not
4 been fooled with on a regular basis, they're very at risk of
5 physiologic changes due to stress. Namely, gastric ulcers
6 are very common in horses directly related to stress,
7 inappetence, colic, which is a generalized term for abdominal
8 pain, colic episodes. Stress definitely affects horses from
9 every -- from the race track to horses out on a pasture in
10 the rain.

11 Q. Did you review the administrative record and the
12 corresponding pleadings prior to the hearing today?

13 A. Yes, I did.

14 MS. SKOPEC: Your Honor, plaintiff would like to
15 tender Dr. Batt as an expert witness for the purpose of
16 establishing long-term effects on the horses, failure to
17 gather baseline information before making a preliminary
18 decision, and irreparable harm.

19 THE COURT: He's being tendered as an expert in
20 what?

21 MS. SKOPEC: In showing that the Army failed to
22 consider alternative actions.

23 THE COURT: Wouldn't that be my determination,
24 whether or not they did that?

25 MS. SKOPEC: You're right. You're right. I'm

1 sorry.

2 THE COURT: Why would he be commenting on that?

3 MS. SKOPEC: He won't be.

4 THE COURT: So what's he being offered as?

5 MS. SKOPEC: He will be showing the effects on the
6 horses and how they have reacted with their treatment.

7 THE COURT: What's the Government's response?

8 MS. WALKER: We object, Your Honor. Again, the
9 effects of the horses is not relevant to the reason that
10 we're here today. As well, plaintiff has not provided
11 any proffer that this witness has actually interacted
12 with the horses at Fort Polk or has any knowledge about
13 any plausible effect. All he would be doing is offering
14 speculative testimony, Your Honor, as to what could
15 potentially happen to these horses.

16 THE COURT: Just with the prior witnesses, I'm
17 going to go ahead and let you put on the evidence but
18 whether or not it will ultimately be considered is yet
19 to be determined.

20 MS. SKOPEC: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 BY MS. SKOPEC:

23 Q. In general, how do horses react to be penned up?

24 A. It totally depends on their background. When it's
25 a wild or spirited horse that has not been handled much, they

1 react in a fearful manner to confinement.

2 Q. What are potential health effects of being penned
3 up?

4 A. Self-induced trauma would be the first and foremost
5 thing that you would see when taking a group of horses that
6 is not used to confinement and place them in confinement.
7 They'll try to escape. Loading horses in trailers, even
8 domesticated horses that have not been conditioned to load
9 into a trailer, is a risky -- definitely a risky proposition
10 to the horses and the people involved with doing the act of
11 loading a horse that's never been loaded into a trailer. It
12 takes some expertise and training to know how to do that
13 properly.

14 Q. As a veterinarian, what do you think should be the
15 baseline medical care for when you're rounding up and putting
16 a bunch of different horses together?

17 A. I would say to get a baseline of the whole herd,
18 their ages. Even, after hearing the proceedings, I think
19 that basic DNA testing could resolve a lot of these issues on
20 where these horses came from or whether they're wild type
21 horses or domesticated. A saliva swab is sufficient enough
22 to determine some of that information.

23 Q. What about being loaded into a trailer compared to
24 a pen?

25 A. Being loaded into a trailer is just a very

1 unnatural thing for a horse to do. They can be conditioned
2 over time to do it willingly. A horse that has not been
3 handled ever, to load them directly into a trailer is placing
4 the horse and the people doing it at risk.

5 Q. What side effects does capture have on wild horses?

6 A. Beyond the psychologic factors that come into play
7 that are kind of intangible and hard to -- you can't
8 interview a horse and ask them how they felt about it, the
9 things that can be measured is weight loss, stress, and
10 self-induced trauma or trauma that -- even in my practice
11 where I deal with domesticated horses as well as wild rescue
12 horses, trailer injuries are a very, very common source of
13 emergencies for me in my practice.

14 Q. In your opinion, how difficult would it be to
15 domesticate a wild horse?

16 A. The process of doing that takes someone with a lot
17 of expertise and a lot of time. You're looking at several
18 months to get a horse that has never really had a lot of
19 contact with humans to be able to be walked on a lead rope
20 with a halter, let alone to have one, you know, have a saddle
21 and be ridden. So you'd be looking at, you know, hundreds of
22 man hours by a trained expert.

23 THE COURT: For one horse?

24 THE WITNESS: Per horse. Obviously, that varies
25 individually. Some horses are going to be more

1 responsive to human interaction than others would be.
2 It's a horse to horse. Just like humans have different
3 personalities, horses certainly do as well.

4 BY MS. SKOPEC:

5 Q. In your opinion, what would you do when you're
6 beginning a horse management plan?

7 A. The number one thing would be to get a head count,
8 first of all, to determine some of their migratory patterns
9 and, as one of the previous witnesses described, to get
10 identifying. You can't even do paperwork on a horse in this
11 state, as previously mentioned, without a microchip, a brand
12 or tattoo. The horse technically doesn't exist. Because in
13 order to be tested for an infectious disease, swamp fever
14 which was indigenous to Louisiana, they have to get a blood
15 test which kind of serves as their I.D. papers. In order to
16 have that blood test done, it's a federal form. And the
17 State of Louisiana requires one of those three identifying
18 marks, a microchip, a brand or tattoo. So that would be the
19 first thing, is to get identification, a head count, an
20 overall estimate of age, prevalence of disease, things like
21 that, how much -- how many foals are being produced a year,
22 just baseline information so you know how the resources match
23 up to the animals and how -- the best measures would be to
24 maintain a population of horses there that's sustainable to
25 stay out of military operations and, also, to potentially

1 adopt out these horses.

2 Q. Have you reviewed the Army's current methodology
3 for rounding up horses?

4 A. In what I saw, there wasn't a lot of detail as far
5 as how the horses would be brought to capture other than the
6 ones that were kind of left with a pen with feed in it and
7 some of the horses walked in there and were captured that
8 way.

9 Q. Did you see anything related to making a herd
10 count?

11 A. I did not see anything specifically for that, no.

12 Q. Did you see anything related to branding?

13 A. No.

14 Q. How does their methodology compare to what you've
15 done in your veterinary practice?

16 A. Generally, when dealing with not necessarily wild
17 but more spirited horses, rodeo horses, things like that,
18 cattle shoots are implemented in order to get the horse into
19 a controlled stock where you can take blood, you can assess
20 the teeth for a basic age, you can implement a microchip at
21 that point. That I don't think has been done, necessarily,
22 to my knowledge, with the way that an equine practitioner or
23 staff veterinarian would have done it. I think they would
24 have done it differently, probably.

25 Q. Have you in your practice ever used a dart gun to

1 round up?

2 A. No.

3 Q. In your opinion, do nonprofits typically have the
4 capacity to round up wild horses, somewhere in the range of
5 700?

6 A. To round up or to adopt out?

7 Q. Both.

8 A. Neither, necessarily. The demand -- the supply for
9 horses way exceeds the demand especially when you're talking
10 about horses that have no skills, they have no past history
11 with humans, and they're not likely to be adopted other than
12 for a novelty purpose of having a Fort Polk horse. People
13 who buy horses for their kids or for their own riding
14 purposes usually look for a horse that has at least some
15 background set of skills and you're not starting with an
16 eight-year-old horse that's already, you know, missed the age
17 of being imprinted on. It's a real project for any horseman
18 to undertake to take a horse like that. Like some of the
19 ones depicted in the pictures that have been there for a long
20 time, have lived in a free environment, and then to try to
21 put them into adoption programs successfully in any amount,
22 any number, it's unlikely to wind up working out well for the
23 individual horses.

24 Q. In your opinion, what is the likelihood that the
25 rounded up Fort Polk horses will end up with kill buyers?

1 A. I would say it's likely, probable, due to the fact
2 that these horses are not going to be the ones that are
3 picked out of the auction to be bought by individuals that
4 are going to potentially rehome the horse in a domesticated
5 environment that fits with what these individual animals
6 should have.

7 Q. What are solutions to security and risk such as
8 protecting runways, protecting soldiers from danger during
9 training?

10 THE COURT: Wait, wait, wait. What's the question?

11 MS. SKOPEC: What is the potential solution to
12 issues of security and risk for soldiers.

13 THE COURT: Has he been offered as an expert on
14 that, on what the security risks are at Fort Polk or any
15 military installation?

16 MS. SKOPEC: Not on security but on how to create
17 an effective plan for preventing that with regard to
18 wild horses.

19 THE COURT: Okay. Well, ask your question one more
20 time, please.

21 BY MS. SKOPEC:

22 Q. How could you as a veterinarian create a plan that
23 would prevent issues of security and risk in terms of horses
24 going out on the runway or interfering with training?

25 THE COURT: But again, just so I understand, are

1 you talking about security and risk to the horses or
2 security and risk to the people on base?

3 MS. SKOPEC: To both.

4 THE COURT: How is he qualified to testify about
5 security for people on base?

6 MS. SKOPEC: I can rephrase my question.

7 THE COURT: Or you could just answer mine.

8 MS. SKOPEC: I feel like by him knowing how to
9 prevent horses from going out into the training areas
10 then he'll know --

11 THE COURT: How would that be different from horses
12 going into any area? Would it?

13 MS. SKOPEC: I feel like it would be a unique
14 situation because they have obstacles out.

15 THE COURT: What information does he have about the
16 obstacles that are out there?

17 MS. SKOPEC: He doesn't have any.

18 THE COURT: So how could he be qualified to testify
19 to that? And I'm asking.

20 MS. SKOPEC: Yeah.

21 THE COURT: Okay.

22 MS. SKOPEC: He doesn't have particular expertise
23 in security, only in how to prevent horses from
24 interfering with humans.

25 THE COURT: All right. So ask your question.

1 BY MS. SKOPEC:

2 Q. How would you protect horses from getting on the
3 runway or interfering with training?

4 A. The most common method would be using a hot wire
5 which is a simple electrical fence that can be turned on and
6 off. Generally, especially wild type horses, when they
7 associate getting a mild electrical shock to an area, they're
8 going to stay away from that area. Going back to the fact
9 that they're prey animals, they've sustained life on this
10 planet for thousands of years using their instincts on how
11 not to get injured or hurt or to stay away from dangerous
12 places and objects to them. So implementing hot wire and,
13 you know, other methods could easily drive horses out of
14 areas that you didn't want them to be on, in my experience.

15 Q. What other methods would work?

16 A. Rubber bullets would work, loud noises, even --
17 although things like cannons, noises like air pollution type
18 noises, generally the horses will over time realize that
19 that's not a real threat to them. Even as much as, you know,
20 shooing the horses off physically with whips. Humane
21 practices could be implemented to drive horses out of areas
22 on the property where you didn't want horses.

23 Q. Would you be willing to consult with the Army to
24 create or help create a long-term management plan for the
25 Fort Polk horses?

1 A. Yes, absolutely.

2 Q. If the Army had contacted you prior to the hearing
3 today, would you have testified to everything you did today?

4 A. Yes.

5 MS. SKOPEC: Your Honor, may I have a moment before
6 I tender the witness?

7 THE COURT: Okay.

8 BY MS. SKOPEC:

9 Q. Mr. Batt, earlier you heard Jennifer Pfaff talk
10 about strangles in the pens. Where do they typically come
11 from, in your veterinary practice when you see strangles?

12 A. Strangles is a bacterial infection. It's usually
13 most commonly occurring in my practice in horses that come
14 from kill pens, from rescues, horses that face a lot of
15 stress and crowding. The disease is more prevalent in those
16 horses, certainly.

17 Q. What kind of health effects long-term would a horse
18 get from strangles?

19 A. It generally starts with mucopurulent discharge
20 from the nose which over a period of weeks, days to weeks,
21 develops into a lymphadenopathy where the bacteria become --
22 they grow to large numbers inside the lymph nodes and
23 eventually the lymph nodes rupture. The mortality for these
24 horses that contract this disease is relatively low, 8 to
25 10 percent. The morbidity is almost 100 percent. So it is

1 highly contagious and causes severe lack of thriftiness in
2 the horse, weight loss, things like that. And it can also
3 lead to what's known as bastard strangles where the infection
4 is quelled by the organism host and it remains in the horse
5 for a long period of time at which point, through the
6 lymphatics, this organism could be introduced to internal
7 organs like the brain or the intestines, at which point at
8 some point those abscesses rupture internally and that could
9 lead to death. Also notably about strangles is it's highly
10 contagious and it's passed in the fomites, dirt. So any
11 exudate that comes from the horse's nose or ruptured
12 abscesses is a potential contaminant.

13 Q. In your opinion, how would you prevent strangles
14 from appearing in a pen?

15 A. The biggest thing would be to just undertake, you
16 know, the proper methods of management in the sense of
17 keeping equipment clean, keeping horses that are infected
18 with the disease quarantined from other horses. The best way
19 to prevent strangles is vaccination. There's no question
20 about that. But equipment and confinement areas should be
21 used and maintained in a way that would prevent the
22 prolongment of this organism on structures and equipment and
23 animals.

24 Q. In your opinion, is that common equine veterinary
25 practice?

1 THE COURT: How many pages is that, the entire
2 record?

3 MS. WALKER: I believe it's over 6,000.

4 MS. HALL: I can answer. It's more than 7,500
5 pages.

6 THE COURT: Okay. Thank you.

7 A. In that case, I have not reviewed the entirety of
8 it. I was mistaken in what I said.

9 BY MS. WALKER:

10 Q. Okay. I mean, you would have done more than I was
11 able to do.

12 A. I didn't realize the document was that long. What
13 I have reviewed was, you know, more excerpts, I suppose, that
14 were relevant to my testimony.

15 Q. But you're not aware of what those exact documents
16 are?

17 A. Not specifically which ones are called to question
18 here.

19 Q. How much time did you spend preparing your opinion
20 today, for today?

21 A. About 12 to 15 hours.

22 Q. And are you being paid to offer your opinion today?

23 A. Yes.

24 Q. What are you being paid?

25 A. \$150 an hour.

1 Q. Did you review the declaration of a Milton Fariss
2 that explains the Army's roundup and removal process for the
3 horses?

4 A. I did.

5 Q. So you're aware that the Army in conjunction with
6 the Louisiana Department of Agriculture is testing each of
7 the horses for two specific diseases?

8 A. Yeah. Equine infectious anemia is the one that I
9 was aware that they were testing for.

10 Q. As well as equine piroplasmosis?

11 A. Exactly.

12 MS. WALKER: No further questions, Your Honor.
13 Thank you.

14 THE COURT: Any followup?

15 **REDIRECT EXAMINATION**

16 **BY MS. SKOPEC:**

17 Q. Dr. Batt, in your opinion, how prolific are the two
18 diseases that the Army referenced in that declaration?

19 A. Equine infectious anemia is largely eradicated. It
20 was once a very prolific disease in Louisiana. It no longer
21 is due to the testing. Piroplasmosis is much more of a
22 prevalent disease and more significant and more blood testing
23 for. Equine infectious anemia testing has become -- other
24 than an eradication program, it serves -- a negative Coggins
25 serves as an I.D. paper for a horse.

1 Q. What is negative Coggins?

2 A. Negative -- Coggins is a test for equine infectious
3 anemia, swamp fever. So it's a test that's done by a lab.
4 There's labs in the state that do it. There's labs all over
5 the country that do it. Once the horse is rendered negative,
6 you get a federal form back and that serves for most purposes
7 as an identification form for the horse. Any time someone is
8 stopped while trailering horses, you know, they're usually
9 asked to present a negative Coggins form for that horse. So
10 it serves -- today it serves more as an identification paper
11 than it does as a significant blood test.

12 Q. In your opinion, are the two diseases that they
13 test for the extent of what a vet should test for?

14 A. No. That being said, in order to test for most of
15 the prevalent diseases, it would require a large expenditure
16 of funding to test for a broad range of diseases. But to do
17 simple fecal egg counts and test the things that really are
18 most probably prominent in the horses, there could be other
19 measures implemented than just testing for piroplasmosis and
20 equine infectious anemia.

21 Q. How so?

22 A. A basic fecal egg count and, again, going back to
23 assessing these horses as they're corralled, assessing their
24 body condition score, looking at their teeth to try to age
25 them, basic CBC chemistry panel, would really be a way to

1 assess the overall health of the animals. You can assess
2 whether they have active infection, the state of their
3 kidneys and liver, all with a fairly simple, you know,
4 routine blood draw that could be done at the same time as the
5 Coggins testing is done. It doesn't require any more blood
6 work, necessarily, just a little bit more volume of blood and
7 for that to be sent to a similar lab for testing. That's
8 minimally -- the cost at my practice, our cost is about \$18
9 for a full CBC chemistry panel.

10 Q. In your opinion, is it common practice to go ahead
11 and do all that testing at one time?

12 A. When I'm employed by a rescue group I always -- by
13 a horse that came from an unknown history or one that was on
14 pasture, I strongly recommend a fecal egg count to assess the
15 number of intestinal parasites in the horse and I am adamant
16 about insisting on a CBC chemistry panel. If those blood
17 results are normal, the horse is overall healthy. If not,
18 then, you know, you have something to dig further and try to
19 find out what is wrong with this horse.

20 Q. In your opinion, would rounding up the horses
21 without doing the necessary blood work be bad practice?

22 A. It could potentially -- especially through trying
23 to adopt these horses out, you could potentially spread
24 disease into unaffected horses that are domesticated in rural
25 communities throughout the state. If these horses do harbor

1 some disease that they're not being tested for and are
2 brought into the general population of horses, there is a
3 potential for spread of disease.

4 Q. Thank you.

5 MS. SKOPEC: Thank you, Your Honor. I tender
6 Dr. Batt.

7 THE COURT: Thank you, Dr. Batt. All right. Is
8 that it?

9 MS. HALL: That is it, Your Honor.

10 THE COURT: Does Government have any evidence to
11 adduce other than what's already been placed in the
12 record?

13 MS. WALKER: No, Your Honor.

14 THE COURT: All right. Well, then, that concludes
15 our hearing. I am going to allow post-trial memoranda.
16 I'll allow the plaintiff 14 days to file a post-trial
17 memorandum, and I'll allow the Government seven days
18 thereafter to respond. And I'm going to take it under
19 advisement. A report and recommendation will be issued
20 when it's prepared. All right. Anything else?

21 MS. HALL: No, Your Honor.

22 THE COURT: Thank you, everybody.

23 (Proceedings adjourned.)

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CERTIFICATE

I hereby certify this 2nd day of February, 2018, that the foregoing is, to the best of my ability and understanding, a true and correct transcript of the proceedings in the above-entitled matter.

S/Deidre D. Juranka, CRR
Official Court Reporter

**Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana**