TRANSCRIPT: Of Video Recording, April 11, 2014, This is Why the BLM Wants Cliven Bundy's Ranch Gone.

When Injustice Becomes Law, Rebellion Becomes Duty

We Lost Our Land Rights During the Civil War. There were a variety of issues that led to the Civil War; but, they all pretty much centered on this theme: The Southern States always maintained the position that a strong federal government was a threat to local norms and traditions. This came from the colonial days; and, the debates that took place with the debate over the United States Constitution. Ultimately, the Southern States, being less populated, were concerned that the more highly-populated Northern States would use their influence to force their will on the South through federal influences.

The issue of slavery became one of the key issues; not because the northern population in general wanted to do something about it; but, because it was the most divisive issue of the time. The federal government began a series of policy changes that the South did not agree with regarding taxation and trade. The Southern States, being threatened by this, began to withdraw from the union on the grounds that they had the right to do so under the Constitution and Declaration of Independence.

The slavery issue came to the forefront later; and, many in the South were discussing the possibility of freeing the slaves on their own. Basically, the South believed that the States should have more control over their own destiny while Northern States believed the federal government should have more power to deal with state-level issues.

Remaking the US Landscape: Do Green Energy Plans Take Aim at Suburbs?

Stanley Kurtz is Senior Fellow at the Ethics & Public Policy Center, Contributing Editor to the *"National Review Online"* and author of *"Spreading the Wealth"*.

Kurtz: It looks like President Obama's plans to fight global warming are going to hurt America's suburbs; and, that's because the Obama administration believes in something called *"Smart Growth"*. Now the idea of Smart Growth policies is that you should get out of your car. Don't move to the suburbs. You should live in a tiny, densely-packed

apartment building in the city where you would walk and take public transportation. Don't drive. That's Smart Growth; and, the Obama administration is gearing up to impose these Smart Growth policies on the country; and, that would be bad for America's suburbs.

Megyn Kelly: How would they do it? How would they make us move from the suburbs to the city because most of the folks who live in the suburbs like the suburbs. They don't want to live in the city. How would they make us do it?

Kurtz: There are several plans; and, part of the idea is just to stop people from moving out to the suburbs in the first place. But, in the end, it might even get some people who are living in suburbs to head to the cities.

Last week the Energy Department released a series of reports that touted a new strategy for cutting back on carbon dioxide emissions. The idea is to make all federal funding conditional on adherence to these Smart Growth principles.

So, let's say the federal government is thinking of funding a new school or a new highway, if this idea goes through, the government would say:

> *"Let's look at the population density. If you've got a high population density, we'll give you the federal money. If you don't, you're not going to get the money."*

That would start channeling new development away from the suburbs and into the cities. If you think about it, it's actually a way of redistributing the wealth of the suburbs into the cities.

Kelly: This is an actual proposal that was put forward?

Kurtz: A report came out called *"Transportation Energy Futures"*. And, one of these reports floated this proposal. At this stage it's a trial balloon, I think you could say.

But, there's another similar proposal that according to a news report the Obama administration has already decided on. And, that is that the Obama administration, for the first time, is going to tell every agency of the federal government to consider carbon dioxide emissions before they give environmental approval to big projects. That could mean big delays, big challenges, maybe even the elimination of some highway construction projects out into the suburbs. So, if you want to have the traffic congestion relieved on your suburban commute; or, maybe opening up a new area for suburban development with a highway; that could be delayed and possibly even blocked by these new regulations; and, that again, would tend to channel development away from the suburbs and back to the cities.

Domestic Energy Policy

- Since January 2009: Obama Investments in *"Clean Energy"* and *"Green Jobs"* have cost taxpayers nearly $100 billion.
- 2009 Stimulus Accounted for approximately ninety percent (90%) of Obama's investments in Green Energy.
- United States relied on net imports for about forty-five percent (45%) of petroleum consumed in 2011.
- Federal offshore crude oil production declined twenty-four percent (24%) from fiscal year 2010 to fiscal year 2012.
- January 2012: President Obama rejected an Application for Permit to Build Keystone Pipeline.

Kelly: Now you talk in your piece which was posted on "*National Review Online"* about how yes, this focuses in part; this initiative that has been proposed; focuses in part on greenhouse gas emissions, making the environment more green; and, you know, your carbon footprint when you live in a little 800 sq. ft. apartment in Manhattan is much, much smaller than if you live in a 3,000 sq. ft. home in the Burbs. So, that's clear. That could be one of the goals. But, you also say that this is about wealth redistribution on a grand scale. How is that a redistribution of wealth?

Kurtz: That's what I talk about in the book. If you go back to Obama's whole political history, people don't realize it; but, he's been a big backer of a movement called *"Regionalism"*. The whole idea of Regionalism is that there's something fundamentally unfair about the very existence of suburbs because when people move out to suburbs they take their tax money with them.

President Obama and some of the people he used to work with in his political career believe that was somehow unfair to the cities. So if you put in these Smart Growth policies: and. you say it's all about carbon dioxide and global warming, you still are channeling all that federal money, which comes from all of our taxes after all, into the cities and away from the suburbs; and, that's a way of redistributing wealth from the suburbs to the cities. And, in the minds of these advocates of Regionalism that Obama has always worked with, this is a way of redistributing money back away from the suburbs and into the cities.

Kelly: So you still have the same crop of people. So, if you're forcing folks who live in the suburbs to eventually move back into the city; or, people who live in the city not to move

out to the suburbs, it's still the same people. You're not going to change their political world view. You're not going to change their voting habits necessarily.

Kurtz: Some people think it might change voting habits: It's unclear whether that will really happen. But, the point for these Regionalists is that you're stopping tax money from being taken away from the cities and put into the suburbs. These Regionalists think that there's something fundamentally unfair about that. So, what they first want to do is get tax payers back to the cities so that their money can go into the coffers of those city governments; and, not the suburban governments. And, maybe the politics will take care of itself after that.

Kelly: You call it an effort to *"Manhattanize America"*. And, a lot of our viewers won't like the thought of that since there's a reason they've chosen not to live in Manhattan; and, it's not just, you know, the lock-jam traffic at rush hour; and, the taxi cabs; and, the pollution; and, all that. Sorry, Mayor Bloomberg; but, you know what I'm talking about. And, they don't necessarily want Iowa to look like Manhattan. But, in any event, Stanley, very interesting hearing your perspective. Thank you.

The Ultimate Goal of the Wildlands Project

The Wildlands Project is a very well-funded effort to lock up as much as fifty percent (50%) of the United States into wilderness. It is heavily promoted by most environmental, non-governmental organizations. The *"International Union for the Conservation of Nature"*, the IUCN, helped create it in the mid 1980s to be the foundation of the *"United Nations Convention on Biological Diversity"* which the IUCN wrote in 1982. The IUCN is an international group of over 1,000 NGO and government members.

Harmful Agenda of Environmental NGOs

Environmental groups have effectively created a public image as organizations caring for helpless species and protecting environments. This has allowed them to implement an agenda in America that if fully exposed, would be opposed by the majority of the people.

In fact, most people supporting these organizations are not aware of their long-term objective, even though it is no secret. Take a look at the Wildlands Map. It defines where environmentalists want to take America in the very near future. The areas in red will be off limits to humans. The areas in yellow represent buffer zones where limited use is allowed primarily to travel to and from populated areas. The areas in green are where normal use by humans will be allowed. However, by the environmentalists' own admission, these normal-use areas would be restricted.

When this plan was first published in 1992, the author, Reed Gnoss, explained how their agenda would affect the human population. He stated:

"Eventually a wilderness network would dominate a region; and, thus would itself constitute the matrix with human habitations being the islands."

No one, not even the long-time opponents of the environmental movement, believed such a transforming agenda was possible. However, it is being implemented quickly through innocent-sounding programs that most Americans support. *"Wilderness Areas"*, *"Critical Habitat for Endangered Species"*, *"Wetlands"*, *"Roadless Areas"*, *"National Heritage Areas"* and other restrictive programs are sold to the public as *"necessary to protect nature"*; or, as assurance that Americans will always have a place to escape from the heavily populated cities. More invented tools and programs such as *"Conservation Easements"*, *"Smart Growth"*, *"Open Space"* and *"Greenlining"* are being promoted as a way to control growth.

Landowners are Losing their Property Rights

What all these programs have in common is extinguishing the private property rights of American citizens; and, transferring the control of the property to elite *"Land Trusts"* or directly to the government.

NGO-Government Cooperation

Federal Government

The environmental movement would not be able to implement their agenda without the cooperation of our government at all levels, including state and federal officials: and, even county commissioners.

Gap Analysis Program

To help facilitate the environmental goals, the Clinton Administration quietly created the *"Gap Analysis Program"*; or, *"Gap"* for short. Gap divides the land into *"Eco-System Regions"*; and, identifies the properties not yet under the control of state and federal governments; in other words, private property. These private holdings are then targeted for preservation by Government Agencies and Land Trusts through Conservation Easements, Purchase and Condemnation. Although the Gap program has not been completed in all states, the data from this project is already being strategically used to target land owners.

Not surprisingly, the areas of protection defined by Gap follow closely along the same boundaries as those shown on the Wildlands Map. It is frightening to see how much of America's land has recently been consumed as a result of this agenda.

For instance, the State of Florida utilized the data from Gap to implement an aggressive preservation plan called *"Florida Forever"*. Since the early 1990s, over two million (2,000,000) acres in the state of Florida have been locked up through this program. The private property owners within the target area were forced to give up their land under the pressure of extreme *"Environmental Regulations"*, *"Purchase"* and outright *"Condemnation"*; and, the Florida Forever campaign is not complete.

At the current rate that environmentalists are implementing their agenda in every state, in every county and soon in every town, private property is quickly being eliminated. It will not take the eighty (80) to one hundred (100) years they originally projected to complete their task. They are much closer to achieving their goal than anyone realizes.

Environmentalists have scared Americans into thinking that if we continue to live as we are today, the Earth will self-destruct; species will die; and, the globe will be covered with development. However, government data shows that only six percent (6%) of America's land mass is currently developed. Only three percent (3%) of America is classified as urban; yet, seventy-seven percent (77%) of all Americans live in these urban areas. The rest is still largely untouched by humans. The problem is not that our nation is being overdeveloped. The problem is as old as time.

It is about who will own the land. Large amounts of the nation's natural resources are still owned by private citizens. America's founders vehemently opposed the concept of government or elitists owning the land in America, which would result in the citizens being leaseholders and serfs. One of the most well-known property rights advocates of our time, Wayne Hage, said it best:

> *"Either you have the right to own property; or, you are property."*

Make no mistake, this battle is not about whether the land will be used, resources extracted and wealth created; but, by whom. Carl Marx wrote in the *"Communist Manifesto"*:

> *"The theory of the Communist may be summed up in the single sentence:*

'Abolition of private property.'

America's founding father, John Adams, stated:

"Property must be secured; or, liberty cannot exist."

Which course will America take? Hear directly from Dr. Michael Coffman, the man who first uncovered the Wildlands Map; and, presented it to the U.S. Senate. Coffman will reveal the details of the *"Environmental Agenda"*; and, how the government is helping to transfer land ownership in America. He explores each region; and, explains the tactics they are using in the different areas. You will learn what might be used to target your land. Environmentalists are counting on their Agenda never being fully revealed. *"Taking Liberty"* is committed to seeing that it is. Their plan must be stopped before all of our liberty is taken.

$\sum CO_2 \rightarrow$ Temperature Increase → Negative Effects

Bill Gates: We need a new constraint; and, that constraint has to do with CO_2. CO_2 is warming the planet; and, the equation on CO_2 is actually a very straightforward one. If you sum up the CO_2 that gets emitted, that leads to a temperature increase; and, that temperature increase leads to some very negative effects. The effects on the weather, perhaps worse, the indirect effect in that the natural eco-systems can't adjust to these rapid changes; and, so, you get eco-system collapses.

Now the exact amount of how you map from a certain increase in CO_2 to what temperature will be; and, where the positive feedbacks are; there's some uncertainty there; but, not very much. And, there's certainly uncertainty about how bad those effects will be. But, they will be extremely bad. I asked the top scientists about this several times:

"Do we really have to get down to near zero? Can't we just cut it in half (½); or, a quarter (1/4) ?"

The answer is that until we get near to zero, the temperature will continue to rise. So that's a big challenge. It's very different than saying we're a 12-foot-high truck trying to get under a 10-foot bridge when we can just sort of squeeze under. This is something that has to get to zero.

Innovating to Zero

"We emit CO_2 naturally; and, plants absorb CO_2; particularly when it rains; and, emit O_2. Bill Gates is wrong. Plant a tree.. Clearly, Gates is a tool for the

elitists. Stop Chemtrails. Global corporations are the cause for destroying Earth's biosphere!"

Gates: Now we put out a lot of CO_2 every year; over twenty-six (26) billion tons. For each American it's about twenty (20) tons. For people in poor countries it's less than one (1) ton. It's an average of about five (5) tons for everyone on the planet; and, somehow we have to make changes that will bring that down to zero. It's been constantly going up, it's only various economic changes that have even flattened if at all. So we have to go from rapidly rising to falling and falling; all the way to zero.

$$CO_2 = \underset{\text{people}}{P} \times \underset{\text{services per person}}{S} \times \underset{\text{energy per service}}{E} \times \underset{CO_2 \text{ per unit energy}}{C}$$

This equation has four (4) factors; a little bit of multiplication. So, you've got a thing on the left: ***"CO_2"***, that you want to get to ***"zero"***; and, that's going to be based on the number of ***"People"***, the ***"Services"*** each person is using on average, the ***"Energy"*** on average for each service and the ***"CO_2"*** being put out per unit of energy.

So, let's look at each one of these; and, see how we can get this down to zero. Probably one of these numbers is going to have to get pretty near to zero. That's back from high school algebra. Let's take a look.

FIRST: We've got ***"Population"***. The world today has got 6.8 billion people. That's headed up to about 9 billion. Now, if we do a really great job on new vaccines, health care and reproductive health services, we could lower that by perhaps ten to fifteen percent (10 to 15%). But, there we see an increase of about 1.3.

They want you dead

SECOND: We've got the ***"Services"*** we use.

2nd Amendment - My Gun Permit - Don't Tread On Me

House Hearing, 113th Congress
From the U.S. Government Printing Office

THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENT REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Tuesday, October 29, 2013

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Serial No. 113-50

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Prepared Statement of Ms. Budd-Falen, Cheyenne, Wyoming

My name is Karen Budd-Falen. I am an attorney and a fifth generation rancher from a family-owned ranch west of Big Piney, Wyoming. I grew up in the same house as my father; and, we still own the ranch; surviving generations of bad winters, drought, tough cattle markets, devastating wildfires and now wolves. My father, like everyone testifying today, is tough, independent, smart and the proud owner of a small business that is fueling the economy in our town and feeding the Nation.

And, while my father, as well as the other ranchers and private property owners, can survive droughts, fires, and low market prices, we cannot survive the heavy hand of the federal bureaucracy; particularly those within the bureaucracy who use the power of the federal government to violate our Constitutionally-guaranteed rights. While some may claim that we are here to ask Congress to eliminate the federal bureaucracy or the federal agencies, we are not. What we are asking for you to do is open the court house door to individuals who believe that their civil and Constitutional rights are being violated by individual federal employees using the power of their offices. While I would absolutely agree that most federal employees are hard-working individuals dedicated to trying to do their jobs to the best of their abilities that is not always the case. But, unlike the case with State and local governmental employees who can be sued under the Civil Rights Act when they use the power of their governmental offices to deprive an individual of his Constitutionally guaranteed rights, there is not a similar option against federally employed individuals. All we want is the chance to go to court to present our facts. Articles I, II, and III of the U.S. Constitution set forth three (3) branches of government and every American citizen should be allowed to access all three (3) branches to redress their grievances; particularly those grievances alleging an abuse of power.

I. Background of Bivens as Applied to the Protection of Private Property

In 2007, the United States Supreme Court reversed decisions by the Wyoming Federal District Court and Tenth Circuit Court of Appeals by holding that a private property owner could not avail himself of a Bivens common law cause of action to protect his private property rights from *"taking"* by intimidation and harassment from federal officials. Neither the Justices voting to affirm nor reverse the lower courts' decisions seemed to question that there had been a degree of harassment and intimidation against private property owner Frank Robbins because Mr. Robbins would not surrender an easement across his private property to the federal government without due process and just compensation. However, the Justices writing for the Court's majority, as well as the two (2) concurring Justices, did not believe that the Court should expand its 40-plus year old precedent in Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), to the Fifth Amendment property protections. However, the Justices for the Supreme Court suggested that the U.S. Congress could create a Bivens *"cause of action"* to protect private property and property rights from actions outside the mandates of the Fifth Amendment. This testimony urges Congress' consideration for adopting that type of protection for America's property owners; and, treating the Fifth Amendment private property protections with the *"comparative importance of* [other Constitutionally guaranteed] *classes of legally protected interests."* Wilkie v. Robbins, 551 U.S. 537, 577 (2007).

At its simplest, the Supreme Court in Bivens allowed a type of Civil Rights Act *"Section 1983"* claim to lie against federal officials. The Civil Rights Act of 1871 prohibits governmental employees, *"acting under the color of state law",* from proximately causing the depravation of certain Constitutionally-guaranteed rights. The Civil Rights Act, however, only applies to State officials. In Bivens, a private individual (Petitioner) complained that agents of the Federal Bureau of Narcotics, acting under claim of federal authority, entered his apartment and arrested him for alleged narcotics violations. The agents manacled Petitioner in front of his wife and children, threatened to arrest the entire family and searched

the apartment. Petitioner also alleged that the arrest was conducted with unreasonable force and without probable cause. Petitioner sought monetary damages against the federal officials. The issue before the Supreme Court was whether *"a federal agent acting under color of his authority"* gives rise to a *"common law"* cause of action for damages based upon his unconstitutional conduct. In Bivens, the Supreme Court agreed that it would recognize this type of common law cause of action for this unreasonable action in violation of the U.S. Constitution's Fourth Amendment protection of an individual from an unreasonable search and seizure. As stated by the Court, it was damages or nothing against the federal officials causing this harassment. After Bivens, the Supreme Court recognized this same cause of action to protect against harassment and intimidation when dealing with Fourteenth Amendment protection of the *"due process"* of law and the Eighth Amendment's protection against cruel and unusual punishment.

In its opinion, the Supreme Court held that Robbins had to pass a two-part test for his case to continue. First, the Justices considered whether they believed that Robbins had any alternative remedies for his harassment. Although the Court seemed to recognize that Robbins was suffering *"death by a thousand cuts"* because of the six-year span and dozens of administrative charges filed against him, false criminal complaints against which Robbins had to defend, trespass on his private land by federal officials and other forms of harassment, the Court's majority opinion believed that Robbins should have administratively challenged or otherwise fought these dozens of actions individually. While the majority opinion seemed to recognize that Congress had never created a *"step by step"* remedial scheme to remedy this array of harm, the majority believed that each alleged form of harassment had to be considered individually, despite the recognition that:

> It is one thing to be threatened with the loss of grazing rights, or to be prosecuted, or to have one's lodge broken into; but, something else to be subjected to this in combination over a period of six (6) years by a series of public officials bent on making life difficult. Agency appeals, lawsuits and criminal defense take money; and, endless battling depleted the spirit along with the purse. The whole here is greater than the sum of its parts.

551 U.S. at 555.

The next step, which the Court's majority also found against Robbins, was whether there were *"special circumstances counseling hesitation"* against allowing Robbins to enforce a Bivens cause of action. With regard to this element, the majority was concerned that allowing a common law cause of action to protect private property owners from federal officials' harassment and intimidation would *"open the floodgates of ligation"* against federal officials. The majority also determined that *"legitimate zeal of* [federal officials] *on the public's behalf in situations where hard bargaining is to be expected"*, was not harassment.

Despite these findings, the Court's Justices recognized that Congress could correct this deficiency. In this regard, the majority opinion, written by Justice Souter, with Justice Roberts and Justice Kennedy, stated:

> We think, accordingly, that any damages remedy for actions by Government employees who push too hard for the Government's benefit may come better, if at all, through legislation. *"Congress is in a far better position than a court to evaluate the impact of a new species of litigation"* against those who act on the public's behalf. And, Congress can tailor the remedy to the problem perceived, thus lessening the risk of a rising tide of suits threatening legitimate initiative on the part of Government's employees.

551 U.S. at 562. Citations omitted.

The concurring opinion of Justices Thomas and Scalia opined that a Bivens common law cause of action should not be extended in any circumstances *"by the Court"*.

551 U.S. at 568.

Finally, the dissenting opinion, written by Justice Ginsberg with Justice Stevens would have extended a Bivens common law cause of action to Robbins. They perceived the question in the Robbins case to be:

> Does the Fifth Amendment provide an effective check on federal officers who abuse their regulatory powers by harassing and punishing property owners who refuse to surrender their property to the United States without fair compensation? The answer should be a resounding *"Yes."*

551 U.S. at 569.

In addition to placing the creation of a cause of action in the hands of Congress, the Court's dissenting opinion also suggested a similar statute containing enough checks to bar every complaint of wrong from reaching the courts. As stated by Justice Ginsberg:

> Sexual harassment jurisprudence is a helpful guide. Title VII, the Court has held, does not provide a remedy for every epithet or offensive remark.

After citing several cases limiting the situations in which a suit for sexual harassment could be brought, she concluded:

> Adopting a similar standard to Fifth Amendment retaliation claims would *"lesse*[n] *the risk of raising a tide of suits threatening initiative on the part of the Government's employees."* Discrete episodes of hard bargaining that might be viewed as oppressive would not entitle a litigant to relief. But, where a plaintiff could prove a pattern of severe and pervasive harassment in duration and degree well beyond the ordinary rough-and-tumble one expects in strenuous negotiations, a Bivens suit would provide a remedy. Robbins would have no trouble meeting that standard.

551 U.S. at 582. Internal citations omitted.

Based upon this Supreme Court opinion, other private property owners who believe that they are being harassed and intimidated because they refuse to turn over their private property outside the mandates of the Fifth Amendment have no forum in which they can vindicate their claims. The Robbins case now acts as a complete bar to the judicial branch of the government, regardless of the extreme nature of the federal officials' actions. That is not to say that every action or decision by a federal employee should give rise to a judicial cause of action, but there are cases where the harassment and intimidation is so severe that, in the words of the U.S. Supreme Court, *"it is damages, or nothing"*. However, without the intervention of Congress, now it is *"nothing"*.

II. Title VII of the Civil Rights Act

As stated above, one of the stark inequities in current statutes is that while State and local governmental employees can be held personally liable for the violation of an individual's Constitutional or civil rights, federal employees acting with the same intention and animus cannot. This contrast is based upon Congress' adoption of the Civil Rights Act, which does not extend its protections to individuals dealing with the federal government. At its core, the Civil Rights Act of 1964 *"outlawed discrimination based on race, color, religion, sex or national origin."* Although originally the Act focused on protection of the

rights of black males, the bill was amended to protect the civil rights of all individuals in the United States from abuses of those State and local governmental employees *"acting under color of law."*

Title VII of the Civil Rights Act states:

> It is unlawful to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of an individual's race, color, religion, sex or national origin.

42 U.S.C. §2000(e)-2(a)(1).

The regulations implementing this statute provide:

> Harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or, (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

29 C.F.R. §1604.11 (a).

"For sexual harassment to be actionable, it must be sufficiently severe or persuasive to alter the conditions of the victim's employment; and, create an abusive working environment." Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986), citation and quotation omitted. *"A hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice."* National Railroad Passenger Corporation v. Morgan, 536 U.S. 101, 115-117 (2002); 42 USC §2000e–5(e)(1), quotations omitted. *"In determining whether an actionable hostile work environment claim exists, we look to all the circumstances, including 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and, whether it unreasonably interferes with an employee's work performance.'"* 536 U.S. at 115-117 (2002) Citations and quotations omitted.

Using this type of analysis, I believe that a statute could be enacted to protect private property owners from intimidation and harassment from federal employees acting under color of law. Such statutory language could include the following:

> The attempted taking of private property or private property rights by means of governmental employee harassment or intimidation, under color of law, is hereby declared to be a violation of the Civil Rights Act. Harassment or intimidation against the owners of private property or private property rights constitutes such violation when: (1) a property owner's relinquishment of his property or property rights is made explicitly or implicitly a term or condition of receipt of a permit or license from a governmental agency; (2) submission to or rejection of such conduct by a property owner is used as the basis for the grant of or conditions included in a permit or license; or, (3) the conduct of the governmental employee has the purpose or effect of unreasonably interfering with an individual's private property or private property rights. An attempted taking of private property or property rights under this section can be composed of a series of separate acts that collectively constitutes a significant deprivation of the ownership or use of private property or property rights. In determining whether the activities of a governmental

employee are actionable under this section, consideration can be given to the frequency of the discriminatory conduct, harassment or intimidation, its severity and whether such governmental action interferes with the ownership, use or legitimate investment-backed expectations of the property owner.

III. The Witnesses Today Are Not the End of the Story

Today, you are going to hear compelling and heartfelt stories of individual families and businesses who are only asking to be able to walk in the doors of the federal courts to plead their cases. But, these are not the only stories in existence. To prepare for this hearing, my office talked to over a dozen other individuals and their representatives who are also willing to tell you their stories; and, ask your help in getting to the courts for justice. The Constitution created three (3) equal branches of government to provide a system of checks and balances over the actions of each other. Yet today, there is no adequate check over the actions of the federal governmental individuals who abuse their power against the American property owner. We are not asking to win every case; but, simply to be able to make our case. We respectfully request that Congress make the same avenue available to us as it does to other Americans.

Prepared Statement of Frank Robbins, Thermopolis, Wyoming

My name is Frank Robbins; and, I am the owner of a ranch that includes private land; and Bureau of Land Management (BLM); and Forest Service livestock grazing permits and preference rights, known as the High Island Ranch, in Hot Springs County, Wyoming. I purchased the High Island Ranch from George Nelson on May 31, 1994, as a cattle ranching and a guest ranch operation. Although I had owned another ranch in Montana prior to purchasing the High Island Ranch, my goal was to move my wife and two children to Thermopolis and make that my home; then pass the ranch on to my children and grandchildren.

Just prior to the sale of the ranch, Mr. Nelson granted a nonexclusive easement to the BLM across the High Island Ranch on a private road known as the Rock Creek Road. The BLM failed to property record this easement. So, when I purchased the ranch, I was unaware of the BLM easement; and, when I recorded my title to the ranch, the BLM easement was extinguished.

Upon realizing the easement Mr. Nelson had granted to the BLM was no longer valid, BLM employee Assistant Area Manager Joe Vessels contacted me to demand that I sign a new easement across my private lands to the BLM; and, to warn me that if I did not give the easement to the BLM, the BLM would deny me access to my private property. Vessels stated to me that there would be no negotiation regarding this easement. Because the BLM would not negotiate to pay compensation or provide due process for the taking of my private property, I declined to just give the BLM one of my property rights. In response to my decision, Vessels told me that the BLM would get the easement:

> *"...one way or another..."*

From that point on, the BLM began engaging in a pattern of intentionally abusive conduct to coerce me to grant my property rights to BLM; and, to punish me for not immediately capitulating to the BLM's demands. For example:

Ed Parodi, a BLM employee, was sent to my home to explain what the BLM would do to me if I did not acquiesce to the BLM demands. At that meeting, Parodi stated:

> *"If you keep butting heads, things are going to get pretty ugly."*

And:

> *"They* [the BLM] *have more resources, more time and more money than you. If you keep butting heads with them, it will come to* war."

Parodi also stated that the BLM was out to give me a *"hardball education"*.

In June of 1994, Vessels twice wrote to me requesting permission to survey for the BLM's desired easement across the private lands of the High Island Ranch. I unequivocally declined to allow the survey. However, Vessels disregarded my clear instructions; and, orchestrated a survey anyway without my permission; then, later bragged to me that I could not stop the BLM.

A policy was also developed by the BLM whereby the terms and conditions of the High Island Ranch Allotment Management Plan (AMP) were not followed in good faith. Although the High Island Ranch AMP, signed by both the BLM and my predecessor-in-interest, included significant opportunities for flexibility for my cattle operation, the BLM refused numerous requests for flexibility. Additionally, a BLM employee, Teryl Shryack, made handwritten changes to the AMP without my knowledge; and, then tried to apply those changes to me.

The BLM also prohibited me from maintaining a portion of the Rock Creek Road located on BLM land that was necessary for me to access parts of the private property of the Ranch. Eventually, the BLM canceled my access rights across BM land to my private property.

Under Vessels' direction, the BLM also made trouble for me with my neighbors. In one instance, a BLM officer urged neighbor Pennoyer to file a criminal complaint with the Sheriff against me although the Sheriff did not follow up on the claim of my neighbor. In another instance, BLM employee Leone provided an incident between Mrs. Pennoyer and I whereby Mrs. Pennoyer drove a motor vehicle into and struck me and the horse on which I was riding.

Vessels also charged me with repeated livestock trespass prosecution; 27 in all. In these prosecutions, the BLM asserted that my cattle were in trespass even though the livestock were located on my unfenced private property. These prosecutions were brought under the theory that the High Island Ranch cattle allegedly could *"access"* the adjoining unfenced public lands. This legal theory has been rejected by the court. However, I had to appeal each and every one of the decisions individually to try to keep my grazing permit.

Although I was willing to grant to the BLM the right to cross my private land to get to BLM land for lawful purposes, the BLM wanted the complete and unconstrained right to trespass on my private property. Because BLM wanted this complete access, they took an easement which allowed the BLM to maintain a 276-foot strip of fencing on a remote corner of a parcel owned by me; and, tried to argue it gave the agency complete and unrestrained access. Using this Fence Easement, BLM employees Shryack and Merrill went onto my private property. When I encountered the BLM trespassing and stopped them to ask what they were doing, Shryack and Merrill showed me the Fence Easement, claiming it allowed them to drive on my private property. In frustration, I tore up the copy of the Fence Easement and told Merrill and Shryack to turn around and leave, which they did without any protest. Several days later, after lying to me to get me to come to the BLM office, the BLM, through its law enforcement officers, notified me that I was being criminally charged with *"intentional interference with a BLM officer"* for telling Shryack and Merrill to leave my private property. Based on this criminal charge, a lengthy and expensive criminal jury trial was held in the Federal District Court for the District of Wyoming. However, after only 25 minutes of deliberation, the jury acquitted me of all charges, commenting that I could not have been railroaded any more unless I worked for the Union Pacific Railroad.

Due to the BLM employees egregious conduct I have suffered significant economic injury to my business both in terms of direct lost revenues for loss of my grazing use and my outfitting business and personal reputation. I am only running one-half of my cattle numbers I once did; and, I cannot operate any of my guest ranching business on the Federal lands. I also spent a significant amount of money on legal fees, individually appealing all of the decisions as well as defending myself at a 3-day criminal jury trial. The economic damage to both me and my family as well as to the local community is still present today.

Some BLM employees; and, based upon the press coverage, some of the public, believe that I deserved to lose much of my ranch simply because I would not give my private property to the Federal government. However, I have never had the chance to argue my case before a judge and jury.

Administratively appealing dozens of trespass decisions before an administrative law judge does not even begin to address the allegations that have been leveled against me. My Supreme Court case was not based upon the facts of the case; rather the question before the Court was simply whether I could even get to court. That is the question before this Congressional Committee. Win or lose, should private individuals and businesses have the chance to prove that they have been harassed, punished and bullied by Federal bureaucrats. There needs to be more accountability of Federal employees; and, opening the courthouse door is one way to provide for that accountability.

Prepared Statement of Tim Lowry, Jordan Valley, Oregon

I am Tim Lowry and with my wife, Rosa; and, parents Bill and Nita Lowry; ranch in the Pleasant Valley community of Owyhee County, Idaho. The future of this rural, family ranching community is in jeopardy due to Federal government actions, policies and direction.

On June 6, 1994, a public hearing was held in Boise, Idaho on Secretary of the Interior Bruce Babbitt's proposed Rangeland Reform 1994 regulations. In preparation for the hearing, the Natural Resources Committee of Owyhee County carefully studied the proposed regulations and identified the areas that were problematic. In order to get all the points into the hearing record given the short amount of time allowed for testimony, the testimony was divided between over 30 individuals. This strategy worked well except for the fact that three of those testifying were WWII veterans, brothers Don and Gene Davis and my father, who were struck by the sad irony that the hearing on regulations that would undermine their rights was being held on the 50th anniversary of D-Day.

These veterans used their allotted time to very movingly explain how 50 years ago from that date they never dreamt a time would come when the greatest threat to their rights would be coming from their own government. I will never forget Gene Davis of Bruneau, Idaho, who, with tears running down his face, recounted the names of his Army friends who had died around him on the beach that morning to preserve our rights and liberties.

It is with that thought in mind that I would like to thank the Committee for holding this hearing. I appreciate the fact that you, who represent us, are concerned with abuse of power. The issue of preserving and protecting the individual rights and freedoms of the citizens of the United States is not a partisan issue; but, one that is vitally important to us all.

There are several examples of abuse by the BLM that could be the topic of my testimony. I shall relate one of them before detailing my main topic of the attempt of the Federal Government to usurp State law; and, steal a private property right; namely, stockwater rights.

In 1984, our family purchased a ranch with a grazing preference right that lay partially within the newly designated North Fork Wilderness Study Area. This allotment is a common-use allotment shared with two other permittees; the Stanfords and the Andersons.

Approximately one (1) month after purchasing the ranch, a BLM employee told me, off the record, that he wished he had known we were purchasing the ranch so that he could have warned us not to because the grazing allotment in the WSA was targeted in the Boise District BLM Office to *"have its head cutoff"*. I assured him that I was confident that working together we could solve any issues relating to grazing in the WSA.

I was wrong. When some resource concerns were identified by the BLM, we worked with a range consultant to devise a grazing rotation system that would address the resource concerns; and, also be economically feasible. In order to implement the system, approximately three (3) miles of fence needed to be constructed with a little more than a mile of it in the WSA.

The BLM refused to agree to the fence, citing the WSA as the reason, despite the fact that the interim Management Policy for the WSA and the Wilderness Act allowed for such improvements. The BLM's solution for the perceived resource issues was to drastically reduce grazing.

After a couple of years of meetings and on-the-ground tours with the permittees, range management experts, Congressional staff personnel and conservation group representatives, the BLM issued a decision

to build the fence. However, the decision to allow us to build the fence contained provisions designed to ensure that the fence would never happen.

The national BLM director had issued a directive that any range improvements in a WSA had to be completed by September 30, 1992, when Congress was expected to act on designating wilderness. The Idaho State Director issued an order that improvements in WSAs in Idaho must be completed by September 30, 1991, in order to ensure that the national directive be met. We received word of the decision allowing us to build the fence the afternoon of September 26, 1991. We were told that the fence had to be completely finished by midnight September 30, 1991; including the portion not in the WSA. We were also emphatically informed that if the fence was not completely finished, then the entire fence had to be removed. For three (3) men and their wives to build approximately three (3) miles of fence in three (3) days was an impossible task in such rough country; and, not being able to use motorized vehicles in the WSA portion made it even more impossible. However, neighbors heard of our plight and came from miles away to assist. With the generous help of thirty-two (32) caring neighbors, the fence was completed by $4:00_{PM}$ Sunday, September 30, 1991.

On Monday morning, October 1, 1991, a BLM employee telephoned Jeannie Stanford and told her to tell her husband, Mike, and me that we had to stop working on the fence. Jeannie informed him that the fence was completed; and, that Mike and I were simply gathering up the excess material from the fence line. Jeannie recounted to us that there was a long pause; and, then he told her to tell us that we could not install the cattle guard because it was considered part of the fence. When Jeannie explained to him again that the fence was done, including the cattle guard, another long pause ensued; and, then he said he had to tell his supervisor; and, hung up.

The rotational grazing system was utilized during the 1992 grazing season and, monitoring indicated that it was working to meet the resource objectives. However, in 1992 the BLM settled an environmental group's appeal of the fencing decision by agreeing to remove the fence. The fence was removed by the BLM in the fall of 1992, after only one (1) season's use. Incidentally, Jeannie took pictures of the tire tracks the BLM made in the WSA; and, of materials they left scattered in it after the fence was removed; illustrating that two (2) sets of rules must apply regarding what is allowable in a WSA. Our grazing season was subsequently reduced from 3-1/2 months to one (1) month; and, our AUMs from 666 to 244. The Stanfords and Andersons suffered AUM reductions of the same ratio. Because sound scientifically recognized management tools were denied us, our ranch is greatly devalued; and, our ability to make a living is a huge challenge.

It was only a few years after receiving this body blow, that the Federal government forced us into court; and, massive debt in an attempt to steal our stockwater rights. The United States objected to our stockwater rights claims that were filed pursuant to the Snake River Basin Adjudication and filed its own stockwater rights claims to the same water.

Before this case was to be heard, the Judge scheduled a settlement meeting between the United States and us to see if the case could be settled without a trial. At that meeting, which was attended by Justice Department attorneys, BLM personnel and me, the United States insisted that only the United States could hold a water right on federal land; and, that we must withdraw our claim. I knew that the United States' position was contrary to the Idaho Constitution, Idaho Law, Federal Law and court decisions; and, refused to abandon our vested rights.

When the United States became convinced that we were not going to capitulate, I was told by the United States that we would need to retain an attorney. I was further informed that the United States would pursue the case to the Supreme Court if necessary; that it would become extremely expensive for us; and, that we would be wise to consider if the cost would be worth the effort. Knowing that the United States'

arguments lacked any basis in law; and, not willing to give in to the veiled threat of financial ruin, we embarked on a litigation journey that spanned ten (10) years. Of all the ranchers who filed for their stockwater rights when the adjudication began, only one (1) other rancher, Paul Nettleton of Joyce Livestock, continued through to the end. The others settled with the United States rather than risk incurring a huge debt; and, losing their ranch.

Despite the fact that the legal theories raised by the United States were contrary to the established law; and, were rejected by the courts at each step, the United States continued to appeal each loss all the way to the Idaho Supreme Court. The Supreme Court upheld the District Court; and, ruled that the United States could not hold a stockwater right because it was not the entity putting the water to beneficial use. It further ruled that stockwater rights belonged to the grazers who put the water to beneficial use; and, that the water rights were an appurtenance of the permittee's base property. All of the assertions of riparian rights and other contentions of the United States were utterly dismissed by the Court.

With appeals and delays obtained by the United States, they managed to extend the litigation ten (10) years; and, saddle us with attorney fees in excess of $800,000. Paul Nettleton owes a similar amount. I am convinced that those responsible for pursuing the position that the United States took were intelligent people who were not simply mistaken; but, were deliberately attempting to overturn Western water law; and, were sending a message to other claimants that challenging the United States is a costly endeavor. They had to know that water rights are created under State law and confirmed by Federal law, including the Mining Act of 1866, Act of 1870, Desert Land Act of 1877, Taylor Grazing Act and the Federal Land Policy Management Act. They also had to be aware that courts have consistently held that water rights may be appropriated on Federal lands by private parties; and, that these rights once acquired, will be afforded all protection. In spite of the clear and unambiguous policies enacted by Congress and the consistent recognition of those policies by the courts, they pursued their illegitimate theories ignoring Congressional policy and Supreme Court decision.

During the ten- (10) year litigation ordeal we were worried about the escalating attorney fees that we could not afford; but, we were certain that at a successful conclusion, attorney fees would be awarded under the Equal Access to Justice Act. Unfortunately, the Idaho Supreme Court determined that as a State court, it lacked jurisdiction to apply the EAJA to this case; and, rejected our EAJA claims. They reached this decision despite the fact that the Nevada Supreme court, in a similar type of case, awarded attorney fees to the prevailing private party litigant, holding that *"it would be an injustice to deprive a prevailing party of attorney fees and costs merely because that party chose to litigate in a State court, as specifically authorized by Federal statute."*

The EAJA clearly provides at 28 USC §2412(b) that *"any court having jurisdiction of such action"* may award attorney fees and expenses to the prevailing party against the United States. The McCarran Amendment gave jurisdiction to State courts over the United States in water rights adjudications. Therefore, State courts are the *"any court having jurisdiction"*; and, thereby should have authorization to award attorney fees under the EAJA.

Because we believed that the Idaho Supreme Court erred in its decision regarding awarding attorney fees, we filed an appeal of that portion of the Supreme Court of Idaho's decision with the Supreme Court of the United States. We had hoped that the United States Supreme Court would take the case in order to resolve the conflicting opinions of the Idaho Supreme Court and the Nevada Supreme Court. Unfortunately, they did not take the case, leaving the conflicting opinions intact.

Congress needs to amend the EAJA to clarify that State courts having jurisdiction over the United States in an action are included in the definition of courts in the EAJA. Failure to do so will act as a deterrent to private parties trying to protect their rights against unwarranted and unjustifiable litigation and actions

initiated by the Federal government. The EAJA was designed to protect the rights of individual and small businesses in litigation against the United States by leveling the playing field given the extreme disproportionate resources at the disposal of the United States.

Many other instances of abuse could be cited which have led to the present time where a scenario is unfolding in the Owyhee Resource Area on the Boise BLM District that threatens the viability of the family ranches, the economy of Owyhee County and circumvents provisions of the Owyhee Initiative Agreement which led to designation of wilderness and wild and scenic rivers in Owyhee County. The BLM is under a court order to complete the Environmental Impact Statements on a large number of allotments for the permit renewals by the end of 2013. Although the BLM has known this for several years, they are now at this late date rushing through the process.

This does not allow time for meaningful consultation, cooperation and coordination with the affected permittees as required. With time rapidly running out, it is questionable if the majority of the decisions will be issued in time for comments, protests and appeals before the end of 2013. Permittees are wondering how their due process rights are going to be affected. By bunching up all these decisions and issuing them at the last minute, the BLM will effectively negate the science review process of the Owyhee Initiative Agreement which was the foundation for an agreement to designate wilderness and wild and scenic rivers in Owyhee County. There will simply not be enough time or personnel available to perform a science review of all the decisions.

I want to again thank the committee for holding this hearing. If family ranches are to remain intact, a functioning un-fragmented landscape maintained, the economy of Owyhee County protected and access for recreationalists preserved, this broken, dysfunctional land management must be fixed. More importantly, we all have a sacred obligation to not let the sacrifices of Gene Davis' fallen friends be in vain. We must not allow the rights and freedoms they died for to be lost through bureaucratic tyranny.

Prepared Statement of Brenda Richards, Murphy, Idaho

I am Brenda Richards; and, I am here today in my capacity as the Owyhee County Treasurer, representing Owyhee County, Idaho. I have served in this elected position for the past eight and a half (8-1/2) years. In addition to serving as the Owyhee County Treasurer, my husband, Tony and I ranch in Owyhee County. My extensive experience in natural resource issues, along with my accounting background lend well to my position as treasurer in a county that largely depends on the ranching community for its economic backbone.

Owyhee County is Idaho's oldest county; and, was established and settled, as many places in the Western United States were, around its natural resources. In our county those two (2) draws were mining of gold and silver; and, grass for cattle and sheep grazing. The gold and silver are not nearly as abundant as they once were; the renewable natural resource of grass continues to help sustain the county. Owyhee County is the 2nd largest county in the State of Idaho, covering 7,639 square miles, or 4.9 million acres. Yet, the population of approximately 11,000 in the entire county averages out to 1.2 people per square mile. Owyhee County is seventy-seven percent (77%) public lands; six percent (6%) State lands; leaving a mere seventeen percent (17%) privately-owned lands. That seventeen percent (17%) is the tax base of the entire county. Owyhee County does receive Payment in Lieu of Taxes (PILT) for the public lands in our county; but, every year the county has to wait to see what will actually be allowed for that payment though we certainly feel it is the Federal government's duty to paying the property tax owed to the county as those acres cannot be developed or taxed in any other way.

Of the 4.9 million acres in the county, approximately 191,700, or about four percent (4%) are agriculture with just a bit over 4.5 million acres in rangeland; and, of that, approximately 3.7 million of those rangeland acres are Federal lands. With the numbers just given, you can see that a very small amount of the land in our vast county serves as the private, taxable base; yet, this privately-owned tax base is largely dependent upon the Federal lands for rangeland grazing accompanying their private lands through the BLM permits. In addition, the communities in this county are rural and small; and, whatever decisions are made for the public lands have effects on those communities.

Over the past twenty (20) years in this county, there is one thing that has become very apparent. Threats, bullying and intimidation do not always present themselves in obvious ways or methods; but, that does not make them any less damaging; any less wrong; nor does it have any less impact. As a matter of fact, these quieter, *"behind-the-scenes"* forms of threatening, bullying or intimidating often have huge impacts and significant damages over a longer period of time. I would like to share with you a few examples of the Bureau of Land Management actions that can certainly be seen as threats and intimidation to Owyhee County and the residents that live here.

No matter that the tax base in the county may be only seventeen percent (17%), those taxpayers and the county are responsible for providing services within the county; some are mandated by either Federal or State laws; and, some are elected county services. Many of those services, such as road maintenance, law enforcement, safety matters and search and rescue are provided to all; whether you live in the county, are visiting the county's vast area or are just passing through. With Owyhee County's close proximity, being not much more than an hour away from the Treasure Valley, with its larger urban population, there are many visitors each day that come across the Snake River to enjoy the vast expanses that surround our rural; and, some very remote communities. Owyhee County offers diverse recreational experiences from motorized to non-motorized, hunting, fishing and sight-seeing; wilderness experiences, white water rafting at the right time of the year and a host of other activities. Many of these activities are on public lands; but, much of it is either accessed by going through, around or across the small amounts of private ground. Almost any BLM decision that is made has an effect in some fashion on the county's well-being; and, that of its rural communities due to the large amount of Federal land around each of these

communities. Often the cost of these decisions, both financially; and, to the health of the natural resources, are not fully vetted; leaving that expense on the local taxpayer's budget.

Once such decision we have recently been dealing with in Owyhee County is the Gateway West Transmission Line. The county residents; and, those of us serving as their elected officials, have attended hundreds of hours of public meetings, written pages and pages of comments; and, found ways we thought could be used to compromise to a solution. The player in this game that we have found to be playing by their own set of rules; and, truly that is a form of bullying when you are aware you can get away with it, is the Bureau of Land Management. Early on in this process, it was agreed the lines were to come across the public land, leaving as much private ground as possible alone as necessary power lines were to be brought in.. Remember the ratio of private acres to public in Owyhee County. This was agreed to by the power company, the diverse interest groups attending these meetings such as conservation and recreational groups, the county elected officials and the residents. After all this was agreed to over months and months of meetings; some of them even held in Ontario, Oregon, that people attended; and, all of them documented with minutes, the Washington BLM office, in one person's decision, negated all that time, money and effort by putting the line right across much of the limited private ground in our county. This is one example of costs to the county in attending and participating in the government's dog and pony shows of public meetings for months and months; resources and time spent to have maps made of the outcome of those meetings' proposed routes; legal advice on the matter; time invested, only to have that thrown back in the face; and, have the line put where they wanted it anyway. This cost comes down to the county and the taxpayers here in more than one way. The initial investments of time, money and sincere participation in a process to come up with a viable solution with the other *"players"* in this process, most who do not even live in the county; but, have conservation, recreational or special interest in the area, is the first cost; the second is the cost to the county and the land owners as their property is devalued due to huge transmission lines being placed across their land; and, last, this cost goes out to those land owners who have not had the decision directly affect them; but, will feel the indirect impact of tax increases as the same costs of services are required to be met within the county; but, the tax base of some property has decreased leaving that hole to be filled by those properties whose value held, to absorb the increase that will be required in the county tax levy rate. Does this not pose a direct threat to the county through a process that surely can be viewed as intimidation?

Ranching has long played a role in Owyhee County; and, continues to do so today. Since the early 1990s, the challenges from the Bureau of Land Management; and, their decisions or lack thereof, have had significant impact on the county government and the residents within the county. These impacts have been financially, emotionally and on the ground. Probably the longest running threat and intimidation within Owyhee County has been that which has come from the BLM neglecting to fulfill their obligations of renewing permits; neglecting to gather necessary information in a consistent, accurate and timely manner as outlined in their own guides; not involving the permittees as is required by those same rules and regulations; and, the results of all of this is the permittees and the county then end up in court battling on the same side as the BLM to defend their rights, permits and livelihood. This is at the expenses of the county and the permittee, as the BLM has the Federal government to cover their attorney costs and time; which means it costs all taxpayers and those in our county twice.

Prior to 1997, the BLM failed to complete the permit renewal work that is necessary to keep ten- (10) year grazing permits current; and, as stated before, public land ranching is the backbone of this vast county that is seventy-seven percent (77%) Federal Land. Grazing continued for over half of the permits by annual authorizations since the permits had been allowed to expire by the BLM. The 1995 changes to the BLM grazing regulations required a valid grazing permit. The lack of action by the agency have direct effects on the economic base; and, also on costs of litigation to challenge these decisions in order to graze on public lands; so, this immediately put the permittees out of compliance due to BLM lack of doing their

job; and, brought radical environmental groups to file suits. The lack of action by the BLM had; and, is still having direct effects on the economic base of the county and the land owners here as the costs of litigation to challenge these decisions continue to be paid. The threat to the economic viability of the county; and, the threat to the land owner and permit owner cannot be ignored as this is the backbone of the county. Legal counsel and consulting to protect themselves and their interest can cost an individual hundreds of thousands of dollars; but, the cost of losing is even higher to them and the county, not to mention, it is a property right. Costs to defend several of these cases already have come in with $100,000 for one allotment to reach a permit renewal; and, two others at $55,000 currently where they are not even half way though defending themselves to get to the end result of the permit being renewed.

As I have mentioned several times, the economic backbone of Owyhee County and the rural communities, is largely dependent on the ranching industry; and, grazing on public lands. The beef industry in Owyhee County accounts for approximately 19,760,000 pounds of edible meat per year; which is enough to feed 300,000 people; or the entire population of our county plus the population in the State capital city of Boise. The total number of acres these ranches occupy is just over 435,000; and, the approximate assessed value for the county is $28,815,299. Please realize this is the assessed value for county tax purposes; not what the land could be sold for if it were to be parceled out and developed; yet, much of this private land is remote; and, assures unfragmented habitat and water sources for many forms of wildlife. Many of these ranches are located in small, very rural communities throughout the county that have schools and smaller businesses depending on their success to keep those communities healthy and vibrant. Because of that; and, because of the continued unpredictability; and, up and down relationship the county has had with the Bureau of Land Management; the county developed a county land use plan in the early 1990s in an effort to address matters relating to State and Federal lands; and, to help protect their interests and assure input in decisions. The plan is reviewed regularly and updated; with the most recent update to this plan having been in 2009; and, reviews are more regular.

The county also has signed a Coordination Agreement with the Bureau of Land Management that dates back more than fifteen (15) years. This agreement was also established to help assure that the county; which in turn represents the residents; is included and involved in decisions that the BLM makes. As the largest land owner in Owyhee County, these decisions often have significant impacts or effects on or within the county, which in turn can also affect the economic stability and well-being of the county; and, have effect on the livelihood of the residents. Over the years in which the Coordination Agreement has been in effect, the Owyhee County Commissioners have spent a tremendous amount of time reminding the BLM of their obligation to coordinate; reinforced by the signed coordination agreement. In the past three (3) years alone, over twenty-five (25) letters were addressed to the BLM by the commissioners on matters and decisions that have directly affected the county. Many of the letters have been written when the BLM either intentionally or due to lack of management's attention or new management, ignores the coordination process. The number of times this happens could certainly be seen; not only as a veiled threat to the county in that the BLM does not feel they have to comply; but, also comes across as a form of intimidation trying to get the county to back off of expecting them to follow the law and requirements of including them in decisions and planning processes.

Both of these have taken much time, resource and dedication by the elected officials; those participating in the public meetings to develop these; and, then keep them updated and reviewed; and, the different groups, agencies and others that use these in their decision making process within Owyhee County. The one agency that has given the county the most problem with these aspects is, again, the BLM.

Every one of these examples given has either direct or indirect impact to the county financially. The cost to our county residents on grazing decisions is astronomical; and, the county has often weighed in over the years with their own financial contribution to the litigation because it is a vital component of the

economic stability within the county. The economic stability of the county is first and foremost in my mind and duty as county treasurer; as it is with the commissioners. The costs to both the individuals and the county have effects on those communities as to dollars that could be spent on schools, business or other areas; but, instead has to go to threats and litigation caused by BLM decisions or lack thereof. The permit renewal process continues here in the county under a court ordered mandate now. That mandate came down in 2008; yet, the BLM did not start on the 125 out of 150 permits included in that order until 2012; and, the deadline is December 31, 2013. If that deadline is not met, the court stated the BLM will be held in contempt. Even though the process was not started in a timely matter, the ones paying the ultimate price, both financially and in emotional duress, are the taxpayers. The documents the BLM is putting out to be reviewed and commented on; and, ultimately end up having to be challenged, are over 500 pages long; and, some of them are over 1,000. If that is not intimidating to a common person, I do not know what is. Yet, the county and our land owners will not take it lying down. We will stand up to the intimidation, threats and bullying because we believe in our property rights; in doing what is right; and, have hope that justice for what is right will prevail. The cost to the county in tax dollars, time and stress is substantial; but, the people of Owyhee County prove to be resourceful, resilient and show the American grit that settled the West in the first place; and, continues to capture the trust and wonder of many people not only in the United States; but, across the world. We only hope that by presenting some of these aspects we have had to fight for years to continue to remain viable, productive and responsible citizens in our county that we love, that the very laws and Federal agencies threatening our existence may be changed to protect those rights and to not allow things to be done in bullying, threatening or intimidating ways; but, in ways that you can hold your head up and be proud and successful in supporting.

Thank you for the opportunity to share this testimony with your subcommittee; and, I would stand for any questions.

Prepared Statement of Lorenzo Valdez, Fairview, New Mexico

Committee Chair Representative Hastings, Subcommittee Chair Bishop and all the Members of this Committee; I want to thank the Committee for this opportunity to present testimony on a very serious matter that will take Congressional and Presidential action to remedy. The management of the National Forests and Grasslands falls on shoulders of the staff of the United States Forest Service, who have the very important charge of keeping our public lands productive. The ecosystems services produced by those lands meet the needs of life in a concentric circle or connectivity; the closer you are to the land, the more dependent you are on the land. Human needs or services are generally grouped into three (3) categories: economic, social and cultural. We all understand that the ability of the ecosystem to deliver services depends on the well-being of the whole, including all dependent species, humans included. There is no time in human existence when we have not managed the landscape to serve our needs; some critters do that also to a lesser extent. It has evolved into a very complex management task worldwide with important decisions to be made.

Regardless of what stressors you believe or agree with, there is no doubt that to have those services in the future, we have to protect them now. And, there lies the dilemma; power dictates management; and, the constructs that emerge in the discourse affiliate closely with power emerge as specific actions on the ground. Power differentials in the United States are supposed to be tempered by Justice, a responsibility borne by all branches of our government.

I was asked to come here today to tell a story of how unjust acts in managing Forest lands push people closest to the landscape off of it; and, create scenarios that are replete with what the esteemed Economist and Nobel Laureate, Dr. Ronald Coase termed *"negative externalities"*. *"Mr. Coase's revolutionary insight was that you and I have a shared interest in minimizing the total harm suffered." "The Problem of Social Cost"*, Ronald Coase; *"A Pragmatic Voice for Government's Role"*, Robert H. frank. Victimizing folks or creating unmanaged casualties is not an efficient option. That process is inefficient. The government has a responsibility to mitigate the *"negative externalities"* to a Federal action. On the ethical or moral plane, I turn to Pope John XXIII's Encyclical for Pacem in Terris, Establishing Universal Peace in Truth, Justice, Charity and Liberty:

> *"When one reflects that it is quite impossible for political leaders to lay aside their natural dignity while acting in their country's name and in its interests, they are still bound by the natural law, which is the rule that governs all moral conduct; and, they have no authority to depart from its slightest precepts."*

My livestock graze on lands in the Santa Fe National Forest, Coyote Ranger District which was titled originally as a Spanish Land Grant to Juan Bautista Valdez in 1807. I do not like the term *"Permittee"* when referring to indigenous Northern New Mexico Forest users. We were denied U.S. Title by the Court of Private Land Claims. My family has been in the Jemez Mountains for thousands of years; I am descended from southwest tribal ancestors as are most Northern New Mexico Villager commonly called Hispanic; but, most scholars refer to the group as Indio-Hispano. On the colonial side we have been grazing cattle since 1590; we are the 1st herders on U.S. soil. We brought three thousand- (3,000) year-old- grazing culture to the new world. I run twenty (20) pair and a bull, on an allotment that includes fifteen (15) relatives; some of them are near full blood Native American. Together we run seven hundred, fifty (750) pair and twenty (20) bulls. These historical and social elements also apply to the folks that are the focus of this tragic narrative. I agreed to bring their message to you because they couldn't be here. It is however my story as well, I was intimately involved with these folks as Rio Arriba County Manager. The message is that the *"government"* has a duty to hold its managers accountable, just like I was as County Manager. All the constitutional protections should be available to those on public lands, including

the courts as appropriate. There are many good managers in the Forest Service ranks. We have such managers *"this year"* on the district I'm in. They carried us through to rainfall this year. And, they could have done what was done in this story. I have supplied for the record a research document by Dr. David Correa that provides a more painful look at the history of the Vallecitos lands that are at the basis of this story.

Jarita Mesa and Alamosa Grazing Association Ranchers

The Jarita Mesa and Alamosa Grazing Associations' members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments; both of which lie within the El Rito Ranger District of the Carson National Forest. The two (2) allotments also are part of the Vallecitos Federal Sustained Yield Unit (*"Unit"*), an area of the Carson National Forest designated by an act of Congress for special treatment because of its mix of intermingled private and Federal lands; and, its particularized use, dating back to before the Guadalupe-Hidalgo Treaty between Mexico and the United States. The ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Associations have been grazing livestock on these lands for generations; and, in fact, most of these families were grazing stock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating in the 1940s, the Forest Service instituted *"management"* practices that were calculated to; and, did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in their areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock; and, were dependent on the availability of their former common lands, i.e., common lands designated by the King of Spain or Mexico prior to the creation of the National Forest, for survival.

Over the past seven (7) or eight (8) years, the permittees and grazing associations in the Jarita Mesa and Alamosa Allotments have repeatedly exercised their 1st Amendment rights to petition their Congressional delegation and other elected officials for the purpose of protesting what they believe have been unlawful actions by Forest Service Officials that have served to destabilize and degrade the private property rights and cultural and social fabric of the communities where these ranchers reside. The lawful conduct of the ranchers has been met by punitive acts by Forest Service officials, particularly Forest Service District Ranger Diana Trujillo, including the reduction of their grazing permits. These ranchers believe that they can prove that many of the decisions by the Forest Service District Ranger were motivated by a desire to punish them for engaging in speech critical of Forest Service practices; and, by racial animus; and, a bias against traditional Hispanic culture and its traditional agro-pastoral way of life.[1] Based upon such animus, the Forest Service has made it nearly impossible for these ranchers to sustain their grazing permits which results not only in a loss of their private property; but, in the slow destruction of their cultural fabric.

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[1] This bias has subtly existed against this land use; and, the relationship of these ranchers to the land for many years. For example, in 1935, Roger Morris, a Forest Service grazing assistant, issued a report concerning grazing issues entitled *"A Dependency Study of Northern New Mexico"*, wherein it was stated that:

> *"*[Hispanos] *are sedentary in character living in the present; and, with no thought for the future. They accept conditions as they are; and, make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extincton by starvation and disease before they would migrate."*

For example, the Forest Service understands that wild horses are eliminating forage and damaging the soil; and, that any significant increase in the size of the wild horse herds in this area could significantly impact the local Hispanic communities in an adverse manner because it eliminates forage needed for the permitted cattle. Despite this knowledge and the existence of the Forest Service Region 3 Policy, the District Ranger decided to increase the wild horse herd beyond the numbers authorized in its 1982 Management Plan from the twelve to fourteen (12-14) head to between twenty and seventy (20-70) head. However, the Forest Service 2002 Decision Notice expressly provided for measures to be taken to reduce the herd if it ever exceeded that number, recognizing that allowing the wild horse herd to increase to even one hundred, twenty (120) head *"may cause some permittees to be forced out of the livestock business by competition for forage from the wild horses."* However, in disregard for the needs of these local ranchers who live within the Vallecitos Federal sustained Yield Unit, the Forest Service has now allowed the wild horse herd to increase far beyond the number permittee by the forest Service's 2002 decision. In fact, Forest Range Trujillo has chosen to allow the wild horse herd to grow to over one hundred, fifty (150) head, rather than attempt to alleviate this problem so as to be responsive to the needs of the Hispanic people in the area.

To deal with these problems, the rancher sought the assistance of then-U.S. Senator Pete Dominici in May 2006. Senator Dominici took up the issue with one of Ranger Trujillo's supervisors. Upset with ranchers for their having exercised their right to petition the government for redress of grievances, on July 5, 2006, Ranger Trujillo issued a decision ordering all cattle removed from the Jarita Mesa Allotment by July 31, 2006. Her decision was purportedly based on a reported June 22, 2006 inspection of range conditions that found the ocular estimate of forage stubble height was less than one to two inches (1"-2") at each of the key areas visited by Forest Service. On July 20, 2006, ranchers Sebedeo Chacon, Gabriel Aldaz and others appealed Ranger Trujillo's decision based upon the significant rains since June 22, 2006, which greatly improved conditions on the range. In light of these changed circumstances, the ranchers implored the Forest Service to recognize that there was no justification for forcing them to go through the significant economic harm that would accrue as a result of having to remove all their cattle prior to the end of the permitted grazing season in October, 2006. Ranger Trujillo refused; but, after Congressional inquiry, was forced to reverse her position.

Ranger Trujillo then tried to force an end to the grazing season in September 2006, instead of on October 31, 2006, based on an allegation that the permittees had failed to meet certain conditions she had imposed. At the end of the grazing season, rancher Chacon was having difficulty locating a small number of cattle that had strayed in the forest. This is a common problem; and, is due, in part, to the number of hunters and wood haulers who come onto the allotments and leave gates open; and, the fact that these allotments cover thousands of acres in the mountains. According to Ranger Trujillo, on October 5, Mr. Chacon had seventeen (17) cows that needed to be located and removed. On October 6, 2006, only four (4) days after her arbitrarily imposed removal *"deadline"*, Ranger Trujillo issued a decision suspending twenty percent (20%) of Mr. Chacon's authorized grazing for two (2) years, a decision which had a profound economic impact on Mr. Chacon and his family, costing him tens of thousands of dollars. Mr. Chacon believes that he was singled out for disparately harsh punishment by Ranger Trujillo because she perceived him, correctly, as a leader of the permittees in the area due to the letters he had written to government officials protesting Ranger Trujillo's conduct.

On June 1, 2009, Mr. Chacon and Thomas Griego responded to Ranger Trujillo with a letter signed by 26 permittees which criticized her poor management style and her mismanagement of the two (2) allotments. The letter was also sent to the New Mexico Congressional Delegation, Governor Richardson and Ranger Trujillo's immediate supervisor, Kendall Clark. In the letter, the ranchers' stated that they were insulted by Ranger Trujillo's past letters and accused her of attempting to intimidate them. The ranchers pointed to Ranger Trujillo's unsuccessful effort to force them to remove their cattle from the allotments during

July 2006. The ranchers also alleged that Ranger Trujillo and her staff had continually failed to install needed cattle guards or to fix plugged ones; and, that Ranger Trujillo then used the fact that cattle would drift from one allotment to another, as a basis to threaten and/or sanction the permittees.

According to the ranchers, in retaliation for these letters, in 2010, District Ranger Trujillo made a decision to reduce the ranchers' use of their allotments by eighteen percent (18%); a decision that ignored the scientific analysis in a Forest Service Environmental Assessment (*"EA"*) that such a reduction was not necessary. Despite the fact that it was a well-established practice and policy of the District Rangers in the different ranger districts within the Carson and Santa Fe National Forests (as well as in other Forests) to adopt the Proposed Action in the EA (the proposed action would have maintained the status quo with regard to permitted use), Ranger Trujillo disregarded the analysis contained in the EA; and, making good on her predetermined decision to punish the ranchers by seeking an alternative calling for a substantial reduction in grazing. The decision of the Forest Service's Interdisciplinary Team contained in the EA did not support the action of Ranger Trujillo. However, Ranger Trujillo was angry with and determined to retaliate against Plaintiffs for having the temerity to point out her errors and criticize her mismanagement of the two (2) allotments and the entire Sustained Yield Unit.[2]

Although the ranchers had availed themselves of all known administrative and other remedies, on January 20, 2012, they filed a case in the Federal District Court for the District of New Mexico alleging, among other things, that they were being singled out through harassment and intimidation by Ranger Trujillo under color of law in retaliation for the ranchers' exercise of their 1st Amendment right of free speech and the right to petition the government for a redress of grievance. The Federal District Court, in a 115-page ruling on January 24, 2011, found that the ranchers had pled sufficient facts to show a possible retaliatory motive against them. However, citing to Wilkie v. Robbins, 551 U.S. 537, 500, the court held that the ranchers could not sustain a Bivens cause of action against Ranger Trujillo personally for damages sustained due to her acts of intimidation and harassment allegedly undertaken in retaliation for the ranchers' exercise of rights guaranteed to them by the 1st and 5th Amendment guaranteed rights. See: Jarita Mesa Livestock Grazing Association, et al v. United States Forest Service, et al., Civ. No. 12-69-JB (Memorandum Opinion and Order, Docket 49, filed January 24, 2018). In essence, this meant that the district ranger remains free to engage in further acts of retaliation; and, the ranchers have no way of deterring her unconstitutional conduct.

[2] In order to create the appearance that her decision was based on science rather than an arbitrary determination to punish Plaintiffs for having engaged in conduct protected by the 1st Amendment, Ranger Trujillo falsely stated that the Forest Service had determined the current level of permitted livestock to be *"unsustainable"*. In fact, the EA had not concluded that the current level of livestock grazing was unsustainable; but, had proposed that grazing continue at current numbers under Alternative 2. Furthermore, despite the fact that the 2002 Decision Notice on the wild horse herd required the Ranger to attempt to reduce the wild horse herd by taking certain measures set forth in that decision, Ranger Trujillo failed even to consider any alternative that would achieve the required reduction in the wild horse herd prior to reducing the number of Plaintiffs' livestock permits. Instead, Ranger Trujillo claimed the herd contained only seven (7) horses when 2010 Forest Service documents showed the herd was estimated to be over one hundred (100); and, as a 2011 Forest Service survey showed, was close to one hundred, fifty (150). Ranger Trujillo had to know that the herd had grown well beyond sixty-seven (67), figure from a 2008 estimate, because almost no horses had been removed in the two and a half (2-1/2) years since the study. In sum, although the EA proposed action was Alternative 2 (status quo) Ranger Trujillo selected Alternative 3.

Since 1978 the employs of these agencies have demonstrated a disregard for my families' property rights; and, have punished us for making an honest use and assertion of these rights. The reason I accepted the invitation to testify here today is that I believe that it is so important for Congress to be aware of the atrocities that are being committed against my family and countless other ranchers. It is worth the risk of retribution from the agency employees. I would not be surprised if the BLM, USFS and DOJ try to make my life difficult because I am testifying before this committee.

Many ranchers have a problem with the BLM and USFS. They have conducted themselves in a criminal manner and destroyed many ranchers. I personally have been at the receiving end of this criminal conduct. This problem, however, does not stop with the Hage family. The number of other ranchers that have suffered like my family is too numerous to count. I know many. In fact, you can talk to almost any rancher who has to deal with the BLM and USFS and hear about another incident where a federal employee has broken the law and was never held accountable. You will only once in a great while hear of minor punishment.

My family has spent over twenty-three (23) years in the court protecting our property and liberties from these Federal employees. During these twenty-three (23) years, we have had eight (8) published decisions and findings of Takings of our property by the Federal agencies and findings of Conspiracy by the Federal employees.

Three (3) courts have been witness to and addressed the Government threats, intimidation and bullying. The 9th Circuit Court of Appeals overturned a criminal conviction obtained by the SFS against my father for cleaning out brush from a ditch with hand tools.

The Federal Court of Claims trial Judge realized and found that it would have been futile for the Hage family to comply with all of the demands of the BLM and USFS employees. He thus ruled the Federal Government had taken our water rights as potential cost to the taxpayer of $14,000,000 for the criminal acts of employees of the BLM and USFS.

The Chief Judge of the Federal District Court of the District of Nevada was so shocked by their behavior that he had found and ruled that the Federal Government employees engaged in a conspiracy against the Hage family. He also was convinced that the employees of the BLM and USFS would not stop; and, therefore gave my family a permanent Injunction against the Federal Government. I pray that the 9th Circuit Court of Appeals does not overturn the Injunction, it is our only protection.

The employees of the agencies, namely Tom Seley of the BLM and Steve Williams of the USFS were also held in contempt of court for trying to seek their own remedy after they realized the court process was not going their way.

The bosses i.e., agency heads some from Washington, D.C., of Tom Seley of the BLM and Steve Williams of the USFS, testified in a Show Cause Hearing for their contempt that they expected Seley and Williams to conduct themselves in this manner that the court found contemptuous and which shocked the conscience of the court. This tells me the problem goes to the agency heads. The conduct, which the court saw as unlawful and vindictive was actually expected out of the Federal employees by the Agency heads.

The Federal District Court of the District of Nevada has referred the Tonopah BLM Field Manager and the Austin Forest Ranger to the U.S. Attorney's Office for the District of Nevada, for prosecution of the conspiracy against my family; but, then explained that there is a possible conflict of interest. The Court then suggested that a U.S. Attorney from another district handle the case. To this date I am not aware that

anything will be done to hold these employees accountable for this conspiracy. I also do not expect that the U.S. Attorney will ever hold these employees accountable for their actions. Thus they know they have enough protection from prosecution that they will not be deterred from acting this way in the future. It is for this reason and others that I believe I will be punished by employees of the BLM, USFS and DOJ for testifying before this committee. The dangerous part of this is that now the Federal employees will be braver than ever.

One of the main problems is that the employees of the USFS and BLM have the protection of the DOJ lawyers. They will go to great lengths to protect the employs of the USFS and BLM even to the extent of violating their ethics rules. One example: The USFS claimed that we needed a *"special use permit"* to maintain a July 6, 1866 Act ditch right of way with heavy equipment. The July 6, 1866 Act ditch right of way is a congressionally granted and recognized right of way that preexisted the USFS; and, did not have any requirements or limitations for obtaining any permission for its maintenance and use. The USFS however claimed we could not maintain our July 6, 1866 Act ditch right of way without first obtaining a *"special use permit"* from them; or we could only use hand tools. Even though we believe the USFS is incorrect in requiring us to obtain a *"special use permit"*, which supposedly they can deny, for any maintenance, we chose to only use hand tools to remove *"brush"* that was obstructing water flow in the ditch.

Nonetheless, the USFS prosecuted my father for cleaning this ditch. The prosecution was overturned by the 9th Circuit Court of Appeals.

However, the DOJ lawyer, Elizabeth Ann Peterson, in clear violation of the ethics rules; and, with no support of the record, represented to the Federal Circuit Court in the case Hage v. U.S. that my father was using *"heavy equipment"* and a dozer to clean this ditch. She argued that since we did not first seek a *"special use permit"* from the USFS and was not denied this permit that our case was not ripe. The Federal Circuit Court based its ruling on these misrepresentations of the facts; and, partially overturned the decision in Hage v. U.S. on the grounds that the case was not ripe because we did not first seek and get denied a *"special use permit"* from the USFS. Again, the USFS even argued that we did not need this *"special use permit"* if we only used hand tools; and, the facts are only hand tools were used. Thus one intentional lie from a DOJ lawyer cost my family immeasurable hardship.

I have included some excerpts from the case U.S. v. Wayne N. Hage, Executor of the Estate of E. Wayne Hage and Wayne N. Hage, individually. Case No. 2:07-cv-01154-RCJ-VCF. I find it best to read the Judge's own words on this matter.

In the present case, the Government's actions over the past two (2) decades shocks the conscience of the Court; and, the burden on the Government of taking a few minutes to realize that the reference to the UCC on the Estate's application was nonsensical; and, would not affect the terms of the permit was minuscule compared to the private interest affected. The risk of erroneous deprivation is great in such a case, because unless the Government analyzes such a note in the margin, it cannot know if the note would affect the terms of the permit such that the acceptance is in fact a counteroffer.

The government revoked the grazing permit of E. Wayne Hage despite his signature on a renewal application form because he had added a reference to the UCC to his signature indicating that he was not waiving any rights thereby. Based upon the declaration of E. Wayne Hage that he refused to waive his rights; a declaration that did not purport to change the substance of the grazing permit renewal for which he was applying; and, which had no plausible legal effect other than to superfluously assert non-waiver of rights; the government denied him a renewal grazing permit based upon its frankly nonsensical position that such an assertion of rights meant that the application had not been properly completed. After the BLM denied his renewal grazing permit for this reason by letter, the Hages indicated that they would take

the issue to court; and, they sued the Government in the CFC. The Government, having already denied the renewal grazing permit arbitrarily, then chose to interpret the initiation of the CFC Case as a refusal to appeal its administrative decision, despite the issuance of further protests by the Estate's attorneys. The Government refuses to consider any applications from Hage at this point. The entire chain of events is the result of the Government's arbitrary denial of the renewal permit of E. Wayne Hage for 1993-2003; and, the effects of this due process violation are continuing.

In 2007, unsatisfied with the outcome thus far in the CFC, the Government brought the present civil trespass action against Hage and the Estate. The government did not bring criminal misdemeanor trespass claims, perhaps because it believed it could not satisfy the burden of proof in a criminal trespass action, as a previous criminal action against E. Wayne Hage had been reversed by the Court of Appeals. During the course of the present trial, the Government has: (1) invited others, including Mr. Gary Snow, to apply for grazing permits on allotments where the Hages previously had permits, indicating that Mr. Snow could use water sources on such land in which Hage had water rights; or at least knowing that he would use such sources; (2) applied with the Nevada State Engineer for its own stock watering rights in waters on the land despite that fact that the Government owns no cattle nearby; and, has never intended to obtain any; but, rather for the purpose of obtaining right of 3rd parties other than Hage in order to interfere with the rights of Hage; and, (3) issued trespass notices and demands for payment against persons who had cattle pastured with Hage, despite having been notified by these persons; and, Hage himself that Hage was responsible for these cattle; and, even issuing such demands for payment to witnesses soon after they testified in this case.

By filing for a public water reserve, the Government in this case sought specifically to transfer to others water rights belonging to the Hages. The Government also explicitly solicited and granted temporary grazing rights to parties who had no preferences under the TGA, such as Mr. Snow, the areas where the Hages had preferences under the TGA. After the filing of this action, the Government sent trespass notices to people who leased or sold cattle to the Hages, notwithstanding the admitted and known control of the Hages over that cattle, in order to pressure other parties not to do business with the Hages; and, even to discourage or punish testimony in the present case. For this reason, the court has held certain government officials in contempt and referred the matter to the U.S. Attorney's Office. In summary, government officials; and, perhaps also Mr. Sow, entered into a literal, intentional conspiracy to deprive the Hages not only of their permits but also of their vested water rights. This behavior shocks the conscience of the Court and provides a sufficient basis for a finding of irreparable harm to support the injunction described at the end of this Order.

The Court will not award punitive damages under State law, because there is not *"clear and convincing"* evidence of *"oppression, fraud, or malice, express or implied"* on behalf of Defendants. See: Nev. Rev. Stat. Sec. 42.005(1). Defendants clearly had a good faith belief in their right to use the land as they did; and, had no intention to disregard the right of others. This does not prevent a trespass claim; but, it does prevent punitive damages.

Defendants are also entitled to an injunction, as outlined, infra. There is a great probability that the Government will continue to cite Defendants and potentially impound Defendants' cattle in the future in derogation of their water rights; and, those statutory privileges of which the Government has arbitrarily and vindictively stripped them.

It is further ordered that to the extent not inconsistent with this Order, the Court adopts Defendants' Proposed Findings of Fact and Conclusions of Law (ECF No. 392).

The conspiracy ruling was much more limited than what it could have been. Had we presented all of our evidence the court would still be trying to write its decision.

It is warming to know that with regard to the Courts that we still have the Rule of Law. Although, as I have found out, it is nearly impossible to defend a person's property and rights in the courts due to the financial burdens and the length of time involved. My Mother and Father filed the original case; and, were not able to live long enough to see the end of the litigation. My stepmother died before there was an end to the litigation; and, it is looking like my siblings and I may be in old age before this is concluded. However, it is becoming very apparent that there is no rule of law with regard to the employees of the BLM, USFS and perhaps the DOJ; there we have the rule of man. I remind Congress that Aristotle explained that the difference between a correct form of government and perverse form of government is that the former is the Rule of Law and the latter is the rule of man.

What solution may I offer?

The Citizens of this great country need to have the means to hold the employees of these agencies accountable for their actions. I believe that only if they are held accountable, will they stop the threats, intimidation and bullying. To accomplish this, we need at least two (2) things from Congress:

1. We need harsh penalties to be placed upon the employees who break the law and violate a person's rights. They are using the color law in the performance of their actions; and, they have the force of the Federal Government to protect them.

2. There must be an easier way to be able to hold them accountable. One of the biggest problems is that they claim their actions are actions of the Federal Government; and, thus they claim sovereign immunity. The individual is then forced to go up against the full force and might of the Federal Government; and, prove that it was not an action of the government in order to proceed. This is a very difficult thing to do. We need to take the sovereign immunity away from Federal employees who break the Law.

Thank you for allowing me to testify before this committee.

Prepared Statement of George Matelich, Sweet Grass County, Montana
The Saga of the Cherry Creek "Road"

The Black Butte Ranch was purchased by George Matelich and Michael Goldberg (the ''Owners'') in May of 1997. The ranch is located in Sweet Grass County, Montana, adjacent to property owned by descendants of the original homesteaders. Prior to purchasing the property, the Owners did ''due diligence'' in examining the title, and checking on what appeared to be an old jeep trail on the property. After finding no easements recorded, and no documentation suggesting that the jeep trail was a public road, they closed on the purchase and took possession of the property. Upon taking possession of the land the Owners closed a gate through which people had reportedly occasionally used the jeep trail to access the Gallatin National Forest. This trail extends from the Boulder Road through the adjacent property and the Black Butte Ranch to the National Forest boundary. In January of 1999 the Owners were sued by the Public Lands Access Association, Inc. ("PLAAI") who claimed that Cherry Creek "Road" was a public road, notwithstanding the fact that the County did not claim the road, and refused to claim it under R.S. 2477. In defense of the suit, the Owners filed a quiet title action, naming the PLAAI, the United States Forest Service ("USFS") and the public at large as defendants. A FOIA request disclosed that the USFS was engaged with PLAAI in planning the litigation and strategic options for opening the road, including condemnation. Nevertheless, rather than litigate the issue on its merits, the USFS filed a Disclaimer of Interest, disclaiming any interest in Cherry Creek "Road".

The PLAAI litigation was resolved by a settlement agreement in which the Owners agreed to allow limited public access on the Cherry Creek "Road" for a period of 10 years, after which the parties all agreed the owners could shut the gate and permanently discontinue the access. The quiet title action proceeded to judgment, which was entered in favor of the Owners. The decree included a finding that the use of the Cherry Creek "Road" for the past 60 years had been permissive, no prescriptive easement existed, R.S. 2477 did not provide for access under the circumstances and that Congress did not envision rights of way for hunting, fishing, snowmobiling and similar activities when enacting R.S. 2477. Additionally, the easement granted to the public for a 10-year period could be extinguished after August 3, 2009, and the Owners' interest in the property was free and clear of any and all estate, right, title, lien, encumbrance, interest or claim by any third-party defendants. No appeal was filed after judgment was entered. Following the conclusion of the litigation, and after the court had entered the judgment in the quiet title case, the USFS revised its Travel Management Plan for Gallatin Forest. As part of that process, the USFS closed other existing roads and area access into the forest, and labeled all but the pipe stem of land through the Owners' property for the Cherry Creek "Road" as "roadless". The USFS essentially limited the travel access alternatives to the one that had been litigated, and in which they had disclaimed all interest.

Pursuant to the settlement agreement, after the 10-year period had run in 2009, the Owners exercised their rights as contained in the agreement and closed the gate to the jeep trail (Cherry Creek "Road") traversing their property.

Shortly before the end of the 10-year period, the USFS made an attempt to reach an agreement with the Owners for access to this area, including a potential land exchange, as well as pursuing the purchase of an easement over the Owners property. The Owners declined to sell an easement to the USFS which would have had the effect of splitting their property, but did offer to engage in a land exchange, even offering at their own expense to build the new road on USFS administered lands. The USFS rejected all offers for limited access, and in a Letter to the Editor published on June 17, 2010 in the Big Timber Pioneer, made it clear that the only alternative the USFS was willing to consider was a road with unlimited vehicular access across the Owner's property.

Sometime in 2010 the USFS notified Congress of their intent to pursue acquisition of the Cherry Creek "Road" through eminent domain. The Owners followed, bringing their story before the Montana Congressional Delegation and other relevant Federal parties. After the expenditure of countless hours and hundreds of thousands of dollars over the course of 3+ years, the matter was finally settled; the Owners are building a road at their own expense on their own land and will be granting a perpetual easement to the public as the settlement required.

The Owners were fortunate in that they had the resources to fight the USFS and ultimately build a road at their own expense that did not result in the splitting of their property. That they had to do this at all is a matter of public policy which cries out for a systemic remedy. The Owners were forced into this situation only through the USFS wielding the cudgel of eminent domain authority. The USFS did not pursue this road access because they needed to, rather the USFS did so because they wanted to, and because by their own actions in closing all other access and designating the entire area as "roadless" they created a lack of public access. The record is clear that numerous other access points to this area of the Gallatin existed. The record is equally clear that in the ensuing decade following the litigation in which they professed no interest, the USFS took actions which had the obvious impact of vitiating the court decision. In all likelihood they behaved in such a fashion because they were confident that they had the unfettered power to simply take property they wanted, regardless of need. This crude and purposeful abuse of the Federal Government's power of eminent domain must be remedied.

The Government's power of eminent domain has always been viewed as one that should be used sparingly and with great restraint. Preservation of private property rights is a fundamental right of our constitution, subject to taking only when there is a public need that has been proven and when appropriate compensation is provided.

However, there is no sufficient compensation to assuage disingenuous behavior of the Government in purposefully turning a want into a need to justify condemnation.

Thank you for this opportunity to tell our story and express our opinions.

TRANSCRIPT: Of Audio Recording, January 27, 2016, Brianna Bundy, Eye-witness to the Murder of LaVoy Finicum.

Ammon and six (6) others were on their way to go in and meet with a few ranchers to have a scheduled meeting with the FBI and the Head of the FBI operation there. They [*Ammon and the others*] got outside of the Refuge, down the road a ways; and, they were stopped like a routine traffic stop. They were asked to get out of the vehicle; put their hands on their head. They [*the FBI*] started to arrest Ammon; and, LaVoy Finicum; and, the others had their hands in the air; and, were on their knees. They [*the FBI*] drew on them; the federal government drew on them; and, LaVoy pleaded with them not to shoot; but, they were unarmed; and, they [*the FBI*] shot him [*LaVoy*] multiple times; and, in the face; and, killed him. They murdered him in cold blood; is exactly what they did. My brother-in-law, Ryan, was also shot in the arm; and, the other remaining survivors were arrested; and, are being held in custody.

If the people were wise enough to realize that the statement that the FBI released said:

> *"It is unclear as to who fired first."*

You can bet your bottom dollar that if it were one of us that fired first, they would have been very open to state such a thing. But, that is their admission of guilt. If you ask me, that was them saying:

> *"We fired first; but, we are not going to say that because then accountability will be held; and, the People will be outraged."*

But, the People are too foolish to believe that was them saying that they did it. I mean, none of the men were armed. There are six (6) witnesses that witnessed the murder of this man, unarmed and pleading for his life; and, they gunned him down for no reason. There was no provocation; and, I got this straight from the mouth of Ammon who was able to make a phone call from the back of the transport vehicle that he was in. They did not take his phone; and, he was able to call. He said:

> *"Get the message out. You tell them that our government just murdered a man in cold blood."*

Nobody has said anything even alluding to the fact that they were possibly dangerous. They went there with a job to do; and, to get the job done; and, to return home to their families. Now there is a man dead. He won't be returning home to his family.

We don't know where they [*Ammon and the others*] are being held. We don't know what their [*the government*] intentions are. Probably to make an example out of them for the rest

of the People in this country that if you stand up against the federal government, they will take you down. We are not going to stop fighting. They are trying to scare the rest of the People. We will not back down. They will not win this war and this land.

There are some men there [*at the Refuge*] that are fully capable; that know what is going on; and, what the plan was; and, they are not leaving. They are going to hold their ground. They can see. There have been eye-witness accounts of some FBI activity probably trying to scare them; but, they are not going to leave there. They went there with a job to do; and, they are not going to leave until it is finished.

[*The FBI*] is saying:

> *"Get out of here so we don't have to come in and have a big blood bath because that would look bad."*

You know, it's funny to me because we have all the Media; and, I talked to a media source that has been out there this whole time; and, she called upset; wanting me to fill her in on details. I told her that was her job, to fill me in on details; and, I wasn't going to do her job for her. For her to call me back. She called me back and said that her cameraman was directly behind Ammon and had video footage; and, that he [*Ammon*] was distraught. I told her that I needed that footage; for her to give it to me as soon as possible. Her producer and she called back about 30 minutes later and said:

> *"Oh, never mind. He [the cameraman] was 10 minutes behind; and, we don't have any footage."*

Now, tell me that isn't the biggest crock you've ever heard in your life. Five minutes before he was distraught, had the footage and was in route.

This is actually other footage [*other than Pete Santilli*] ... that another News ... I believe out of Los Angeles; but, it is a very large... I am sure that they [*the government*] just paid them off. I am sure that lady and that guy with the footage are going to be driving a fancy car and living in a fancy condo in another week.

Well, surely [*the government is trying to cover up what happened*]. I know all those cars have dash cams. So, if there was such a question to what went down, why have the FBI and the police not released that footage? Because, you know they have it. There would be too much accountability if that gets out.

I am sure their [*FBI*] story will be rich; but, the People know the truth; and, they know the tyranny that we are facing in this country; and, the only way that we are going to put an end to it is if we all unite together and say:

> *"Enough is enough."*

We are so upside down. Our Federal Government was supposed to come in and enforce the Constitution where the State and County Officials were not doing their jobs; and, instead they came in and created a blood bath. They did not do their job. They did not uphold their oath; and, the County and the State also refused to uphold their oath; and, to me, that seems like if you don't have your State and County on board; and, you don't have your federal government to back you; and vice versa, where do we stand in this country? We're slaves.

I am sure they [*other Patriot groups from across the country*] are going to come to the aid [*of those in the Refuge*] because of different threats and hearsay that are out there. I know that there is a large number of People that are enraged over this situation. We are not going to handle it the way they did in Ferguson because that is not the type of People that we are; but, our voices will be heard; and, they will know that this man was murdered; and, somebody needs to be held accountable for it.

No. They [*the government*] don't [*have a problem in just murdering you*]. The only thing that we can do at this point is pray for the families of the men that are locked up; and, extra prayers for the Finicum family and his wife; and, to pray for the men at the Refuge that they continue to stand their ground; and, that they have the courage; and, the People of Burns to have courage to stand against this and to continue to fight for their freedom beca*use otherwise we might as well just lay down and wait for them to take us.*

No. [It's not over.] It has just begun I believe.

Transcript [video available]
16-01-28 Attorney Reads Bundy´s Statement

"We're Done with the Government Pointing Guns at Us"

Turn yourself in. Do not use physical force. Use the national platform that we have to continue to defend liberty through our constitutional rights in an Article III Court with an Article III Judge.

America must understand where we are at. We must make a choice now between freedom or force. Are we going to live free?

I will not abandon all that we have accomplished in the name of liberty for the sake of my own personal freedom. We must choose the path of liberty which comes with the freedom of choice. People must not be ok with what is going on. I am committed to freedom; not force. Freedom; not force. We are done with the culture of force. We are done with the government pointing guns at us to enforce their will upon the people. This is not liberty; and, this is not America.

As much as I desire to see my own babies and my wife; and, to be a loving husband and caring father for my six (6) children; to be home with them; caring for their needs; and, holding them in my arms, I must not desire this at the cost of freedom.

I want to make sure that the American people understand that we have a duty in our situation to further the defense of our God-give rights. The world is listening. We will use the criminal discovery process to obtain information; and, government records. We will continue to educate the American people of the injustices that are taking place; and, we can do this through an Article III Court with an Article III Judge. This is the Constitution. It is ours; and, we will use it.

When we were detained, we were traveling to Grant County to educate those people of their individual rights. We have been branded as "armed occupiers"; but, we were prepared with computers and PA systems and projectors. We have spent endless hours for weeks visiting the people in Harney County and the surrounding counties presenting to them solutions and giving them choices to make. We were being very successful in educating people and getting them to move towards freedom. At the time, we were gaining momentum through education; and, for this the government once again chose force that turned lethal.

We had guns only for our protection; and, never once pointed them at another individual; or, had any desire to do so. The people have a right to bear arms for their own protection. We never wanted bloodshed. We verbalized this many, many times; and, we continue to do so.

I mourn LaVoy's death. LaVoy was a man who put other's needs and safety before his own. After we were arrested, the FBI agent that transported us said that LaVoy's shooting would have to have been recorded on video. We are anxiously waiting to review this video. Questions must be answered.

5 The choice is ours. Are we going to stand for freedom; or, will we fall by force.

Eyewitness Says Feds Ambushed Bundys, 100 Shots Fired at Passengers, Lavoy Finicum Killed With 'Hands Up'

January 27, 2016 By **Patrick Henningsen 21st Century Wire** **UPDATE: 1-30-2016**

Last night, the standoff at Malheur National Wildlife Refuge outside Burns, Oregon took a rather ugly turn which resulted in one man shot dead and another wounded by federal agents.

The latest incident took place as two vehicles carrying protesters, led by **Ammon Bundy**, were in route to a community meeting in the nearby town of John Day in Oregon.

According to numerous mainstream media reports and local media outlet *Oregon Live*, 'federal sources' are telling the media that only "3 shots were fired", but a new eye witness testimony by one of the vehicle's passengers tells a very different story.

While the mainstream media is still referring to the event as "a shoot-out", according to this latest eye witness account at the scene – **no shots were fired by vehicle passengers**.

According to eyewitness Victoria Sharp, 18 yrs old, from Kansas, who was a passenger in the same truck driven by Arizona rancher Robert 'Lavoy' Finicum, along with Ryan Bundy, Ryan Payne and Shawna Cox – dozens of federal vehicles and countless agents were waiting for the group, pre-positioned at a point along the isolated rural Highway 395, before intercepting the group and detaining 8 persons, including brothers Ammon and Ryan Bundy, who were booked into Multnomah County Jail early this morning.

Sharp confirmed that the **passengers never drew weapons** and attempted to get out of their vehicles before federal agents fired **"at least 120 shots altogether"** at the vehicle carrying her party.

Federal agents fired their first shots at passenger and militia leader, Ryan Payne, as he attempted to make contact with the agents by sticking his head and hands out of the window, at which point Payne got back inside the vehicle.

Payne then exited the truck and was detained before driver Finicum advanced the vehicle further down the road before sliding into a snow bank on the side of the road.

A second vehicle, a Jeep with passengers including Ammon Bundy, had already been stopped by authorities, with its all passengers taken into custody with no one harmed.

A third vehicle driving approximately one mile ahead at the front of the convoy, carrying Sharp's mother and young siblings, was allowed to pass through the police roadblocks without incident.

Finicum then attempted to drive around the next federal road block, but lost control of the vehicle before careening into snow piled on the road's hard shoulder.

After crashing into the snow bank on the side of the highway, the driver, 54 yr old Arizona resident, Lavoy Finicum (photo, above), then exited the vehicle, visibly upset and with his hands in the air, before being gunned down by federal agents. Finicum was walking with his hands in the air, daring federal agents, *"Just shoot me! Just shoot me"* – at which point the agents shot him dead. The witness testimony indicates that his hands were still in the air.

Numerous 'red dots' from lasers could be seen pointed on the passengers by federal marksmen, in what was described by this witness as an "ambush" by federal authorities. Sharps said, "I had 20 lasers on me when I got out of the car."

She also confirmed that Ryan Bundy was shot and wounded in the arm by federal agents was shot while still inside the truck.

Federal forces then followed-up by firing CS tear gas rounds around the vehicle, apparently in an attempt to further disable the remaining passengers.

At least 40 federal vehicles, as well as many armed federal agents including some seen emerging from the surrounding forest along the highway, should leave little doubt as to the scale and nature of the operation.

Listen to Ms. Sharp's harrowing testimony here:

According to local media outlet Oregon Live reports: "The highway was blocked for a 40-mile stretch between Burns and John Day. Police were stationed near Seneca, a small city of 200 south of John Day, with long guns. They said they didn't know how long the roadblock would be in place. Grant County Sheriff Glenn Palmer *was there*."

IMPORTANT NOTE *(UPDATE 1-30-16): According to this recent report by Pedro Quintana from Central Oregon local affiliate News Channel 21, Sheriff Palmer was not at the federal roadblock and had no prior knowledge of the FBI ambush of the Bundy convoy. According to the chat session relayed in Pedro Quintana's report, Palmer was asked in an online chat, "Did you witness Lavoy shooting, or no?", to which Palmer replies, "NO… The shooting from what I hear was close to 4 and I heard of it at about 5:45pm." News 21continued:*

"Palmer responded he had no knowledge of anything about the plans or who was coming to the public meeting. He went on to say that the "FBI and Oregon State Police know me, they shared nothing with me and they know I wouldn't have allowed it."

Earlier mainstream media reports that Palmer was present at the FBI roadblock would lead Bundy supporters to believe that Palmer had betrayed the Bundys and Lavoy Finicum. One the main sources, if not the main source of the original Sheriff Palmer controversy appears to be none other than Oregon Live staff writer Les Zaitz who has slipped-in this key piece of line into his report which says:

"They said they didn't know how long the roadblock would be place. Grant County Sheriff Glenn Palmer was there."

Is this a case of media dirty tricks by Oregon Live? Certainly, Oregon Live's coverage of Burns events has been skewed from the beginning, and have been running character assassination pieces against

Malheur occupiers in a effort to discredit the protest. Sheriff Palmer is clearly on record as being sympathetic to the Hammond Ranch protest and had recently opened up a constructive dialogue with the Bundys and occupiers from Malheur Wildlife Refuge. If Pedro Quintana's News 21 report is indeed accurate, then one might conclude that Oregon Live put out a piece of disinformation, likely designed to further divide the protest movement and create dissension in militia and activist ranks.

However, until Sheriff Glenn Palmer comes out and issues clear statement declaring where he was – and where he wasn't, then people will continue to speculate what really happened. (END OF UPDATE)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Lloyd D. George US Courthouse, 333 Las Vegas Blvd South, 1st Floor, Las Vegas, NV 89101-7065

5

Tribunal: **Unified United States Common Law Grand Jury[1]:**
P.O. Box 59; Valhalla, New York 10595; Fax: (888) 891-8977

TO: Chief Judge Gloria M. Navarro, assigned by UUSCLGJ
[**NOTE:** *Written approval from UUSCLGJ required for any reassignment*]

Court of Origin: **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**, de facto;

CASE NO. 2:16-cr-00046Gmn-Pal, statutory

Schuyler Barbeau, Ammon Edward Bundy, Cliven D. Bundy, David H. Bundy, Melvin D. Bundy, Ryan C. Bundy, Gregory P. Burleson, Brian D. Cavalier, Blaine Cooper, Shawna Cox, Gerald A. DeLemus, O. Scott Drexler, Todd C. Engel, Richard R. Lovelien, Micah L. McGuire, Joseph D. O'Shaughnessy, Eric J. Parker, Ryan Waylen Payne, Peter T. Santilli, Steven A. Stewart and Jason D. Woods,

Petitioner

Against

Magistrate Judge Peggy A. Leen, Magistrate Judge Carl Hoffman, U.S. Marshal for Nevada State Christopher Hoye, FBI Special Agent in Charge for Nevada State Laura A. Bucheit, Nevada

Assigned: Chief Judge Gloria M. Navarro

FEDERAL CASE NO. 1776-1789-2015, de jure

CORAM NOBIS[2]

[1] *"***THE GRAND JURY** *is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury's functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. 'Unlike* [a] [c]*ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.'"* United States v. John H. Williams, 112 S. Ct. 1735, 504; U.S. 36, 118, L. Ed. 2d, 352, (1992)

[2] **CORAM NOBIS**: Before us ourselves, (the King, i.e., in the King's Bench) applied to Writs of Error directed to another branch of the same court, e.g., from the full bench to the court at nisi prius. 1 Archb. Pr. K. B. 234.

State Highway Patrol Chief Colonel Dennis S. Osborn, U.S. Attorney Daniel G. Bogden, Assistant U.S. Attorney Steven W. Myhre, Assistant U.S. Attorney Nicholas D. Dickinson, Special Assistant U.S. Attorney Nadia J. Ahmed and Special Assistant U.S. Attorney Erin M. Creegan,

Respondents

Default Judgment Coram Ipso Rege

Default Judgment - Entering a Default: *"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by Affidavit or otherwise* [under seal]*, the clerk must enter the party's default."* FRCP Rule 55(a); FRCP Rule 58(b) (2); 28 U.S.C. §2243

The respondents, against whom a judgment for affirmative relief is sought, have failed to plead or otherwise defend as provided by these rules; and, that fact is made to appear by Affidavit. **NOW, THEREFORE, THIS COURT OF RECORD** issues this Default Judgment Coram Ipso Rege to dispose of the matter as law and justice require, to wit:

IT IS ORDERED AND ADJUDGED that Petitioner be released from custody immediately; and, that the respondents, namely **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**, de facto, Magistrate Judge Peggy A. Leen et al. shall abate at law all proceedings in and relating to Schuyler Barbeau et al. Court Case No. 2:16-cr-00046Gmn-Pal. No damages, costs or attorneys' fees are awarded.

THE COURT, April 26, 2016.

(seal)

Unified United States Common Law Grand Jury Administrator

WHEREAS: April 26, 2016, Magistrate Judge Peggy A. Leen et al. defaulted; the record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings; and,

THEREBY: law requires de facto court to abate at law; and, release of restraint on both person and property.

> **Default Judgment - Entering a Default:** *"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend; and, that failure is shown by Affidavit or otherwise* [under seal], *the clerk must enter the party's default."* FRCP Rule 55(a); FRCP Rule 58(b) (2); 28 U.S.C. §2243

William Joseph Goode

NOTARY

In Arizona State, Mohave County, on this 26th day of April, 2016, before me, Amanda Young, the undersigned notary public, personally appeared William Joseph Goode, to me known to be the living man described herein, who executed the forgoing instrument and has sworn before me that he executed the same as his free will, act and deed.

(Notary seal)

Amanda Young
Notary Public
Mohave County, Arizona
My Comm. Expires 10-31-19

Notary

My commission expires: 10-31-2019

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Lloyd D. George US Courthouse, 333 Las Vegas Blvd South, 1st Floor, Las Vegas, NV 89101-7065

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Tribunal: **Unified United States Common Law Grand Jury**[1]
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Petitioner

Assigned: Chief Judge Gloria M. Navarro

FEDERAL CASE NO. 1776-1789-2015, de jure

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[1] "**THE GRAND JURY:** *"Is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury's functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. 'Unlike* [a] [c]*ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.'"* United States v. John H. Williams, 112 S.Ct. 1735, 504; U.S. 36, 118, L.Ed.2d, 352, (1992)

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Magistrate Judge Peggy A. Leen, Magistrate Judge Carl Hoffman, U.S. Marshal for Nevada State Christopher Hoye, FBI Special Agent in Charge for Nevada State Laura A. Bucheit, Nevada State Highway Patrol Chief Colonel Dennis S. Osborn, U.S. Attorney Daniel G. Bogden, Assistant U.S. Attorney Steven W. Myhre, Assistant U.S. Attorney Nicholas D. Dickinson, Special Assistant U.S. Attorney Nadia J. Ahmed and Special Assistant U.S. Attorney Erin M. Creegan,

Respondents

Default Judgment Coram Ipso Rege

FRCP Rule 55[1]; Rule 58 (b) 2[1]; 28 USC 2243

COMES NOW THE ABOVE-ENTITLED COURT OF RECORD to review the record; summarily determine the facts; and, dispose of the matter as law and justice require.[3]

Habeas Corpus has been called "The Great Writ of Liberty". Historically, that is a side issue. In the early days, Habeas Corpus was not connected with the idea of Liberty. It was a useful device in the struggle for control between common law and equity courts. By the middle of the fifteenth century, the issue of Habeas Corpus, together with privilege, was a well-established way to remove a cause from an inferior court where the defendant could show some special connection with one of the central courts, which entitled him to have his case tried there.[4] In the early seventeenth century, The Five Knights' Case[5] involved the clash between the Stuart claims of prerogative and the common law; and, was, in the words of one of the judges, *"the greatest cause that I ever knew in this court."*[6] Over the centuries the Writ became a viable bulwark between the powers of government and the rights of the people in both England and the United States.

[3] **28 USC §2243**
[4] De Vine (1456) O. Bridg. 288; Fizherbert, Abridg., sub tit. "Corpus cum Causa".
[5] Darnel's Case, 3 St. Tr. 1.
[6] Ibid. at 31 per Doderidge J.

CONTENTS

I. SUMMARY

Oliver Wendell Holmes once wrote, *"I long have said there is no such thing as a hard case. I am frightened weekly; but, always, when you walk up to the lion and lay hold, the hide comes off; and, the same old donkey of a question of law is underneath."*[7] Duty falls upon this court of record to lay hold of the lion; unhide the underlying question of law; and, dispose of the matter as law and justice require.[8]

On April 19, 2016, Schuyler Barbeau et al., a People of the United States, filed in the above-entitled court of record a Petition for Writ of Habeas Corpus by a People in constructive custody. The Petition invited this court's inquiry into the following:

A. The cause of the restraint
B. The jurisdictional basis of the restraint
C. Prosecutorial vindictiveness
D. Reasonable apprehension of restraint of Liberty
E. Strict compliance with statutory requirements
F. Diminishment of rights
G. Charges of common barratry, maintenance and Champerty

The Petition presented issues of both fact and law. It did not appear from the Application that the applicant was not entitled thereto; therefore, this court ordered the respondents to show cause why the Writ should not be granted. Explicit Return instructions were included as part of the Order to Show Cause to enable the respondents to fulfill the Order. All respondents were duly[9] served with the Petition and Order to Show Cause. The record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings.

[7] 1 Holmes-Pottock Letters 156.
[8] 28 USC §2243.
[9] **DULY:** According to law; in both form and substance. Black's 6th

ANALYSIS:

II. JURISDICTION OF THIS COURT

Tribunal - Unified United States Common Law Grand Jury:[10]

It is the duty of any court to determine whether it has jurisdiction even though that question is not raised, in order for the exercise of jurisdiction to constitute a binding Decision that the court has jurisdiction.[11] We fulfill that duty by examining the sovereign power creating the court.

But, first, what is a court? It is the person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Further, a court is an agency of the sovereign; created by it directly or indirectly under its authority; consisting of one or more officers; established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof; and, of applying the sanctions of the law; and, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority.[12] The source of the authority is acknowledged by the Preamble of the Constitution for the United States of America.[13] The People of the United States, acting in sovereign capacity, *"ordain*[14] *and establish*[15] *this Constitution for the United States of America."* The Constitution contains

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[10] *"The grand jury is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three* (3) *Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury's functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. 'Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.'"* United States v. John H. Williams; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; 1992

[11] State ex rel. Missouri Gravel Co. v. Missouri Workmen's Compensation Commission, 113 S.W. 2d 1034, 234 Mo. App. 232.

[12] Isbill v. Stovall, Tex. Civ. App. 92 S.W. 2d 1067, 1070; Black's 4th, p 425

[13] **U.S. CONSTITUTION PREAMBLE:** *"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."*

[14] **ORDAIN:** …to enact a constitution or law. Black's 6th

[15] **ESTABLISH:** …to create, ratify or confirm… Black's 6th

nothing that would diminish the sovereign[16] power of the People; and, no State may presume to do so.[17]

80 Further, the United States of America, and each Member State, is a Republic,[18] which means that the People may act either directly or through their representatives.[19] Here the sovereign People are acting directly. Beyond ordaining and establishing the Constitution, what are the powers of the People? The People retain all powers to self-determine and exercise rights.[20] The essence of the People's sovereignty distills to this: The decree of the
85 sovereign makes law.[21]

Some have argued that the People have relinquished sovereignty through various contractual devices in which rights were not expressly reserved. However, that cannot hold because rights are unalienable.[22] The People retain all rights of sovereignty at all times.[23]

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[16] … at the Revolution, the sovereignty devolved on the people; and, they are truly the sovereigns of the country; but, they are sovereigns without subjects… with none to govern but themselves… Chisholm v. Georgia U.S. 2 Dall 419, 454, 1 LEd 440, 455, 2 Dall, 1793, pp 471-472.

[17] Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436, 491; The State cannot diminish rights of the people. Hertado v. California, 100 U.S. 516; the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Constitution for the United States of America Amendment IX; The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively; or, to the people. The Constitution for the United States of America Amendment X

[18] *"The United States shall guarantee to every State in this Union a Republican Form of Government…"* Constitution for the United States Article IV Section 4

[19] **GOVERNMENT:** Republican government – One in which the powers of sovereignty are vested in the People; and, are exercised by the People, either directly or through representatives chosen by the People to whom those powers are specially delegated. In re Duncan, 139 U.S. 449, 11 S. Ct. 573, 35 L. Ed. 219; Minor v. Happersett, 88 U.S. 21, Wall 162, 22 L. Ed. 627; Black's 6th.

[20] The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em. Dom. Sec. 3, 228; 37 C Nav. Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7

[21] The very meaning of *"sovereignty"* is that the decree of the sovereign makes law. American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L. Ed. 826, 19 Ann.Cas. 1047.

[22] **UNALIENABLE:** Not subject to alienation; the characteristic of those things which cannot be bought, or sold, or transferred from one person to another, such as rivers, and public highways, and certain personal rights; e. g., Liberty. Unalienable: incapable of being aliened; that is, [not capable of being] sold and transferred. Black's 4th 1891.

[23] **RESERVATION OF SOVEREIGNTY:** *"*[15](b) … *The Tribe's role as commercial partner with petitioners should not be confused with its role as sovereign. It is one thing to find that the Tribe has agreed to sell the right to use the land and take valuable minerals from it, and quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. To presume that a sovereign forever waives the right to exercise one of its powers unless it expressly reserves the right to exercise that power in a commercial agreement turns the concept of sovereignty on its head."* Merrion et al., dba Merrion & Bayless, et al. v. Jicarilla Apache Tribe et al. 1982. SCT.394.

The exercise of sovereignty by the People is further clarified when one considers that the Constitutional government agencies have no genuine sovereign power of their own. All just authority of the Constitutional government agencies is solely that to which the People consent.[24] In the Petition, the petitioner identifies himself as *"a People*[25] *of the United States"*. As such he decrees the law for this court; and, ultimately, for this court as a court of record. This, then, is the sovereign power by which this court is created. The Constitution for the United States of America mandates that: *"The judicial Power*[26] *shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..."*[27] This is a case in law, i.e., proceeding according to the common law in a court of record. This case arises under the Constitution and the Laws of the United States. It follows that "the judicial power" of [the People of] the United States "shall extend" to this case. Therefore, it is the Grand Jury, as arbiter, that shall be enforcer of the law. We read:

> "*If any of our civil servants shall have transgressed against any of the people in any respect; and, they shall ask us to cause that error to be amended without delay; or, shall have broken some one of the articles of peace or security; and, their transgression shall have been shown to four* (4) *Jurors of the aforesaid twenty five* (25)*; and, if those four* (4) *Jurors are unable to settle the transgression, they shall come to the twenty-five* (25)*, showing to the Grand Jury the error which shall be enforced by the law of the land."* Magna Carta, June 15, A.D. 1215, 61.

> Justice Powell, in United States v. Calandra, 414 U.S. 338, 343 (1974), stated: *"The institution of the grand jury is deeply rooted in Anglo-American history;* [n3] *In England, the grand jury* [p343] *served for centuries, both as a body of accusers, sworn to discover, and present for trial, persons suspected of criminal wrongdoing; and, as a protector of citizens against arbitrary and oppressive governmental action. In this country, the Founders thought the grand jury so essential to basic liberties, that they provided, in the Fifth*

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[24] **SOVEREIGN STATE:** are cabalistic words, not understood [rejected] by the disciple of Liberty, who has been instructed in our constitutional schools. It is our appropriate phrase when applied to an absolute despotism. The idea of sovereign power [vested] in government of a Republic is incompatible with the existence, and foundation, of civil Liberty; and, the rights of property. Gaines v. Buford, 31 Ky. (1 Dana) 481, 501.

[25] **PEOPLE:** …considered as… any portion of the inhabitants of a city or country. Webster's 1828 Dictionary. The word *"People"* may be either plural or singular in its meaning. The plural of *"person"* is *"persons"*, not *"People"*.

[26] **JUDICIAL POWER:** The power to decide and pronounce a judgment; and, carry it into effect between persons and parties who bring a case before court for decision. Power that adjudicates upon, and protects, the rights and interests of persons or property; and, to that end, declares, construes, and applies the law. Black's 6th.

[27] Constitution for the United States of America Article III Section 2 Clause 1.

Amendment, that federal prosecution for serious crimes can only be instituted by a 'presentment or indictment of a Grand Jury'." Cf. Costello v. United States, 350 U.S. 359, 361-362 (1956). *"The grand jury's historic functions survive to this day. Its responsibilities determination whether there is probable cause to believe a crime has been committed, and the protection of citizens against unfounded criminal prosecutions.* Branzburg v. Hayes, 408 U.S. 665, 686-687 (1972)."

SUPERIOR COURTS ARE COURTS OF LAW: De jure[28] courts are any duly constituted tribunal [Jury] administering the laws of the State or nation; proceeding according to the course of the common law; and, governed by its rules and principles; as contrasted with a "court of equity". Court of "Law" means Court of Common Law, i.e., a court for the People CORAM IPSO REGE, which is to say BEFORE THE KING HIMSELF.

"The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court[29] *are subject to collateral attack. In other words, in a superior court, one may sue an inferior court directly, rather than resort to appeal to an appellate court. The decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court, whether it be an appellate or Supreme Court, can second guess the judgment of a court of record. 'The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact by deciding it.'"* Ex parte Watkins, 3 Pet., at 202-203. [Cited by Schneckloth v. Bustamonte, 412 U.S. 218, 255 (1973).

THE JUDICIAL TRIBUNAL: *"A 'court of record' is a judicial tribunal* [Jury] *having attributes and exercising functions independently of the person of the magistrate designated generally to hold it; and, proceeding according to the course of common law; its acts and proceedings being enrolled for a perpetual memorial."* Jones v. Jones, 188 Mo. App. 220, 175 S.W. 227, 229; Exparte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See also Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

THE PEOPLE'S REMEDY: *"The grand jury is not merely an investigatory body; it also serves as a protector of citizens against arbitrary and oppressive*

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[28] **DE JURE:** of right; legitimate; lawful; by right and just title. In this sense it is the contrary of de facto. Black's 4th.

[29] **AN INFERIOR COURT:** Is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or Supreme Court. Nugent v. State, 18 Ala. 521.

governmental action; and, must be both independent and informed." United States v. Calandra, 414 U.S., at 343, 94 S.Ct. at 617. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962): *"Historically, this body has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason, or was dictated by an intimidating power, or by malice and personal ill will."* Id., at 390, 82 S.Ct. at 137.

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURE

Ordinarily, exhaustion of state or federal administrative procedures is a requirement before a court of another jurisdiction will review the proceedings of another court. This is founded upon the principle of comity.[30] The courts of the United States, both equity and law, and the courts of the various States, both equity and law, are independent of each other.[31] Federal courts have no supervisory powers over State judicial proceedings,[32] State court systems,[33] or trial judges.[34] Thus, federal courts have no general power to correct errors of law that may occur from time to time in the course of State proceedings.[35]

However, a federal court and a State court are not foreign to each other. They form one system of jurisprudence, which constitutes the law of the land; and, should be considered as courts of the same country, having jurisdiction partly different, and partly concurrent;[36] and, as a matter of comity, one of such courts will not ordinarily determine a controversy of which another of such courts has previously obtained jurisdiction. In cases of apparent conflict between State and federal jurisdiction, the federal courts are the exclusive judges

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[30] **JUDICIAL COMITY:** *"The principle, in accordance with which, the courts of one State, or jurisdiction, will give effect to the laws and judicial decisions of another; not as a matter of obligation; but, out of deference and respect."* Black's 4th; Franzen v. Zimmer, 35 N.Y.S. 612, 90 Hun 103; Stowp v. Bank, C.C.Me., 92 F. 96; Strawn Mercantile Co. v. First Nat. Bank, Tex. Civ. App., 279 S.W. 473, 474; Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845, 849.

[31] Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L. Ed. 833.

[32] Smith v. Phillips, 102 S.Ct. 940, 455 U.S. 209, 71 L.Ed.2d 78, on remand 552 F.Supp. 653, affirmed 717 F.2d 44, certiorari denied 104 S.Ct. 1287, 465 U.S. 1027, 79 L.Ed.2d 689; Ker v. State of California, Cal., 83 S.Ct. 1623, 374 U.S. 23, 10 L.Ed.2d 726, 24 O.O.2d 201; Burrus v. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A. Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A. Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961.

[33] U.S. ex rel. Gentry v. Circuit Court of Cook County, Municipal Division, First Municipal Dist., C.A.Ill., 586 F.2d 1142.

[34] Harris v. Rivera, N.Y., 102S. Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.

[35] Buckley Towers Condominium, Inc. v. Buchwald, C.A. Fla., 595 F. 2d 253.

[36] Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.

over their jurisdiction in the matter.[37] That being a given, federal intervention is only proper to correct errors of constitutional dimension,[38] which occurs when a State court arbitrarily, or discriminatorily, applies State law.[39] The rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;[40] and, all considerations of comity must give way to the duty of a federal court to accord a People of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.[41]

As to the principle of exhaustion of state remedies; the Petitioner is not founding his Petition on the principle embodied in 28 U.S.C. §2254. The basis of Petitioner's Petition is addressed in section **V. PETITION** below. However, we will address it here.

In Friske v. Collins,[42] the Court's view was that exhaustion was not a "rigid and inflexible" rule; but, could be deviated from in "special circumstances". In addition to the class of "special circumstances" developed in the early history of the exhaustion rule, exhaustion was not required where procedural obstacles make theoretically available processes unavailable; where the available state procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.[43]

Exhaustion today is a rule rooted in the relationship between the national and State judicial systems. The rule is consistent with the Writ's extraordinary character; but, it must be balanced by another characteristic of the Writ, to wit: its object of providing *"a swift and*

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[37] Craig v. Logemann, 412 N.W.2d 857, 226 Neb. 587, appeal dismissed 108 S.Ct. 1002, 484 U.S. 1053, 98 L.Ed.2d 969.

[38] Burrus v. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961;

INCONSISTENT VERDICTS: Court of Appeals erred when it directed State trial judge to provide explanation of apparent inconsistency in his acquittal of codefendant and his conviction of defendant, without first determining whether inexplicably inconsistent verdicts would be unconstitutional. Harris v. Rivera, N.Y., 102 S.Ct. 460, 454 U.S. 339, 70 L. Ed. 2d 530.

[39] Jentges v. Milwaukee County Circuit Court, C.A.Wis., 733 F. 2d 1238.

[40] Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

[41] Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Ga., 268 F. 980.

[42] 342 US 519 (1952).

[43] Amsterdam, *"Federal Removal and Habeas Corpus Jurisdiction"*, 113 U. Pa. L. Rev. 793, 893-94; Developments, *"Federal Habeas Corpus"*, 83 Harv. L. Rev. 1038, 1097-107. Cf. Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

imperative remedy in all cases of illegal restraint upon personal Liberty."[44] That is, it *"is not* [a rule] *defining power but one which relates to the appropriate exercise of power."*[45]

The Court noted that where resort to State remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the State affords no remedy; or, because in the particular case, the remedy afforded by State laws, proves, in practice, unavailable, or seriously inadequate; a federal court should entertain a Petition for Habeas Corpus; otherwise, a petitioner would be remediless. In such a case, the applicant should proceed in the federal district court before resorting to the Supreme Court by Petition for Habeas Corpus.[46]

> **28 U.S.C. §2243** provides as follows: Issuance of Writ; Return; Hearing; Decision. A court justice or judge, entertaining an application for a Writ of Habeas Corpus, shall forthwith award the Writ; or, issue an Order directing the respondent to show cause why the Writ should not be granted; unless it appears, from the Application, that the applicant, or person detained, is not entitled thereto. The Writ, or Order to Show Cause, shall be directed to the person having custody of the person detained. It shall be returned within three (3) days; unless, for good cause, additional time, not exceeding twenty (20) days, is [be] allowed.

The State has been duly served; and, the State has not made; and, apparently cares not to make a Return. This question of timeliness constitutes a special circumstance justifying deviation from the exhaustion rule. Exhaustion is not required where procedural obstacles make theoretically available processes unavailable; where the available State procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.[47] Until the case is resolved in the district court, the petitioner will be unable to present his claims to the State Supreme Court.[48] This delay, and lack of timeliness, is a further special circumstance. In the interim, the petitioner

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[44] Price v. Johnson, 334 U.S. 266, 283 (1947).

[45] Bowen v. Johnston, 306. U.S. 19, 27 (1939). See Brennan, *"Some Aspects of Federalism"*, 39 N.Y. U.L. Rev. 945, 957-58; Brennan, *"Federal Habeas Corpus and State Prisoners"*, 7 Utah L. Rev. 423, 426.

[46] Ex parte Hawk, 321 U.S. 114, 118; See also Ex parte Abernathy, 320 U.S. 219 (1943); White v. Ragen, 324 U.S. 760 (1945); Wood v. Niersteimer, 328 U.S. 211 (1946).

[47] Amsterdam, *"Federal Removal and Habeas Corpus Jurisdiction"*, 113 U. Pa. L. Rev. 793, 893-94; Developments, *"Federal Habeas Corpus"*, 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

[48] Magistrate's Report (#5), filed March 7, 2003, 6:46am, p3, L3-6.

would be required to lose his Liberty, because of the lack of swift State vindication of his rights.[49]

IV. COMITY

Comity is one court giving full faith and credit to the judicial proceedings of another court, provided that such proceedings do not violate its own rules. Though comity is not mandated, it is encouraged by The Constitution for The United States Article IV Section 1.[50] However, comity does not mean that one court involuntarily gives up its jurisdiction to another court. Comity does not mean that one court must respect the improprieties of another court. Comity does not mean that one court must submit to the whim of another court. Further, comity cannot enter the equation when the question before the courts concerns which of the two courts has jurisdiction regarding the vindication of the rights of the Petitioner. The protection of the Petitioner's rights from encroachment by the State is the innate responsibility of the federal courts.

In the United States, Habeas Corpus exists in two forms: Common Law and Statutory. The Petitioner has chosen Habeas Corpus at common law in a court of record. The Constitution for the United States of America acknowledges the Peoples' right to the common law of England as it was in 1789. What is that common law? It does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive principles based on justice, reason, and common sense...[51]

The common law is also the Magna Carta,[52] as authorized by the Confirmatio Cartarum, if the accused so demands.[53] The Confirmatio Cartarum succinctly says, *"... our justices, sheriffs, mayors, and other ministers, which, under us have the laws of our land to guide, shall allow the said charters pleaded before them, in judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the forest, for the wealth of our realm."*[54] In other words, the King's men must allow the Magna Carta to be pleaded as the common law if the accused so wishes it.

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[49] Amsterdam, *"Federal Removal and Habeas Corpus Jurisdiction"*, 113 U. Pa. L. Rev. 793, 893-94; Developments, *"Federal Habeas Corpus"*, 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

[50] Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial proceedings of every other State. And, the Congress may, by general Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be proved; and, the Effect thereof. Constitution for the United States of America Article IV Section 1.

[51] Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.

[52] June 15, 1215, King John I.

[53] November 5, 1297, King Edward I.

[54] Confirmatio Cartarum Article I Clause 3.

Magna Carta says, *"Henceforth the Writ which is called Praecipe shall not be served on anyone for any holding so as to cause a free man to lose his court."*[55] In this case, the free man's court is the court of record of the petitioner, as above entitled. The Constitution for the United States of America Article III Section 2 Clause 1 says, *"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..."* The judicial power is thusly extended to this Habeas Corpus case at law in the above-entitled court of record.

The above-entitled court of record, invoking the extension of the judicial power of the United States upon a case in law, is proceeding according to the common law as sanctioned by the Constitution; and, considering the matter that has arisen under the Constitution and laws of the United States. As stated above, the rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;[56] and, all considerations of comity must give way to the duty of a federal court to accord a citizen of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.[57]

This court accepts the duty obligation to proceed promptly to enforce rights asserted under the federal Constitution. Thus, this court has the subject matter jurisdiction to examine, and act, upon the Petition for Habeas Corpus. Further, the parties were duly served personally with a copy of the Petition and the Writ of Habeas Corpus thus this court has *"in personam jurisdiction"*.

V. PETITION

Title 28 of the United States Code[58] acknowledges that it is not the responsibility of the Petitioner to know by what claim or authority the State acts; but, that the Petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any statement of cause of the restraint. Therefore, this court may presume that there is neither legal nor lawful cause of restraint.

Petitioner has isolated five (5) points upon which he bases his Petition:

A. The lack of cause of the restraint
B. The lack of jurisdictional basis of the restraint
C. Prosecutorial vindictiveness

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[55] Magna Carta Article 34.

[56] Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

[57] Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.

[58] **APPLICATION FOR A WRIT OF HABEAS CORPUS:** shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him, and by virtue of what claim or authority, if known. 28 USC §2242

D. Reasonable apprehension of restraint of Liberty
E. Strict compliance with statutory requirements
F. Diminishment of rights

Because the respondents have made no Return, this court must rule solely upon the evidence before it, as provided by the Petitioner. Seneca wrote, *"He who decides a case with the other side unheard, though he decide justly, is himself unjust."*[59] Mindful of the wisdom of Seneca, we proceed.

This court has taken judicial notice of the Federal Rules of Civil Procedure Title 28 United States Code, insofar as it is not repugnant to the common law. F.R.C.P. Rule 55 regarding default[60] is applied here.[61] The record shows that the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were duly served upon the respondents; no Return was filed; a *Notice of Default* was filed. So, no claim may be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated: the parties against whom a Judgment for Affirmative Relief is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by Affidavit in accordance with F.R.C.P. Rule 55(a).

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[59] Seneca's *Medea*.

[60] **DEFAULT:** (a) **Entry:** When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the court] by Affidavit or otherwise, the clerk shall enter the party's Default. (b) **Judgment:** Judgment by Default may be entered as follows: (1) **By the Clerk:** When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) **By the Court**: In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c) **Setting Aside Default:** For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b). Federal Rules of Civil Procedure Rule 55.

[61] Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

VI. FINDINGS OF FACT

THEREFORE, BASED UPON THE RECORD BEFORE THIS COURT:

THE COURT FINDS THAT:

(1) Schuyler Barbeau et al. are People as contemplated in the Preamble of the Constitution for the United States of America.

(2) This above-entitled court is a court of record.

(3) All respondents were duly served; and, court personnel were apprised of the Petitioner's claims and the Writ; all respondents had full Notice and fair opportunity to argue their cause; and, respondents did not argue their cause.

(4) The respondents have not presented any legal or lawful cause of the restraint of Schuyler Barbeau et al.

(5) The respondents have not presented any jurisdictional basis for the restraint of Schuyler Barbeau et al. The court of the respondents did not fulfill the duty to determine whether it has jurisdiction in order for the exercise of jurisdiction to constitute a binding Decision.

(6) The respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Schuyler Barbeau et al.

(7) Schuyler Barbeau et al. have a reasonable apprehension of future restraint of Liberty arising from the same facts.

(8) Strict compliance with statutory requirements was not met by the respondents.

(9) Schuyler Barbeau et al. have suffered an unlawful and illegal diminishment of rights.

VII. CONCLUSIONS OF LAW

FURTHER, THE COURT CONCLUDES THAT:

(1) This above-entitled court has the sovereign authority to proceed as a court of record with jurisdiction to act in the instant case and subject matter.

(2) Because all respondents were duly served; and, court personnel were apprised of the Petitioner's *Petition* and *Writ*; and, because all respondents had full Notice and fair opportunity to argue their cause; and, did not so do; and, because none of the aforementioned persons made a Return, Objection, or Motion, the above-entitled court has acquired "in personam jurisdiction" of each of the respondents.

(3) Because the respondents have not presented any legal or lawful cause of, or any jurisdictional basis for the restraint of Schuyler Barbeau et al., the respondents do not have any legal or lawful cause against or jurisdiction over Schuyler Barbeau et al.

(4) Because the respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Schuyler Barbeau et al.; and, because the burden of proof is upon the respondents when evidence of prosecutorial vindictiveness has been presented, as a matter of law the respondents have committed prosecutorial vindictiveness against Schuyler Barbeau et al.

(5) Strict compliance with statutory requirements were not met by the respondents, Schuyler Barbeau et al. were denied due process, there is a reasonable probability that they will be denied due process and there is a reasonable probability that Schuyler Barbeau et al. will be subjected to future restraint of Liberty arising from the same facts.

(6) Schuyler Barbeau et al. have suffered an unlawful and illegal diminishment of rights. Schuyler Barbeau et al. will very likely continue to be subjected to further unlawful and illegal diminishment of rights if not immediately released.

(7) It has become clear to this Grand Jury Investigative Body that the Court has taken advantage through undue influence[62] of its victims by manipulating peoples' free will for money and is thereby guilty of common barratry[63], maintenance[64] and Champerty[65]. Since this problem has been found in many courts in America we have concluded the courts guilty of racketeering.

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[62] **UNDUE INFLUENCE:** Any improper or wrongful constraint, machination or urgency of persuasion whereby the will of a person is overpowered; and, he is induced to do or forbear an act which he would not do or would do if left to act freely. Powell v. Betchel, 340 Ill. 330, 172 N.E. 765, 768. Influence which deprives person influenced of free agency; or, destroys freedom of his will; and, renders it more the will of another than his own. Conner v. Brown, Del., 3 A.2d 64, 71, 9 W.W.Harr. 529; In re Velladao's Estate, 31 Cal.App.2d 355, 88 P.2d 187, 190.

[63] **BARRATRY:** In criminal law; also spelled *"Barretry"*. The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513; *"Common barratry is the practice of exciting groundless judicial proceedings."* Pen. Code Cal. §158; Lucas v. Pico, 55 Cal. 128; Corn. v. McCulloch, 15 Mass. 229; Ex parte McCloskey, 82 Tex.Cr.R. 531, 199 S.W. 1101, 1102.

[64] **MAINTENANCE:** Consists in maintaining, supporting or promoting the litigation of another. *"Act of maintaining, keeping up, supporting; livelihood; means of sustenance."* Federal Land Bank of St. Louis v. Miller, 184 Ark. 415, 42 S.W. 2d 564, 566.

[65] **CHAMPERTY:** A bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. Draper v. Lebec, 219 Ind. 362, 37 N.E.2d 952, 956; A bargain by a stranger with a party to a suit by which such third person undertakes to carry on the litigation at his own cost and risk in consideration of receiving, if successful, a part of the proceeds or subject

VIII. CONCLUSION SUMMARY

The respondents, namely village, town, city, county, State or Federal governments, Magistrate Judge Peggy A. Leen et al., by their Default (their failure to Return the Writ of Habeas Corpus), have failed to prove their jurisdiction; therefore, they each and all of them shall abate at law all proceedings in and relating to UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, de facto Case No. 2:16-cr-00046Gmn-Pal.

None of the respondents, Magistrate Judge Peggy A. Leen et al., is an infant or incompetent. None of the respondents, Magistrate Judge Peggy A. Leen et al. has appeared in the proceedings.

Default Judgment to be entered by this court in accordance with Federal Rules of Civil Procedure Rule 55(b) (2). Schuyler Barbeau et al., if not already released, are to be released straightway and any property seized returned immediately. No damages are awarded.

Chief Judge Gloria M. Navarro shall confirm release of Petitioner and abatement and inform the Unified United States Common Law Grand Jury of the same by Fax: (888) 891-8977.

THE COURT April 26, 2016.

(seal)

Unified United States Common Law Grand Jury Administrator

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sought to be recovered. Small v. Mott, 22 Wend. N.Y., 405; Gilman v. Jones, 87 Ala. 691, 5 So. 785, 7 So. 48, 4 L.R.A. 113; Jamison Coal & Coke Co. v. Goltra, C.C.A.Mo., 143 F.2d 889, 895, 154 A.L.R. 1191; The purchase of an interest in a thing in dispute with the object of maintaining and taking part in the litigation. 7 Bing. 378.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Lloyd D. George US Courthouse, 333 Las Vegas Blvd South, 1st Floor, Las Vegas, NV 89101-7065

Tribunal: **Unified United States Common Law Grand Jury**
P.O. Box 59; Valhalla, New York 10595; Fax: (888) 891-8977

TO: Magistrate Judge Peggy A. Leen, Magistrate Judge Carl Hoffman, U.S. Marshal for Nevada State Christopher Hoye, FBI Special Agent in Charge for Nevada State Laura A. Bucheit, Nevada State Highway Patrol Chief Colonel Dennis S. Osborn, U.S. Attorney Daniel G. Bogden, Assistant U.S. Attorney Steven W. Myhre, Assistant U.S. Attorney Nicholas D. Dickinson, Special Assistant U.S. Attorney Nadia J. Ahmed and Special Assistant U.S. Attorney Erin M. Creegan

Court of Origin: **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**, de facto;
CASE NO. 2:16-cr-00046Gmn-Pal, statutory

Schuyler Barbeau, Ammon Edward Bundy, Cliven D. Bundy, David H. Bundy, Melvin D. Bundy, Ryan C. Bundy, Gregory P. Burleson, Brian D. Cavalier, Blaine Cooper, Shawna Cox, Gerald A. DeLemus, O. Scott Drexler, Todd C. Engel, Richard R. Lovelien, Micah L. McGuire, Joseph D. O'Shaughnessy, Eric J. Parker, Ryan Waylen Payne, Peter T. Santilli, Steven A. Stewart and Jason D. Woods,

Assigned: Chief Judge Gloria M. Navarro

FEDERAL CASE NO. 1776-1789-2015, de jure

Petitioner

Against

Magistrate Judge Peggy A. Leen, Magistrate Judge Carl Hoffman, U.S. Marshal for Nevada State Christopher Hoye, FBI Special Agent in Charge for Nevada State Laura A. Bucheit, Nevada State Highway Patrol Chief Colonel Dennis S. Osborn, U.S. Attorney Daniel G. Bogden, Assistant U.S. Attorney Steven W. Myhre, Assistant U.S. Attorney Nicholas D. Dickinson, Special Assistant U.S. Attorney Nadia J. Ahmed and Special Assistant U.S. Attorney Erin M. Creegan,

Respondents

Writ Mandamus Coram Ipso Rege[1]

CONTEMPT OF COURT

THE GREAT WRIT OF LIBERTY is *"the Writ of Habeas Corpus Ad Subjiciendum, issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer."* Ex parte Kelly, 123 N.J.Eq. 489, 198 A. 203, 207; *"In the United States, Habeas Corpus exists in two forms: common law and statutory. The Constitution for the United States of America acknowledges the Peoples' right to the Common Law of England as it was in 1789. It does not consist of absolute, fixed and inflexible rules, but broad and comprehensive principles based on justice, reason and common sense."* Miller v. Monsen, 37 N.W. 2d 543, 547, 228 Minn. 400;*"This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated Writ in the English law, and the great and efficacious Writ in all manner of illegal confinement."* 3 Bl. Comm. 129

[1] **KING'S BENCH:** The Supreme Court of Common Law in England; being so called because the King used formerly to sit there in person; the style of the Court being *"Coram Ipso Rege"*.

US CONSTITUTION ARTICLE I SECTION 9: [common law] The privilege of the Writ of Habeas Corpus shall not be suspended.

28 USC §2243: [statutory] Issuance of Writ; Return; Hearing; Decision; A court, justice or judge entertaining an Application for a Writ of Habeas Corpus shall forthwith award the Writ or issue an Order directing the respondent to Show Cause why the Writ should not be granted, unless it appears from the Application that the applicant or person detained is not entitled thereto. The Writ or Order to Show Cause shall be directed to the person having custody of the person detained. It shall be returned within three (3) days unless for good cause additional time, not exceeding twenty (20) days.

COURT MUST AWARD AND RESPONDENTS MUST SHOW CAUSE

This court of justice has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. FRCP Rule 55 regarding Default[2] is applied here.[3] The record shows that on April 19, 2016 the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were duly served upon the respondents; no Return was filed; a *Notice of Default* was filed on April 26, 2016. So, no claim may be made that the statutory court(s) were

[2] **FEDERAL RULES OF CIVIL PROCEDURE RULE 55: DEFAULT** (a) **ENTRY:** When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the Court] by Affidavit or otherwise, the Clerk shall enter the party's Default. (b) **JUDGMENT:** Judgment by Default may be entered as follows: (1) **BY THE CLERK:** When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) **BY THE COURT:** In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c**) SETTING ASIDE DEFAULT:** For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b).

[3] **COURTS OF RECORD:** Have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id, 336, 2 Mo. 98

unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated; the parties against whom a *Judgment for Affirmative Relief* is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by *Affidavit* in accordance with FRCP Rule 55(a). [**SEE:** attached]

TO INTERCEPT, CONCEAL or EXPUNGE HABEAS CORPUS IS TO DENY DUE PROCESS, THEREBY WARRING AGAINST THE CONSTITUTION

VIOLATING: 18 USC § 2071, 18 USC §1001, 18 USC §4, 18 USC §241, 18 USC §242, 18 USC §872, 18 USC §1512b, 18 USC §2382, 28 USC §2242, 28 USC §2243, 42 USC §1986, 42 USC §1985: *"Any judge who does not comply with his oath to the Constitution of* [for] *the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason*." Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).

A Writ of Habeas Corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A Petition for Habeas Corpus is a Petition filed with a court by a person who objects to his own or another's detention or imprisonment. The Petition must show that the court ordering the detention or imprisonment made a legal or factual error. Petition for Habeas Corpus is usually filed by a person serving a prison sentence. In family law, a parent who has been denied custody of his child by a trial court may file a Petition for Habeas Corpus. Also, a party may file a Petition for Habeas Corpus if a judge declares them in contempt of court and jails or threatens to jail them.

In Brown v. Vasquez, 952 F.2d 1164, 1166 (9th Cir. 1991), cert. denied, 112 S.Ct. 1778 (1992), the Court observed that "*the Supreme Court has recognized the fact that '*[t]*he Writ of Habeas Corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless State action*.'" Harris v. Nelson, 394 U.S. 286, 290-91 (1969) *"Therefore, the Writ must be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected."* Harris, 394 U.S. at 291. *"The Writ of Habeas Corpus serves as an important check on the manner in which State courts pay respect to federal constitutional rights. The Writ is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless State action."* Harris v. Nelson, 394 U.S. 286, 290-91 (1969).

28 USC §2242: *"Every person unlawfully committed, detained, confined or restrained of his Liberty or Property, under any pretense whatsoever, may prosecute a Writ of Habeas Corpus to inquire into the cause of such imprisonment or restraint."*

The petitioner showed in his Petition that the court ordering the detention or imprisonment made the following legal and factual errors; and, therefore, Writ Habeas Corpus *"must be prosecuted"*.

1) Respondents gathered a biased statutory grand/trial jury; a jury not under Common Law; a jury under a court not of record, i.e., not at law; a jury which has no power to fine or imprison thereby jurisdiction was fraudulently acquired.
2) There was no sworn documentary evidence from a competent fact witness.
3) Petitioner is being unconstitutionally held by a court *"not of record"* as required and defined under Article VI Clause 2.
4) Court is proceeding under statutes and jurisdictions unknown and *"not under the Law of the Land"* a/k/a Common Law.
5) Court's jurisdiction was not stated, as required by law.
6) Petitioner was denied due process; trial in a Court of [Common] Law is due process.
7) Petitioner(s) are victim(s) of barratry, maintenance and Champerty.
8) Custodians have engaged in prosecutorial vindictiveness therefore the burden is upon respondents to rebut presumption.

HABEAS CORPUS IS DUE PROCESS

TITLE 28 OF THE UNITED STATES CODE: acknowledges that it is not the responsibility of the petitioner to know by what claim or authority the State acts; but, that the petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any Statement of Cause of the Restraint. Therefore, this court may and has presumed that there is neither legal nor lawful cause of restraint.

On April 26, 2016, the Grand Jury filed a Default and Memorandum of Decision of the Default and thereby the statutory court was ordered to **ABATE AT LAW** all proceedings in and relating to UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, de facto, CASE NO. 2:16-cr-00046Gmn-Pal, against Schuyler Barbeau et al.

The above-named statutory court ignored Habeas Corpus; and, has yet to release Schuyler Barbeau et al from illegal custody. After reviewing this case, we have concluded the following:

(1) The court that prosecuted Schuyler Barbeau et al was a statutory court; not a court of record;[4] and, therefore, had no Constitutional Authority to incarcerate.
(2) The grand/trial jury was tampered with to secure statutory indictments and statutory prosecutions[5] by said court not of record under color of law.
(3) There were no injured parties.[6]
(4) There were no sworn affidavits.[7]
(5) There was no due process.[8]
(6) This was a political case with vindictive prosecution.

Because of the aforesaid conclusions; and, from information received, in that pressure is being applied upon petitioner to somehow stop the probing and actions of the Grand Jury, let us be clear: Habeas Corpus has endured over four hundred (400) years unimpeded. Once the Petition for Habeas Corpus was received by the court's bench (grand jury) and acted upon, the petitioner, attorney(s) or statutory court(s) do not have power to stop the Writ Habeas Corpus. Furthermore, vindictiveness has already been established; and, we are therefore, warning all involved that we will be reviewing the actions of all involved.

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[4] **COURTS OF RECORD AND COURTS NOT OF RECORD:** the former being those whose acts and judicial proceedings are enrolled or recorded for a perpetual memory and testimony; and, which have power to fine or imprison for contempt. Error lies to their judgments and they generally possess a seal. Courts not of record are those of inferior dignity which have no power to fine or imprison; and, in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231

[5] **COMMON LAW:** *"The common law is the real law, the Supreme Law of the land; the code, rules, regulations, policy and statutes are not the law."* Self v. Rhay, 61 Wn (2d) 261; *"There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent."* Cruden v. Neale, 2 N.C. 338 (1796) 2 S.E.

[6] **"FOR A CRIME TO EXIST:** *there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights."* Sherar v. Cullen, 481 F. 945.

[7] **PRIME FACIE CASE:** *"Indeed, no more than an Affidavit is necessary to make the prima facie case."* United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982.

[8] **DUE COURSE OF LAW:** *"this phrase is synonymous with 'due process of law' or 'law of the land' and means law in its regular course of administration through courts of justice* [court of record]*".* Kansas Pac. Ry. Co. v. Dunmeyer 19 Kan 542.

In conclusion, Magistrate Judge Peggy A. Leen et al. are in contempt of court; and, are herein ordered to release Schuyler Barbeau et al. immediately as previously ordered by this Tribunal; or, we will bring this action before the full Grand Jury for Judicial Remedy upon all conspirators including all court officers who are violating the aforesaid federal codes.

This Court is gracing Magistrate Judge Peggy A. Leen et al. with the opportunity to amend their error and abate at law immediately all proceedings in and relating to UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, de facto, CASE NO. 2:16-cr-00046Gmn-Pal, against Schuyler Barbeau et al.

THE COURT May 6, 2016.

(seal)

Grand Jury Foreman

THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES, PART II

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENTAL REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Thursday, July 24, 2014

Serial No. 113–82

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OVERSIGHT HEARING ON THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES, PART II

Thursday, July 24, 2014
U.S. House of Representatives
Subcommittee on Public Lands and Environmental Regulation
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 1324, Longworth House Office Building, Hon. Doug LaMalfa presiding.

Present: Representatives McClintock, Lummis, Tipton, LaMalfa; Grijalva, and Garcia.

Also Present: Representatives Pearce and Stewart.

Mr. LAMALFA. The subcommittee will come to order. The Chairman notes the presence of a quorum.

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee so that we can quickly hear from our witnesses in time today. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the Clerk by close of business today. Hearing no objection, so ordered.

I will also ask unanimous consent that Members not on the subcommittee or the full committee be allowed to sit at the dais and take part in the proceedings. Without objection, so ordered.

STATEMENT OF HON. DOUGLAS LAMALFA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LAMALFA. Today we have Part II in our oversight series on, "Threats, Intimidation, and Bullying by Federal Land Management Agencies." During Part I of the hearing, the committee heard firsthand accounts of mistreatment by the hands of Federal officials seeking to extort the witnesses into relinquishing their property rights. In the case of one of the witnesses, the Supreme Court, in *Wilkie* v. *Robbins*, said Congress has not provided victims of Federal bullying a legal recourse to seek a remedy for damages.

In Part II of this hearing, we will hear other accounts of mistreatment of American citizens who have been subjected to abusive behaviors by Federal officials. These firsthand accounts, like those examined in Part I, will give the victims of abusive conduct by a Federal land managing official a chance to tell their story to Congress.

Their testimony will show that status quo agency oversight policies and procedures are inadequate for addressing or deterring employee abuses, and may instead embolden overreaching or malicious employee behavior, with little risk of retribution for their actions.

In many cases, citizens who refuse to surrender their constitutional rights have been subject to a pattern and practice of threats and intimidation. Government agencies, through individual and collective efforts, are actively using land designations and restrictions, prompted mainly by radical environmental groups, to curtail multiple use on Federal lands.

State and local governments have been subjected to threats, lack of cooperation, and numerous unfair or heavy-handed tactics, which threaten public safety and threaten the livelihoods of communities, especially those in public land states. These actions are creating unnecessary tension with individual citizens, state and local units of government, and even local law enforcement.

Congressional oversight and legislative solutions are necessary to provide an effective check on Federal officials who abuse their regulatory powers. Today's hearing will continue the committee's work to fashion a legislative solution that will give targets of abuse by Federal land management employees the opportunity to seek a just remedy.

I am eager to hear the panel of witnesses today, and I hope Members on both sides of the aisle will listen to their accounts of what happened to them so we can work together in fashioning our remedy to these abuses.

I would like now to turn it over to our Ranking Member, Mr. Grijalva, for his opening statement.

STATEMENT OF HON. RAÚL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. GRIJALVA. Thank you, Mr. Chairman. I also want to thank Chairman Bishop for holding this hearing today. As was stated, this is our second hearing on intimidation and bullying by Federal land management agencies. But I do not think anyone in this room wants to simply point fingers or make an unfounded accusation. The issue should be improving relationships, and that improvement is a two-way street that requires dialog and partnership, not name-calling and disengagement.

Unfortunately, like the first hearing on this subject, the administration was not invited to testify. We will not be able to hear their perspective or have them respond directly to the witnesses in order to find solutions and common ground. Their presence would have made this a much more useful hearing and better use of this committee's time.

Instead, this afternoon will be an echo chamber of complaints and hand-wringing. We will hear testimony on the range of issues, from the Endangered Species Act to accusations that the BLM is turning southern Utah into a police state.

However, I would also like to say that all Federal employees, regardless of rank and position, should have and should uphold a high standard of professionalism to provide the best possible service to the public, and I think we could all agree that the vast majority act in a professional and courteous manner. Unfortunately, like any company, organization, or government, there will be instances where employees do not live up to that standard, and they must be held accountable.

Today's hearing will be an opportunity to hear from individuals who have grievances with the Federal land managers and law enforcement personnel. As we hear from today's witnesses, I think it is important to remember that these incidents should not be seen as a reflection of all the public land management agencies and their employees.

Today's witnesses will describe disputes they have had with BLM and the Forest Service over grazing permits, water rights, and law enforcement, among other issues. Keep in mind, BLM administers 18,000 grazing permits and less 155 million acres, and the Forest Service administers nearly 8,000 grazing permits on roughly 90 million acres, the vast majority of which are managed without complaints or incidents.

It is the responsibility of the Federal land managing agencies and their employees to protect the land that is the property of the entire American people. With such a broad directive, the opinions on how to do so are endless.

In some of these cases, disagreement in policy is perceived as overreach of authority, and the land managers who, under law, carry out the policies are considered threatening and bullying. It is important to see these examples for what they are, a matter of difference in policy opinion, and we must not lose sight of that.

Mr. Chairman, thank you, and with that I yield back the balance of my time.

Mr. LAMALFA. Thank you, Mr. Grijalva.

We will now hear from our panel of witnesses, but at this time I would like to yield to the gentleman from Utah, Mr. Stewart, who would like to make some introductions of them.

Mr. STEWART. Thank you, Mr. Chairman. I appreciate the opportunity to sit before your committee for at least part of a day. I am on the Appropriations Committee now, but I am on the Interior Subcommittee, and these issues are very, very dear to me. And I think they are really important, and this hearing is very important. So thank you for that.

I would like to introduce two of your panelists today, who happen to be not only from the State of Utah but from my District, and in addition to introducing them, maybe make a brief comment on the topic of the hearing.

First, I am pleased to introduce Sheriff James D. Perkins, or as his friends call him, Danny. Sheriff Perkins has been in service to Garfield County for a total of 27 years in law enforcement. He was a deputy for more than 20 years, and was then chosen to serve as the Sheriff of Garfield County in January of 2007, and he has continued to serve Garfield County as sheriff ever since.

Sheriff Perkins is actively involved in the drug task force, and strives to keep drugs out of Garfield County. And Danny is devoted to the people of the community, there is no question about that.

I would also like to introduce a good friend, Commissioner Leland Pollock, who has been a Commissioner of Garfield County for the last 3 years. He and I have known each other for about that amount of time, and I have not met anyone in my role in Congress who has impressed me more.

It has been my pleasure to work with him closely on a number of different issues since coming to Congress, and he is a genuine

public servant who puts first the specific needs of his constituents in what are really some of the most rural parts of our Nation.

He understands the impacts of Federal ownership on land and how that can affect real people in his community, and he is committed to finding solutions to improve the lives of the people in Garfield County as those who come to visit this very, very beautiful part of the state.

Then, Mr. Chairman, if I could divert just briefly and talk a little bit about the subject at hand that the committee has chosen to hold this hearing. I feel like it is a timely and very important topic.

If you would refer to the slides, and I show you these slides, at first glance you might look at those and think, well, that is some scene from some war zone, maybe Afghanistan or Iraq or something similar to that. But actually, that is not true. Those are Interior Department agency employees, and those pictures were actually taken in the western United States within the last 6 months or so.

I have been disturbed over the past several months as I have learned more and more about the level of militarization occurring within many Federal agencies, and I mean almost every Federal agency, but also, unfortunately, including Department of the Interior agencies.

When I see agents with helmets, with shields, with hard-plated body armor, with grenades, and in some cases grenade launchers and M4 carbines, my assumption is that they are military or possibly with the Department of Justice. As it turns out, the National Park Service has a number of what they call special event tactical teams, and they look an awful lot like what we would consider SWAT teams. There are also BLM officers with a surprising amount of firepower.

I recognize that officers need to be able to protect themselves, and in some cases they are in very rural and lonely parts of the state or of the Nation, and they need to be able to protect themselves in situations that may be unpredictable. And I want them to be able to protect themselves.

But what concerns me is when you see these type of very heavy-handed SWAT-like teams, with non-DOJ agencies being used as the tip of the spear for Federal law enforcement. I am not sure that having these teams scattered across dozens of Federal agencies is the most efficient use of resources. I think it is heavy-handed, it is intimidating to the American people, and I think it harms the sense of trust that is so important to be established between American citizens and the Federal Government.

I have introduced a bill to address some of these concerns. If the Interior agencies have SWAT teams or SET teams or whatever they might be called, we ought to know of their existence and have a better justification from the agencies for why they are necessary and when and how they are used. And I am hopeful that this committee hearing will help cast some light on that.

With that, I thank our witnesses for being with us today. And Mr. Chairman, I yield back my time.

Mr. LAMALFA. Thank you to the gentleman from Utah.

Also, I would like to introduce the third member of this panel today. Please take the dais as your name is called. It is Mr. Grant

Gerber, a Commissioner from Elko County, Nevada. So welcome, sir. Thank you for joining the panel.

I would also like to pause here for a moment before we start with testimony. Our colleague, the gentleman from New Mexico, Mr. Pearce, would like to acknowledge and make introductions of the second panel. You will remain where you are until the first panel is finished, but Mr. Pearce is on a limited time frame.

So I would ask unanimous consent for the committee to do so.

Mr. Pearce.

STATEMENT OF HON. STEVE PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. PEARCE. Thank you, Chairman LaMalfa and Ranking Member Grijalva, members of the subcommittee. I appreciate your holding this hearing today on Federal agencies which intimidate and bully private citizens. I asked the Natural Resources Committee in May of this year to conduct a hearing on this topic as it relates to Otero County, New Mexico, which is in my District.

I appreciate the subcommittee looking into the issues as well as inviting the people on the ground who deal with the Forest Service every day. I am proud to call Otero County Commissioner Ronny Rardin a personal friend.

I would also like to thank Jose Varela Lopez of the New Mexico Cattle Growers' Association, Attorney Blair Dunn, and Mike Lucero, all for making the journey all the way from the Land of Enchantment to the Nation's capital for today's hearing. Our National Forests are real treasures to the people of New Mexico. We in southern New Mexico know conservation better than any outside special interest group or bureaucrats in Washington.

However, in recent years we have seen a sharp downturn for the worse from Federal land management agencies. Balance is no longer the order of the day, but instead, agencies look to implement a narrow special interest-led agenda. BLM is slow-walking oil and gas drilling applications. The Forest Service only puts up minimal acreage for necessary thinning projects. Grazing is improperly stopped because of faulty science. Public access to public lands and resources is being cut off.

The situation in Otero County began this spring, when the U.S. Forest Service began construction of a pipe fence that directly impacted the water rights of ranchers in the Agua Chiquita riparian area of the Lincoln National Forest. This was done to maintain the habitat of the meadow jumping mouse before the mouse was even listed as endangered.

The Service claimed that the construction of this fence would not impact the ranch owners who own the water because their cattle can move through two small fence openings. Imagine trying to herd a large number of cattle through a 10-foot-wide opening in a fence. Bureaucrats and special interest groups treat that as a solution. I believe it is a shell game.

Had the Forest Service actually consulted with the Office of the State Engineer, the agency which oversees water rights in New Mexico, the Forest Service would have learned what my office learned within 24 hours of contacting the State Engineer: the Goss family has adjudicated water rights in the Agua Chiquita dating

back to the 1880s. The fact that an agency would make the claim that water rights do not exist when they clearly do is an example of the Federal Government's arrogance and attempt to bully our local ranchers into submission.

The Forest Service also claims to accommodate ranchers by saying that the trenches near the Agua Chiquita allow water to flow under the fences. New Mexico, like much of the West, has been in a drought since 2011, and water does not flow through these trenches unless a heavy downpour occurs.

The New Mexico State Supreme Court has ruled that an individual with water rights has the ability to move the water to the cattle through trenches or pipelines, yet the Forest Service refuses to allow the pipeline.

The Court of Federal Claims sided with the Goss family in a similar case 4 years ago. The actions of the Forest Service have made it nearly impossible to move the water to the cattle, violating the law and violating the findings of two different courts.

Despite the bullying by the Federal Government, the county attempted to mediate this dispute with the U.S. Attorney's Office. When my office asked to attend this meeting for our constituents, the U.S. Attorney and the Forest Service threatened to cancel it, leaving one to wonder why an elected official is being excluded.

At this meeting, the Forest Service and U.S. Attorney refused to compromise. They would not even agree to not lock the gates on the fence until the issue could be discussed more thoroughly and resolved.

I am afraid that this is only the opening salvo from Federal agencies attempting to further restrict access to water and other vital resources in the West. The Environmental Protection Agency is attempting to regulate virtually every ditch in the United States under the Clean Water Act.

The Forest Service believes it has a right to regulate ground water it does not own, including ground water underneath lands it does not own, as well as the power to review state water rights applications. The arrogance and the bullying by Federal agencies must stop. This is not some theoretical argument. It is about our culture in the West and our livelihood. It is about the economy of southern New Mexico and other western states.

Chairman LaMalfa, Ranking Member Grijalva, and members of the subcommittee, I would like to once again thank you for allowing me to speak here on this issue today. I look forward to reading the testimony, and I have a more complete statement that I would like to submit for the record, with unanimous consent.

[The prepared statement of Mr. Pearce follows:]

PREPARED STATEMENT OF HON. STEVE PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Chairman Bishop, Ranking Member Grijalva, members of the subcommittee: thank you for conducting this hearing today on Federal agencies' intimidation and bullying tactics of private citizens. I asked the Natural Resources Committee in May to conduct a hearing on this topic as it relates to Otero County, New Mexico. I appreciate the subcommittee looking into these issues, as well as inviting the people on the ground who deal with the Forest Service every day. I am proud to call Otero County Commissioner Ronnie Rardin a personal friend. I'd also like to thank Jose Varela Lopez of the New Mexico Cattle Growers' Association, Attorney Blair Dunn

and Rancher Mike Lucero for making the journey all the way from the Land of Enchantment to our Nation's capital for today's hearing.

Our National Forests are a real treasure to the people of New Mexico. We in southern New Mexico know conservation better than any outside special interest group or bureaucrats in Washington. Sportsmen require access to public lands to hunt and fish. Tourists need the ability to move their vehicles along roads, and recreational enthusiasts must be able to bring boats and OHVs to truly enjoy everything that our forests have to offer. And our ranchers, often surrounded by Federal lands and checkerboarding, require rights of way and grazing permits that they pay for. Allowing such varied forms of access helps to achieve the necessary balance that protects our lands and economic interests.

However, in recent years, we've seen a sharp turn for the worse from Federal land management agencies. Balance is not the order of the day, but instead agencies look to implement a narrow special interest-led agenda. BLM is slow-walking oil and gas drilling applications. The Forest Service only puts up minimal acreage for necessary thinning projects. Grazing is abruptly stopped because of faulty science. Public access to public lands and resources is being cut off.

The situation in Otero County began this spring when the U.S. Forest Service began construction of a pipe fence that directly impacted the water rights of ranchers in the Agua Chiquita riparian area of the Lincoln National Forest. This was done to maintain the habitat of the meadow jumping mouse—before the mouse was even listed as endangered. The Service claims that the construction of this fence would not impact ranchers who own the water because their cattle can move through two small fence openings. Imagine trying to herd a large number of cattle through a 10 foot-wide opening in a fence. Bureaucrats and interest groups treat that as a solution—I believe it's a shell game.

Had the Forest Service actually consulted the Office of the State Engineer, the agency which oversees water rights in New Mexico, the Forest Service would have learned what my office learned within 24 hours of contacting the State Engineer: the Goss family has adjudicated water rights in the Agua Chiquita dating back to the 1880s. The fact that an agency would make the claim that water rights do not exist when they clearly do is an example of the Federal Government's arrogance and an attempt to bully our local ranchers into submission.

The Forest Service also claims to accommodate ranchers by saying that trenches near the Agua Chiquita allow water to flow under the fences. New Mexico has been in a drought since 2011, and water does not flow through these trenches unless a heavy downpour occurs. The New Mexico State Supreme Court has ruled that an individual with water rights has the ability to move the water to their cattle. The Court of Federal Claims sided with the Goss ranch in a similar case 4 years ago. The actions of the Forest Service have made it nearly impossible to move the water to the cattle, violating state law.

Despite the bullying by the Federal Government, the county attempted to mediate this dispute with the U.S. Attorney's Office. When my office asked to attend this meeting, the U.S. Attorney and Forest Service threatened to cancel it, leaving one to wonder why an elected official is being excluded. At this meeting, the Forest Service and U.S. Attorney refused to compromise. They would not even agree to not lock the gates on the fence until this issue could be discussed more thoroughly, and resolved.

I am afraid that this is only the opening salvo from Federal agencies attempting to further restrict access to water and other vital resources in the West. The Environmental Protection Agency is attempting to regulate virtually every ditch in the United States under the Clean Water Act. The Forest Service believes it has the right to regulate groundwater it does not own, including groundwater underneath lands it does not own, as well as the power to review state water rights applications. The arrogance and bullying by Federal agencies must stop.

This is not some theoretical argument. This is about our culture and livelihood. This is about the economy of southern New Mexico and the West as a whole.

Chairman Bishop, Ranking Member Grijalva and members of the subcommittee, I would like to once again thank you for holding this hearing today. The legislative branch exists in part to conduct oversight of executive agencies. It is time to exercise that power, and rein them in.

Mr. LAMALFA. Thank you, Mr. Pearce. We appreciate having you here today.

Let's proceed, then. We have our three witnesses from the first panel in place. Like all of our witnesses, your written testimony will appear in the full hearing record, so for this portion I ask that you keep your oral statement to 5 minutes. And that will be governed, of course, by the green light, the yellow, and then finally the red. Things get pretty heated with the red, so we ask that you adhere to that, much like a stoplight.

So with that, first up we will have Sheriff Perkins.

STATEMENT OF JAMES D. PERKINS, SHERIFF, GARFIELD COUNTY, UTAH

Sheriff PERKINS. Thank you. I would like to thank Chairman Bishop, Ranking Member Grijalva, and the members of the subcommittee. Thank you for inviting me to testify in this oversight hearing.

I am James D. Perkins, Jr., Sheriff of Garfield County, Utah. In my more than 27 years of law enforcement experience, I have worked closely with many different Federal law enforcement agencies. I would like to focus today on what I see as a system-wide failure by the Bureau of Land Management law enforcement to accomplish its mission.

If we had time, I could talk all afternoon, giving you example after example of problems I have experienced with BLM law enforcement. My written testimony includes nine examples that will give this subcommittee an idea of some of the difficulties we face. And I would like to talk today about three examples in particular.

But before I begin, I want to make sure that you understand that I absolutely recognize the critical role that Federal law enforcement agencies play in my county. Garfield County is more than 85 times the size of the District of Columbia. About 93 percent of our county is managed by the BLM, Forest Service, and National Park Service. So coordinating with each other is not optional.

We have a long record of working hand-in-hand with Federal agencies, like the FBI, the DEA, Immigration and Customs Enforcement, the Forest Service, and the National Park Service. I am proud of the many successful operations and investigations we have done jointly. We may not agree on everything, but we work together for one main reason: our relationships are based upon mutual respect. And that is where BLM law enforcement has been different.

My first example shows exactly how BLM law enforcement views our relationship. While I was attending a drug task force meeting in Cedar City, Utah, a BLM law enforcement officer told me point blank that he really did not care about any authority that I had as the Garfield County Sheriff. He told me that he did not feel like he had to coordinate anything through my office. His statement left me speechless. This attitude of lack of respect, which I find reaches through many levels of BLM law enforcement, is what I believe is the cause of the problem.

Another example of attitude happened during a search and rescue operation. We received a call that a party was overdue, and a search and rescue team needed to be sent. In these kinds of life-and-death emergencies, time is of the essence, and we need as

much help as we can get to locate the vehicle to give us a starting point for the search.

I asked one of the dispatchers to call the BLM law enforcement officer that is located in the middle of our county to help in the search. The frustrated dispatcher told me, "Sheriff, it is a waste of time. If he will answer the phone or we do get in touch with him, all he is going to tell us he is off duty or he is out of hours."

My last example involves a complaint I received from a BLM field manager located in Escalante, Utah. On the night before the elk hunt was open, a BLM law enforcement officer posted "Road Closed" signs on a road that was actually open to the public. The BLM field manager received complaints about the illegal road closures, and he went to the area and started to remove the "Road Closed" signs.

The BLM law enforcement officer confronted the field manager and threatened to arrest him. He even stepped back and placed his hand on his service weapon. The field manager told me that he felt like his life was in danger.

These examples are not isolated incidents. They happen all the time, and not only in Garfield County. I have included in my written statement letters from the Western States Sheriffs Association, Utah Sheriffs, and Nevada State Sheriffs to be included in the official record.

Years ago we had similar problems with the Forest Service law enforcement, but we were able to resolve them. Dave Ferrell, the Director of Law Enforcement for the Forest Service based here in Washington, took the time to come to Garfield County personally and meet with me. Our discussion resulted in both a change in attitude and personnel, and the problems have resolved themselves.

I am confident that we could do the same with the BLM if we had the chance. Until then, BLM law enforcement will continue to cause problems for the Sheriff's Office, first responders, residents, visitors, and the local economy.

Again, I appreciate the opportunity to testify before you today, and I will be happy to answer any questions.

[The prepared statement of Sheriff Perkins follows:]

PREPARED STATEMENT OF SHERIFF JAMES D. PERKINS JR., GARFIELD COUNTY, UTAH

Thank you Chairman Bishop, Ranking Member Grijalva, and members of the subcommittee for this opportunity to testify in this oversight hearing. My name is James D. Perkins, Jr., Sheriff of Garfield County, Utah. I have worked in law enforcement for more than 27 years and have significant experience in working with many different Federal law enforcement agencies. I would like to focus my testimony today on what I see as a system-wide failure by the Bureau of Land Management (BLM) law enforcement to accomplish its mission.

If we had the time, I could take all afternoon giving the subcommittee example after example of problems that I have experienced with BLM law enforcement and its lack of coordination with local law enforcement. I've included several examples in this testimony that will give the subcommittee an idea of some of the difficulties that BLM law enforcement has created for Garfield County—examples that affect not only the Sheriff's Office, but also our first responders, residents, and visitors.

NEED AND HISTORY OF LOCAL AND FEDERAL LAW ENFORCEMENT COORDINATION IN GARFIELD COUNTY

Before I begin, I would like to give you some background on Garfield County to explain why coordinating law enforcement activities with Federal agencies is so critical. Garfield County is more than 85 times the size of the District of Columbia. Including me, the Sheriff's Office employs only six full-time deputies across the county

to cover more than 3.3 million acres. Our law enforcement activities on public lands create a significant strain on our manpower and resources as we routinely are required to conduct emergency search and rescue operations and narcotic interdictions. We are often required to enlist the help of local volunteers, state police, and multi-county task force personnel.

Our law enforcement mission is made significantly more difficult because of the composition of the land ownership in our county and the number of people from home and around the world that come to see the beautiful landscape. About 93 percent of the area within Garfield County is managed by Federal agencies. We are home to three national parks, the Glen Canyon National Recreational Area, Dixie National Forest, and the Grand Staircase-Escalante National Monument. Combined, these areas receive more than 1.5 million visitors each year. With this number of people and overlapping jurisdictions, coordinating with Federal agencies is not optional.

Accordingly, we have a long record of working hand-in-hand with Federal agencies like the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), the Forest Service, and the National Park Service. I am proud of the many successful joint operations and investigations that we have done. I have battled the Mexican Cartel as they moved their illegal marijuana growing operations into my county. I have worked with the FBI on a kidnapping case where I arrested the suspect in my jurisdiction. I have worked alongside DEA and FBI agents on an attempted assassination case where one of our local Adult Probation and Parole Officers was the target. While exercising a search warrant on this investigation, one of the suspects was shot. Because of the coordinated efforts of all the agencies involved, including Federal agencies, no law enforcement officers were injured during this operation.

As these examples show, I absolutely recognize the critical role that Federal law enforcement agencies play in my county. While we do not agree on everything, we are able to work together because our relationships are based on mutual respect. I respect the role of each of these agencies to enforce Federal law within their jurisdictions, and they respect my role as sheriff and the chief state law enforcement officer of the county.

Notably absent from these examples is any joint work with law enforcement from the BLM. It's because there is none. And that is what I want to focus on today, because I see this lack of coordination—rather, their refusal to coordinate—as a system-wide failure that needs to urgently be addressed.

LACK OF COORDINATION AND INAPPROPRIATE BEHAVIORS OF BLM LAW ENFORCEMENT

BLM's attitude toward coordinating with local law enforcement is summed up best by a conversation I had with a BLM law enforcement officer while we were attending a drug task force meeting in Cedar City, Utah. He told me point blank that he really didn't care about any authority that I thought I had as the Garfield County Sheriff, and that he did not feel like he had to coordinate anything through my office. This statement left me speechless at the time, and, in my experience, it is representative of the lack of respect that BLM law enforcement has for local law enforcement. This lack of respect and choice to ignore the Garfield County Sheriff's Office makes my job significantly more difficult because the BLM is the largest land manager in Garfield County.

This refusal to coordinate, coupled with a lack of any meaningful oversight, has created a perfect environment where the abuse of Federal law enforcement powers can occur. We have had complaints of BLM law enforcement stopping people under the pretext of enforcing state law, and they have refused to provide me with documentation of their authority or jurisdiction to do so. They have detained people completely outside of BLM's jurisdiction on land managed by the Forest Service, illegally closed roads, and interfered with county emergency medical technicians, wasting time and resources. Local residents and visitors who feel they have been wronged by BLM law enforcement have little recourse but to come talk to me. The following examples are from a cross-section of these complaints, and I can assure that they are not isolated incidents. They happen all the time, and not only in Garfield County. I would note that the first is from a complaint that I received, not from a visitor or resident, but rather from a local BLM field manager.

I received a complaint from a BLM field manager located in Escalante, Utah. On the night before the mule deer hunt was to open, a BLM Law Enforcement Officer posted road closed signs on roads that were actually open to the public The BLM field manager received complaints about the illegal road closures so he went to the area to investigate and remove the signs. The BLM law enforcement officer confronted the field manager as he was removing the signs and threatened to arrest

him. The BLM Law Enforcement Officer stepped back and placed his hand on his duty weapon. The BLM Field Manager stated that he felt like his life was in danger.

- Several visitors to Garfield County told me that they would never return because of the way they were treated by BLM law enforcement. These tourists were visiting the Grand Staircase-Escalante National Monument and wanted to see a rock formation that was off the road. They parked their motorcycles off the roadway, within the county right-of-way, which is perfectly legal. When they returned, they were met by a BLM law enforcement officer, who threatened them with a citation and the impoundment of their bikes for not leaving them in the roadway.
- I have received complaints from citizens that live in Escalante, Utah. They reported that while they were on Forest Service property, a BLM law enforcement officer pulled them over for no apparent reason. The officer questioned them about what they were doing and they felt like they were being bullied. I contacted the District Forest Service Ranger in charge of the area and asked him if he had requested that the BLM law enforcement patrol on Forest Service property. He advised me that he had not and that he was also upset because he had received other complaints of similar activity. I contacted the BLM sergeant in law enforcement that is responsible for this area. This sergeant made excuses for the BLM law enforcement officer's actions and stated that they would get back to me. The sergeant eventually got back with me and advised me that the alleged allegations had taken place prior to her attaining the rank of sergeant, therefore they would not investigate. This didn't make any sense to me but that was the answer they provided.
- Garfield County Emergency Medical Service Director, Tammy Barton, reported to me that on three different occasions, a BLM law enforcement officer showed up on the scene of medical and search and rescue emergencies. The BLM officer refused to check in or sign the sign in sheet at the Incident Command, as is normal protocol. He took it upon himself to walk through the scene where an airplane accident was located within a State of Utah right of way. On another occasion, it was required to carry a patient out of a remote area to a landing zone where a medical helicopter could land to pick up this patient. The Incident Commander knew that carrying out the patient would take several hours. The BLM officer demanded that a helicopter be called immediately. Not only did the BLM officer again refuse to check in with the Incident Command, but he also took it upon himself to dispatch a helicopter to the scene after being told by the Incident Commander to wait until the patient could be carried out and was closer to the landing zone area. The medical helicopter arrived at the landing zone and sat there idling for approximately 4 hours. This resulted in the pilot having to return back to his station, get fuel, switch out pilots, and then return to the scene. This not only wasted time and money but further endangered the patient.
- I received reports from local ranchers that BLM law enforcement officers were seizing their empty protein supplement tubs as soon as the cattle had emptied them. The BLM law enforcement officer would take possession of the tubs and threaten the local ranchers with littering citations. I contacted the BLM's Special Agent in Charge and expressed my concern over the officer confiscating the tubs. I explained that the ranchers used these tubs for many different purposes after they were empty and certain types of tubs were returnable for a rebate when purchasing more of the protein. I told him that it was improper for the officer to remove these tubs and that the ranchers were not abandoning them. The Special Agent in Charge uncaringly laughed it off.
- It was reported to my office that additional roads had been illegally closed in the Spencer Flat area on the Grand Staircase-Escalante National Monument. I proceeded to this area and found a large pile of limbs, logs, and rocks blocking access to this road. I received a report that a BLM law enforcement officer was seen with limbs and logs in the back of his vehicle in the area. The Monument's manager was contacted and he advised me that this road had been illegally closed. I questioned the local BLM law enforcement officer that was implicated and he denied any involvement. However, to date there have been no other road closures of this nature.

These examples trouble me a great deal, especially where tourism is affected. Tourism is the lifeblood of Garfield County's economy. While we have received many similar reports from visitors, I have to wonder how many others have simply chosen to leave the county and not return.

Another area where a lack of coordination is very evident is in search and rescue operations on the Grand Staircase-Escalante National Monument. In recent history, we have had a number of fatalities for a lot of different reasons. I honestly cannot remember the number of people I have witnessed whose lives were nearly ended and then saved by Garfield County Sheriff's Office, Garfield County Search and Rescue, and use of the Utah Department of Public Safety (DPS) helicopter.

But these efforts are costly both in manpower and financial resources. From April 13, 2013 to March 11, 2014, I have spent a total of 469.75 hours of search and rescue time rescuing individuals. This does not count any training time for search and rescue—this is actual time spent on searches. From July 2, 2013 to April 29, 2014, I have 38.6 hours of use on the DPS helicopter. The helicopter's rate is $1,700 an hour, which means the cost during that period for the helicopter is $65,620.

Yet I have not received a single minute of help or assistance from any BLM officer, nor have I received one penny of assistance for search and rescue reimbursements from the BLM. Although search and rescue is primarily the sheriff's responsibility, the BLM does have an obligation to assist when requested. I think that it is time that the Bureau of Land Management stepped up and helped with these responsibilities. They also need to help with manpower and financially for the individuals that visit the Grand Staircase-Escalante National Monument and other BLM grounds.

Although my dispatchers have attempted to contact BLM law enforcement for assistance in search and rescue operations, there always seems to be an excuse for why they can't help. It has risen to the point where my dispatchers have become completely frustrated with BLM law enforcement. Recently, we received a call that a party was overdue and a search and rescue team needed to be sent. In these kinds of life and death emergencies, time is often of the essence, and we needed as much help as we could get to locate the vehicle to give us a starting point for the search. I asked one of my dispatchers to call the BLM law enforcement officer that is located in the middle of our county to help with the search. The frustrated dispatcher told me, "Sheriff, it's a waste of time! If he will answer his phone or we do get in touch with him, all he is going to tell us is that he is out of hours or he is off duty."

RESOLVING THE PROBLEM

I mentioned in the beginning that my office has excellent working relationships with other Federal law enforcement agencies. This has not always been the case, but we have always been able to work through these issues so we can do our jobs effectively. For example, several years ago we had incidents, similar to those I've discussed above, happening with the Forest Service Law Enforcement from our area. Dave Ferrell, Director of Law Enforcement for the Forest Service, took the time to fly from Washington, DC to personally meet with me in Garfield County. Our discussions resulted in both a change of attitude and personnel, and the problems have resolved themselves. In fact, I am in the process of deputizing two Forest Service law enforcement officers, in addition to the three Bryce Canyon National Park Rangers I have deputized since I became sheriff in 2007.

I am confident that if we had the opportunity to engage with the BLM constructively, in a spirit of working together, we could resolve the problems. We are open to any opportunity to work toward resolution with the BLM, and would appreciate any help the subcommittee could provide in our efforts. Oversight hearings like this give us a voice that is often overlooked, and the evidence that has been submitted to the subcommittee without doubt provides sufficient justification for a change in the status quo.

Again, Mr. Chairman, I would like to thank the subcommittee for this opportunity to testify before you, and would be happy to answer any questions.

Mr. LAMALFA. Thank you, Sheriff. We appreciate it.

Now we will move to Commissioner Pollock from Garfield County, Utah as well.

Five minutes, please.

STATEMENT OF LELAND POLLOCK, COMMISSIONER, GARFIELD COUNTY, UTAH

Mr. POLLOCK. Thank you, Mr. Chairman, Ranking Member Grijalva. My name is Leland Pollock. I am a Garfield County

Commissioner. I chair the Utah State Association of Counties' Public Land Committee. I sit on a national Public Land Committee for the National Association of Counties.

And if you will indulge me for a moment, we have some teenage TARS members. If I could just have them stand. Thank you. They are with us coincidentally.

What I am going to get into today, very seldom do we come back here and offer solutions. But I do have one solution to this problem. Contracting when it comes to BLM law enforcement is critical. That is where relationships are forged. And relationships in the West, believe me, are everything. In rural areas, good relationships can be the difference between life or death, really literally.

Now, a couple of years ago—and by the way, these are not partisan issues, a good friend of mine, State Director Juan Palma of the BLM—he has nothing to do with the law enforcement side; he is the State Director—he was working with me to establish a contract.

This contract would have allowed our sheriff to deputize BLM employees, let the BLM law enforcement officers use all our resources, use our dispatch, and basically protect his safety as well as the safety of the county. These cooperative agreements pay the counties, the rural counties, to offer law enforcement, and they are a huge savings to the agency, no matter what agency it is.

A prime example of how well this works is in Kane County, on the popular Grand Staircase National Monument. You all have heard of that. We share that monument with Kane County. They had an agreement similar to the one that the State Director and myself had worked out, and it was working beautifully. You can talk to the locals on the ground from either side, the BLM, the local sheriff, anybody you want to talk to, and this is the way to do it. OK?

Unfortunately, I do not share that same relationship with the State Director of Law Enforcement. It is not because I do not want to. It is because it is impossible. Unfortunately, as well, this State Director of Law Enforcement canceled all of the contracts in the entire State of Utah.

Now, you have for the record a letter from our Lieutenant Governor stating how imperative it is for the state to get those contracts reestablished, and we are not just talking about fiscally. We are talking about safety for the entire law enforcement system. Now, going forward, also, if you look at my statement, you are going to find a NACO Sheriffs Resolution, which means every county in the United States supports contracts with the local sheriff.

Every county in the United States—this was passed on through my committee and through NACO, the National Association of Counties—every county in the United States also supports him as the chief law enforcement officer. He has been told many times by the BLM law enforcement side that he is not the chief law enforcement officer of the county. This is a paradox that needs to be fixed, and you all have the power to fix that.

Now, we sometimes in the West and in Utah—some of you folks back here may think that we are anti-government, and that is just not the case. We are reaching out today as well as we will back

in Utah to try to forge relationships, to try to work through these issues.

What I am recommending here today is that we start with contracts. These contracts work all across the West, and they are vital to what we do on the ground. And they are a much greater help, believe me. And a good man, Juan Palma, State Director of BLM in Utah, knew that when he tried to forge and enter into an agreement with Garfield County.

But also, I want to bring one point up really quick. I am running out of time. It is kind of unnerving to me that the state director can work on an agreement with a local county commissioner, and the law enforcement side has the authority to override that. That is troubling.

Anyway, thank you for your time. And Congressman Stewart, I know you went through a lot to be here today, and you are very much appreciated in the great State of Utah, believe me.

[The prepared statement of Mr. Pollock follows:]

PREPARED STATEMENT OF LELAND F. POLLOCK, GARFIELD COUNTY, UTAH COMMISSIONER

Chairman Bishop, Ranking Member Grijalva and members of the committee: my name is Leland Pollock, and I am a County Commissioner from Garfield County, Utah. I also serve as a member of the National Association of Counties Public Lands Committee and have been designated by my fellow commissioners in Utah as the Chairman of the Utah Association of Counties Public Land Steering Committee.

Garfield County is a scenic rural area roughly the size of Connecticut. Ninety-three percent of the land base is under Federal ownership, and I believe we are the only U.S. county that contains portions of three National Parks (Bryce Canyon, Capitol Reef and Canyonlands). We are also home to significant portions of the Glen Canyon National Recreation Area, the Dixie National Forest, the Grand Staircase-Escalante National Monument, two BLM field offices, and a small segment of the Fish Lake National Forest.

I grew up cherishing the lands in Garfield County as the son of a Park Service employee. An ex-marine, my father worked for Bryce Canyon National Park. My father's employment was outside strict law enforcement responsibilities, but because of his military experience, he was often called upon to assist NPS officers—especially in the most volatile situations. I observed with my own eyes proper methods for protecting and serving the people of the United States.

I am here today to testify on two issues regarding BLM law enforcement activities that have moved away from a public service philosophy: (1) polarization of BLM law enforcement personnel/bullying; and (2) cancellation of cooperative law enforcement agreements between BLM and local governments.

As a preface to my remarks I want to inform you that Garfield County has a cooperative and productive relationship with National Park Service and U.S. Forest Service law enforcement personnel. Things are not always perfect, but we work with them within the confines of the law and with honest consideration for the public. I also want to let you know we enjoy a very positive and productive relationship with Juan Palma, Utah's State BLM Director. We meet and talk on the phone frequently; and he has been attentive to our requests and has responded expeditiously and appropriately within his authority. Unfortunately, we cannot make the same statement regarding BLM law enforcement personnel. Discussing BLM law enforcement operations is my purpose today.

This is not our first attempt to resolve issues of bullying, intimidation and the lack of integrity exhibited by BLM law enforcement agents. We have tried locally, and earlier this spring Utah's Lieutenant Governor convened an executive level meeting to discuss law enforcement on Federal lands in Utah. The meeting was attended by the Lieutenant Governor Spencer Cox, Utah's Attorney General Sean Reyes, the Regional Forester, the Regional Chief of Law Enforcement for the Forest Service, Utah's State BLM Director, BLM's Chief of Law Enforcement, and numerous Federal, state and local leaders. The meeting was open, cooperative and productive, except for the participation of the BLM's Chief of Law Enforcement. The Lieutenant Governor of Utah caught BLM's Chief of Law Enforcement in a lie and

exposed in his deception. His arrogant behavior lacked integrity and was illustrative of his department's unacceptable culture.

Our concerns/complaints are not just a matter of hurt feelings. The policies of BLM's Chief of Law Enforcement have cost Garfield County real dollars. Last year Garfield County and the Utah State BLM Director worked out a cooperative agreement providing Garfield County Sheriff's office a contract for law enforcement on BLM land. The BLM was to reimburse the county a set amount that would have resulted in significant savings to the Federal Government. The County—with BLM concurrence—hired law enforcement staff, acquired vehicles and equipment, provided training and proceeded with implementation of the agreement. Contrary to the State BLM Director's orders and without concurrence, BLM's Chief of Law Enforcement canceled the agreement leaving Garfield County with a significant budget shortfall and staff operating in an area without an agreement. We are befuddled how one individual can override a State Director and negatively impact an entire county with impunity.

We need your help to correct these serious problems. Let me address the two issues cited above:

POLARIZATION OF BLM LAW ENFORCEMENT PERSONNEL

Over the past decade or so we have observed and experienced an increasing hostility from BLM's officers. I am confident you are aware of recent, highly publicized actions involving BLM agents. But you may not be aware that much of the frustration by everyday citizens has resulted from lack of professionalism by local BLM officers. Some equate BLM's law enforcement operations to bullying and intimidation.

Submitted under separate cover is a list of actions that illustrate BLM's heavy handed authority. Three additional examples from only one BLM unit in Garfield County illustrate the problem.

Example 1. BLM law enforcement officers have been known to block open public roads asserted under Revised Statute 2477 and maintained by Garfield County with rocks, logs and debris. Such actions constitute a Class B Misdemeanor under Utah law.

Example 2. Immediately prior to a big game hunt authorized under Utah Law by the Utah Division of Wildlife resources, a BLM agent placed road closed signs in several county roads that accessed the hunting area. The BLM land manager heard about the problem and took a field trip to investigate. The land manager reports that during the investigation he was harassed and intimidated by the law enforcement officer. At one point the officer put his hand on his gun in an effort to discourage the land manager from continuing. This was a direct threat to an individual with management authority in the officer's own agency.

Example 3. BLM requested the county's help to install an underground waterline to serve wildlife, livestock, recreation and other public interests. The county offered to put the waterline in a county road to minimize any disturbance on Federal land. A BLM back country ranger observed county equipment being transported to the jobsite and followed county crews for more than 20 miles. When the county crews stopped the BLM officer got out of his vehicle and walked behind crew members harassing and interrogating them. Some crew members became so upset they returned to their vehicle to cool down. This occurred on a project where the county was donating thousands of dollars of equipment time and a road easement just to help BLM.

The cumulative effect of BLM law enforcement is disheartening, especially when I know we have good relationships with other agencies. Dispatchers have been rebuffed so many times by BLM agents that the county only contacts them as a last resort and with little hope for assistance.

CANCELLATION OF COOPERATIVE LAW ENFORCEMENT AGREEMENTS BETWEEN BLM AND LOCAL GOVERNMENTS

As mentioned above, we have a positive and healthy relationship with many Federal agencies and especially with Juan Palma, Utah BLM State Director. We have worked with Mr. Palma to develop a cooperative law enforcement agreement similar to those executed for neighboring counties; and he is supportive of moving forward in accordance with Federal law. However the Chief of Law Enforcement for BLM has unilaterally canceled contracts which has reduced coverage and increased costs.

The Federal Land Policy Management Act (FLPMA) states that the Secretary of the Interior shall contract with local law enforcement *to the greatest extent possible* for law enforcement services on public lands. Typically, BLM has cooperated with

local county sheriff departments to enforce state, local, local BLM laws on Federal land. Yet lately, BLM has refused to enter into such contracts due to resistance from BLM's Chief of Law Enforcement.

Earlier this spring Utah's Lieutenant Governor took steps to develop cooperative agreements and contracts in accordance with Federal law. The BLM agent in charge opposed such contracts but agreed to provide some additional information. However, to date—4 months later, no communication has been received from him and no improvement has occurred in BLM's heavy handed actions.

This testimony is not intended to only document complaints. We offer a simple solution: comply with FLPMA by contracting with local law enforcement to the greatest extent possible for law enforcement services on public lands. This may require direction to BLM's Chief Law Enforcement Officer, but it is compliant with Federal law and is supported by local BLM leadership. Such contracts will also cut Federal administrative costs, provide better service and increase public safety at a time when fiscal constraints demand more efficiency. This may require Congress clarifying the authority of BLM State Directors.

We are hopeful that after careful consideration, the BLM will take appropriate steps to better coordinate law enforcement with local governments in Utah and BLM law enforcement will enter into contracts as directed by Federal law. Thank you for the opportunity of speaking today.

NACO Sheriff's Resolution
2013

Issue: Local Law Enforcement on Public Lands

Proposed Policy: NACO urges all federal land management agencies to recognize and respect sheriffs (or the chief local law enforcement officer) in public land counties as the primary and chief law enforcement officer of the entire county. Federal agencies should execute cooperative agreements with counties to ensure fair and prompt federal payment of compensation for additional local law enforcement activities desired of sheriffs, and federal agencies submit their agents for deputization and accountability under local sheriff authority and control.

Background: Federal land counties are frequently impacted by lack of coordination from federal law enforcement officers. Federal officials fail to recognize the County Sheriff's role as the chief law enforcement officer within his/her jurisdiction; and, often, federal officers undermine local law enforcement efforts by usurping local authority in violation of established law. Counties are also forced to expend limited local funds to perform uncompensated law enforcement functions on federal land. This resolution is needed to encourage federal agencies to: a) recognize the sheriff's role as the chief law enforcement officer; b) work cooperatively with local government to coordinate law enforcement functions on federal land in accordance with established law; and c) develop cooperative agreements to compensate local government for services provided on federal land and to establish clear lines of authority.

Fiscal/Urban/Rural Impact: There will be limited fiscal impact for urban areas. Rural areas, especially public land counties, can expect greater coordination with federal law enforcement officials, reduced duplication of effort, and increased funding resulting from cooperative agreements and clearly defined roles. Citizens will reap the benefits of more efficient responses to problems, reduced cost by eliminating duplication, a streamlined approach to law enforcement issues, and greater efficiency of all levels of government.

Mr. LAMALFA. Thank you, Commissioner Pollock.

At any moment, votes will be called on the House Floor for a series of votes, amendments, et cetera. So we will just work through this as we can here.

Mr. Gerber, you are up next, Commissioner Gerber.

STATEMENT OF GRANT A. GERBER, ESQ., COMMISSIONER, ELKO COUNTY, NEVADA

Mr. GERBER. Thank you, Mr. Chairman, members of the committee. I certainly appreciate the opportunity to come here today and represent my constituents in Elko County and represent many of the people in Nevada that are concerned. I believe this hearing regarding threats, intimidation, and bullying by Federal land management agencies is very appropriate at this time.

I am a fourth generation Elko County resident. Our family settled there in the mid-1800s, and I have been cowboying in that county since the 1940s. I am 72 years old. I served in Vietnam. Our family, besides having a ranch, we had a hunting camp for over 30 years.

But a major change has occurred in Elko County. The BLM and Forest Service agents are operating so far different than they did when I was a boy and as I grew up. At that time,, they were friendly. They came to the ranch. We worked with them. But over the years, that has changed.

They are predominately from outside the area and do not develop connections with the locals, and many of them start off with a belligerent attitude, even a commanding presence. They are especially offended if anyone opposes any Federal Government actions. And the worst are the Federal law enforcement agents that arrogantly announce that they are not governed by Nevada law but can enforce it if they choose.

Now we have been informed, without notice or hearings, that the BLM has determined that two more BLM law enforcement agents are necessary to control the people in Elko County. It is unacceptable to us, to have additional people imposed on us without our consent.

I am going to give you two quick examples of our problem. In the fall of 2012, three minors on their day off went up to cut wood on Spruce Mountain. They cut the wood, and after they came off the mountain, they stopped to readjust their loads.

They looked back, and here was a pickup flying down the road at them, and one of the minors said they were getting air as it came. And this BLM agent jumped out. He had two guns on him. He had a flak vest on him, dark glasses. He was belligerent. He told them that he was giving them a ticket for cutting wood in a wilderness study area.

They protested and said, "We've got permits here, and we were not on a wilderness study area." But because of the cost of driving 300 miles to Reno to contest it, and having to go down twice and hire an attorney, it would have cost them thousands of dollars to protest it.

So I heard about it and offered to represent them for free. And we got a ways into it, and I looked at the maps, and the law enforcement agent from the BLM was on the wrong mountain. To get to where he said the wilderness study area was, you had to go down the valley and up on the mountain on the other side. He did not know where he was. These people are, many of them, very unprofessional. They do not even know where they are.

We got that case dismissed, but only after he had called them and given them false information about when the hearing was

going to be, and that it had been dismissed. And we got that on their telephones.

But the most egregious is down at Battle Mountain at this point. In that district, the Battle Mountain BLM Manager, Doug Furtado, has been threatening, intimidating, and bullying the citizens down there. That Battle Mountain District covers a huge amount of the State of Nevada. It goes down and connects up with Clark County.

In Clark County, the BLM has succeeded in eliminating all 50 of the ranchers. There are no more ranchers on that district, according to the BLM regulations. The only one left standing there, is in their mind, still there illegally. In the Battle Mountain District, Mr. Furtado is attempting to do the same thing. In the last 2 years, he has eliminated over 10,000 head of cattle grazing on that district.

I was contacted, and volunteered to help these ranchers for free to see if we could change things. There are six families that this spring were given an order that—oh, I have run out of time. That's what happens with attorneys.

[Laughter.]

Mr. GERBER. But this is an issue that is clearly wrong, and we have to make changes, and we have to make them quickly.

Thank you very much. I would be happy to answer questions.

[The prepared statement of Mr. Gerber follows:]

PREPARED STATEMENT OF A. GRANT GERBER, COMMISSIONER, ELKO COUNTY, NEVADA

My name is Grant Gerber. I am an Elko County Commissioner and a fourth generation descendant of ranchers that settled in Elko County, Nevada in the mid 1800s.

For over 35 years I have been serving as an attorney working on Federal Land issues.

A major change has been occurring in Elko County. When I was a boy and as I grew the few Federal Agents were mainly local or from rural areas and fit in well with the local area. They knew the people and worked cooperatively. Now the Federal Agents are predominantly from outside the area and do not develop connections with the locals as was done previously. Many start off with a belligerent attitude, even a commanding presence. They are especially offended if anyone opposes any Federal Government actions. The worst are the Federal Law Enforcement Agents that arrogantly announce that they are not governed by Nevada law, but can enforce it if they choose. Now we have been informed that, without notice or hearings, the BLM has determined that two more BLM Law Enforcement Agents are necessary to control the people in the Elko area. All of this is resulting in less use of Federal Lands by citizens as the citizens become afraid of being accosted and berated.

That has to change. Following are the most recent egregious examples in northern Nevada.

In the fall of 2012, three miners, on their days off, drove their pickups onto Spruce Mountain to cut winter wood. When they drove off of the mountain with the wood they cut they stopped to adjust their load. Suddenly, a pickup came flying down the road after them. One of the miners said it was coming so fast that it was catching air over the bumps in the road. The pickup slid to a stop and a man jumped out with two guns, flak vest, radio, tazer, handcuffs and with his pants tucked into jump boots. He belligerently announced that he was giving them a citation for cutting wood on a BLM Wilderness Study Area. When the miners told the agent that they had permits to cut and that they did not cut on a Wilderness Study Area, he would not listen. The agent told them that it was a Federal offense and not to contest the citation because the Federal Government always won. He gave each of the miners tickets of $275. A boy was in one of the pickups and he was so intimidated that it made him cry.

The miners knew that they had not been on a Wilderness Study Area but it was going to cost them thousands to drive to Reno 300 miles away to Federal Court twice and hire an attorney to defend themselves. Additionally, they would miss at least 3 days of work. For these reasons, they decided to pay the fees and cut their losses. I heard about the situation and met with the miners. I told them that I had a criminal attorney friend in Reno and we would represent them for free. We reviewed the maps of the area and confirmed that the agent, Mr. Brad Sone, did not know where he was. *He was on the wrong mountain!* He cited the miners for cutting wood in a Wilderness Study Area on a mountain that was over 7 miles away down, across a valley and up the other side.

Before the preliminary hearing Mr. Sone called the miners and told them the date of the hearing had been changed. One of the miners called the court and learned that Mr. Sone had not told them the truth, that the date had not been changed. Then the agent called the miners again before the trial and told them the case had been dismissed. Again the miner called and learned that the case had not been dismissed. I do not practice criminal law, but criminal attorneys have told me that Sone's calls were illegal at worst, and if not illegal it was inappropriate for the arresting officer to contact the cited citizens. The agent had already intimidated them and now was continuing to intimidate and mislead them.

In Battle Mountain, Nevada the Battle Mountain BLM Manager Douglas Furtado has been "*threatening, intimidating and bullying*." He has used BLM Law Enforcement to attempt to intimidate people from exercising their First Amendment rights of petition, speech, assembly, press and prayer. The Battle Mountain District over which Mr. Furtado presides is huge. It covers from Clark County in the south to I–80 in the north covering Nye County, (the largest county in the Nation), Eureka County, Lander County and Esmeralda County. Mr. Furtado has been eliminating much of the grazing in the Battle Mountain BLM District. Over 10,000 cattle have been removed in just the last 3 years. On one area alone, in June 2013, Furtado removed all 900 cattle that had been grazing each year for over 140 years. And in 2014 he did not allow any of those 900 cattle to graze even though the grass was over 2 feet high on much of the range. Because of these drastic grazing reductions the fire danger is excessive. Millions of animals have burned because of the management practices of the BLM and these actions by Mr. Furtado will result in the burning of millions more. Before the huge BLM reductions in grazing there were few fires. If Mr. Furtado succeeds in eliminating all the cattle in his district he will join the Clark County BLM District as "cattle free". In the 1980s there were over 50 ranchers with grazing rights in the Clark County District. Now there are no cattle authorized to graze on that district.

In March of 2014 I volunteered, for free, to help the ranchers in the Battle Mountain District reverse the unfair, illegal and morally corrupt practices of Douglas Furtado that were threatening millions of animals, destroying the lives of ranch families, harming the mining industry, hurting hunting and recreation and causing great harm to the economy. In working on this project I have learned many things about Mr. Furtado. He is vindictive and conniving. He has developed one tactic to an art form—"*voluntary non-use*."

In April a petition was created and passed throughout northern Nevada to have Mr. Furtado removed. Mr. Furtado sent a BLM law enforcement officer to the local hardware store where there was a petition to have him removed on the counter. The BLM Agent informed the store owner that it was a Federal offense to threaten or harass a BLM official. He then left the store for a few minutes, but then went back in and took photos of the petition. Steve P. Seldin, the store owner stated, "The officer appeared to be dressed as though he were going to war over seas, with black jacket, guns, etc. Only thing he may have needed to complete the uniform would be a steel helmet."

A GRASS MARCH/COWBOY EXPRESS was then organized to take the petition asking for Mr. Furtado to be removed to Governor Sandoval 320 miles on horseback. At the end of the ride the BLM had an agent there taking pictures of the participants. Many of those participants were intimidated because they rely on Federal Grazing Rights that Mr. Furtado controls.

Following are some issues that I am investigating as a result of my work with the ranchers in the Battle Mountain District. This investigation is ongoing and far from complete. I will supplement my testimony at this hearing with the results of this investigation.

VOLUNTARY NON-USE

That phrase is supposed to mean that the holder of the grazing right has voluntarily decided not to graze an area. Mr. Furtado has gone to ranchers and asked them to take "*voluntary non-use*" for part of their grazing. If they refuse or argue he then tells them that he will give them 100 percent cuts. So they then agree to the "*voluntary non-use*." Other districts in Nevada use this tactic, but are much more subtle when doing it. The rancher that is intimidated into taking "*voluntary non-use*" is then afraid to complain about it because they did it "*voluntarily*."

One rancher is reported to have asked Mr. Furtado if the BLM would please remove some of the horses that were overrunning the range as required by Congress. Mr. Furtado is reported to have told him that he would not remove any horses until he had removed all the cattle from the Battle Mountain District.

In February of 2014 Mr. Furtado announced to six extended ranching families, the Tomera, Filippini and Mariluch families that they would not be allowed to turn any cattle out on Mount Lewis during 2014. Their 10-year grazing licenses authorized them to turn out over 2,000 head of cattle in March. They argued with Mr. Furtado, but he refused to budge. I prepared a petition demanding that Mr. Furtado be removed from his position as the Battle Mountain BLM Manager. That petition now has many signatures and is continuing to gain signatures. Some of the ranchers have refused to sign because of fear of retaliation by Mr. Furtado.

On May 17 a GRASS TOUR of Mount Lewis was conducted with Nevada State Senator Pete Goicoechea, Assemblymen John Ellison and Ira Hansen, the Lander County and Elko County Commissions. There were over 200 citizens on the tour that saw the grass that was over 2 feet high. This information was published in the newspapers along with the announcement that a GRASS MARCH would go from Elko to Battle Mountain on May 26 and a COWBOY EXPRESS would then go from Battle Mountain to the Capital in Carson City to deliver petitions to Governor Sandoval requesting that Mr. Furtado be removed. The Washington BLM office sent a representative to review the condition of the range and immediately after he came Mr. Furtado met with the ranchers and agreed to let them graze their cattle in 2014. So finally 2½ months after they should have had their cattle out on the mountain they began turning cattle out. But Mr. Furtado's actions had caused them hundreds of thousand of dollars of loss. And because the low country was not grazed off when it should have been there is a tremendous amount of fuel that has now turned brown and is ripe to burn threatening the lives of tens of thousands of animals and the rancher's cattle.

It is to the credit of the Washington BLM that Mr. Furtado was required to turn the cattle out, but immediately he began a program of intimidation to justify his earlier decision to not allow any cattle to graze on Mount Lewis in 2014. I am researching that intimidation and will supplement this testimony with that information. As a part of that intimidation Mr. Furtado took Ms. Fite of Western Watersheds on a tour of Mount Lewis and refused to allow any of the ranchers to participate.

To shed further light on the tactics of Mr. Furtado and help the public to understand the great threat to wildlife because of the increased fire danger and the great harm he has caused and is causing to the ranchers, miners, hunters, recreationist and the economy a GRASS MARCH/COWBOY EXPRESS will leave Carson City to Washington, DC on September 29, 2014 crossing the continent in approximately 20 days. It will be the fastest crossing of the Nation on horseback in history. A horse and rider will lope 5 miles and then pass the petitions asking for the removal of Mr. Furtado to another rider who will then lope 5 miles.

If everyone in Nevada, all County Commissions, the Nevada State Legislature and the Governor and even all of Congress wanted to remove Mr. Furtado it could not be done without an impeachment proceeding. Mr. Furtado works for the Executive Department and the Executive Department is the only entity that can remove him. That is an intolerable situation. There has to be local control and the only way that can be accomplished is for the Federal Government to transfer the BLM lands to the states. If Mr. Furtado was an employee of the State of Nevada he would have been removed in 2012 or 2013 and certainly by this time in 2014.

The BLM law enforcement agents in Nevada report to Salt Lake City and there is no local input. And the BLM is very reluctant to investigate stories of abuse. When the Elko County Commission considered the woodcutting incident the BLM was outraged and said the miners should have taken their complaint to the BLM. At an Elko County Commission meeting in the spring of 2013 the BLM said they would investigate the incident. But the investigation was not begun until the spring

of 2014 and is proceeding very slowly. The investigator from California is starting to ask the right questions, but so much time has passed, over 14 months, that when the report does come out it will be an old story. Contrast that with what would have occurred if the citation had been issued by an Elko County Sheriff's Deputy. Because the Elko County Sheriff is an elected official and answers to the citizens of Elko County the Sheriff would have done an immediate investigation and taken appropriate action. If he found the officer had acted improperly he would have either disciplined him or fired him and that information would have been public. There is no corresponding accountability within the BLM. Even if the BLM, after this delayed investigation, finds that the agent acted improperly the BLM will keep any actions it takes secret to protect the reputation of the BLM.

On January 9, 2013 a delegation of the leadership of BLM law enforcement from Salt Lake City came to the Elko County Commission meeting and proposed a Memorandum of Understanding that would give the BLM Law Enforcement Agents the ability to cite for Elko County ordinances and Nevada State law. The Commission was opposed. The delegation then went on to explain that it really did not matter what Elko County did the BLM was going to enforce Elko County and Nevada State Law if the BLM decided to do so, including citing drivers on Elko County roads, Nevada State Highways and I–80 because those roads and highways passed through BLM lands.

In 1930 Gandhi began the Salt March that eventually gained freedom for the citizens of India. He said that it was the inalienable right of Indian citizens to have freedom and enjoy the fruits of their toil. Likewise the citizens of Nevada have the inalienable right to freedom and the fruits of their toil. The combined might of the BLM, especially BLM law enforcement and BLM Managers like Mr. Furtado are depriving Nevadans of their freedom and the fruits of their toil.

Congress must act to restore freedom.

Enclosures:

Exhibit A: Hansen Letter

Exhibit B: Mariluch Letter

Exhibit C: Seldin Letter

Exhibit A

FYI - My open letter to Governor Sandoval from Assemblyman Ira Hansen District 32 regarding the BLM Battle Mountain District Manager Doug Furtado...

AN OPEN LETTER TO GOVERNOR SANDOVAL

Dear Governor,

As the Assemblyman for District 32, I represent Lander County and the Argenta BLM grazing district. I want to insure you are fully informed on the increasingly unreasonable and nearly tyrannical actions of the BLM there, especially the conduct of BLM District Manager Doug Furtado.

My involvement started this spring when I was contacted by State Senator Pete Goicoechea about an upcoming "allotment" meeting to be held between the permittees and the BLM. I contacted Mr. Furtado, asking him for details on when and where the meeting was to take place. He informed me I was mistaken; there was no such meeting. I then called Senator Goicoechea back and told him he was apparently mistaken.

However, after Mr. Furtado hung up with me, he called Mr. Pete Tomera, a permittee, and read him the riot act. He threatened him for notifying both Senator Goicoechea and myself about the meeting, and told him if Assemblyman Ira Hansen or Senator Goicoechea show up, he will shut down the meeting.

Mr Furtado flat out lied to me. There was a meeting scheduled, exactly as Senator Goicoechea had alerted me to.

Following Furtado's threats, Mr. Tomera contacted Senator Goicoechea and he, much agitated, again contacted me and told me to be sure and be at the meeting.

This blatant lie and Furtado's threats are simple illustrations of what the permittees have been dealing with for years.

I then met with Amy Leuders, Nevada BLM Director, and her assistant, Raul Morales in an effort to bypass Furtado. Instead, they showed me photos of poor range conditions sent in by Furtado. There seemed to be no interest in seeking a middle ground.

I then attended an all day tour on May 11th of the Argenta allotment.Contrary to the photos from Furtado - taken in February - the range is in excellent condition. Both the riparian habitat along the streams and springs and the uplands were in excellent condition. Without exaggeration, native grasses waved like wheat fields in the breeze, and on recent fire scars, cheatgrass was thick and already a foot high. These conditions are perfect for grazing - or fire. Several hundred people are witnesses and the photos and videos taken by many there are proof beyond dispute. I would love to escort you or your staff, by car or horseback, all around the Argenta district, and you can see for yourself who the liars are. Incidentally, the BLM was invited but chose to not show up.

One other disturbing development: a petition to remove Furtado is circulating in Northern Nevada. One is available in the Battle Mountain hardware store. When the petition was first introduced, a fully armed BLM cop, bullet proof vest and all, showed up at the hardware store. The heavily armed BLM agent asked for the store owner, Mr. Steve Seldin. The BLM agent then informed him that it was a crime to attempt to intimidate or harass a BLM official. After reading through the petition, he told Mr. Seldin the petition was "O.K." and left. Clearly, this was an attempt to intimidate. It also is a violation of a constitutional right - to petition our government for a redress of our grievances.

Governor, I have attempted to work with the BLM and local officials to resolve this - unsuccessfully. I ask you for additional assistance. Mr. Furtado is the root of the problem. I ask you to use your authority to protect the hardworking, honest people in my district and see that he is replaced. The situation is heating up. Action is needed now.

Ira Hansen Assemblyman District 32

Exhibit B

Shawn and Angie Mariluch
Filippini Ranching Company
HC 61 Box 75
Battle Mountain, NV 89820
June 3, 2014

Dear Officials of the *Nevada Department of Agriculture:*

This letter is another example of Doug Furtado's unprofessionalism and insulting ways as a public servant. On May 19, 2014 we went to the BLM office to get our license and pay our fees after our Range Consultant, Bob Schweigert, had made up a management plan for our allotment on Argenta. Adam Cochran came out to say there would not be a license or a bill at this time and that they would be meeting with us soon. Doug popped out and said he would like to meet with us about a recent letter we had sent him. Then out of the blue he started slamming our Range Consultant, Bob Schweigert. He went on to say in a mean and loud voice that Bob Schweigert did not know anything and the worst think about him is that he never learned anything because he never worked for the BLM long enough! He continued insulting him saying he could sway his monitoring results any way he wanted. This was so rude and uncalled for, and it upset us to no end as Bob is a very respected professional and takes his job very seriously.

After this, we met with the BLM on May 22, 2014 to work out and discuss a license to turn out on. Chris cook was in charge and right of the bat, shut down Bob Schweigert when he tried to present our monitoring results. He would not only let him make his presentation, he would not even let him even talk. When Bob asked if they would share their monitoring they said no! They would not even let our spokesman and representative represent us! They said it was a take it or leave it situation! Mind you this agreement, written up by Doug Furtado, would take away our due process if signed. What public service government agency in the USA would write a document that takes away all due process? This is simply appalling; we are not a dictatorship yet in this country.

Overall, on both occasions we were treated quite shabbily to say the least!

Thank you very much for your time concerning this matter.

Sincerely,

Filippini Ranching Company

Exhibit C

7/21/14

Royal Hardware
404 East Front Street
Battle Mountain, Nevada 89820
(775) 635-2422

An officer from/representing the BLM, arrived at Royal Hardware to review the petition to have Doug Furtado removed from the BLM office. The officer stated his business as, …making sure there were no threats towards Doug Furtado himself, or his family… However, his attire seemed deliberately intimidating. The officer appeared to be dressed as though he were going to war over seas, with flack jacket, gun, etc. Only thing he may have needed to complete the uniform would be a steel helmet. He then took pictures of the petition, and left.

/s/ Steven P. Seldin
Steven P. Seldin

Mr. LAMALFA. Thank you, Mr. Gerber. You heard the buzzer go off here, so votes are underway. But I think we have enough time to do one question on each side before we have to recess for a little while to go do Floor votes. So we want you to stick around. You have traveled, and we want to have the chance to do the full round of questions, if you would like.

So I will recognize myself for 5 minutes here, and ask Commissioner Pollock, and Sheriff Perkins you can jump in as well, but we want to know what the impact is on your Garfield County budget as a result of the enforcement contracting agreement with BLM falling through.

Sheriff PERKINS. I am going to take just a few seconds, and then give it to Commissioner Pollock.

One of the impacts is going to be—I have another example where I actually have had people tell me that they will never return to my county because of the way they were treated by BLM law enforcement for simple things that they did that were not illegal. They parked their motorcycles in the borrow pit and walked over to a rock cropping, and were threatened with a citation and impoundment of their bikes. And these people are good people.

Mr. LAMALFA. Could you elaborate on that? They parked their motorcycles—how was that?

Sheriff PERKINS. Sorry. The borrow pit is a part of the county road right-of-way where the water drains.

Mr. LAMALFA. For those that are watching, so you are talking there is a roadway and there is the edge of the road where it is lower. That is the borrow pit?

Sheriff PERKINS. That is the borrow pit, yes. They parked their bikes down there so they did not leave them on the roadway, and they walked over to a rock cropping. When they came back, this is when they were met by this BLM ranger and told they should have left their bikes on the roadway.

Mr. LAMALFA. In the middle of the road?

Sheriff PERKINS. Well, on the edge of the road or on the roadway. They were threatened with a citation——

Mr. LAMALFA. Is it a narrow road?

Sheriff PERKINS. No. It is a two-lane road. It is a dirt road.

Mr. LAMALFA. Is it a paved road? A dirt road?

Sheriff PERKINS. A dirt road, but two lanes. Wide enough for two vehicles.

Mr. LAMALFA. So there was other traffic that might be coming, trucks and cars?

Sheriff PERKINS. Absolutely. It is a busy road.

Mr. LAMALFA. Logging trucks? Larger vehicles?

Sheriff PERKINS. Tourists. It is down the Hole-in-the-Rock Road, if you are familiar with the area.

Mr. LAMALFA. So the average person might think it is wise to pull your machine off and park it——

Sheriff PERKINS. Absolutely. You would not want to leave anything in this roadway.

Mr. LAMALFA. OK. And the gentleman was cited for that?

Sheriff PERKINS. He was not cited. He was threatened with a citation. They told me that they were bullied and mistreated, were their exact words. So that affects our economy a great deal, when

people will not return to our beautiful county because of the way that the law enforcement treated them.

Mr. POLLOCK. Thank you, Sheriff. Fiscally, you have to remember—let me frame this a little bit and put it into perspective; 93 percent of our county is federally owned; 3½ percent is state. So we have 3½ percent of that county to tax; 87 percent of that revenue goes to the school district.

So we can operate our county for 16 days from property tax revenue. So I am glad you asked that question. These contracts would have been vital. And again, this is nobody's fault on the State Director's behalf. He came down. I spent a full day with him on the monument. And he could see the problem.

And we worked out a cooperative agreement verbally, and he would have carried through on this. This man has integrity. He would have carried through on a contract that I believe was $120,000 a year to cover another county deputy and provide additional services from all deputies. They would have been at his disposal.

So we hired a deputy in good faith. Now, when we hired this deputy, bear in mind he is still working for us. So we have the deputy, the additional deputy, which is needed. Whether it can be afforded or not is questionable. Now, bear in mind, property tax is how most counties survive. We survive from intergovernmental revenue.

So from a budgetary standpoint, things like this are very troubling to me.

Mr. LAMALFA. Thank you.

Mr. Gerber, would you like to touch on that subject as it affects Nevada?

Mr. GERBER. Yes. We have just done some recent studies, and the cost of the Federal Government is in the multi, multi millions. And that is why it is imperative that these lands be transferred from the Federal Government to the states so that we can survive, not just for the reasons that we have about the intimidation and the bullying.

But if the Federal agents were not there and it was state agents, we would do well, if county sheriffs could take care of things. But as a result of this, we have situations like in Battle Mountain, where the agent came at the request of the Battle Mountain manager and intimidated a store owner that had a petition there, saying that if there was any threats to Federal agents, he would be arrested. And it was purely done for intimidation purposes. There are those kinds of intimidation things we cannot accept.

Mr. LAMALFA. Thank you to our panelists. I will recognize Mr. Grijalva for 5 minutes.

Mr. GRIJALVA. Thank you, Mr. Chairman. I am just going to ask some questions for clarification, some of the inconsistencies that I want clarified or at least explained. We make a lot of decisions based on conjecture in this body sometimes.

On the issue in which we have BLM being, based on the experiences in Garfield and Nevada, categorized as an organization that—the generalization is this is system-wide, that it occurs everywhere. I think that is a leap too far for me in terms of conjecture. I think data for this committee, and verifiable examples that the agency has a chance to respond to, and the Members can deliberate

and see what they feel, I think would be the appropriate way to go.

But in terms of just clarification, Commissioner Pollock, Garfield County, as I understand it, passed a resolution declaring that Federal law enforcement authority—I am assuming specifically BLM—is not recognized in the county.

Now, if the county chooses not to recognize Federal authority, why the advocacy for Federal funding? That is where there is some inconsistency. Either you recognize the legitimacy of the Federal Government in the sense of law enforcement in this instance, and want to be a partner and deal with the contractual issues that have been brought up, or you do not. Am I misreading that resolution and your statements?

Mr. POLLOCK. No, Ranking Member. Actually, I am glad you asked that question. That resolution, believe me, was a last resort. That resolution has just been passed. What that resolution is doing is protecting our citizens. Now, I have been nice enough not to speak of the bullying going on, but I am going to give you a couple of examples.

Mr. GRIJALVA. No. That is OK. I only have 5 minutes. But I wanted to get to the specific question I asked you, about the inconsistency.

Mr. POLLOCK. The inconsistency? That is fine, and I can deal with that. If the BLM would like to come forward and forge a relationship and sign contracts, absolutely. We would recant that resolution. But bear in mind, a resolution is not a legal document. When we have to——

Mr. GRIJALVA. OK. I was going to bring up that next. But it is a formalized opinion by the——

Mr. POLLOCK. Absolutely. It is what we have to do in extreme situations. And believe me, Congressman, this is an extreme situation. These are not partisan issues. And if the BLM would like to forge something by way of contracts, not just with Garfield but the entire State of Utah—and it is not just Garfield County that has created these resolutions; four other counties have done the same and followed suit.

Believe me, it is a last resort. And I really do not think there are inconsistencies simply because we reached out to try to resolve this. We tried to resolve this.

Mr. GRIJALVA. Do you believe that based on Utah State law, that that provides Garfield County, Mr. Commissioner, with the authority to operate roads within the National Parks and the National Monuments?

Mr. POLLOCK. You mean as far as maintain, Congressman?

Mr. GRIJALVA. Operate. Yes.

Mr. POLLOCK. Yes. We are already doing that. We maintain them as we speak. If we did not maintain them—their budgets have been cut to the point we have to maintain BLM roads or they will be closed by way of weather. On the forest, you would not be able to see the popular Dixie National Forest without our road maintenance program. So we are maintaining those roads as we speak at our expense.

Mr. GRIJALVA. I think the last one—and I appreciate that—do you recognize BLM's authority to enforce Federal law on the public lands and in Garfield County?

Mr. POLLOCK. OK. Where they run into trouble with us as far as us recognizing that authority is if they affect the health, welfare, and public safety of our citizens. If they do so, then it is my job and the sheriff's job to protect the health, welfare, and public safety of the citizens in our county.

And believe me, this is protection that our citizens need. And it does not matter what the adversary is. If they are being threatened in any way, it is our job—when we were sworn in, we took an oath to protect the health, welfare, and public safety of the citizens of our county. So in that sense, we need to protect our citizens. That is our job.

Mr. GRIJALVA. But there is an acknowledgment, I hope—or that is my own preference—there is an acknowledgment that the enforcement of Federal law is BLM's prerogative?

Mr. POLLOCK. It depends on the situation. And I am telling you right now—I am telling you right now——

Mr. GRIJALVA. OK. Thank you.

Mr. LAMALFA. We have to stop here. We are going to recess for—I hate to guess time on the House of Representatives on real time. It looks like we made up 30 seconds on the clock here, but approximately 35, 40 minutes to get through the votes we have on the Floor.

So please stay if you can, and then we will finish up this first round of questions, then have our second panel. So thank you for your indulgence. We will recess for a little while.

[Recess.]

Mr. LAMALFA. We will resume with the hearing of the Public Lands Subcommittee. Thank you for your patience, you all, as we conducted our Floor business. It always seems to take longer than you would hope. But anyway, thank you for staying. We were in the middle of our first round of questions for Panel I, so I would now recognize the gentleman from California, Mr. McClintock, for 5 minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

The stories you have told are similar to stories that my office is constantly receiving. I have the Sierra Nevada of California. Some of our counties—Alpine, for example—96 percent of the land area of that county is administered by the Federal Government.

Mr. Gerber, the change in attitude that you reported over a generation is very similar to what I have observed as well in my time in California. The frustration that we have for some very good reasons. Our Constitution is founded on a separation of powers. Congress has the sole authority to make the law, but the President has the sole authority to enforce it.

So my question of you, in speaking of essentially the administration of these agencies and the administration of the law, that is beyond our powers as a Congress. Our power is to enact legislation. What changes do you believe need to be made in order to right this wrong?

Let me throw out a couple of suggestions. One of them is, I do not understand why land managers have to be armed. Should not

the law enforcement on these lands be left to local law enforcement agencies?

Mr. GERBER. Without question, Congressman. The sheriff is and should be respected and be the chief law enforcement area of a county. He is elected locally. That was the purpose of the Revolution in the first place, is to have local control.

As a result of what has occurred, the Federal Government continues to increase its position in every one of these states. And so at the end of the day, the only solution, the only solution big enough, is to transfer the BLM and Forest Service lands to the states so we get back to what the Founding Fathers intended.

Mr. MCCLINTOCK. Are you suggesting transferring the entire lands to the states, or law enforcement responsibility to the states?

Mr. GERBER. The land itself. Six states have passed legislation that has begun taking us in this area, Montana, Wyoming, Utah, Idaho, Nevada, and Arizona, and it appears that Alaska is going to be next. We have made significant strides in the eastern states and in the southern states because they are beginning to realize that they should not be sending their tax dollars out there to waste money on these fires that would not occur if the locals had control.

If the locals had control, we would have it grazed. We would be logging. And as a result, millions of animals would be saved because these fires kill millions every year. And then all the easterners would benefit because the pollution would not be coming this direction.

So we are in a position where things can change, and that is why we are here. We want that change to occur, and we think that the western states should have the same freedoms as the eastern states. And we believe that the enabling acts of the western states are exactly the same as the enabling acts of these eastern states.

In Illinois and Indiana and Missouri, they had 90 percent of their land controlled by the Federal Government in the 1820s, and they got it changed because they banded together. So hopefully we can get that done, sir.

Mr. MCCLINTOCK. It is interesting to note that, as I said, I have a county where 96 percent of the land is controlled by the Federal Government. Overall, I believe about 42 percent of California is controlled by the Federal Government.

It is interesting to note that the Federal Government only controls 25 percent of the land area of the District of Columbia. Here is the national capital, a Federal district, with all of the national malls and buildings and other public works. That amounts to about 25 percent of the land area of Washington, DC.

Mr. GERBER. Well, at the time that was set up, the Founding Fathers were still in charge.

Mr. MCCLINTOCK. Thank you. I yield back.

Mr. LAMALFA. The gentleman yields back.

I will recognize the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I would like to thank our panel for taking the time to be able to be here. For Members out of Utah, I am out of Colorado. We probably have some very common experiences that are there.

Commissioner Gerber, I would like to question you. We had Secretary Jewell before the Natural Resources Committee, and we have had a lot of issues in Colorado, as I believe we have probably in Nevada, certainly over into Utah, with road closures, which have been noted in some of the testimony.

The Department of the Interior, the BLM, the Forest Service, have they ever approached you in any type of consultation in regard to road closures?

Mr. GERBER. Elko County met with the Forest Service over a hundred times during the period that the Forest Service was going through its travel management plan, and at the end of the day Elko County got nothing that they asked for, and they have closed hundreds of miles. In the West, they have closed thousands of miles of road, and the local people were just ignored.

So roads are being closed, and that also results in increased fire. Millions of animals killed. It is an intolerable situation, sir.

Mr. TIPTON. This might be a question for the entire panel. Given some of the road closures—we have a vast expanse of public lands throughout the West—from a sheriff's standpoint in terms of public safety, when we are responding to a forest fire or if there are other problems that are going on, have these road closures impacted your ability to be able to service your communities public safety-wise?

Sheriff PERKINS. Absolutely. Let me answer that. Absolutely. I had a search and rescue just last year where an elderly gentleman had been gone for over 24 hours. This man was in his 80s. Southern Utah is big and vast, like Colorado. A lot of this area, there were old ATV trails that had been closed off. We were using the helicopter, with no avail.

But I actually had to go open personally—I went and opened these trails for my search and rescue to get in and save this man's life.

Mr. TIPTON. So it is a matter of actual safety?

Sheriff PERKINS. Yes.

Mr. TIPTON. And Sheriff, just by way of a little bit of background, how long have you been in law enforcement?

Sheriff PERKINS. I have been around for a long time. At the end of this year, I will have 28 years—8 years as sheriff, 20 years before that as a deputy.

Mr. TIPTON. Great. Twenty-some-odd years, basically, of experience. Growing up, we dealt a lot with the BLM. Dealt a lot with the Forest Service. And effectively, they were community members. But it seems from your testimony that we are starting now to see changes in terms of some of the administrative policy that is coming out.

Do you see this as a systemic, out of Washington, top-down sort of an approach, or is it more at the local level?

Sheriff PERKINS. Well, I will tell you, I am not sure because like with the Forest Service, I am here to tell you that a couple of years ago I had the very same problems with the Forest Service as I do with the BLM today. They just would not work with me.

But after some personnel changes and after the director came to not only the Utah Sheriffs Association but Western States Sheriffs, and eventually to Garfield County, I've seen some good changes. And I have an extremely good working relationship with the Forest

Service now, like I always have had with the DEA and the FBI and Immigration.

In fact, I have a contract sitting on my desk. I am going to deputize two Forest Service law enforcement officers for Garfield County. Last Friday we just had a mission where we had a shooting suspect that was up in our hills, and I sent a deputy along with this Forest Service officer for backup.

So the BLM, I do not know where it stems from. I wish it was that easy. I think, and I am being candid here, and maybe that is kind of a fault I have, but there need to be some personnel changes. There have been so many bridges burned, I do not know if they can ever be repaired.

I want to work with these people. You people, please, go through these letters that I have provided you from other agencies, other sheriffs, and these people, they want to work with the BLM. They really do. But they need the BLM to recognize their law enforcement authority.

Mr. TIPTON. So is this a communication problem or is it more to the point you simply are not being heard?

Sheriff PERKINS. I think that they just do—the people that I have in my area, and I am speaking as Garfield County Sheriff, they have a problem with recognizing the sheriff as the chief law enforcement agency.

And you need to understand that if they have operations that involves a drug eradication program where they bring helicopters in my county, they need to go through me with that, on that kind of stuff, because—and this has happened—I have other situations that are going on that I may not want a helicopter over a certain area at a certain period of time because it could actually put people's lives in danger on other operations.

So they need to coordinate things with the sheriff. The sheriff is like Congressmen and Senators and all the other elected people. We are the people's representative, and it is our responsibility to oversee the law enforcement in our counties.

The FBI, when they come through my county, I get a phone call if they have something going on. The DEA, they are my right hand when it comes to big drug seizures and these cartel gardens that we have dealt with. I respect the Federal Government agencies, and they have a place. But the sheriff is the chief law enforcement officer of the county.

Mr. TIPTON. Thank you, sir.

Mr. LAMALFA. Thanks, Mr. Tipton.

We have completed the first round of questioning by those available on the panel here, so I will recognize myself in a brief second round of questioning here as well.

Sheriff Perkins, I do not imagine you are the only sheriff that is experiencing these activities and actions in your state or maybe even neighboring states. Do you know of other jurisdictions or other sheriffs that feel the same way?

Sheriff PERKINS. Once again, when you folks get a chance to go through the packet that I have provided you, there are going to be letters from a Nevada sheriff. There are going to be letters from western states sheriffs. There are going to be letters from several other sheriffs throughout Utah.

Yes. It is a problem in the western United States, not just in Garfield County. This is not just a Garfield County problem. This is a western United States issue.

Mr. LAMALFA. Other sheriffs you have talked to express concern?

Sheriff PERKINS. Oh, absolutely. They will pour their hearts out in these letters. If I may, I just want to read one paragraph from a sheriff in Lincoln County, Nevada, I think that is where he is from. And this is the problem. This pretty much says it all:

"Over the past few years I have continued to try to work with the BLM on issues in Lincoln County, but tensions have been very high. A few months ago, I had occasion to speak to a BLM employee and was discussing issues between counties and Federal agencies. The BLM employee pointed to a flagpole that was near to us and said, 'See that American flag? It is above the Nevada flag, and you need to remember that'."

That is the problem.

Mr. LAMALFA. Interesting. Well, the BLM had guidelines and rules that they are supposed to follow, and they have a handbook that their officers are supposed to use. So what do you think is in that handbook as far as their interaction with the state and local laws on that?

Sheriff PERKINS. First of all, and I have talked to the BLM and they recognize that they have—and I recognize that they have—proprietorial jurisdiction. And this is the definition of that. It's in the Eisenhower Report. It has been around for a while. "The United States has acquired some right or title to an area within a state, but has not obtained any measure of the state's authority over the area." That's what it is.

Now, in their own handbook, in their own rules, let me read you this, if I can find it. "BLM law enforcement must not enforce state and local laws without a written law enforcement agreement with the state and local agencies that has authority to grant state law enforcement authority to Federal law enforcement officers." That is in their own rule book.

Mr. LAMALFA. OK. Thank you. That is very telling.

Commissioner Pollock, what has your relationship been like? Have you engaged them? Have you dialoged very much with these folks in order to come to an agreement as gentlemen instead of perhaps the heavy hand of the Federal law?

Mr. POLLOCK. Thank you, Mr. Chairman. You are talking about the law enforcement side of it?

Mr. LAMALFA. Yes.

Mr. POLLOCK. Yes. In fact, the entire State of Utah convened a special hearing during the legislative session. The Lieutenant Governor, myself, and several others had the Director of Law Enforcement of BLM—I think he is over Nevada and Utah—in that meeting, and there was Utah State legislative leadership, Attorney General Sean Reyes, and many of the leaders of the State of Utah. And we were up——

Mr. LAMALFA. How did that go? My time is running short. How was the dialog, or was it a useful dialog?

Mr. POLLOCK. Not good. It was very, very petulant coming from the Director of Law Enforcement. In fact, there was no one in the

room, including the Lieutenant Governor of the State of Utah, that could get along with this guy.

So yes, that is a great question. And we have had problems that we cannot get through. And that is why we are asking, the only solution that we can see is a personnel change.

Mr. LAMALFA. OK. Thank you. We have heard that already a couple times.

Commissioner Gerber, the terminology, "voluntary non-use," is one that has come up and can be used in certain ways. Why do you not expound upon that for a moment in my remaining time?

Mr. GERBER. It is supposed to mean that the holder of the grazing right voluntarily relinquishes his grazing for a year or 2 years.

Mr. LAMALFA. Why would they do that?

Mr. GERBER. Most of the time they do not want to do that. But what happens is that in the case of Mr. Furtado, he went to them and said, "Look. I want you to reduce your grazing by 50 percent," in some cases 75 percent. And they said, "Well, what happens if we do not?" And he said, "Well, I will reduce you 100 percent, then."

So with a gun at their head, they say, "OK, we will accept that because we have to." And then when you ask them about it, they do not want to talk about it because they voluntarily relinquished it.

Now, other districts—and I represent lots of ranchers and have over the years—they do not want to ever take that. But in subtle ways, the agencies in other districts do it, too, but none of them with the heavy-handed approach that Mr. Furtado in the Battle Mountain District has done.

Mr. LAMALFA. Thank you. My time is up on that.

I recognize Mr. Grijalva for 5 minutes.

Mr. GRIJALVA. Thank you.

Sheriff Perkins, thank you for the—I guess you deputized me. Right?

Sheriff PERKINS. Well——

Mr. GRIJALVA. No. I am just kidding. Scared you for a second.

[Laughter.]

Sheriff PERKINS. You need to have 20 hours of training before I can legally do that.

Mr. GRIJALVA. And I understand, having been a county supervisor and commissioner in Pima County in Arizona, the tension that is inevitable between the Federal agencies and the county agencies and state agencies.

But I thought your point was well taken in terms of law enforcement, search and rescue, first responder activities, that there has to be a level of cooperation, memorandums of understanding, whatever is necessary to make that part of the service that is provided to the public excellent like you want it. And it requires not only good working relationships but to the point of even memorandums of understanding that have to be developed.

I say that because we had a tragedy in one of our national parks. A ranger was killed by drug runners. Very unfortunate. But what was discovered was one of the reasons was that we did not have the frequencies, the intermodal frequencies, between the communications between the county sheriffs, the state police, and the

National Park Service rangers that were also responsible for patrolling that part of it.

From that came many better understandings, intermodal communications where everybody can talk to each other. So Sheriff, for myself your point is very well taken. I think that level of cooperation, if it does not happen voluntarily, should be required in terms of that response that you have to have for the public. Thank you.

Commissioner Gerber, I was just going to ask you a question. This whole controversy that happened, did you support Bundy through that whole process?

Mr. GERBER. I did not go to it down there. I know Mr. Bundy. I know the Bundy family. Back in the 1980s, when they began eliminating all the other ranchers, Mr. Bundy was the only one that finally said, "Hey, I have had enough."

Mr. GRIJALVA. Physically. But as a Commissioner, did you——

Mr. GERBER. No.

Mr. GRIJALVA [continuing]. Because you made public comments that it was—"I truly honor his courage and desire to protect his rights"? I mention that because part of the situation in being able to work with any agency—we saw some pictures, isolated pictures, of the heavy-handedness of law enforcement under the Park Service or BLM. But there were also very graphic pictures of militia folks supporting Bundy on the highway, pointing weapons at U.S. Marshals.

That kind of a confrontation, I think, is something none of us want. And there was a court ruling that was being effectuated that he owed $2 million worth of grazing fees. And 99 percent of all other grazing permits are paid for, and I would suggest that if that is the level of the rhetoric, then opening up the doors to BLM and having a discussion—I think both sides would be very cautious.

Mr. GERBER. And I agree with you, Congressman. It is a terrible situation. But I want to make it clear that in the 1980s, Mr. Bundy was paying the BLM, and it was not until they in effect were eliminating all of his neighbors' grazing and eliminating his grazing that he finally said, "I am not leaving." And so the history on that is not necessarily correct out there because he tried to pay, and they would not accept it.

Mr. GRIJALVA. Yes. I know. But the point is, as you said, the Founding Fathers—the point being that in their wisdom, to be three divisions of government, the judicial, who is just the important arbitrator on the law, the key arbitrator, ruled against that argument you just had.

I do not want to make this an argument about Bundy. Some people do not pay their bills. So with that, let me yield back.

Mr. GERBER. The ranchers that—could I answer that?

Mr. GRIJALVA. I yield back, but it is up to you.

Mr. LAMALFA. The gentleman may respond.

Mr. GERBER. The ranchers that I am here speaking for have always paid their grazing fees, have always done everything the BLM asked them to do, until he said, "This year you have to take all your cattle off," and they recognized it was going to destroy them. They have still followed the rule.

So the point I make is that we cannot allow the BLM to destroy the livelihoods of all these people on the whim of a BLM bureaucrat that is not even following his own rules.

Mr. LAMALFA. Thank you for finishing.

Mr. McClintock.

Mr. MCCLINTOCK. It seems to me whether Mr. Bundy was right or wrong, the question occurs, was the BLM response reasonable? I think anyone who watched that unfolding fiasco can answer it was completely insane.

It seems to me that a local law enforcement agency that knew the circumstances, knew the people involved, would exercise much better judgment 9 times out of 10 than we saw out of the BLM. So I ask again, why are we arming land managers? Should that not be the responsibility of local law enforcement? Sheriff Perkins?

Sheriff PERKINS. You are absolutely right, 100 percent right. If that would have been turned over to the county, it would be done today. There would not even be an issue. We would not be talking about it.

And I have had situations with the Forest Service just recently where we did have some issues on the Forest Service with some stolen timber. And they come to me, and I helped them solve that case, and it ended up not being a big horrible thing like you have seen on TV with the Cliven Bundy thing. You are absolutely right. I agree 100 percent.

Mr. MCCLINTOCK. Is there anything that you can see that would advise us not to simply contract out law enforcement duties on the Federal lands to the local law enforcement agencies?

Sheriff PERKINS. Now, ask me that again? I'm sorry.

Mr. MCCLINTOCK. Is there any reason why we should not contract out law enforcement on Federal lands to the local law enforcement?

Sheriff PERKINS. There is every reason why you should. You are going to get better law enforcement, and it is going to be a lot cheaper.

Mr. MCCLINTOCK. Say that again?

Sheriff PERKINS. You are going to get better, more effective law enforcement, and it is going to be cheaper.

Mr. MCCLINTOCK. I am quite sympathetic to Mr. Gerber's concern that the best way to resolve these issues is to divest surplus land that the Federal Government has done an absolutely terrible job managing.

And I have the Rim Fire area in my district, 400 square miles destroyed by forest fire because we have not thinned the forests in that region in 30 years. We have seen an 80 percent decline in timber harvests across the Federal—the National Forest lands. And in those 30 years that we have seen an 80 percent decline in the timber harvest, we have seen a concomitant and proportional increase in acreage destroyed, utterly destroyed, by forest fires.

So it is quite clear to me the Federal Government is not properly managing the vast bulk of the lands that it holds and divestment is certainly advisable. But on those lands that we do not divest, it seems to me that at least we ought to restore local control over law enforcement decisions to the agencies that are directly responsible to the people in the community.

Sheriff PERKINS. Well, I agree. And I would take that responsibility on if it was, you know, absolutely. I do it now anyway.

Mr. MCCLINTOCK. Thank you. I yield back.

Mr. LAMALFA. Thank you. Are there any other questions of our Members of the dais here? OK, we will bring in our next panel, our Panel II. But I would like to have just a quick follow-up. The gentleman from Utah please feel free to be excused. I want to ask Mr. Gerber one more thing for about 90 seconds while the other panel comes on up. So thank you, gentleman.

Mr. Gerber, we were talking about the voluntary non-use before I ran out of minutes a little bit ago. It did not sound very voluntary. That was Battle Mountain, you mentioned?

Mr. GERBER. Yes, in fact, it is all over the state but in Battle Mountain it is so egregious that when they—when Mr. Furtado goes to one of those and says, "We want you to reduce your grazing," if they say, "No," he gives them a 100-percent cut.

Mr. LAMALFA. Do you have that in your written testimony that you have submitted?

Mr. GERBER. Yes.

Mr. LAMALFA. OK. We would love to have any more follow-up, Chairman Bishop here, or my office as well, specifying some of this treatment.

Mr. GERBER. And most of those ranchers know that they have to deal with Mr. Furtado again next year, so they are really afraid to say anything because he will cut them further. But the six ranching families that I have been involved with on this issue this last 3 or 4 months, they got 100 percent cut so they had no fear anymore of him cutting them further. Otherwise they would not have fought.

Mr. LAMALFA. OK. Mr. Gerber, thank you again to our first panel here. Let's please seat the second panel that had been introduced earlier by our colleague, Mr. Pearce. So we will proceed.

Here again we are going to be up against another Floor vote. They are saying approximately at 4:40, but we will stick with this panel and get through the opening round of testimony. And we will see where we are at that time.

OK, very good. Panelists, thank you for joining us here. I will go ahead and recognize for 5 minutes the Commissioner from New Mexico, Otero County, Mr. Ronny Rardin.

STATEMENT OF THE HON. RONNY RARDIN, COMMISSIONER, OTERO COUNTY, NEW MEXICO

Mr. RARDIN. Thank you, Mr. Chairman and committee members. We are kind of losing our committee up there, dwindling down. But I am going to go a little different——

Mr. LAMALFA. Well, reminded, this will all be on the record and all available for the permanent record. So that makes that important, so thank you.

Mr. RARDIN. I am going to go in a little different direction. As an elected official, I have been two terms, two full terms almost. I am going on my 15th year this year, and I will finish out in 16 years as a commissioner. And what I want to say to the committee, and to Washington as a whole, is there is an old saying my dad used to teach me. He goes, "Figures do not lie, son, but liars use

figures." And it took me a long time to figure what he really meant by that, but what he meant was we really need to stand back and look at the issues this country is facing. We can point names and say this one is a bully and this one is not.

And I have seen that change from 1992 to 2000 when I was a commissioner, the first 8 years. I took office again in 2008. And in my testimony, I tell you the first 8 years, we did not have to raise taxes ever. We worked with the BLM and things got done. And RS–2477 roads were recognized. And we really had a good working relationship.

When I came back in 2008, different faces, different names, same rules. I love FLPMA. And I think it is a great Act of Congress, but it is not being imposed properly in New Mexico, especially in Otero County and in all these other places.

And so the problem has become, in my opinion, an oversight of an elected official over the employees. And what I like to think about is if the Commission—and my Commission is only three men, actually one lady and a man, three persons, if we went down and set policy and just left and never came back, a year later we would have total chaos within our little county because we deal with the public on an everyday issue all the time.

And that is what I see going on here is I really wish the Congress would look back and see where the weak spots are. And I believe it is the oversight. I do not believe being elected you have to go back to your constituents, as I do, and convince them that you are doing a good job. And then when you are, you get re-elected. If you are not, you do not. And what I see happening is there is no oversight out there. So these agencies, they will get their feelings hurt. They will not like what we are doing or they have an agenda of their own that is not a multiple-use agenda, not a multiple serving everybody, but it serves one person.

And I will give you an example. The Agua Chiquita that was mentioned earlier by Congressman Pearce, they are keeping out 180 cattle, but they are letting 10,000 non-indigenous elk jump the fence, which causes 10 times more damage than walking into. And there are not 10,000 in that area but there are 10,000 in the whole area. So we do not know how many, 200, 500 head can come in there at night and water. They are letting them get in the same area, and saying we are managing, when they have forest fires that are the number one threat to this mouse.

And then the second threat is the animals. And they are letting the animals that can threaten destroy it, but the ones that they can manage, they are kicking out. And to me as a commissioner, it kills us because we have a very small budget. We do not say federally owned because there are really only two parcels of land that the Federal Government owns in Otero County. There is 88 percent of it which is managed by the Federal Government. But when I checked with the GSA here in Washington, they gave me a book and showed how much land the Federal Government owns. They own Holloman Air Force Base. It has been ceded to them. And they own 40,000 acres on a bombing range. The rest of it, they just manage.

It is still the proprietary right that we have over law enforcement. We do not have that problem in our county with law enforce-

ment because we know that our understanding of law enforcement is through that situation, but what I am saying is when these managing agencies come in, and they take away even 2 percent of a budget that is only 12 percent that manage a $30 million budget a year, it hurts us dreadfully. So we have to—we have to do multiple use.

Could I hand my FLPMA down there, please, my book? I am sorry, I forgot to get that. I handed out a FLPMA book to you. And I know you all read FLPMA, and you understand FLPMA, but what I try to tell our director for the state, I give him Title 7 of FLPMA. And you have it, and it is tabbed on yours and it is even highlighted. I highlighted yours. But Title 7 of FLPMA says, the act of FLPMA, it says, "Nothing in this Act, or in any amendment made to this Act," this is Congress made this, "shall be construed as terminating any valid lease, permit, patent, right-away or other land use or authorization existing on the date of approval of this Act." Which we all know is 1976.

And the second—(b) says, "Nothing"—"Notwithstanding any provision of this Act, in the event of conflict with, or inconsistency between the Act, the Act of August 28, 1937, insofar as the related management of the timber resources and disposition of revenues of the lands and resources, the latter Act shall prevail." And this is what has happened. They are not prevailing.

[The prepared statement of Mr. Rardin follows:]

PREPARED STATEMENT OF RONNY RARDIN, COMMISSIONER, OTERO COUNTY, NEW MEXICO

Chairman Hastings, Subcommittee Chairman Bishop, and members of the committee: I am an elected official at the county level and have been elected and re-elected by my constituents 10 different times with an opponent in each race. When I finish my term in 2016, I will have had the privilege of serving the public for a total of 16 years.

I remember a time when the BLM and Forest Service worked together with local officials and parties of interest to use the current laws and regulations to make Otero County and this country a better and safer place to live. Today I long for those days to come again.

Sadly I am here today to testify of what I have witnessed over the past 20 years. Instead of growing together under the current laws such as FLPMA, those laws have had the opposite effect. The Federal Government agencies (BLM, FS) have evolved into the problem we face today, instead of the solution we can turn to.

The 1976 FLPMA was passed and introduced to America and since then it has been many things to many people.

FLPMA, when followed correctly, can be a useful tool to assure local government and groups a part of management of their lands within their said county. However, let me assure you that what FLPMA has become is a tool for the agencies to use and hide behind with no oversight from any elected officials, Congress included. This has become the normal day-to-day way the bureaucracies control and devastate the local government's ability to do our job, destroy the very Customs and Cultures of the people who elect us, and in the name of "Preservation" cause total devastation. If this is not corrected soon, there will be irreversible damage to this country as a whole.

Here are two examples of what has happened in Otero County in just the past 4 years:

1. In southern Otero County, we are blessed with minerals, oil and gas, resources that have never been developed in Otero because we have always had plenty in the logging, cattle and agriculture industry.

During my first 8 years in office, (1992–2000) the Board of County Commissioners never had the need to ask one time for a tax increase.

During my second 8 years in office (2008–2016) the Board of County Commissioners has had to raise taxes twice to just maintain the services we have to the public.

Approximately 2 years ago, a company called Gulf Coast Mining came to the Commission and laid out a plan that would create 150 jobs by re-opening an existing Oro Grande mine. All they planned to do was to clean up the tailing of Oro Grande that was left over from the mining done at this site in the 1800s.

David Davidson, an owner of Gulf Coast Mining Company, has produced an 1897 grant signed by the President giving this mine, Iron Duke, a right of way to cross Territorial Property. This grant has been shown to the BLM with no resolve. BLM refuses to recognize any grant to this day.

Furthermore, the leadership of BLM, State Director Jesse Juen and the District Manager Bill Childress, as well as other employees of the agency, not only refused to allow this company access to their private property, but to this day has refused to settle with them and allow Gulf Coast to use a "DIRT" road that had existed 80 years before FLPMA became law.

BLM is currently in a lawsuit with Gulf Coast for an alleged trespass that occurred on vested private property right of way owned by both the county and the mine.

At first BLM stated that if Gulf Coast paid a $250,000 trespass fee, then they would allow a permit to be issued to allow them to use this road. When Gulf Coast chose to challenge their decision, the BLM tried to coerce Gulf Coast by raising the trespass fine to $750,000 if they lose.

Otero County took a bold stand and we forced the BLM to give us a permit for the road recognizing and preserving our existing vested rights. However, it wasn't until we took heavy equipment out to the road and started to fix our road that BLM decided to made a deal where Otero County could allow whoever they wanted to cross the road, but not without restriction from BLM. True to form, the first time the county went to maintain the road, BLM stopped the crew and changed the rules again.

I have some maps of the area if the committee would like to see and get a better understanding of the situation they can be supplied later.

The bullying did not stop there. There is a section of land in this area, which the road crosses also, that is managed by the State Land office. The BLM seemed to have settled down, but the State Land office refused to issue a permit for their area until Gulf Coast paid the BLM the $750,000 in fines. BLM claims they knew nothing about this, but it fits in with what these agencies have become and what we have to deal with every day.

Had FLPMA been followed, Gulf Coast would have been exempt and we would now have 150 new high paying jobs in Otero County. Instead we have no jobs and Otero County tax payers are out thousands of dollars spent on attorneys trying to resolve an issue that should have been handled at the local level within 30 days.

2. Forest Service: the Forest Service has evolved into a machine that is totally controlled by Washington and they use the Endangered Species Act to force an "agenda" that has obviously taken an attack on the ranching community in our country.

They have ignored the voice of the local people to force on us a management scheme that has cost the people of New Mexico and this country dearly. In the name of FLPMA and ESA, they have taken away thousands of jobs, burned millions of acres, become one of the biggest contributors of pollution in our country, and killed millions of animals in forest fires, some which are on the ESA list, all the while calling this good government.

Now they are taking private water rights away from local citizens by fencing off their water and calling it conservation for wildlife. However, the FS was never given any authority to manage wildlife, and in doing so, they are going against our Constitution and the very rights this Nation has fought to protect.

Agua Chiquita is a small area in the Sacramento Mountains where ranchers have grazed since before the 1900s. This small spring, called the Barrel Springs, has served the cattle and animals for hundreds of years. There are times it runs dry and times it has plenty, and for years there has been a wire fence around it, which had gates that could be closed if need be, but have always been reopened to allow all animals to use the waters.

Recently the Forest Service went up and fenced off the area with metal pipe fence and the only animals unable to obtain any water is the cattle of the local rancher who have used this water for years and years.

Please understand that we have over 10,000 head of non-indigenous elk in the area, thousands of mule deer, bears, and feral hogs, and hundreds of species of

smaller animals who all water at places like these. The rancher in this area only has, at the most, 180 head of cattle.

Elk will easily jump 6 foot, as will deer, and the hogs can go through the fence, but the cattle are fenced out of water that rightfully belongs to the rancher according to the history and laws of this Nation.

When the elk and deer jump into this protected area, they now will destroy much more than by simply being able to walk in and walk out. The FS says they are protecting the habitat for the New Mexico jumping mouse, but this makes no sense.

Now, before the New Mexico jumping mouse was even listed, the FS was being funded by the NM Game and Fish to put this fence up, but the NM Game and Fish decided to withdraw on this issue and they pulled their funding. So the FS went out and solicited private money to build this fence and it is now a reality. The New Mexico jumping mouse was listed and the gates were shut by the FS. All of this is unconstitutional and should never have been what the FS spends their time on.

The County Commission became involved and tried to find a solution to this situation. After running into a brick wall with Travis Mosley, the local supervisor, we were invited to meet with the U.S. attorney's office.

We hoped to solve this by simply allowing the gates to open until the local rancher could go into the "protected area" and pipe their water out so both sides could be served. However, all the U.S. attorney wanted from the county was for us to go back and settle down the people and make sure the Federal Government employees were protected while they did their job. We asked if they could just open the gates for 30 days until we could get this water piped outside the fenced area and the answer was NO. Further, they also made it a point to exclude Congressman Pearce from the meeting stating that there would be no meeting if the Congressman chose to try to attend. The reason for the meeting was simple, they wanted to threaten the county and its sheriff not take action or we would be facing criminal prosecution and lawsuits for any action to allow a private citizen to access their private property.

After this I decided to break all working ties with any Federal agency. I made that in form of a motion at our regular County Commission meeting this July and only part of it passed, but my point is we have a broken system. I truly don't believe it started off that way nor was FLPMA or the ESA ever intended to do what it has done to this Nation, but it has devastated us in its present form. Unless and until we can receive proper oversight from Congress for these Federal employees that act maliciously or our citizens can be given the tools to stand up to the bullying themselves we are fighting a losing battle.

Mr. Chairman and members of the committee, you have the power and the duty within your elected offices to hear the citizens of this country and to take action and fix what is an obvious problem that is plaguing our Great Nation. This will certainly be the destruction of the greatest Nation on earth if you don't act now.

I pray you will take this testimony to heart and act accordingly. I look forward to working with you to resolve this and put this Nation back on track.

Thank you.

Mr. LAMALFA. We are going to go on time here.

Mr. RARDIN. I am sorry, I apologize.

Mr. LAMALFA. So we will follow-up on a later round, OK.

Alright, Mr. Blair Dunn, you are up next, please, for 5 minutes.

STATEMENT OF BLAIR DUNN, ATTORNEY, ALBUQUERQUE, NEW MEXICO

Mr. DUNN. Mr. Chairman and members of the committee, thank you. I would like to start by discussing some agreement and disagreement with what the Ranking Member started out with. This is about relationships. It is not about disagreements over policy. This is about inability of Federal employees, Federal agencies, Federal bureaucrats not following the laws.

I am going to refer back to the Agua Chiquita matter that has been in the news so much. And by way of background, I do represent Otero County, but I also represent farmers and ranchers across the state of New Mexico and in the western United States.

I also represent non-profit organizations concerned with property rights and environmental issues, such as Protect Americans Now, people like the cattle growers, who are also represented here on the panel. So this is not a singular issue. It is one that is very widespread across the western United States, affecting lots of communities and lots of individuals.

But when you look at the Agua Chiquita, one of the major things that has happened is the Forest Service even knowing what the law is in New Mexico concerning water rights ignores that. I have had previous hearings. We have had previous legal disputes with the Forest Service. They understand that in New Mexico that these water rights in question are actually what we would call pre-1907 water rights. It does not mean that they have to be on file with the state engineer's office, but they are still vested private property rights.

And the deal in the Agua Chiquita, what they got everybody so stirred up there was that the Forest Service came—despite the fact that these private property rights exist—and fenced around them.

Now, there was some discussion from Congressman Pearce about whether or not the access was reasonable. And the county felt that the access was not reasonable. I think the ranchers felt that the access was not reasonable. But at the end of the day, it was still their private property. It was still the U.S. Forest Service ignoring the laws of the State of New Mexico when it comes to water, which they are supposed to follow, and coming in and ignoring those laws in order to trample private property rights.

What we are here today is not to discuss whether or not the Endangered Species Act is proper or functioning as it should. What we are discussing is when they do not follow that, when they do not follow NEPA, what is the recourse to local governments, to private individuals when a Federal agent or Federal employee tramples their rights? That is the issue today.

And, unfortunately, when the Forest Service and other Federal agencies do not follow these laws, the effects are more far-reaching than just one instance. In a minute you are probably going to hear discussion about people picking on the Forest Service, but that is really not the case. It is a matter of when the Forest Service puts out mis-information or they mis-use the law, it tends to mis-lead other members of the public into believing that somehow it is the ranchers doing something wrong or it is the county picking on the government, Federal Government. That is not the case. These are private property rights, and the Forest Service sometimes tramples them. The BLM sometimes tramples them and takes them.

What we are looking for is a solution that would enable oversight to come from something other than just Congress. You guys have a lot of work to do, and the Federal Government is expansive and broad. We need a solution that empowers the people, empowers local governments when we have a bad apple to step in and take some action to hold them accountable. That oversight is one of the things that Congress is supposed to do, and they cede that back to the private individuals and give private individuals the ability to go to court to protect their rights or to re-gain or remedy some of what has happened to them.

There are a host of other instances that we could cite to and discuss, some of which are in my written testimony. But at the end of the day, that is what we are talking about—oversight and providing an alternative so that the public can take matters into their own hands and take it to court if need be.

I will yield now.

[The prepared statement of Mr. Dunn follows:]

PREPARED STATEMENT OF A. BLAIR DUNN, ESQ., ATTORNEY, ALBUQUERQUE, NEW MEXICO

Chairman Hastings, Subcommittee Chairman Bishop, and members of the committee: my name is A. Blair Dunn. I am an attorney and a fifth generation agriculturist in southern New Mexico. My family, to this day, raises cattle and horses on a ranch that includes private land, Bureau of Land Management ("BLM") land and New Mexico State Land. My law practice focuses on assisting those involved in agriculture, natural resource use, and conservation. My family has long been involved in the legislative process and active in government. My grandfather, a long time legislative finance chairman for New Mexico, would have told you that the business of government is much like the business of tending to the apple orchard, where myself and many of my family were raised. Growing apples consists of watching out for the good and the bad, and getting rid of the bad apples so the good ones don't spoil; government should consist of watching for the good ideas by getting rid of the bad ones, allowing the good employees to thrive while getting rid of the rotten ones that destroy the whole bushel.

This applies to what we are here today to discuss, overseeing the business of Federal agencies and their employees. One of my clients is Otero County in New Mexico. You just heard from one of their commissioners regarding the trouble that their county is subjected to as a result of those within the Federal bureaucracy that would use their power in a heavy handed or malicious way that violates civil and constitutionally guaranteed rights. Otero County has sent pleas to this very committee for congressional inquiry and oversight into what is happening in their county, and what is happening in their county is far from an isolated incident.

Otero County, like many others, is crying out for congressional oversight into the harms caused by those bad apples that misuse the power of the executive in a way that harms or interferes with private property rights. Such oversight of executive agencies is a crucial component of ensuring a well-run government. Such oversight has long been held to be an implied authority of Congress derived from the rest of the legislative functions of Congress, as delegated by the U.S. Constitution.

To say that our Federal Government is large and extensive is an understatement, and would not do justice to the state of our affairs. To that end congressional oversight into the activities of the few bad apples runs counterintuitive to reality. Without a doubt, it must be agreed that the majority of Federal employees are dedicated and hardworking individuals that are trying to do their jobs to the best of their abilities in keeping with the direction and mandates of U.S. Constitution and Federal laws. However, a well-crafted tool to assist Congress in overseeing and addressing those that would abuse their power to violate the civil and constitutional rights of the citizens of the United States is sorely missing. Some would say that such a tool does already exist, and has existed for many decades, in the form of The Civil Rights Act of 1871, which prohibits governmental employees, "acting under the color of state law," from proximately causing the depravation of certain constitutionally guaranteed rights. However, The Civil Rights Act of 1871 only applies to state officials.

I. BACKGROUND ON CASE HISTORY AND EFFECTS OF PREVIOUS DECISIONS ON CURRENT INTERACTIONS BETWEEN THE PUBLIC AND FEDERAL EMPLOYEES

This committee has previously heard testimony from Ms. Karen Budd-Falen. I have reviewed her testimony and the cases to which she cites. I concur with her analysis of both *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) and its role in *Wilkie* v. *Robbins*, 551 U.S. 537, 577 (2007). For purposes of this testimony I will not belabor the important work of this committee by again reciting that analysis, but would respectfully offer that I incorporate her legal analysis in my testimony and adopt her legal opinion as concurring with my legal opinion.

Ms. Budd-Falen offered in her testimony that the *Robbins* case "now acts as a complete bar to the judicial branch of government, regardless of the extreme nature of the Federal officials actions," and I would for the most part agree, certainly inas-

much as it does act as a complete bar to actions seeking to address conduct by Federal employees using the authority of their offices to violate private property rights outside of the mandates of the Fifth Amendment. But I would respectfully offer to the committee that her analysis falls short of the full effect of the decision without the subsequent action that the Court offered Congress should undertake:

> We think accordingly that any damages remedy for actions by Government employees who push too hard for the Government's benefit may come better, if at all, through legislation. "Congress is in a far better position than a court to evaluate the impact of a new species of litigation" against those who act on the public's behalf. And Congress can tailor the remedy to the problem perceived, thus lessening the risk of a rising tide of suits threatening legitimate initiative on the part of Government's employees.

551 U.S. at 562. Citations omitted. Thus, instead of acting as a complete bar, such precedent now serves to embolden Federal employees to reach even further in abusing their power to violate private property rights absent oversight and legislation from Congress. An overreaching or maliciously acting employee runs little risk of retribution from their acts. Behaviors of threatening or cajoling, as you have heard about from others here testifying today, are allowed to proceed under a stronger cloak of immunity.

For example, one of my clients, El Capitan Precious Metals, Inc., a mining company in southern New Mexico that is seeking to utilize new technology to create industry and jobs in the local communities, has been subjected to threats and cajoling by the U.S. Forest Service employees. El Capitan is seeking to rework and reopen the mining claims on private property that they now own, some of which are hundreds of years old. Incidental to the claims to patented lands are vested rights of ingress and egress to their fee simple property that is surrounded by National Forest lands. Pursuant to the laws of this country, their predecessors owned a vested private property easement across forest service lands to access their private property. Now after 100 years of use on the ¾-mile road, upon which their vested easement runs, they are being told that they have no right, that they must go thru the NEPA process and they must purchase a special use permit to use the road. The road has literally been in use since 1914 and the Forest Service is telling them they must go through a lengthy and expensive NEPA process to continue use of the ¾-mile road from the highway to their mine. At one point they were threatened with charges of criminal trespass for mine employees utilizing their private property easement. They have repeatedly been cajoled to abandon their private property rights and just take a special use permit for the road. Such actions, if done by a state employee, would certainly have prompted a civil rights claim for the attempt to deprive them of their private property right. Instead, they are left seeking other less immediate remedies of pursing Federal litigation for a taking and hopefully a short term remedy to provide them continued access to their private property, but in the mean time they run the risk of the loss of their business or even criminal prosecution for using their vested easement. I can point to other examples from clients seeking Federal grants of inspection harassed only because the Federal employee disagreed with the species of animal they intended to harvest. All of these types of actions harm not only the specific individual or companies, but also harm local rural economies and cost communities much needed jobs.

The public trust in government should be a sacred thing to Federal employees. I think that to most of them it is. But for those that would abuse the power they have been given, the public deserves an avenue to provide oversight, the public deserves a ticket to the door of the court house to seek a remedy for their damages. As has been previously cited, the *Robbins*'s dissenting opinion discussed the merits of a narrowly tailored cause of action to provide and found merit to such an action:

> Adopting a similar standard to Fifth Amendment retaliation claims would "lesse[n] the risk of raising a tide of suits threatening initiative on the part of Government's employees." Discrete episodes of hard bargaining that might be viewed as oppressive would not entitle a litigant to relief. But where a plaintiff could prove a pattern of severe and pervasive harassment in duration and degree well beyond the ordinary rough-and-tumble one expects in strenuous negotiations, a Bivens suit would provide a remedy. Robbins would have no trouble meeting that standard.

551 U.S. at 582. Internal citations omitted.

I can say without reservation that three of my current clients would directly fall into this category of people maliciously harmed by an abuse of power by Federal employees, and I can say with absolutely the same lack of reservation that all three

of them would never reach a point of needing to file a cause of action. I say that without reservation because I firmly believe that such options as are being discussed here by this committee would serve to deter many instances of abuse of power and would incentivize the agencies to ensure that the proper checks and balances were in place to prevent such an abuse of power.

An argument can be made that the creation of new causes of actions would cause a flood of Federal litigation, burdening the Courts and costing tax payers money. But such an argument leaves aside the fact that these causes already exist against the state employees. Further, one must give weight to the simple argument that if the harm is not occurring, then citizens will have nothing to bring a claim on.

A claim (similar to a Section 1983 claim) must include the components of a right that is possessed by a person that has suffered a deprivation of said right by an action carried out by a government employee acting under the color of the law. The deterrence policy of Section 1983 operates through the mechanism of compensation of the actual damages suffered by the victim. See *Carey* v. *Piphus*, 435 U.S. at 256–57 (1978); *Memphis Community School Dist.* v. *Stachura*, 477 U.S. 299, 307, 106 S.Ct. 2537, 2543, 91 L.Ed.2d 249 (1986) ("**deterrence is also an important purpose of this system, but it operates through the mechanism of damages that are *compensatory***") (emphasis in original). As the Supreme Court noted in *Carey*, "[t]o the extent that Congress intended that awards under §1983 should deter the deprivation of constitutional rights, there is no evidence that it meant to establish a deterrent more formidable than that inherent in the award of compensatory damages." 435 U.S. at 256–57. *Tinch* v. *City of Dayton*, 77 F.3d 483 (6th Cir. 1996) See also *Medina* v. *Pacheco*, 161 F.3d 18 (10th Cir. 1998) (recognizing the deterrent value of section 1983 of the Civil Rights Act).

II. PROPOSED LANGUAGE

I have also reviewed the following proposed language for a statute that could be enacted to protect private property owners from intimidating or cajoling behaviors by Federal employees acting under the color of law:

> *The attempted taking of private property or private property rights by means of governmental employee harassment or intimidation, under color of law, is hereby declared to be a violation of Civil Rights Act. Harassment or intimidation against the owners of private property or private property rights constitutes such violation when (1) a property owner's relinquishment of his property or property rights is made explicitly or implicitly a term or condition of receipt of a permit or license from a governmental agency, (2) submission to or rejection of such conduct by a property owner is used as the basis for the grant of or conditions included in a permit or license, or (3) the conduct of the governmental employee has the purpose or effect of unreasonably interfering with an individual's private property or private property rights. An attempted taking of private property or property rights under this section can be composed of a series of separate acts that collectively constitutes a significant deprivation of the ownership or use of private property or property rights. In determining whether the activities of a governmental employee are actionable under this section, consideration can be given to the frequency of the discriminatory conduct, harassment or intimidation, its severity, and whether such governmental action interferes with the ownership, use or legitimate investment backed expectations of the property owner.*

Such narrowly tailored language would serve as a much needed guidance post to Federal agencies. Imagine if, in considering fencing around private property water rights, threatening local governments with trespass for using vested easements, or cajoling a fifth generation agriculturist to go along with a plan or lose his grazing permits, the Federal employees also had to consider whether their desired actions and behavior resulted in liability to the government for damage to private property rights. Arguably they should already be doing so in their oaths to uphold the Constitution, but in reality some of them are not, with no fear of retribution for acting badly. I would respectfully request that the committee consider what added deliberation decisionmakers and supervisors would make when considering a proposed action or statement made to a private land owner if they must first consider the liability of violating a citizen's civil and constitutional rights. Section 1983 claims under the Civil Rights Act have been proven to encourage constitutional policing by local law enforcement officers around the country; wouldn't it make sense to encourage constitutional regulating and land managing by our Federal agencies employees?

III. THE AMOUNT OF BAD APPLES VERSUS GOOD AND GIVING THE PUBLIC THE TOOLS TO HELP CONGRESS PROVIDE OVERSIGHT TO FEDERAL AGENCIES AND EMPLOYEES

By and large, these examples of Federal employees acting intentionally to violate the private property rights of American citizens are the exception, not the rule. But as you have heard from testimony today, and will continue hearing well into the future, should Congress fail to act to remedy this issue, the problem will continue to grow. The Federal Government is broad in size, with thousands of Federal employees; sorting through all of the employees to root out the bad apples is a task that is beyond the capabilities of Congress to do one oversight committee hearing at time. Congress should open the door of the courthouse to the everyday citizens to help shoulder the burden sorting out the bad apples and remedying the damages done by those that would abuse their power.

Mr. LAMALFA. Thank you.

Our next panelist is Mr. Jose Varela Lopez.

Five minutes, please.

STATEMENT OF JOSE VARELA LOPEZ, NEW MEXICO CATTLE GROWERS' ASSOCIATION, SANTA FE, NEW MEXICO

Mr. LOPEZ. Mr. Chairman, members of the committee, thank you for the opportunity to come before you today. My name is Jose Varela Lopez. I live on my family ranch, southwest of Santa Fe, New Mexico. I am the 14th generation of my family to do so, and I pray daily that I will not be the last.

I am president of the New Mexico Cattle Growers' Association, the executive director of the New Mexico Forest Industry Association, immediate past president of the New Mexico Soil and Water Conservation Commission, vice chairman of the Santa Fe-Pojoaque Water Conservation District, and a former Santa Fe county commissioner.

As you know, we are here today to talk about bullying and abuse of citizens at the hand of the Federal Government. Unfortunately, this is a story that is all too familiar, ranging from the IRS scandal to the mistreatment of veterans, the failure to protect dignitaries in foreign lands, the protection of private information, the collapse of security on the Mexican border, and most recently the failure of the CDC to protect their own employees. And you can add to that the treatment of Americans by the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Army Corps of Engineers and others.

I am not here to tell you that every employee of these agencies is rogue, but I can tell you that the agencies are permeated with employees who wantonly violate the rights of the rural citizens of this country and their small businesses, entities that provide economic stability to the majority of the counties in our great Nation.

As Cattle Growers' president, we are dealing daily with individual and collective efforts to remove families like mine from the land. The worst part is that we have no recourse. New Mexico has been a hotspot not only for catastrophic wildfires resulting from lack of management by Federal agencies but also for species listings which affect natural resource users.

Endangered species protection is the biggest culprit. At the moment, the Fish and Wildlife Service is considering critical habitat for the Lesser-Prairie Chicken, the New Mexico meadow jumping

mouse and two varieties of garter snakes. Expansion of the Mexican wolf habitat is expected as early as tomorrow.

We have had 764,000 acres in New Mexico and Arizona recently designated critical habitat for the jaguar, although only a few male jaguars have been sighted in the United States over the last 60 years. We are awaiting the listings and designations for the Canadian lynx and the wolverine even though those species do not exist in our state.

But that is just half the story. New Mexico has been a hotbed for land use designations. The most recent transgression is the Organ Mountain-Desert Peaks National Monument, encompassing some 550,000 acres in the southern part of the state bordering Mexico. Add to that the recent Rio Grande del Norte National Monument of 250,000 acres and the Rio Mora National Wildlife Refuge and Conservation Area of 800,000 acres. There are also proposed designations for national monuments and wilderness expansion of 1.3 million acres.

Each of these listings and designations provide the opportunity for Federal overreach and the violation of our rights as citizens. And there is no recourse. Federal agents are literally taking the food out of the mouths of rural families and Americans as a whole. I believe my civil or constitutionally guaranteed rights are violated by a local—if I believe my civil or constitutionally guaranteed rights are violated by a local or state agent, I have the right to my day in court where a judge and a jury will have the opportunity to hear both sides of the story. If those agents have crossed the line, they are held personally liable.

Not so with Federal agents. Under current law, Federal land management employees hold the same immunity from the law as diplomats and are above any law. That is patently inequitable, can be discriminatory and violates the humanitarian ethics we strive to live by. There is no accountability for those who use the power of their employment against people like me.

A report done by the U.S. Department of Agriculture in June of 2013 documents the fact that the U.S. Forest Service employees in Regions 2 and 3 routinely violate the civil rights of allotment owners in New Mexico and Colorado. The report states that a detailed corrective action plan must be developed within 60 days of receipt of the report. As of today, to my knowledge, nothing has happened.

In closing, our government agencies are punishing natural resource users through unnecessary land use designations and restrictions prompted mainly by radical environmental groups. The preservationist mentality is making it difficult, if not impossible, for renewable resource users to make a living and is in effect extinguishing the customs and culture of our country's land-based people.

Thank you for your time and attention. We look forward to working with you to resolve these issues so our families can continue to feed ourselves and the rest of the world.

[The prepared statement of Mr. Lopez follows:]

PREPARED STATEMENT OF JOSE J. VARELA LOPEZ, ON BEHALF OF THE NEW MEXICO CATTLE GROWERS' ASSOCIATION

Chairman Bishop, members of the committee, thank you for the opportunity to come before you today. My name is Jose Varela Lopez. I live on my family ranch southwest of Santa Fe, New Mexico. I am the 14th generation of my family to do so and I pray daily that I will not be the last.

I am president of the New Mexico Cattle Growers' Association, the executive director of the New Mexico Forest Industry Association, the immediate past chairman of the New Mexico Soil & Water Conservation Commission, vice chairman of the Santa Fe-Pojoaque Soil & Water Conservation District and a former Santa Fe County Commissioner.

We are here today to talk about the bullying and abuse of citizens at the hands of the Federal Government. Unfortunately, this is a story that is all too familiar ranging from the IRS scandal, the mistreatment of veterans, the failure to protect dignitaries in foreign lands, the protection of private information, the collapse of security on the Mexican border, and most recently the failure of the CDC to protect their employees.

You can add to that the treatment of Americans by the U.S. Forest Service, the U.S. Fish & Wildlife Service, the Bureau of Land Management, the U.S. Army Corps of Engineers and others. I am not here to tell you that every employee of these agencies is rogue, but I can tell you that the agencies are permeated with employees that wantonly violate the rights of the rural citizens of this country and their small businesses, entities that provide economic stability to the majority of the counties in our great Nation.

As Cattle Growers' President, we are dealing daily with individual and collective efforts to remove families like mine from the land. The worst part is that we have no recourse.

New Mexico has been a hot spot not only for catastrophic wildfires resulting from the lack of management by Federal agencies but also for species listings which affect natural resource users.

Endangered species "protection" is the biggest culprit. At the moment the Fish & Wildlife Service is considering critical habitat for the lesser prairie chicken, the New Mexico meadow jumping mouse and two varieties of garter snakes. Expansion of the Mexican wolf habitat is expected as early as tomorrow. We have had 764,000 acres in New Mexico and Arizona recently designated critical habitat for the jaguar although only a few male jaguars have been sighted in the United States over the last 60 years. We are awaiting listings and designations for the Canadian lynx and the wolverine even though those species do not exist in our state.

Additionally, the Fish & Wildlife Service is taking their power to a whole new level directing their employees in Region 8 **NOT** to follow the current law, but rather to direct their resources to a program created by a secretarial order issued in December 2010. We have not yet located similar orders for the rest of the Nation, but are confident they are out there.

But that is just half the story. New Mexico has been a hot bed for special land use designations. The most recent transgression is the Organ Mountains/Desert Peaks National Monument encompassing some 550,000 acres in the southern part of the state bordering Mexico. Add that to the recent Rio Grande del Norte National Monument of 250,000 acres and the Rio Mora National Wildlife Refuge and Conservation Area of 800,000 acres.

There are also proposed designations for a national monument on Otero Mesa of up to a million acres, the La Bajada National Monument of about 130,000 acres, Hondo/Columbine Wilderness at 60,000 acres, Pecos Wilderness expansion of approximately 120,000 acres and the transfer of the 89,000 acre Valles Caldera National Preserve from a multiple use property to the National Park Service. Add to that existing wilderness designations and wilderness study areas of 2.8 million acres and 4.6 million acres of inventoried roadless areas, areas of critical environmental concern, special management areas and national conservation areas.

In my own case, the BLM has been buying up private lands near my family ranch within the boundaries of an Area of Critical Environmental Concern that they designated as part of their Resource Management Plan. They now refer to our ranch as an in-holding, meaning that we are now surrounded by federally managed land and ostensibly the next "willing sellers." What this designation has done is devalued our land and effectively prohibits any type of future development on the ranch that is not consistent with the BLM's Area of Critical Environmental Concern. My takings protest to their headquarters was to no avail.

Each of these listings and designations provide the opportunity for Federal overreach and the violation of our rights as citizens. And there is no recourse. Federal

agents are literally taking the food out of the mouths of rural families and Americans as a whole.

If I believe my civil or constitutionally guaranteed rights are violated by a local or state agent, I have the right to my day in court where a judge and/or a jury have the opportunity to hear both sides of the story. If those agents have crossed the line, they are held personally liable. Not so with Federal agents.

Under current law, Federal land management employees hold the same immunity from the law as diplomats, and are above any law. That is patently inequitable, can be discriminatory and violates the humanitarian ethics we strive to live by. There is no accountability for those who use the power of their employment against people like me.

A report done by the U.S. Department of Agriculture in June of 2013 documents the fact that U.S. Forest Service employees in Regions 2 and 3 routinely violate the civil rights of allotment owners in New Mexico and Colorado. The report states that a detailed Corrective Action Plan must be developed within 60 days of receipt of the report. As of today, to my knowledge, nothing has happened.

The hierarchy of the Forest Service and the BLM is such that it seems nearly impossible for there to be justice for natural resource users. In the case of the Forest Service there is no recourse. A district ranger is generally the prosecution, judge, jury and executioner. Decisions go up the chain of command, but are rarely overturned.

The BLM does provide at least some way to appeal to higher levels, but allotment owners go to those higher levels at their own peril because retaliatory action at the field level is a real and constant threat.

In closing, our Government agencies are punishing natural resource users through unnecessary land use designations and restrictions, prompted mainly by radical environmental groups. This preservationist mentality is making it difficult if not impossible for renewable resource users to make a living, and is in effect extinguishing the customs and culture of our country's land based people. Besides, how do you preserve a renewable resource?

Thank you for your time and attention. We look forward to working with you to resolve these issues so our families can continue to feed ourselves and the rest the world.

Attachments

ATTACHMENT 1

A list of all lawsuits or petitions filed by you against the federal government in the current year and the previous four years, giving the name of the lawsuit or petition, the subject matter of the lawsuit or petition, and the federal statutes under which the lawsuits or petitions were filed.

Case Name and Description **Approximate Date Filed**

Federal Court Cases

Valley Meat LLC. v. Vilsack et. al. and HSUS,
U.S. District Court NM
Civ. No. 12-cv-1083 02/13

Represent Intervenor New Mexico Cattle Growers Association et al against U.S. Department of Agriculture Food Safety and Inspection Service relating to delay of a grant of inspection.

Front Range Equine Rescue et al., v. Vilsack et al.,
U.S. District Court NM
1:13-cv-00639-MCA-RHS 09/13

Represent Intervenors New Mexico Cattle Growers Association supporting U.S. Department of Agriculture Food Safety and Inspection Service relating to grant of inspection.

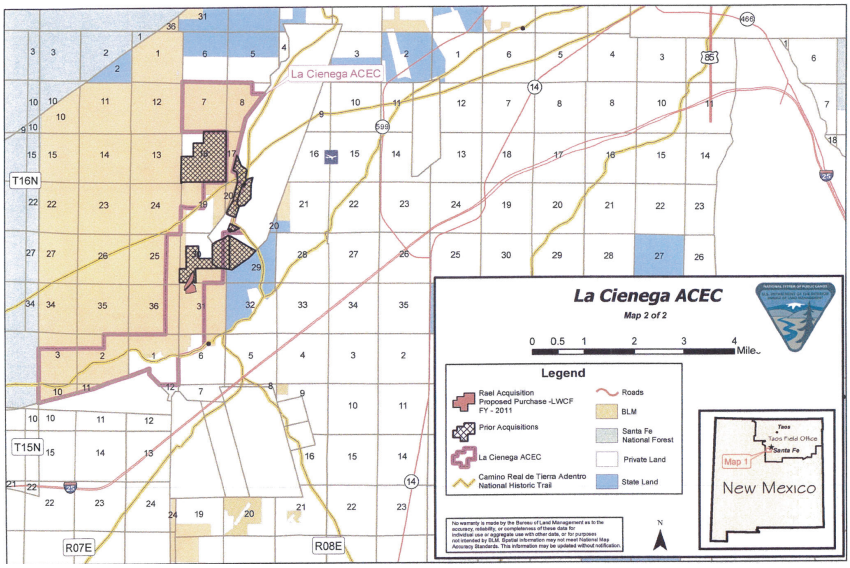
Front Range Equine Rescue et al., v. Vilsack et al.,
10th Circuit Court of Appeals
13-2187 11/13

Represent Intervenors New Mexico Cattle Growers Association et al supporting U.S. Department of Agriculture Food Safety and Inspection Service relating to grant of inspection.

WildEarth Guardians v. New Mexico State Game Commission,
10th Circuit Court of Appeals
13-2001 02/12

Represented Intervenors New Mexico Cattle Growers Association et al supporting New Mexico Game Commission in opposing claims of "take" of Mexican wolves for allowing lawful trapping pursuant to New Mexico state law.

ATTACHMENT 2



ATTACHMENT 3

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, California 95825

In Response Reply To:
FWS/R8/AES

MAY 20 2014

Memorandum

To: Regional Director, Pacific Southwest Region
Sacramento, California

From: Assistant Regional Director, Ecological Services

Subject: Ecological Services Workload Prioritization */s/ Michael Fris*

Consecutive years of reduced funding for the Ecological Services Program have had a meaningful impact in Region 8. Workload associated with sections 4, 7, and 10 of the Endangered Species Act (ESA) is greater than our resources can address. To compound this problem, we anticipate the demand for ESA permitting, listing, and recovery work will increase in the coming years as the housing market improves, natural resource needs increase, and listing petitions rise. We expect this increase in workload to occur while renewable energy permitting remains a high priority for the Administration and Department of Interior. Given decreased staff resources and budgets, it behooves us to craft a strategy for prioritizing workload. Ultimately, we need a long-term strategy which may entail shifting resources throughout our region to ensure that staffing is commensurate with our priority assignments. As we for-

mulate this long-term strategy, this memorandum will guide deployment of our resources in the short term.

Regionally, our top priorities include Department of Interior initiatives, preservation of health and human safety, and workload required to meet our legal mandates. Our highest priorities also include continued implementation of Landscape Conservation Cooperatives and the surrogate species concept. Specific priorities encompass Tribal trust responsibilities, Klamath water operations projects (including the hydroelectric settlement agreement), the Desert Renewable Energy Conservation Plan, the Bay-Delta Conservation Plan, the Central Valley Project Operations and Criteria Plan, issues of national security, projects related to flood prevention, projects related to fire risk reduction, and communicating with the public through external affairs. While these priorities comprise our regional focus, they do not provide the fine-scale sideboards to determine how offices should prioritize projects, and they do not all apply to each office within Region 8. Thus, each office will need to prioritize its own workload within their specific geographic priorities, and using surrogate species as the measure of success.

Among the remaining workload, we will focus on projects with a high conservation benefit. Whenever possible, we will place the highest priority on projects where big conservation gains can be achieved with relatively little effort through the solid work of our partners. When conservation value and programmatic priority are equal, projects will enter a queue to be addressed on a first-come, first-served basis. Streamlined, programmatic approaches (landscape scale) will be prioritized ahead of individual projects.

Action agencies and applicants can reduce permit processing time frames by producing well-prepared biological assessments and habitat conservation plans. For priority projects we cannot accomplish due to budget shortfalls, reimbursable dollars may enable us to hire temporary or term employees to work on the project from start to finish. Reimbursable dollars should only be accepted when a project would otherwise be a priority, but would go unfunded due to budget shortfalls.

Based on limited staff resources, we anticipate that we will not be able to meet regulatory time frames with some degree of frequency. This includes ESA section 7 time frames for issuing biological opinions (135 days) and time frames for issuing ESA section 4 findings (e.g., 90-day findings and 12-month findings). Finally, there are a number of items we simply won't be able to do. These items are discussed below, by Ecological Services Program.

Section 7 and Section 10

Our primary focus will continue to be Departmental and agency priorities, as well as projects where we foresee having the biggest conservation benefit. Departmental and agency priority projects include the DRECP, high-profile renewable energy projects, Klamath, BDCP, and OCAP as well as projects necessary for health and human safety or national security and those for which we have court-ordered or settlement obligations. Among section 10 projects, we will prioritize those regional HCP development efforts for which we think the applicants are committed to expeditiously completing the plan and which are most promising in terms of positive conservation outcomes. Our section 7 priorities will focus on those projects that are designed with species conservation in mind and projects where we can achieve the greatest conservation outcome for the resources expended in working on the project. We will pursue programmatic consultations if there are expected long-term conservation and workload benefits.

To focus our efforts and attention on priorities, we foresee rarely or not doing Safe Harbor Agreements, general technical assistance, and CCAAs and CCAs. We will step away from the lead role on most intra-Service consultations for non-Ecological Services programs. Those programs have been delegated the authority to complete their own section 7 consultations; we are committed to providing those programs with the tools they need to support their own determinations.

As the economic recovery continues, we anticipate that HCP and consultation workload associated with urban development will increase. We must be prepared to prioritize projects. We will not be able to complete all projects in a timely manner. Sometimes our partners have assisted with funding, which helps us complete these requests in a more timely manner (streamlined MOU with FS, agreements with Caltrans and the Corps). To enable Federal land management agencies to reduce the risk of catastrophic wildfire, we will continue to engage these partners on fire-related consultations. We have recently reaffirmed our commitment to the Streamlined Consultation process in the Northwest Forest Plan area, and will continue to seek consensus and efficiencies in these consultations.

Listing and Recovery

Our primary (and perhaps only) focus will be on meeting court-ordered and settlement deadlines for findings, including findings for reclassifications. We will also put resources toward completing litigation-driven recovery plans, and for other recovery plans we will continue to implement our work activity guidance for FY13–FY17, ensuring that the pace of plan development is commensurate with staffing levels. Recovery implementation will be focused on critically imperiled species and will be primarily in the form of Service staff working with partners to identify and fund recovery actions.

With few exceptions, we do not plan to carry out the following activities: uplisting rules, downlisting rules, post-deli sting monitoring plans, petition responses, CNORs, non-MDL findings and proposed rules, or recovery plan revisions. Five-year reviews will not be done, although abbreviated reviews may be completed if sufficient resources are available.

Contaminants

Our main priority will be maintaining spill response planning and preparedness capabilities with our field offices as well as our Federal and State partners. Another priority will be to ensure new case development and support in our Natural Resource Damage Assessment & Restoration (NRDAR) program. For restoration activities of our on-going existing NRDAR cases, implementation and support will continue as these funds are non-appropriated and derived from settlements.

With the exception of our current On-Refuge Investigation program activities, all contaminant investigation activities are no longer being implemented (unless funding/support is provided to us from our partners or stakeholders). In addition, technical assistance provided on contaminant issues to other Service Programs (i.e., Consultation, Recovery, Listing, Refuges, Fisheries, etc.) will be significantly reduced. Some technical assistance may be provided on a case-by-case basis for high-priority issues, and in such cases cost-sharing with the requesting program will be sought. Specific Service issues that will be affected include:

- Clean Water Act regulatory reviews (water quality standards, TMDLs, etc.)
- Listing support reviews (five-factor analyses, 90-day reviews, deli sting, etc.)
- Mining-related NEPA reviews
- Pre-acquisition Environmental Site Assessments (Level II and Level III)
- Recovery support reviews (recovery plans, 5-year reviews, etc.)
- Refuge Pesticide Use Proposal reviews
- Refuge Cleanup reviews (EECAs, PASIs, etc.)

Conservation Planning Assistance

We will continue to focus our efforts on Departmental and agency priorities, including the Secretarial Determination for the Klamath settlement agreement, and water operations associated with the Klamath hydroelectric facilities and the Central Valley Project Improvement Act. Our field offices have been and will continue to rely on reimbursable funding from our Federal partners for work on Fish and Wildlife Coordination Act reports. It is imperative that these funds be sufficient to fully support staff, and we will prioritize projects based on the amount of funds, Departmental and agency priorities, and conservation benefit. We will continue work on FERC reviews insofar as the available funding allows, which will likely entail stepping away from involvement with some FERC projects (except Klamath).

We will not or rarely be reviewing and commenting on other agencies NEPA documents, unless we have agreed to be a Cooperating or Participating agency. Our involvement with Bald and Golden Eagle Act permitting will be minimal, and will largely depend on the priority given to individual projects.

cc: R8 All ES Project Leaders

Mr. LAMALFA. Thank you. Real quick, 14 generations, what year does that go back to?

Mr. LOPEZ. 1600, sir.

Mr. LAMALFA. Incredible. OK, thank you. Mr. Mike Lucero? OK, we are changing the order, I am sorry. We need to go to Mr. Garrett VeneKlasen. Is that in the ball park, VeneKlasen? Go ahead and say it your way so we will pronounce it correctly.

Mr. VENEKLASEN. It is Garrett VeneKlasen.

Mr. LAMALFA. VeneKlasen, thank you. Alright, 5 minutes, please.

STATEMENT OF GARRETT O. VENEKLASEN, EXECUTIVE DIRECTOR, NEW MEXICO WILDLIFE FEDERATION, SANTA FE, NEW MEXICO

Mr. VENEKLASEN. Mr. Chairman and members of the committee, my name is Garrett VeneKlasen. I am a native New Mexican, and I have spent my entire life hunting and fishing throughout the Southwest. Before taking my position with the New Mexico Wildlife Federation, I was the Southwest Director for Trout Unlimited, working on cold water restoration and public land protection projects, including Rio Grande del Norte and the Organ Mountains-Desert Peaks designations throughout New Mexico, Arizona and Colorado.

Hunting and fishing combined contribute $93 billion to the Nation's GDP. It is a massive industry. Like all western states, hunting and fishing in New Mexico is a thriving and rapidly growing, yet sustainable industry that enhances and greatly diversifies rural economies west-wide.

Eighty-nine percent of New Mexican sportsmen and women utilize public lands to hunt and fish. And even though we are a sparsely populated state, New Mexican sportsmen spend $579 million, support $258 million in salaries and wages and contribute $58 million to state and local taxes and support 7,695 jobs annually.

It is also important to note that in New Mexico, hunting and fishing are more than just sport. They are the oldest of our core cultural land use values with a 10,000-year-old tradition. This vibrant industry and our cultural values and lifestyle are dependent upon two things: expansive, viable habitat for our fish and wildlife and large undeveloped tracts of public lands in which our rapidly growing community can recreate.

A tiny spring and its riparian area in the Lincoln National Forest known as Agua Chiquita has gotten a lot of attention lately. The Agua Chiquita offers crucial riparian habitat used by elk, which are native to the area, turkey and other wildlife for water, food and breeding. The riparian areas have been fenced with gaps for cattle for more than 20 years to mitigate livestock damage. Such cattle exclosures have been used by virtually all state and Federal land management agencies to protect critical habit for more than 50 years west-wide.

The original barbed-wire fence around Agua Chiquita was cut so often that the Forest Service replaced it with a welded pipe rail fence. It is 4 feet high and roughly encompasses 23 acres of land. It encloses less than 23 acres of riparian habit within a 28,000-acre grazing allotment.

It was not the Forest Service that paid for the fence. Hunters and anglers did using $104,000 from New Mexico's Habitat Stamp Program, which is paid for with hunter and fishing license dollars, and $11,000 from the New Mexico members of the National Wild Turkey Federation. It was a sportsmen-generated project that was designated by the Southwest Habitat Stamp Program. It was not generated by extreme environmentalists or anybody else.

Some of those who were offended by the Agua Chiquita project said water rights were being ignored or taken away, but the U.S. Forest Service told our organization that when they checked with the New Mexico agency that monitors water rights, the Office of the State Engineer, that the database showed that the only recorded water rights in that portion of Lincoln National Forest belonged to the U.S. Forest Service.

This issue of habitat protection goes far beyond the Lincoln National Forest. It extends wherever important wildlife habitat is threatened in New Mexico and other states. Stream exclosure projects offer tremendous benefit for game and non-species alike, both aquatic and terrestrial.

Outdoorsmen like me are primarily interested in trout, elk, turkey and other game, but what is good for little creatures like meadow jumping mice are also great for trout, waterfowl, upland birds and big game, for which New Mexico is known worldwide.

The discussion in New Mexico, and now in this hearing, is focused on fencing projects around critical wildlife habitat. But the discussion should broaden and acknowledge the impact of livestock grazing on our western landscapes and watersheds. Hundreds of years of grazing have transformed entire western landscapes and compromised the function of our water head. This is a fact, and it is high time that both state and Federal policymakers and land management agencies recognize this.

Grazing practices affect the fish and wildlife, but the general public has also felt the impact. Our watersheds have been degraded and they are dysfunctional. And the downstream users, municipalities and larger agricultural interests, are the ones that are really feeling the brunt of this. Our western watersheds are broken and need to be fixed.

The good news is that our watersheds are restorable and that sustainable grazing can and should continue alongside proactive habitat restoration. But as a Nation, we need to start thinking of better ways to protect and restore degraded watersheds and riparian habitat while at the same time allowing our grazing community to thrive. Sportsmen have already shown they are ready to chip in and do our share.

The Agua Chiquita incident reflects the feeling by some that Federal agencies, such as the Forest Service and BLM, have somehow overstepped their authority. They have not. They are abiding by law laid down through 200-plus years of democratic action. Sportsmen have had to learn to share our public lands and to take responsibility for protecting them. We urge others who use and profit from our Federal public lands to do the same.

Thank you very much.

[The prepared statement of Mr. VeneKlasen follows:]

PREPARED STATEMENT OF GARRETT O. VENEKLASEN, EXECUTIVE DIRECTOR, NEW MEXICO WILDLIFE FEDERATION

Chairman Rob Bishop, Ranking Member Raúl M. Grijalva, members of the committee: thank you for giving me the opportunity to present my perspective on "Threats, Intimidation and Bullying by Federal Land Managing Agencies," especially as it pertains to cattle exclosures on Federal lands in New Mexico.

My name is Garrett VeneKlasen. I am a native New Mexican and have spent my entire life hunting and fishing throughout the Southwest. Before taking my current

position as the Executive Director of the New Mexico Wildlife Federation, I was the Southwest Director for Trout Unlimited, working on coldwater restoration and public land protection projects throughout New Mexico, Arizona and Colorado.

Hunting and fishing combined contribute $93 billion to the Nation's Gross Domestic Product. Like all western states, hunting and fishing in New Mexico is a thriving and rapidly growing yet sustainable industry that enhances and greatly diversifies rural economies west wide.

Eighty-nine percent of NM sportsmen and women utilize public lands to hunt and fish. New Mexico sportsmen alone spend $579 million, support $258 million in salaries and wages, contribute $58 million to state and local taxes and support 7,695 jobs annually (Outdoor Industry Association, Boulder, Colo.)

It is also important to note that in New Mexico, hunting and fishing are more than just "sport." They are the oldest of our core cultural land use values with a 10,000-year tradition.

This vibrant industry and our cultural values and lifestyle are dependent upon two things: expansive, viable habitat for our fish and wildlife and large, undeveloped tracts of public lands in which our rapidly growing community can recreate.

The tiny spring and its riparian area in Lincoln National Forest known as Agua Chiquita have gotten a lot of attention lately. A small group of ranchers claims the U.S. Forest Service is trampling their rights. They make it sound like they're the victims, but there's far more to the story.

The Agua Chiquita offers crucial riparian habitat used by elk, turkey and other wildlife for water, food and breeding. The riparian area has been fenced—with gaps for cattle—for more than 20 years to mitigate livestock damage. Such cattle exclosures have been used by virtually all state and Federal land management agencies to protect critical habitat for more than 50 years.

The original barbed-wire fence around the Agua Chiquita was cut so often that the Forest Service replaced it with a welded pipe-rail fence, 4 feet high and roughly a mile long on both sides of the stream. It encloses less than two dozen acres of riparian habitat within the 28,000-acre grazing allotment. Cattle have access to the stream through two "water lanes" built into the fence.

But it wasn't the Forest Service that paid for the fence. Hunters and anglers did, using $104,000 from New Mexico's Habitat Stamp Program and another $11,000 from New Mexico members of the National Wild Turkey Federation. It was sportsmen in southeast New Mexico that manifested the Agua Chiquita project and made it a top priority because riparian habitat is a precious thing in our arid state.

Some of those who were offended by the Agua Chiquita project said water rights were being ignored or taken away. But the U.S. Forest Service told our organization that when they checked with the New Mexico agency that monitors water rights, the Office of the State Engineer, the database showed that the only recorded water rights in that portion of Lincoln National Forest belonged to the U.S. Forest Service.

There were also complaints that the cattle in that grazing allotment were being denied water. But in fact, there are two places along the Agua Chiquita project where cattle can reach the stream. The Forest Service has excellent photographs if you would like to see them for yourselves.

But this issue of habitat protection goes far beyond Lincoln National Forest, however. It extends wherever important wildlife habitat is threatened, in New Mexico and other western states.

Stream exclosure projects offer tremendous benefits for game and non-game species alike, both aquatic and terrestrial. Outdoorsmen like me are primarily interested in trout, elk, turkey and other game. But what's good for tiny creatures like the meadow jumping mouse is also great for the trout, waterfowl, upland birds and big game for which New Mexico is known worldwide.

The discussion in New Mexico and now, in this hearing, has focused on fencing projects around critical wildlife habitat. But perhaps the discussion should broaden and acknowledge the impact of outdated livestock grazing practices on our western landscapes and watersheds. Hundreds of years of overgrazing has literally transformed entire western landscapes and greatly compromised the function of our watersheds. This is a fact and it's high time both state and Federal policymakers and land management agencies recognize and address this issue head on.

Grazing practices have affected fish and wildlife, but the general public has also felt the impact in many western states. Degraded watersheds—especially upland watersheds—do not properly hold and dependably deliver our precious and limited water reserves. In the end, the biggest losers are municipalities and downstream

agricultural interests who can and should be receiving more water if the upstream systems functioned as they should. The economic impacts to these water dependent economies—especially in times of extreme drought as we're seeing in much of the West—should be carefully considered by this committee.

The good news is that our watersheds are restorable, and that sustainable grazing can and should continue alongside proactive habitat restoration. But as a Nation we need to start thinking of better ways to protect and restore degraded watersheds and riparian habitat while at the same time allowing our grazing community to thrive. Sportsmen have already shown they are ready to chip in and do our share.

It is ironic that the title of this hearing is "Threats, Intimidation and Bullying BY Federal Land Managing Agencies." I would ask this committee to also consider "Threats, Intimidation and Bullying OF Federal Land Managing Agencies," by certain members of the public lands grazing community as well as by select county policymakers. More than once I have witnessed county commissioners publicly verbally abuse and ridicule land managers in their meetings.

I believe the tension under discussion today boils down to one thing: communication. I suspect that if Federal land managers were treated with more respect, the public lands grazing community, county officials and the land managers could start working out their issues on a local, mutually respectful level.

The Otero County Commission's actions and behavior certainly has not represented the best interest of their sportsmen constituents, but instead follows a flawed ideological agenda of rejecting America's public lands legacy. It is also contrary to the best of human traits—collaboration and cooperation.

Public lands are democracy in action. They are worth fighting for. They are an American birthright that belongs equally to all citizens both born and unborn. Proximity bestows neither privilege nor special entitlements, only a heightened responsibility of localized stewardship.

But as misguided incidents like the Agua Chiquita in New Mexico, the Cliven Bundy standoff in Nevada and the ATV trespass fiasco in Utah's Recapture Canyon show, there is a move afoot to ignore these fundamental public property rights. To some, it may not matter. To public lands sportsmen and women, it does.

The Agua Chiquita incident reflects the feeling by some that Federal agencies such as the Forest Service and the BLM have somehow "overstepped" their authority. They haven't. They are abiding by the law laid down through 200-plus years of democratic action. Sportsmen have had to learn to share our public lands and to take responsibility for protecting them. We urge others who use and profit from our Federal public lands to do the same.

Attachment

ATTACHMENT

NEW MEXICO WILDLIFE FEDERATION
100 Years of Conservation • 1914–2014
OUTDOOR REPORTER
Summer 2014

Sportsmen save habitat protection project

It appears the habitat protection project funded by sportsmen and built around sensitive riparian habitat in Lincoln National Forest is having the intended effect. In this photo taken several months after work finished, the left side is the area open to cattle while the right side is protected for wildlife. *(Photo courtesy U.S. Forest Service)*

Efforts to derail work funded by hunters and anglers falls short

By Joel Gay
New Mexico Wildlife Federation

Sportsman-funded habitat projects rarely make the news, but one in Lincoln National Forest drew a surprising amount of attention this spring, including strong opposition from ranchers and others who want to remove the stream protection project for the sake of livestock.

Efforts to derail the work on Agua Chiquita, a spring-fed stream in the Sacramento Mountains south of Cloudcroft, actually started a year earlier But New Mexico members of the National Wild Turkey Federation made it their top priority to complete the work this spring, which prompted a fresh round of complaints, threats and legal action.

"Some people have claimed this habitat protection project was 'overreach' by the U.S. Forest Service, but nothing could be further from the truth," said New Mexico Wildlife Federation Executive Director Garrett VeneKlasen. "This was sportsmen doing what they have always done, which is working together to protect public land and habitat so that their children and grandchildren have opportunity to hunt and fish in the future."

"Hunters and anglers have had to learn to share our public lands and to take responsibility for protecting

See "Agua Chiquita," Page 12

Tierras preciadas:

Public lands are a treasure for sportsmen and women. In this Outdoor Reporter we focus on how and why hunters and anglers work so hard to protect them.

Gila Wilderness

A legacy for sportsmen

By M.H. "Dutch" Salmon
Special to New Mexico Wildlife Federation

When Aldo Leopold, founder of the organization that would become the New Mexico Wildlife Federation, arrived in the Southwest as a fledgling U.S. Forest Service ranger in 1909, he discovered six blocks of roadless country in the region's national forests that contained half a million acres or more.

"By the 1920s," Leopold would write later, "roads had invaded five of them and there was only one left: the headwaters of the Gila River."

Leopold, who by his own admission had "hunting fever," was the perfect scribe for the subject at hand – wilderness – with just the right mix of skilled narration, authenticity (he fished, he hunted, he camped out), poetry, polemic and foresight. In 1921 he wrote something in the Journal of Forestry that most Americans would never read but that professional foresters and game managers did.

By dint of his literacy, elegance and passion, Leopold would convince his peers that this far-away place in New Mexico would best serve the nation by being left "open to lawful hunting and fishing, big enough to absorb a two week's pack trip, and kept devoid of roads, artificial trails, cottages, and other works of man."

Furthermore, he continued, "a good big sample of it should be preserved. … It is the last typical wilderness in the southwestern mountains. Highest and best use demands its preservation."

Ninety years ago this summer, District Forester Frank Pooler responded to Leopold's assessment of "highest and best use" by designating 755,000 acres of the headwaters of the Gila River as off limits to roads, vehicles and other works of man, yet available to hunters and anglers.

It was the nation's first protected wilderness area.

Gila has it all

The Gila now makes up just a fraction of our nation's wilderness system, which has grown to more than 100 million acres. And to this day you may stand, as I have, amidst these far-flung and peculiar mountains and ask: How can this be? How is it that in the whirl of population growth and burgeoning industry and technology, the nation has here, voluntarily, turned its back on the 21st century and returned to the 19th?

Well, it all happened right here in the Gila – the Mimbreño artists, the Apaches' legacy as equine buccaneers; mountain men, hound men and predator hunters; and the conservation legacy of Leopold, the most avid and articulate of sportsmen, who killed quite a few animals and saved entire landscapes. All were inspired

See "Gila," Page 4

State of the Game

Turkey tracks getting thicker all over NM

By Jim Bates
Special to New Mexico Wildlife Federation

"I think that's number 25," I said to my turkey hunting buddy Dick as we got back into my pickup and headed on down the forest road.

"Wow, this is incredible. I've never heard so many gobblers in my life!" Dick responded.

What was even more incredible was the fact that we were "putting gobblers to bed" along a main thoroughfare running through Lincoln National Forest.

Gobbling turkeys were everywhere on this eve of the start of the spring turkey season. What was particularly encouraging, though, was that this was not some isolated hotspot or wildly unusual incident. It was only a single example that wild turkeys are doing well in many locations in our state.

New Mexico has always had a fairly stable turkey population. Even in the grim years following the end of market hunting which decimated wild turkey numbers

See "Turkey," Page 10

. . . Agua Chiquita work finished, despite hurdles

Continued from Page 1

them," VeneKlasen continued. "We urge others who use our federal public lands to do the same."

Protecting water a top priority for sportsmen

The Agua Chiquita project has been on sportsmen's radar since at least the 1990s, according to Dale Hall, the head of the Habitat Stamp Program for the Department of Game and Fish until he retired last May. For many years, hunters and anglers volunteered their time and provided funding to install and maintain a barbed wire fence meant to keep cattle out of the fragile riparian area, he said.

In an arid state, Hall added, "Those are premium habitats, and we should be protecting them."

But because livestock and wildlife kept breaching the barbed wire, the Forest Service proposed to replace the barbed wire with a pipe-rail fence. The project was to be funded by the Habitat Stamp Program. It was discussed and approved by the program's southeastern Citizens Advisory Committee more than a year ago.

Work began in the spring of 2013, using thousands of feet of pipe donated by Yates Petroleum Corp. of Artesia and $104,000 in Habitat Stamp funds. But as word of the project spread, an Otero County Sheriff's deputy visited the site and threatened to arrest the contractor and Forest Service personnel for allegedly violating fire restrictions in place at the time.

The Forest Service had already taken fire precautions, said USFS wildlife biologist Jack Williams. The agency's fire management office had issued the contractor a waiver and fire personnel were on site. "All the necessary precautions were in place," Williams said.

Work resumed, but in May 2013 the Department of Game and Fish pulled out of the Agua Chiquita project completely. Hall said he was ordered to stop work by then-director Jim Lane.

"He called me in and wanted an explanation of what I was doing down there," Hall told NMWF. Hall said he was in the process of developing a presentation on the project when Lane pulled the plug. "I never got chance to explain it," Hall said, "because he made a political decision, not a biological decision" to kill the habitat protection work.

At that point, Game and Fish was walking away from a project that was nearly complete, according to Williams and Hall. Both the Forest Service and the Habitat Stamp program coordinator wanted to finish it after fire restrictions were lifted, but even after Lane resigned last fall –well after fire season was over – Game and Fish would not complete the job, Hall and Williams said.

Once again, sportsmen stepped up. In March of this year, New Mexico members of the National Wild Turkey Federation made the Agua Chiquita their top priority. Scott Lerich, the federation's biologist in New Mexico, said he met with the Forest Service, Hall and the fence contractor and determined that a little over $11,000 was needed to finish the job. The Turkey Federation picked up the tab and work began again in early April, Lerich said.

This time, however, the Forest Service returned to the worksite with a fire engine and law enforcement officials. "We wanted to make sure the contractor was going to be able to complete the job.," Williams said, recalling the interaction with the Otero County Sheriff's office last year. "We wanted to make sure there wasn't going to be any further interruption in the work."

Indeed, the job finished up on April 24. It consists of 4-foot-high pipe-rail fencing along both sides of the Agua Chiquita, enclosing about a mile of stream and some 24 acres of riparian habitat. Cattle still have access to the stream through two "water lanes" built into the fence.

Sportsmen wanted to beef up the fence protecting sensitive habitat along the Agua Chiquita to keep cattle out, for obvious reasons. This photo was taken several weeks after the pipe fence was completed in April. *(Photo courtesy U.S. Forest Service)*

Work sets off firestorm

By the time the contractor was putting away his tools, opponents of the project had taken their complaints public. The Otero County Commission sided with local ranchers and issued a cease-and-desist order on the project. When the Forest Service received the letter, the work had already been completed..

Commissioners then asked the agency to unlock gates in the fence and allow cattle full access to the stream. When the Forest Service stood its ground, the commission ordered the county sheriff to cut the locks. According to news reports, the sheriff sought permission from a federal judge but was denied.

Coming on the heels of the standoff between the BLM and Nevada rancher Cliven Bundy, the Agua Chiquita project generated national attention. The news media reported charges of "federal overreach" and allegations that the government was ignoring the Constitution or taking private property without compensation.

Judyann Holcomb Medeiros, whose Holcomb Family Ranch was most affected by the fence-out project, was quoted by several newspapers and said, essentially, that the Forest Service was harming her business. "Fencing our cattle off of the water denies us our usage rights," she told the Alamogordo Daily News. "During the drought, our cattle have to walk extended lengths to reach water. The fences also causes the cattle to use the heavily used county road, and we have had cattle hit and killed or severely crippled or damaged by the impacts."

She did not mention the fact that her ranch will receive 15 elk tags – unit-wide – from the Department of Game and Fish this fall.

Blair Dunn, an Otero County attorney, said the Forest Service "doesn't have the right to appropriate water for wildlife," the Daily News reported. "So to pen something off for wildlife to go drink and to appropriate that water for wildlife when they don't have the necessary legal permits or rights to do so amounts to an illegal diversion of water."

Several ranchers said the Agua Chiquita project was aimed at driving them off their land, and one Otero County commissioner described the Forest Service's actions as "tyranny." More than 100 people gathered in Alamogordo in late May to protest the Agua Chiquita project, including John Bell, president of the Otero County Cattlemen's Association, who said, "We've got to stand up and fight back and that is what this is about."

Supporters have facts on their side

To those who followed the project closely, however, the Otero County protests missed the mark. "A grazing permit is not a right, but a permit that allows the permittee to occupy the forest but which can be revoked for any number of reasons," Sacramento District Ranger James Duran said. "Nobody lost their grazing permit over the Agua Chiquita flap," he said.

Nor did anyone lose their water rights or access to water. In fact, Duran said, "We have no documentation from the Office of the State Engineer, who we rely on for these determinations, that water rights exist or are being violated" in that portion of the Lincoln National Forest. "A lot of folks have made claims," he said, but his office searched the water rights database maintained by the state and found no evidence. "The only licensed water right is issued to the Forest Service in the database," he said. Even if a water right did exist, he said, "We have not limited livestock access to the use of the water. Since the herd was turned out into the area on May 18 cattle have had water all along."

And as to claims about the Forest Service violating local, state or federal law, Duran said no law enforcement agency has brought forth charges. "We have no intentions of breaking the law," he said.

The Forest Service is, however, mandated by law to manage its forests for multiple use. That includes protecting water quality and wildlife large and small as well as providing for livestock grazing. "I don't want folks to believe the Forest Service wants to put ranching out of business," Duran said.

Lerich, the Turkey Federation biologist, said the Agua Chiquita project was needed to protect a fragile stream and riparian area, and nothing more.

"I don't have anything against cattle," he said. But cattle and elk have starkly different impacts on a water source. "Elk will have an impact, but they'll leave. Cattle, if given a choice, will never leave – they'll stay there, and before long it's a pile of dust. "

Protecting riparian habitat like the Agua Chiquita "fits into the mission of the turkey federation," he said. "It's what we do. But if we want to protect 10 or 15 acres out of the 28,000 in that grazing allotment, I think that's benefiting everybody, including the rancher. Our goal here is to provide clean water and more of it."

Public lands like Lincoln National Forest are among the many reasons the United States is exceptional in the world, said NMWF Director VeneKlasen. Thanks to visionary sportsmen of the early 20th century like Theodore Roosevelt and Aldo Leopold, everyone – regardless of race, social status or bank account – has a place to hunt, fish and relax.

"Public lands are our birthright," he said. "They are worth fighting for."

But as incidents like the Agua Chiquita protests and Cliven Bundy standoff in Nevada show, there is a growing movement to treat public lands as if they were private or to transfer federal public lands to the states, and then very likely into private ownership. (See associated story on this page.)

"This is a huge threat to the sportsmen of New Mexico and throughout the West," VeneKlasen said. "We can camp, hike and scout for big game freely on BLM and Forest Service land, but not on state land and certainly not on private land."

If the state seized our national forests and BLM landscapes, New Mexico taxpayers would be on the hook to fund everything from fighting forest fires to maintaining thousands of miles of roads, he continued. "It wouldn't take long before the financial demands of such management would force the state to sell, trade or lease 'our' lands. And sportsmen would lose, I guarantee."

Although some have argued that federal agencies such as the Forest Service and the BLM have somehow "overstepped" their authority, "Sportsmen know they haven't," VeneKlasen said. "These agencies are abiding by the law laid down through 200-plus years of democratic action. Sportsmen have had to learn to share our public lands and to take responsibility for protecting them. Others who also use our federal public lands should do the same."

Mr. LAMALFA. Thank you.

OK, Mr. Mike Lucero, you are the closer here, so 5 minutes.

STATEMENT OF MIKE LUCERO, RANCHER, JEMEZ PUEBLE, NEW MEXICO

Mr. LUCERO. Mr. Chairman, members of the committee, I appreciate your time. First off, my name is Mike Lucero. I was born and raised in New Mexico as well as my family. My family, friends and I ranch in northern New Mexico, as do many.

I am here today to inform you on some of the issues that we are having with our Federal agencies, the Forest Service and the Fish and Wildlife Service.

We feel that when it comes to these agencies, they take the "take it or leave it" stance with us, as they have now for many years due to the budget issues, low staffing and lack of training, to name a few. But the most recent one that I will not stand for is, "This is to avoid a lawsuit, that is why this is happening to you." By saying that, I feel that they are telling us, "This is the land of opportunity until somebody does not like what you are doing."

We have always wanted to work well with the Forest Service, and I think that our records will show that. And even now, we are respectfully disagreeing with what is going on though we are growing tired of trying to get answers and talk about compromise and being shut down because of the threat of lawsuit by a nongovernmental agency.

Remember, our tax dollars are being spent to keep out cattle that have been grazing—that occurs only 45 days a year in these areas. And to my knowledge, are not the only grazing animals that use this area. And by doing so, we feel that our rights are being violated. Cattle have been grazed on this land for generations. Forgive me, my emotions, because this is dear to me, OK, for generations, long before the Forest Service took over.

The Fish and Wildlife talk about ecosystems. How long does something have to be in place for it to become part of the ecosystem? Is 100 years not part of that? And how does it change the ecosystem by changing what is going on now and what has been for over 100 years?

Somehow I feel that they have not done their studies and found an effective way to spend this money that has somehow been set aside for New Mexico jumping mouse habitat.

Now, we have been asking for compromise. We have been wanting to work out alternatives to what is going on up there. The ranchers there are tired of asking questions and never getting answers. Every time we have a question, there is always a thread of "if you question what is going on, you are going to lose your permits."

The majority of these men that are ranching in these areas are elderly. This is their sole source of income. And these agencies need to realize that when this—when people come to this table, and they sit across from the Forest Service or the Fish and Wildlife and they ask and answer, they expect the respect that we give them when we do our daily job up there and manage the way we have been for 100 years. The problem is we do not get answers ever. And if we question more than we are supposed to, we are always threatened.

Now, I sit before you today to let you know what is going on up there. And I hope that we can come to some kind of agreement on what needs to be done and move forward with it because enough is enough when it comes to bullying people that have been on this land for generations. Remember, this was a land grant before the Forest Service took it over. And my family ultimately has been the stewards of this land for as long as they have. And the reason we are in the situation we are now with poor watershed and wildfires is mismanagement by the people that are taking care of it now, the Federal agencies.

Thank you.

[The prepared statement of Mr. Lucero follows:]

PREPARED STATEMENT OF MICHAEL LUCERO, JEMEZ PUEBLE, NEW MEXICO

Mr. Chairman and members of the committee, thank you for allowing me to tell you what is going on in New Mexico at the hands of the U.S. Forest Service and the U.S. Fish & Wildlife Service.

My name is Michael Lucero, I was born and raised in New Mexico. I am an allotment owner in the Santa Fe National Forest, as is my father. I currently serve on two boards; the Jemez Valley School Board of Education and the Union Board at work.

My family and I ranch on the Santa Fe National Forest, and have for many generations. My great grandfather started off on foot with 1,000 head of sheep when the Forest Service was not even in existence. This was then passed down to my grandparents, then to my father.

Our allotment originally started as the San Diego Land Grant which eventually was taken by the government and became Forest Service land. Land grants were issued to settlers by the king of Spain when the land was part of Mexico. The land was taken from us to create the bureaucracy in place today. Now that government is driving us completely from the land.

We feel that the government has taken away and are still trying to take away what is rightfully ours, from our grazing rights to our water rights. It seems that every year it gets more difficult to continue with our way of life and keep our heritage alive as the government is continually putting obstacles in our path.

My mother's family was driven out of the logging business when the Spotted Owl became an endangered species. They left the valley that they grew up in to find work elsewhere.

Since the drought took over New Mexico, the Forest Service has used the "drought" to reduce our herd numbers. We always did as we were asked and cut our herds. Even though we cut our numbers for a particular year, we still paid the full payment due for the permit. When we looked at the drought maps and the formula they were using with the Forest Service, we were able to prove to them that their formula was incorrect. We were then allowed to come in with full numbers for our herds. Now that that issue has been resolved, here we are again with another issue, an endangered species threatening to shut us down.

Two years ago in 2011, our range conservationist gave us a handout which talked about the New Mexico Meadow Jumping Mouse. In that meeting he stated that if it was listed, that it would be the end of grazing on Forest Service Lands.

This mouse hibernates about 9 months a year and requires a 24-inch stubble height of dense grass. If we were not already providing the appropriate conditions, how can the mouse be there?

Another puzzling fact is that the mouse can apparently detect property lines. The proposed critical habitat goes right to the fence line to the Valles Caldera National Preserve and stops.

That was all we heard on the issue until the fall of 2013. The comment period in the Federal Register would open and the Forest Service told us how important it was to comment. That being said we did make comments when the notice was posted in the Federal Register. We then were called into another meeting with the Forest Service where they told us that they had no control over what was going happen if it was listed.

The local ranchers had many questions about the New Mexico Meadow Jumping Mouse, like where it was found. How many were found? What would be done to protect it and where it would be done? The Forest Service had no answers about the mouse. They told us that the Fish & Wildlife Service made all those decisions.

We then asked the Forest Service to call a meeting with the Forest Service and the Fish & Wildlife Service. In that meeting the Fish & Wildlife Service told us that the listing of the mouse would not affect grazing and that the Fish & Wildlife Service had not told the Forest Service to put up fences of any kind; we were told that all the Fish & Wildlife Service does is list the species.

The Forest Service was present at this meeting. Eric Hines from the Fish & Wildlife Service told us that we would still have our opportunity to be involved in a Section 7 consultation. We asked the Forest Service about that and they had no clue what we were talking about. All this being said we have been in the dark since day one.

The science used to list the mouse is disputable. Why are there no lists of areas that were studied? And if there is a list, why was it not provided to us when we asked for it? In the meeting with the Forest Service, they stated that the only reason for the fence was to avoid being sued by the WildEarth Guardians.

Why is the Forest Service making these decisions that will affect the local economy, the ranching industry and the culture, and well being of rural communities? It appears that they are not taking into account the local comments on these issues based on a lawsuit by a non-governmental party.

Since when is America not a democratic country? Why is the Federal Government not giving every citizen its due process on issues that affect so many different aspects of their lives? In every meeting with the Forest Service, they are always telling us that we are closer to NO RANCHING ON FOREST SERVICE LANDS! When we asked how we can work out a compromise with the Forest Service on issues like this, the Forest Service personnel always answer, "It's not me, I was told that this is the way the upper staff wants it."

I personally asked about alternatives fencing us off water and then out of our pastures but always hit road blocks, such as, no money or more studies needed. But somehow there is now money to build fences? At about $20 per linear foot, where did the money come from and why now, when we have been asking for alternatives for the past year. The expense of putting up this fence does not make sense since we only graze our cattle 2 months out of the year in these areas.

We were told in the meeting with the Forest Service and Fish & Wildlife Service that nothing would be done without first the NEPA process and a meeting with all of the ranchers and the Forest Service to come up with a plan together. Next thing we hear is that they are going to put up an 8-foot fence spanning 117 acres to keep animals and humans out of the critical habitat for the mouse. That is just my allotment. There are 10 others who are being similarly affected. Seems that we skipped a couple of steps and their words are just empty promises. Moving forward like this is a clear picture of GOVERNMENT BULLYING. They tell us one thing and do the opposite. They are never truthful with us and we are living in constant fear of what comes next.

After the media got involved around the 4th of July camping season, the Forest Service changed their tune. They are now proposing a 5-foot fence covering the same area that may impact dispersed camping. Why are we told about an 8-foot fence and 2 weeks later it becomes a 5-foot fence? Why are humans and wildlife, particularly elk, not harmful to the mouse?

The money being used to erect these fences is from taxpayers. That being said, it appears that the Forest Service is using my tax dollars to fence my family and numerous other families OUT OF BUSINESS! Tell me how that makes sense? Why would our concerns and comments not be heard, when we have been using these lands since it was our ancestors Land Grant?

Every time that there are compromises to be made, it is always us, the ranchers, who have to compromise on our end. We are told that if we do not compromise and agree with the decisions being made by the Forest Service that we risk losing our grazing allotments.

How are we supposed to work with the Forest Service when we all know that they do not listen to our concerns? We want to work with the Forest Service for the benefit of us all. It is in our best interest to take care of the land and help manage it properly. If we were not managing properly, then how is it that my family has been in business for over 100 years? It's because we love the land and our tradition and hope to pass it down for many generations to come.

I feel that Agriculture is very important to America, if you've seen the price of beef in the grocery stores lately, the more they cut herds the higher the price goes up for all American People.

I don't get how the environmental groups work with the Federal Government; what gives them so much power that they dictate what the Federal Government does with other people that use government lands? If you look at the WildEarth Guardians Web site, it states exactly what the U.S. Forest Service is going to do.

They want to protect one endangered spices and do everything in their power to get it done, they don't take into consideration that land management is so important for example: the Spotted Owl that was listed years ago. Many people (most of my family) from the logging industry lost their jobs which cased them to move out of the area to find work.

Through the years, now from the lack of managing the land correctly the Santa Fe National Forest is overgrown and we have had several forest fires with so much fuel they are out of control and the American Tax Payers spend so much more money on these forest fires than they would have if the land was managed properly. People would still have jobs. The Spotted Owl would not have a burned forest and not only that species, but all the other listed species on the Endangered Species List. In the ecosystem how do you protect one species and throw it off for the other endangered species?

Fencing off the river would dramatically affect our culture, economy, and our local community. Our local community businesses thrive on the business generated by ranchers, campers, fishermen, hunters and hikers. If we fence off all of the proposed rivers, it would have a detrimental effect on these local businesses.

I don't understand how people from other states get jobs at these Federal agencies that don't understand the way you manage a ranch in New Mexico. The way we manage a ranch in northern New Mexico is completely different than you would manage a ranch in a place like Wyoming or Montana.

The ranchers in this area don't have a lot of money; there are not a lot of big cattle operations like everyone thinks there are. I bought my own cattle and allotments and I bought it for a reason. It was an investment to put my two kids through college and so I could have something to hand over to my children that they have known their whole lives. My father inherited his small operation from my grandpa, which helps pay for my elderly grandmother's care: medical insurance, daily caretaker, and anything she may need. Because of these cows, grandma is not in a state paid or Federal paid nursing home. This is how we take care of her, it's how our community works; this is a part of what we do as a ranching family and community.

It saddens me to sit in a meeting where the head Forest Ranger (Linda Riddle) is telling us "I could care less if they got rid of all the cows on the Forest, that would make my job that much easier."

This statement coming from a Federal Government employee! Robert Trujillo, Deputy Director of the USFS stated in a local newspaper that he feels that the forest is overgrazed, however if the USFS was to pull the allotment management records, it would show that this is and never has been the case. The areas used by the ranchers are NOT OVERGRAZED! We have never been in violation of the Federal regulations governing ranching.

The opposite is true for the Forest Service personnel because they are not following the Federal regulation that says they are to protect the heritage and culture of ranching families that are allotment owners on the USFS. The Federal regulation states that they are to always get input from the allotment owners when making decisions that would affect them.

Rumors are floating in our communities that the Forest Service is planning to use eminent domain to obtain private land that is within what is believed to be jumping mouse areas. We cannot document them, but this is the fear we are living under.

The government and environmental groups are making it almost impossible for us to do what we love (our culture/heritage). In my opinion cattlemen are the caretakers of the land, if it wasn't for cattle grazing these lands we wouldn't have an environment for a jumping mouse or most other creatures. We are the ones who manage the lands and wildlife also benefit from our watering systems.

The media has accurately shown how our land looks. This is how we have taken care of this land, a part of our culture is an understanding that you have to take care of the land, in order for the land to take care you.

We are trying to do the right thing, but what we see for doing the right thing is we better go along with this or you are going to lose your permits! Ultimately the government is losing its caretaker, because that's what we do.

Thank you for your time. We pray that you can help us.

Timeline on New Mexico Meadow Jumping Mouse

- February 27, 2014—Official meeting about the NMNJM, the Forest Service told us they were going to start the NEPA process
- March 4, 2014—The Forest Service told us NO NEPA; Forest Service talked about the fence and taking 300 feet on each side of the river

- March 28, 2014—Forest Service sent letter on mouse fencing
- April 2, 2014—We called a meeting with the Forest Service to ask questions
- April 8, 2014—Meeting with the Forest Service; we looked at other options, but no money
- April 9, 2014—Meeting in El Rito NM with Cal Joyner; NO ANSWERS
- April 25, 2014—Meeting with the Forest Service and Fish and Wildlife Service
- May 9, 2014—Forest Service sends letter retracting the March 28, 2014 letter
- June 25, 2014—Meeting with the Forest Service; they showed us a map of fencing areas and they told us about categorical exclusion
- July 2, 2014—Forest Service and Fish & Wildlife canceled meeting
- July 10, 2014—Received comment notices from Forest Service

Mr. LAMALFA. I want to thank you, Mr. Lucero. OK, we are still doing OK on time. Let's move to our first round of questions here. I will recognize myself for up to 5 minutes here.

Let me come back to you, Mr. Lucero. In your dealings, you felt that decisions are made by Federal managers not because maybe it is the best practice or the most neighborly one but a fear of lawsuits by other outside sources. Could you dwell on that a little bit, please?

Mr. LUCERO. Exactly. We have asked—we have asked them, OK, "What is the alternative to putting a fence up that excludes cattle out of these riparian areas?" And they said, "If we do not put this up, we are going to be sued."

Mr. LAMALFA. By who?

Mr. LUCERO. By the WildEarth Guardians. And with their permission, I videotaped the meeting because I knew this was going in this direction. And for years, it has been. And I am fed up with it. So if anybody wants to question what was said by them, I have it on videotape.

Mr. LAMALFA. You should put that on YouTube then.

Mr. LUCERO. Yeah, I guess.

Mr. LAMALFA. It would be easily accessible.

Mr. LUCERO. But, yes, their answer is, "The reason we are doing this is because we are going to be sued." As a Federal agency, that is not how you manage what is going on in this forest.

Mr. LAMALFA. It is all too prevalent over a lot of the West where decisions are made by various entities, and I have run across it too.

In my part of the state, there is becoming a larger and larger elk problem in northern California where people are looking for remedies, and they are not getting them. They are told, "Hey, put up a fence, keep the elk out." Well, an elk is a very powerful animal. And so putting aside the idea of the expense of the fence or you having to change your operation for something that perhaps should be managed, how effective do you see fencing as far as just affecting an elk population and preventing elk grazing, for example?

Mr. LUCERO. The fence they originally proposed was 8-feet high, and it would exclude elk, cattle, hunting, fishing, hiking, everything. The Fourth of July weekend went by, and for some reason they came back to us with a letter. And I provided the letter to you guys. They came back to us with a letter, and now they are proposing a 5-foot high fence that would just exclude cattle. Now, tell me that makes sense when we are talking about 45 days worth of cattle grazing versus 365 days of elk grazing.

Mr. LAMALFA. So the fences are not preventing over-grazing, it sounds like?

Mr. LUCERO. No. And to go back to the over-grazing, the term has been thrown around loosely. And I provided some pictures here. And if I could point to these pictures real quick, I would like to. This is in a drought. This is the actual meadow that we are talking about. This is in a drought before the rain started, and we have already grazed that pasture. And this is over-grazing to them.

Mr. LAMALFA. This is post-grazing?

Mr. LUCERO. Yes. Also, I would like to add the fact that if we have over-grazed it, why have they never told us we have?

Mr. LAMALFA. OK, thank you. I go to Mr. Dunn. What recommendations do you have to allow individuals to seek recourse for the abuses by some of these employees? Have you——

Mr. DUNN. Mr. Chair, yes, I have. There is some proposed language that was part of my written testimony. One alternative is to make that an addition to the Civil Rights Act and essentially create a cause of action similar to a Section 1983 civil rights claim. As you are probably aware, Section 1983 claims can be brought against state and local authorities that exceed the law and harm somebody's individual rights. But that is not a remedy that is available to private citizens against Federal employees.

One way to gain some accountability would be to make that kind of a cause to action available. And I honestly believe that it would act as a deterrent. I think if there was some accountability, and the Forest Service, the BLM had to think about the fact that their actions might cause liability, they might take a little bit more care in not abusing the law.

Mr. LAMALFA. OK, thank you. I am going to come back on the second round. I will yield now and recognize Mr. Grijalva, our Ranking Member.

Mr. GRIJALVA. Yes, thank you very much. Mr. Lucero, I want to thank you for your testimony. What are the disadvantages of not having the agencies that we are talking about here today is they cannot respond to some of the points that you make. And I think they need to be responded to. It is my understanding that nothing has been finalized because we asked about that, in particular up in northern New Mexico. I asked your Congressman about that, and the Forest Service said nothing had been finalized. Leaving that aside, but it would have been good to get a direct answer,——

Mr. LUCERO. Can I speak on that real quick?

Mr. GRIJALVA. Let me finish my question, Mr. Lucero, and then you can——

Mr. LUCERO. OK.

Mr. GRIJALVA [continuing]. Wrap it up. Breaks in the fence that would allow cattle to be able to go into those 23 acres, is it?

Mr. LUCERO. This is a completely different area——

Mr. GRIJALVA. OK.

Mr. LUCERO [continuing]. That you are talking about.

Mr. GRIJALVA. That is the other one?

Mr. LUCERO. Yes.

Mr. GRIJALVA. Breaks in there so they could go—cattle could have access, the pumping of water even if it is necessary, those were two points that I think I had also heard in a letter that I re-

ceived from one of your colleagues, one of the ranchers up there. And those are questions we are going to pursue with the Forest Service because there is no way to get an answer right now. You have your point of view and your opinion and what you taped. And I do not deny that, but I want to hear from the agency as to how they are working with and what mitigating steps they are making to try to draw something cooperative with the ranchers in the area because I think that is the important way to go.

I know you will be advised that litigation is the only way to fly, but if this can be worked out cooperatively, I think it would be to the best benefits of everybody.

So we will pursue with the agency the points that you brought up because I think they deserve answers. And I certainly want those answers as much as you do.

Mr. LUCERO. OK. I think I kind of gave you what you are asking for. Categorical exclusion is what they told us they are using on this, which does not give us our option for a NEPA or an environmental assessment. We have asked for that in an official letter.

Mr. GRIJALVA. Well, see, that is the point. The agency being here, I would have asked those questions of the agencies.

Mr. LUCERO. Yes, well, I provided you the paperwork so you have it in front of you.

Mr. GRIJALVA. Well, I would still need to the talk to the agency, Mr. Lucero,——

Mr. LUCERO. Yes, sir.

Mr. GRIJALVA [continuing]. And get that point of view. Thank you. I was going to ask Mr. Dunn, the argument that I have heard you make is that the Federal grazing permits are, if I am not mistaken, a form of private property or should be recognized by the Federal Government?

Mr. DUNN. Ranking Member, I was actually discussing water rights. I had not talked about whether or not grazing rights were private property.

Mr. GRIJALVA. Is it in the written testimony? Well, I thought it was in your written testimony as well as we read it. Is it?

Mr. DUNN. I believe all I discussed at this point was private water rights.

Mr. GRIJALVA. But is it in your written testimony or is it not?

Mr. DUNN. I do not believe it is, sir.

Mr. GRIJALVA. Well, then that question is moot then if it is not in there, but if it is, we will get back to that question, OK? Because I think I am not the constitutional scholar that you appear to be, but I do have a constitutional question.

Mr. DUNN. OK.

Mr. GRIJALVA. The other point is, Mr. VeneKlasen, in the first panel, we heard about transferring all the Federal public lands to the states. We also heard a little bit about let the local communities be the decisionmakers and the state just pays the—and the Federal Government just pays the bills. But all the policy decisions are going to be made by the state. What does that mean for the sportsmen you represent?

Mr. VENEKLASEN. Well, I mean it sounds good on paper but it is sort of a gilded——

Mr. GRIJALVA. Lily?

Mr. VENEKLASEN. It is gilded. One of our biggest concerns is we have had some catastrophic wildfires in New Mexico, the cost of which are in excess of $150 million. There is no way on earth the state could even begin to pay for fighting a catastrophic wildfire, for example.

We have a 100,000-acre thinning project in the Jemez Mountains right now. The Federal Government has donated $80 million to thin that 100,000 acres of forest.

And so the idea of state management sounds good on paper, but what we would also see is in our state, for example, you cannot camp on state land. And the lands are regulated in a very different way. So, you know, the idea of the state managing lands is a—it is a pipe dream is what it is.

Mr. GRIJALVA. And the states charge a much higher grazing fee than the Federal Government and for other uses?

Mr. VENEKLASEN. The average AMU in New Mexico on private land is $13, and the Federal lands, it is a $1.34. And so, you know, those are big things that would impact the grazing community.

Mr. GRIJALVA. But state land does not have the constitutional issues that have been raised today as to——

Mr. VENEKLASEN. No. And one of the other concerns we have is the thing we like about Federal management is there is a standard that is followed across the board that will make sure that these lands and the habitat are——

Mr. GRIJALVA. And I agree. I think the point that Mr. Lucero brought up about northern New Mexico that I am not real familiar with, but I got real lucky and married a young lady from Penasco, so I know—I got very lucky, is there is unique historical, there is unique cultural issues that while there is a general standard, sometimes those nuances have to be part of the decisionmaking. I think that in particular in northern New Mexico, that might be the case. In some of the other areas, I do not think they have that nuance.

Anyway, I yield back.

Mr. LAMALFA. Alright, thank you. Mr. Tipton, 5 minutes, please.

Mr. TIPTON. Thank you, Mr. Chairman. And, by the way, Mr. Lopez, that looks like a great field to graze in from the one you have got up there, a lot of feed.

But I would like to start with Mr. Lopez. We have a real issue it seems. The Federal Government keeps trying to acquire more land. And I found it incredibly curious when we have had the Forest Service before us, even the BLM, they do not have the resources to currently manage the lands they have, but are now acquiring more land. Now, they have been acquiring land near your homestead, is that correct?

Mr. LOPEZ. Mr. Chairman and Mr. Tipton, that is correct. In my written testimony, I provided you with a map that was attached there. And basically the BLM has been purchasing small tracts of lands that were parts of old ranches that were around me until the point that I am considered an in-holding.

Mr. TIPTON. Yes.

Mr. LOPEZ. Which they gleefully tell me that I am an in-holding. And to me that means that I am going to be the next willing seller because I am completely surrounded by Federal land now.

Mr. TIPTON. Now, what type of notice did you receive, Mr. Lopez, in regards to the acquisition of that land? Did the BLM notify you that they were making those acquisitions?

Mr. LOPEZ. Mr. Chairman and Mr. Tipton, they did not notify me. It is my understanding in talking to them recently that normally they do not notify the adjoining landowners because when they make agreements with certain nonprofits, like Trust for Public Land and others, it is usually a hush-hush deal. They do not want anybody to know what they are doing. And so when I found out about all these things was after the fact.

Mr. TIPTON. But the fact of the matter is that may have been an economic decision on the BLM's part to be able to get the land at a lower price. But how has that impacted your land price now that you are now labeled as an in-holding?

Mr. LOPEZ. Well, apart from being an in-holding, Mr. Chairman and Mr. Tipton, I also happen to be in what the BLM created a few years ago called an Area of Critical Environmental Concern. The BLM tells me that I am not in that area, although I am surrounded by the area. But since I am not Federal land, it does not impact me. The problem is that it actually does impact me because if I went to use any of my mineral rights or anything else or do any development on my property being inside that zone, I would have a very difficult time getting anything through the county because they recognize the Area of Critical Environmental Concern.

Mr. TIPTON. So effectively this had a negative impact in terms of your holdings, ability to be able to re-sell the property. Do you not believe that adjacent landowners at a very minimum should at least be notified of these acquisitions because of the potential challenges that you are describing?

Mr. LOPEZ. Mr. Chairman and Mr. Tipton, I certainly do. And it would have been nice if they had advised me because now that they have purchased all this land, I have a lot of trespass issues on the property because my property is in between two pieces of BLM land. And so I get trespassed all the time. If I had known about this before this happened, we could have come to some agreement in doing a land exchange or something like that that would have benefited both of us.

Mr. TIPTON. You know, I just introduced some legislation, it was H.R. 5074, the Land Adjacency Notification Disclosure Act, which would actually require that you be notified. Would that be of benefit to you?

Mr. LOPEZ. Mr. Chairman and Mr. Tipton, that certainly would be of benefit, maybe not in my case now but for many others, it certainly would be.

Mr. TIPTON. I thank you for your time and for being here and certainly understand some of the challenges that you are facing.

Mr. Dunn, I would like to be able to visit with you for just a moment if we may in regards to the company that you represent. In their vested private property easement across these Forest Service lands that they have had for 100 years, were they notified that it no longer existed and is now subject to a lengthy NEPA analysis?

Mr. DUNN. Yes, they have been.

Mr. TIPTON. OK. And was the company ever consulted or afforded any opportunity to be able to respond to the Forest Service in regards to these actions?

Mr. DUNN. They did. They had discussions with the Forest Service. They were in negotiations with the Forest Service. Ultimately, what the Forest Service said was, we will issue you a special use permit for that road you have already—well, that they believe that they already hold a vested right to, but we do not recognize, the Forest Service does not recognize vested private property right easements across our ground. So therefore without a special use permit, you have nothing.

Mr. TIPTON. Even with that ability to be able to have that easement, is this effectively a taking?

Mr. DUNN. Yes, it is. One of the things I did disclose is that that is what the company is considering is—and has filed a takings litigation on that basis.

Mr. TIPTON. Right, and no compensation was offered. The Federal Government took it?

Mr. DUNN. No, they just wanted them to give up their easement.

Mr. TIPTON. This puts the company in kind of a difficult position of take it or leave it really, doesn't it, with the Federal Government?

Mr. DUNN. Absolutely. The "take it or leave it" attitude, not only are they potentially losing their right, but they are trying to start a company and reopen a mine, bring people to work, startup, get community—get the community involved, get going. And without that certainty that that road is going to continue to be there, and that they will continue to be able to access that, you are talking about a publicly-traded company that might lose millions of dollars when they get shut down by the Forest Service over a ¾-mile section of road.

Mr. TIPTON. Thank you. I am out of time, Mr. Chairman. I yield back.

Mr. LAMALFA. Thank you, Mr. Tipton. Votes are up. We have a little time I think for one additional round. Would you like an additional round, Mr. Tipton? OK, alright. Thank you.

I would follow up with one for Mr. VeneKlasen. I was curious, again, you had in your statement that fencing off the particular creek was done in order to protect a trout habitat. According to the Watershed Protection Section of the New Mexico Environmental Department, the only trout present in that stream at that time were brook trout, which are native to the East Coast, and rainbow trout, native to the Northwest. So what is the logic in cutting off access to protect non-native fish as well as non-native elk and even feral pigs that are non-native to that area? It seems that that is an overreach.

Mr. VENEKLASEN. Mr. Chairman, regardless of the species of trout that exists in the particular watershed, and I think we are talking about the Sequoia River because Agua Chiquita does not have trout in it. The trout do have a great deal of economic value because people come and fish for those fish, not only people that live in the area but a lot of out-of-state people come and fish there.

Mr. LAMALFA. But you are using basically environmental law to cut people off with longstanding generational access to that for

someone else's economic benefit. It almost sounds like an imminent domain taking in a way.

Mr. VENEKLASEN. I don't think you are taking away—if we are talking about the Sequoia instance, we are talking about 101,000-acre grazing allotment.

Mr. LAMALFA. I was talking about the Agua Chiquita.

Mr. VENEKLASEN. Agua Chiquita does not have trout in it.

Mr. DUNN. Mr. Chairman?

Mr. LAMALFA. Yes, sir.

Mr. DUNN. I might be able to add to that. Part of why the Agua Chiquita fencing originally started back in the mid-1990s was because there was a hatchery in that area at that point. That hatchery has long since gone away in the last 10 years. It is no longer there. So the reason that Sikes money was used, and I believe a lot of the—we will call it the environmental money was used on those projects was originally because there was a fish hatchery in that area. Since that time, it has gone away. And now they have without going through the NEPA process converted this to mouse habitat. And this riparian area is now about mouse habitat even though they have never actually gone through the NEPA process to study the effects of making it mouse habitat.

Mr. LAMALFA. Good. OK, thank you for the clarification. We have run across this again where we have non-native species that all of a sudden become protected species where they are introduced by other means, mankind, et cetera.

Mr. Lucero, you look like you would like to add to that?

Mr. LUCERO. Yes, I would like to add the fact that Mr.—I'm sorry?

Mr. VENEKLASEN. VeneKlasen.

Mr. LUCERO. VeneKlasen stated that it is only 127 acres out of this allotment. I get that. I have a 2,800-square foot house. My kitchen sink where I drink my water is very small but without that, how am I supposed to use my home?

Mr. LAMALFA. Because that is the water source?

Mr. LUCERO. Yes, sir.

Mr. LAMALFA. Yes, sir. OK. Alright, one final one. Mr. Dunn, I was intrigued by something you were talking about earlier as a type of a civil rights action for people in dealing with their Federal Government there, especially western landowners and those that regulate them. Would you expand upon that a little bit?

Mr. DUNN. Mr. Chairman, I believe an expansion of that would be that while a cause of action already exists against state employees that would harm your property rights, what we are talking about is expanding that to Federal employees that would use the color of authority to infringe upon a person's constitutional and civil rights, namely, to interfere with their constitutionally guaranteed property rights.

For instance, the mining company that I described in my written testimony, where the Forest Service came in and threatened and cajoled them to give up their vested property rights easement and used the color of law to do so, if this language were adopted, it would enable that company to bring a Section 1983 claim in effect against the Forest Service where they have used their authority improperly.

Mr. LAMALFA. Interesting. I am interested in that concept.

So at this point, there are no other further questions from the committee. I would like to thank all of you for your travel, for your patience as we come back and forth from votes, and we have them up right now. So much appreciated that you would take your time and come speak with us and inform us here.

So for those members of the subcommittee that may have additional questions in reviewing this or their staff, we would ask to submit those questions. And then we could ask you to respond to those in writing at a later date.

The hearing record will be open for 10 days to receive those responses. So if there is no further business, as we are lonely here now, without objection, the subcommittee will stand adjourned.

[Whereupon, at 5:15 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF DREW O. PARKIN, ESCALANTE, UTAH, REGARDING A NOVEMBER 2009 INCIDENT AT THE CIRCLER CLIFFS, GARFIELD COUNTY, WITHIN THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

My name is Drew O. Parkin. I am a resident of Escalante, Utah. I am a natural resource policy analyst and planner with 40 years of professional experience in 30 states spanning from Maine to Hawaii. In 2009, I was Assistant Manager for the BLM's Grand Staircase-Escalante National Monument and field station manager for the northern portion of the National Monument, including all of the monument in Garfield County, Utah. In this capacity I had responsibility for overseeing management of field-level management on the northern half of the monument including recreation, wildlife, range, and road management. At the monument I reported to a monument-wide manager named Rene Berkhoudt.

I did not have authority over law enforcement, as that element is managed through a stove-pipe operation where a state-level BLM law enforcement officer directly oversees field-level law enforcement officers (LEOs). However, I did have authority over all of the activities for which an LEO could issue a citation or make an arrest, and for identifying the priorities for LEO involvement within the Escalante Field Station area. Jeffrey Lauersdorf was the LEO assigned to the Escalante Field Station.

In 2009 my office had arranged for the Utah Division of Wildlife Resources (DWR) to hold a special elk hunt in an area called the Circle Cliffs in eastern Garfield County, some 50 miles east of Escalante. We requested the hunt on the advice of the Monument's wildlife biologist to decrease grazing pressure by elk on a large area that had recently been reseeded by the BLM. To participate in the hunt, hunters had to draw a permit. There was high interest in the hunt due to the reputation of the area as a high quality hunting area.

At 4:30 p.m. on November 6, 2009—the day prior to the start of the hunt—I received a telephone call from a DWR manager in Wayne County, Utah. He was concerned because his staff had visited the site of the impending hunt and discovered that carsonite posts with official "no motor vehicles" posters on them had been placed on several spur roads and undeveloped camping areas, allegedly by "someone from the BLM." I informed him that I had no knowledge of this and committed to investigate. Immediately after I terminated the call I received another call, this one from the Garfield County Engineer, who called with the same concern. He called after hearing complaints from county residents who were planning to participate in the hunt. He was particularly concerned given the county's assertion of RS 2477 rights to several roads in the area in the Circle Cliff area. Again, I promised to investigate. I immediately drove to the area in question. I drove a government-licensed truck and wore an official BLM uniform. When I arrived at the Circle Cliffs I confirmed the accuracy of the DFW and county telephone calls. Most of the side roads were blocked by newly installed carsonite "no motor vehicle" signs. Also signed were many areas historically used as undeveloped vehicle-accessed campsites.

I was also approached by several prospective hunters camped near the main road concerned that they could not access their usual and accustomed hunting and camp-

ing areas. They confirmed that the signs had been placed by a uniformed LEO from the BLM. From their descriptions I concluded that the LEO was Jeff Lauersdorf, an LEO out of the Escalante Field Office, who had a history of rouge enforcement actions, principally aimed at hunters, ranchers, and ATV enthusiasts.

In preparation for this hunt I had given no thought to closing either roads or camping areas. Mr. Lauersdorf had not consulted with me concerning his plan to close roads, and law enforcement officers have no authority to unilaterally close roads. That is a management decision, and I was the field-level management authority for the Circle Cliffs area. At no time did I ask Mr. Lauersdorf to engage with the Circle Cliffs hunt. In fact I had asked staff, including Mr. Lauersdorf, to leave management of the hunt to DWR, as it was their responsibility.

Given the situation I concluded that leaving the road and camping area closure signs in place would be extremely disruptive to the next day's hunt. It was also illegal, and I already knew that both DWR and Garfield County were very concerned. It was now past 6 p.m. and, as this was early November, nighttime was fast approaching. As it would have been impractical to obtain assistance at this time of day I proceeded to remove the signs, which I did by wrapping a chain around the sign, hooking the other end of the chain to my vehicle's trailer hitch, and pulling the signs using my vehicle. I did not count the number of signs that I pulled, but it was certainly over 20. By the time I had finished it was dark and past 10 p.m.

At a location near the Lamp Stand, a prominent rock outcropping at the northeast end of the Circle Cliffs where I had pulled the last sign, I saw headlights coming toward me from the south. I assumed it was a hunter coming to set up camp. When the vehicle reached my location I saw that it was Mr. Lauersdorf, driving his BLM vehicle and wearing his uniform. He stopped his truck abruptly and walked directly to me. He looking in the bed of my truck, saw the signs, and angrily challenged my decision to remove the signs. I informed him of my reason and of the fact that signs are not to be placed in the Escalante Field Station area without my permission. Without comment he proceeded to transfer the signs from my truck to his. I did not intercede as I was aware that (1) we were miles away from the closest person, (2) he was agitated, (3) he was armed with at least three firearms and a knife, and (4) he had a history of impulsive and irrational behavior. In short, I was concerned for my safety. After transferring the signs he came up to me, placed his hand around the handle of his holstered pistol, and, at very close distance, told me the he "was arresting me for destruction of government property."

Fearing for my safety, I pointed my finger at him and told him to back off. He backed up a step or two. I bolted for my vehicle, jumped in, and proceeded to leave by driving through the sage brush to the nearest unimproved road. He followed me, with both of us moving at fairly high speed for this type of road. He followed me for less than a mile and then stopped.

I returned the next morning to observe how the hunt was proceeding. I stopped at the larger camps. I was informed that a BLM LEO had visited the camps earlier in the morning, and that the officer had asked occupants for their hunting and driver's licenses. They questioned why a BLM officer was asking for this information. I met one hunter who informed me that earlier that morning he had been driving his UTV down a Circle Cliffs secondary road and was pulled over by Mr. Lauersdorf, who proceeded to ask for his licenses. After the hunt I spoke with a gentleman from Kanab. The gentleman, who was a disabled hunter participating in the hunt, had been pulled off the road by Mr. Lauersdorf on the morning in question. He told me that the officer had shocked him with his abrupt manner of approach and, as a result, the hunter pulled his vehicle off of the roadway and onto the adjacent sage brush. Mr. Lauersdorf proceeded to threaten to give a ticket for driving off of the road. Mr. Lauersdorf then asked for his hunting permit. After reading it Mr. Lauersdorf told the man that his permit did not cover this hunt and ordered him to leave. He was informed that if he left he would not receive the ticket for being off road. The man left and, after the fact, was informed by DWR that his permit was, in fact valid for this hunt. I was particularly concerned with this situation as the man was disabled, and had gone to considerable effort to participate in the hunt.

The next Monday morning I informed the monument manager, Rene Berkhoudt, of the weekend's events. Concerning the placement of signs, Berkhoudt suggested that he had not spoken to Mr. Lauersdorf before the hunt and had no knowledge of the plan to sign the roads and camping areas. Concerning Mr. Lauersdorf's threat to arrest me, Berkhoudt said, and I quote, "Jeff sometimes gets excited. I will have a talk with him." I was never informed that such a talk took place.

This is a true depiction of the events that took place, to the best of my knowledge. I am quite certain of the date of Friday, November 6 but do not have records to

verify the date. It may have been Friday, November 13. I know that it was a Friday evening in early November 2009.

STATE OF UTAH,
OFFICE OF THE LIEUTENANT GOVERNOR,
JULY 17, 2014.

Hon. ROB BISHOP, *Chairman*,
House Subcommittee on Public Lands and Environmental Regulation,
1324 Longworth House Office Building,
Washington, DC 20515.

DEAR CHAIRMAN BISHOP:

Thank you for convening a committee hearing of the Public Lands and Environmental Regulation Subcommittee to consider issues related to Bureau of Land Management (BLM) law enforcement activities within the State of Utah. Before addressing our concerns, let me state that we enjoy a very positive and productive relationship with the BLM State Director Juan Palma. He has been consistently attentive to matters that interest the state and swift to respond to requests for meetings, phone conferences, or information. We are fortunate to have him at the helm of the agency that manages more than half of Utah's land. Unfortunately, I cannot extend the same compliments to BLM law enforcement operations in Utah that, regrettably, do not fall under Director Palma's supervision.

To give you some background, I came to my position as Lieutenant Governor after having served as Sanpete County commissioner and as an elected representative in the Utah Legislature. I have deep roots in our rural culture; and am proud of the integrity and self-reliance of our local elected officials. Over the past several years, I have heard an increasingly loud chorus of voices expressing concerns on the intrusion of Federal law enforcement officers into matters that fall clearly within the jurisdiction of our county sheriffs and a lack of cooperation in those areas which traditionally have involved common Federal-local concerns. Examples include the issuance of traffic violations on county roads both on and off the BLM lands and confrontation and intimidation of local residents accusing them of minor civil infractions of BLM protocols.

Another matter of concern is how the BLM law enforcement handled the arrest and charges relating to possession of Indian artifacts allegedly taken from BLM lands in southwestern Utah. The BLM law enforcement executed that operation in an unnecessarily aggressive manner. It was an "invasion" of a small town involving an unusually large number of officers. The SWAT team approach to non-violent crimes reflected the arrogance and insensitivity of the law enforcement team involved.

The BLM approach at the Bundy Ranch, in which Utah's BLM Agent in Charge was heavily involved, further demonstrates a lack of judgment. The near disaster at the ranch was brought on by the massive BLM response to a situation involving unlawful grazing and failure to pay fines and fees. This could have been avoided by a reasoned, balanced approach. Yet, overkill seems to be the default response of Utah's BLM Agent in Charge.

Another very troublesome issue is cooperative law enforcement contracts with our county sheriffs. The Federal Land Policy Management Act (FLPMA) states that the Secretary shall contract with local law enforcement to the greatest extent possible for law enforcement services on public lands. Historically, BLM has delegated law enforcement authority to county sheriff departments to enforce state and local BLM's laws on Federal lands. Such contracts are in place on Forest Service (FS) lands in Utah. Yet, recently, these same contracts have been difficult and in some cases impossible to negotiate due to resistance from the BLM Utah Law Enforcement Chief.

In March of this year, I convened a group of county commissioners, sheriffs, legislators, and the law enforcement agents in charge for both the BLM and the FS to discuss these issues and seek resolution. At that time, we explained our concerns and constructively discussed them concluding with a "next steps" proposal. The BLM Agent in Charge stated that he did not approve contracts out of a concern for lack of "deliverables." He agreed to give us a written description of what he meant by deliverables and provide additional documentation explaining his refusal to renew these contracts. Regrettably, he has not provided the requested information, nor have we seen improvement in the attitudes and performance of Federal law enforcement officers working in the state.

I am hopeful that as you consider our concerns in the course of the hearing, the BLM will respond appropriately to ensure that Utah enjoys the same productive partnership with the Federal law enforcement operations within the state that we have with the BLM State Office.

Respectfully,

SPENCER J. COX,
Lieutenant Governor.

STATE OF UTAH,
OFFICE OF THE ATTORNEY GENERAL,
JULY 23, 2014.

Hon. ROB BISHOP, *Chairman*,
House Subcommittee on Public Lands and Environmental Regulation,
Washington, DC 20515.

DEAR CHAIRMAN BISHOP:

I appreciate your convening a committee hearing of the Public Lands and Environmental Regulation Subcommittee regarding law enforcement activities by the Bureau of Land Management ("BLM") within the State of Utah. I have read the letter dated July 17, 2014 submitted by Utah Lieutenant Governor Spencer J. Cox to you. I agree with the both the content and concern expressed by the Lieutenant Governor and incorporate by reference much of what he communicated.

I, too, would underscore the fact that Utah has had a long and often productive relationship with the BLM over decades and that the current approach and implementation of policies under the BLM State Director, Juan Palma, has been both positive and productive. Just recently, on his own initiative, Mr. Palma took me and a member of my staff on an in-depth tour of his office to increase working relationships and understanding between his office and mine. It was educational and helped build further trust between a Federal and state agency. Also, one of the past national directors of the BLM, Kathleen Clarke, is from Utah and works closely with our office daily in her role as head of Utah's Public Lands Office.

In contrast to the relationship with Director Palma and former Director Clark, the level of trust and respect for law enforcement under the BLM, seems marginal at best throughout my state. Like our Lt. Governor, I have heard consistent and repeated concerns from the ranks of well-respected and reasonable county commissioners, county attorneys and sheriffs, among others, from counties across my state, regarding what they perceive to be strong-arm tactics, overstepping of authority and attitudes dismissive of county interests by the BLM.

I understand the difficulties facing the Agent in Charge ("AIC") of law enforcement in Utah. As a fellow law enforcement executive, I manage a state agency with hundreds of employees, including dozens of investigators/peace officers. I understand the complexity and many competing interests at play in making every policy decision. I am loath to judge any other executive without knowing all of the considerations facing that leader. Moreover, the AIC has also demonstrated professionalism in our limited personal interactions and been cordial and responsive to me. Nevertheless, I can judge the effect of his decisions on those in my state and, in this case, his decisions have created a void of trust from too many in Utah.

While I have expressed to him my absolute belief, that despite political or personal differences, law enforcement officers at the Federal, state, county and city level need total solidarity in the field (a philosophy to which I continue to hold strongly), the lack of trust toward the BLM law enforcement arm has deteriorated to such a degree, that I am afraid investigators, agents or other law enforcement from his agency, the Utah Attorney General's Office and other law enforcement agencies are not as safe or effective as they could be in multi-agency situations or cases due to such strained relationships.

I hope this perspective provides some assistance to the committee as it hears testimony and deliberates in this matter.

Respectfully,

SEAN D. REYES,
Utah Attorney General.

MOHAVE COUNTY BOARD OF SUPERVISORS,
LAKE HAVASU CITY, AZ,
JULY 29, 2014.

Hon. ROB BISHOP, *Chairman*,
House Subcommittee on Public Lands and Environmental Regulation,
Washington, DC 20515.

DEAR CHAIRMAN BISHOP:

My name is Buster Johnson and I have been a Supervisor for Mohave County, AZ for 17+ years. I am also retired from Los Angeles County Sheriff's Department. Over the years, I have had a mostly good working relationship with BLM enforcement officers in both jobs. This year is the first time that I have had to question as to how Mohave County will work with BLM officers. It has nothing to do with the officers themselves; it is the leadership in BLM.

The Bundy incident in Nevada, which borders our county, caused us great concern due to the handling of the situation. I believe we saw the incident escalated to a dangerous level by BLM leadership or lack thereof. We teach our local law enforcement people to defuse situations which may arise, not to throw gas on the fire.

The Federal Government is, from time to time, inexplicably guilty of bullying and in the process of serving arrest warrants on some involved in the Bundy incident which we believe will once again flame the fires of discontent. Clearly, Mr. Bundy needs to pay his grazing fees, and I believe the BLM was within their legal right to try to collect grazing fee arrearages. However, no one in their right mind would design and carry out such a heavy handed, ham-boned raid which sets a bad precedent and places the safety people living near public lands in jeopardy. I agree with the pending arrests but believe the issuing of a summons would work better to keep the possible violence to a minimum. Waiting until after the first of 2015 might also help. Mohave County signs an agreement to allow the feds to enforce Arizona state law in our county. To date that agreement has not been signed due to our concerns over BLM's use of its police powers.

I wish to express my empathy for other counties across the Nation trying to work with BLM law enforcement officials—it is crucial that we work this out and the sooner the better.

Sincerely,

BUSTER D. JOHNSON,
Mohave County Supervisor,
District III.

CUSTER BATTLEFIELD MUSEUM,
GARRYOWEN, MONTANA,
JULY 22, 2014.

To Whom It May Concern:

My name is Christopher Kortlander. I own and operate the historic town of Garryowen, Montana, the only town inside the perimeter of the Custer Battlefield. I am also the founding director of the Custer Battlefield Museum in Garryowen.

In 2005 a small army of Federal law enforcement agents descended on Garryowen with drawn fully automatic machine guns. Federal agents pointed guns at Garryowen employees and museum interns while executing a search warrant that was obtained by deceit and the twisting of truth.

This 'raid' was conducted as a military style assault on a domestic terrorist cell. The Federal agents had not received any information stating that the target(s) of their assault were in any way violent. In addition, there were a number of civilians/tourists present who were also put in harm's way during this raid at Garryowen, which was and remains a historic site and popular tourist destination, as well as a state-recognized informational center, housing a U.S. post office, a gas station, convenience store, museum, Subway sandwich shop and a retail trading post selling souvenirs.

For 8 hours, the BLM agents conducting the 'raid' at Garryowen, continually threatened me with never again seeing my special needs son, stating that I was facing decades in a Federal prison. BLM Federal law enforcement agents verbally harassed me, accusing me of being a baby killer, a swindler and a con man, and asserting that I was going to be charged with nine Federal felonies.

After a day terrorizing all the civilians they encountered, and for the following 4-plus years, they continued to threaten me through the U.S. Attorney's office, and retained seized property that was unassociated with any crime whatsoever. I was forced to expend hundreds of thousands of dollars and nearly every waking moment, as well as countless sleepless nights, dealing with the legal threats thrown at me, evidently because I needed to be rolled over to advance an agenda that benefited only the BLM and the Federal agents involved.

When the U.S. Attorney announced that there would be no charges filed against me, I sued the 24 Federal agents involved in prosecuting me, and found that I could not legally engage them because of the quasi-immunity that protects Federal law enforcement agents and prevents them from being held accountable for any wrongs they may commit. These men and women who had persecuted me in the 2005 raid—and those who came to conduct another raid in 2008—were beyond my reach and the reach of any non-agency review. They remained free to harass and attack me and others without any personal accountability or responsibility for their actions. The quasi-immunity enjoyed by BLM and Federal Fish and Wildlife law enforcement agents means that they are not accountable to me, the American public, the U.S. Court system, or the U.S. Congress. They are untouchables, protected no matter what they do.

Following the end of the investigation and the numerous threats of prosecution made against me, I received—anonymously—a 52-page document which stated that the BLM raids on Garryowen, Gibson Guitar, and the Four Comers incident in Blanding, Utah, were all connected to the same agency and at least one Federal special agent who were on a mission to enhance their personal status and increase BLM funding from Congress. The actions of the law enforcement agents in the paramilitary raids on Garryowen, the *Operation* CERBERUS Action in Blanding, Utah, and the Gibson Guitar raids served only the political purposes of the BLM.

At Garryowen, Federal machine guns were pointed at the head of a museum intern who had been forced to the ground spread eagle—not for a pat down consistent with the safety of the abusive law enforcement agents, but rather as a show of force to intimidate and threaten this uninvolved young citizen into fearfully accepting the government's 'might makes right' posture.

I was victimized as a criminal although I have no criminal history. I was denied constitutional protections because these apparently do not attach until charges are filed. The same Federal agents who executed search warrants pursued a fruitless investigation that served only to make me appear to be a criminal to family, friends, colleagues, and business associates, in the process destroying my personal reputation, my businesses and business relationships, together with other opportunities that I had spent more than a decade developing.

Despite my obvious efforts to cooperate with the Federal agents involved, during the raid I was accused of being a baby killer, and had my private residence (which was NOT on the search warrant) forced open, entered, and searched. Hundreds of artifacts—personal and private—together with tens of thousands of pages of documentation and other assets were seized, all of which were outside the scope of the search warrant used by the BLM.

No items listed on the search warrant—four buttons and a suspender belt buckle—were taken. After more than 8 hours of scaring and intimidating me, my employees, and volunteer staff, this arrogant assembly of Federal agents departed. My business and philanthropic endeavors were laid to waste and I was left financially destroyed. All that was missing was Federal charges, but despite seizing a mountain of so-called evidence, no charges were ever filed.

What had happened to me can only be described as a non-judicial prosecution, or more correctly, an extra-judicial persecution by BLM Federal agents. Federal charges were threatened for the next several years, but charges were never filed, and nearly 5 years after the 'raid' the U.S. Attorney indicated that the investigation was completed and that NO charges were to be filed against me. Despite that fact, it is unreasonable to say that I had not been abusively prosecuted by the Federal agency involved.

The BLM retained hundreds of artifacts until their so-called investigation had been completed nearly 5 years later, and they continued to hold dozens more after that time, initially alleging that these artifacts were absolute contraband and unlawful to be possessed even by a museum, and later insisting that the artifacts were derivative contraband based upon the manner in which they had been obtained or retained by me and the museum with which I am associated. A Federal claim for the return of these items was filed and just this winter (2014) all of the items sought were finally returned to the Custer Battlefield Museum in Garryowen, MT.

Seized documents had been previously returned, but thrown about in such a manner that it is impossible to restore the organization that existed at the time the

BLM agents carted them away. It is impossible for me to even know if what was returned is in fact ALL of the documentation that was seized. I have been unable to find a number of museum documents I know that I possessed prior to the BLM raid.

It is important to note, once again, that no charges of criminal activity of any sort were ever filed in this matter. That action would have moved the matter into Federal court where constitutional protections against the actions of Federal law enforcement agents and the Federal agency they support would have arisen. However, without Federal court supervision, the "800 pound gorilla" that is the autonomous Federal agent, cloaked with the power and authority of the U.S. Government, remains free to use unrestrained, military-level tactics and weaponry and the threat of force to crush citizens—frequently guilty of nothing—and in the process, destroy the businesses and lives of their victims with impunity.

These Federal agents do not appear to answer to anyone other than possibly their peers—those also in agency law enforcement. Their methods are secret, their endeavors blacked out when pursued through Freedom of Information requests, and protected by judicial quasi-immunity granted to any Federal law enforcement agent from the prying eyes of their victims, the press, and apparently the people's representatives in Congress. Even though the Supreme Court recognized the right of the citizen to hold the workers of the Federal Government personally accountable for their actions, the hurdle for a victim to get into court is generally impossible with ill-defined rules and standards, especially regarding Federal law enforcement agents.

I remain fearful today—not because I am guilty of any criminal activity—but because the unrestrained power of Federal law enforcement agencies to use force and intimidation to strike fear into the hearts and lives of law-abiding citizens remains in place, allowing these reckless agents and agencies to destroy lives and livelihoods and seize personal possessions without reason or accountability to the citizens of these United States or to the letter and spirit of the laws that regulate their activities.

It is time for the U.S. Congress to reign in this self-serving agency that uses Federal paramilitary force to further its own agenda, and believes itself to be beyond reproach or accountability. Thank you for your consideration and concern regarding this matter.

Sincerely,

CHRISTOPHER KORTLANDER,
Founding Director.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Correspondence dated March 28, 2014 and May 9, 2014 from Jacob S. Lubera, District Ranger, U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Jemez Ranger District to Friends and Neighbors regarding a proposed riparian improvement project along the upper Rio Cebolla where it crosses Forest Road 376.

Correspondence dated July 9, 2014 from Allan R. Setzer, District Ranger, U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Cuba Ranger District to Friends and Neighbors regarding a proposed project along the upper Rio Cebolla where it crosses Forest Road 376.

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THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENTAL REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

Tuesday, October 29, 2013

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OVERSIGHT HEARING ON: THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES

Tuesday, October 29, 2013
U.S. House of Representatives
Subcommittee on Public Lands and Environmental Regulation
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Subcommittee] presiding.

Present: Representatives Bishop, Young, McClintock, Lummis, Tipton, Labrador, Amodei, Daines, LaMalfa, Grijalva, Horsford, Garcia, and Huffman.

Mr. BISHOP. The committee will come to order. The Chairman notes the presence of a quorum. And so, the Subcommittee on Public Lands and Environmental Regulation is meeting today to hear testimony on threats, intimidation, and bullying by Federal land managing agencies.

Under the Committee Rules, the opening statements are limited to the Chairman and the Ranking Member of the Subcommittee. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if they are submitted to the clerk by the close of business today.

[No response.]

Mr. BISHOP. And hearing no objections, that is so ordered.

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. BISHOP. Let me begin, if I could, by saying how happy I am to have the witnesses here who will be speaking to us. Today we are going to hear about a number of troubling cases in which Federal land managing agencies have employed abusive tactics to extort rural families into giving up property rights, or to bully farmers and ranchers into making concessions to which the Federal agency had no legal right.

It is not an easy thing for someone to stand up to the government. In fact, in most of the world, that is impossible. But America is different, and it should be different. We should not be afraid to take on the Federal Government when it trespasses on our rights. And the witnesses before us today are doing just that. I am grateful for their courage. In many respects, the word "heroes" or "great Americans" is too overused; but you, indeed, are.

The Supreme Court has called on Congress to fashion a legal remedy, a cause of action, through which the victims of abuse can have the opportunity to seek redress in the courts. This hearing, I hope, is going to be the first step in getting Congress to protect

and strengthen civil rights—and property rights are civil rights—of people whose property the government wants to take without compensation.

Legal scholars tell us that property rights are actually a bundle, and that bundle includes water rights and grazing rights and mineral rights and access to recreation rights. And with one-third of America being owned by the Federal Government, and it being predominantly in the West, it is no coincidence that most of the problems that we have in dealing with those rights and the Federal Government are situated in States found in the West, the so-called "public land States."

I realize that there are going to be a lot of people that are going to try to make this into a conservative-versus-liberal framework. But that is simply not the case. If you read the two justices who put an opinion on one of these cases before us, you will find it is the so-called "justices from the left," who are most emphatic about the rights being abused by the Federal Government.

If I could quote Justice Ginsberg from a case that involved Mr. Robbins, who will testify shortly, "The BLM officials mounted a 7-year campaign of relentless harassment and intimidation to force Robbins to give in. They refused to maintain the road providing access to the ranch, trespassed on Robbins' property, brought unfounded criminal charges against him, canceled his special recreation use permits and grazing privileges, interfered with his business operations, and invaded the privacy of his ranch guests on cattle drives."

She went on to write, "The case presents this question: Does the Fifth Amendment provide an effective check on Federal officers who abuse their regulatory powers by harassing and punishing property owners who refuse to surrender their property to the United States without fair compensation? The answer should be a resounding Yes."

Unfortunately, the answer in reality is no, unless we in Congress do something to rectify the situation.

I want to also admit that even though this is happening with this particular administration, it is not limited to this administration. These same type of actions done by land managers in the Forest Service, the BLM, Fish and Wildlife, those same actions took place not only today, in this administration, but they took place under both the Bush administrations, the Clinton administration, and the Reagan administration. Unfortunately, it is a pattern of habit, and a pattern of activity that is far too common and must stop in some way.

Some will say this is simply a carry-on, or a second part to the hearing we had over the barricades being put up during the shut-down. This is more than just Barricade Part II. In fact, it is the reverse. Putting up the barricades in the shut-down was an example of the attitude that has always been used, especially in the West, in making public land decisions that have harmed individuals. So that is what we are trying to go for, the longer picture in some way.

There are three factors that have always been used that are misconceptions from the very beginning of public land management by the Federal Government.

One is some people truly think that only Washington has the common—the overall view to make large decisions for the entire Nation. That is wrong.

Second is, if there is ever a conflict between Washington and local government, Washington should automatically have jurisdiction and sway. That is wrong.

And the third is this constant idea that the West has to be protected from itself by the Federal Government. That is incredibly wrong. Sometimes I think our constituents are justified in viewing the Federal Government as something like a hotel thief who walks down the hallway, checking every doorknob, hoping to find someone or find one of them that is unlocked.

I am eager to hear this panel of witnesses today. I hope Members on both sides of the aisle will listen to their accounts of what happened to them, a consistent pattern of what is happening to them, and that we can work together to fashion a remedy in a bipartisan way of these abuses.

With that, I will yield to the Ranking Member for any opening statement he may have.

STATEMENT OF THE HON. RAÚL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Chairman Bishop, and thank you for holding this hearing, and for the subtlety of its title.

First, I would like to start by saying that all Federal employees, regardless of rank and position, should uphold the highest standard of professionalism, and to provide the best possible service to the public. And I think that we can all agree that the vast majority do so. Unfortunately, like any company, organization, or government, there will be instances where employees do not live up to that standard, and they must be held accountable.

Today's hearing will be an opportunity to hear from individuals who have had grievances with the Federal land managers in the past. Many of these grievances have been dealt with through litigation. This is a great testament to our American judicial system, which allows these matters to be dealt with accordingly. And I look forward to hearing from our witnesses on the progress and outcome of the litigation.

But as we hear from today's witnesses, I think it is important to remember that these incidents should not be seen as a reflection of all public land management agencies or their employees. Today's witnesses will describe disputes they have had with BLM and the Forest Service over grazing permits and water rights, among other issues. But keep in mind, BLM administers 18,000 grazing permits and leases 155 million acres. And the Forest Service administers nearly 8,000 grazing permits on roughly 90 million acres. The vast majority of these are managed without any complaints.

It is the responsibility of Federal land managing agencies and their employees to protect the land that is property of the American people. With such a broad directive, the opinions on how to do this are endless. In some of these cases, disagreement on policy is perceived as overreach by the authority, and land managers who, under law, carry out these policies are considered threatening and bullying. It is important to see these examples for what they are,

a matter of difference in policy opinion. And we must not lose sight of that.

And I want to say thank you, to the witnesses. With that, I yield the balance of my time to Mr. Horsford, who would like to introduce a witness.

Sir.

Mr. HORSFORD. With your permission, Mr. Chairman, thank you to the Ranking Member, Mr. Grijalva, for yielding time, and for you, Mr. Chairman, for having this morning's hearing.

I want to welcome Wayne Hage, Jr., who is here today from Tonopah, which is a part of my district in Nevada. Mr. Hage and his family have been actively engaged for decades in a quintessential part of life in rural Nevada: ranching. And we really appreciate him traveling all this way to share his story.

I wanted to let him know personally, unfortunately, I am going to have to leave this hearing. I also serve on the Oversight and Government Reform and the Homeland Security Committees, and they are all meeting this morning, and there are votes in those committees, unfortunately. But I want to thank you, sir, for traveling all this way to share your story. And I have read your testimony, and I have asked this committee and our staff to work with you on the issues that you raise. And I look forward to following up with you, as I understand these are issues which have been—your family has been facing in the courts for some 23 years now. So it clearly is not just this administration, but a systemic problem that needs to be addressed.

And again, I thank you very much for coming here, and for the legacy that you and your family make to the great State of Nevada. So thank you very much.

Mr. HAGE. Thank you, sir.

Mr. BISHOP. Thank you. I appreciate that introduction.

This is the point where I now ask the panel to come to the table, but you are already there. So let me just introduce who will be our panel, the single panel of witnesses.

Starting on my left is Karen Budd-Falen from Cheyenne, Wyoming; Frank Robbins, from Thermopolis, Wyoming; Tim Lowry, from Jordan Valley, Oregon; Brenda Richards, from Murphy, Idaho; and then Lorenzo Valdez from Fairview, New Mexico; and, finally, Wayne Hage, Jr., from Tonopah, Nevada. We welcome all of you.

All our witnesses have had experience dealing with the Federal land managers, which I think will establish a pattern that has, unfortunately, been all too common.

For the witnesses, your written testimony is already in the record. Your oral testimony, for those who have not been here before, is limited to 5 minutes. You will see the clock in front of you. When the light is green on that clock, you are free to go, and your time is ticking down. When it goes yellow, you have 1 minute to finish up, and I would appreciate it if you would actually finish up before it hits the red button, which means your time has expired.

So, with that, Ms. Budd-Falen, welcome back to this committee. It is good to see you again. We are going to start with you, and then we will just work down the table.

STATEMENT OF KAREN BUDD-FALEN, CHEYENNE, WYOMING

Ms. BUDD-FALEN. Thank you, Chairman Bishop and members of the committee.

Over 200 years ago, America's founding fathers rejected the notion that all power in this Nation should come from a king, and that the citizens were servants, or subjects of the king's rule. Rather, this Nation was founded on the principle that each of the three branches of government was to be a check on the other.

Under this carefully crafted and carefully compromised system, this body of elected legislators is to represent the citizens who send them to these hallowed halls. The executive branch is to implement the laws that you pass, and the individual citizen is protected from the abuse of the majority, as well as abuse from other individuals by the courts.

The Bill of Rights was not written and adopted to give the Federal Government power. Rather, the Bill of Rights is a document that guarantees that the inalienable rights of the citizens are protected from the abuse of the Federal Government's power. But this system, where power is to be based in the people, is broken. And so, the checks and balances so carefully and skillfully compromised in the Constitution are broken.

What we have now is a system that bars citizens from litigating against individual Federal employees in court for abuses of power. And what we really turned into is that all-powerful, unelected, and unaccountable bureaucracy has set up a dictatorship over some of the private citizens who actually employ them. This bureaucratic power is wielded simply by some bureaucrats who use the power of Federal regulations and the "color of their office" to take private property and private property rights. And because private citizens are barred from bringing their claims in the courts, we are powerless to stop this.

Now, I am not here to tell you that every Federal bureaucrat—or actually, even a majority of the Federal bureaucrats are tyrants who seek to use the power of their offices to take private property or to eliminate free-market enterprise from rural economies who depend on ranching small businesses. Nor am I here to tell you that the abuses of bureaucratic power are assigned or reserved to a particular political party. But what I am here to tell you today is that, in some cases, the Federal bureaucracy is so big and so far removed from its elected leaders in Washington, DC on both sides of the political aisle, that there are cases of abuse.

Today, if the American citizen believes that an employee of the bureaucracy is abusing his regulatory power given to him simply because of his employment, that citizen has no redress in the courts. And in the Frank Robbins case, although the Wyoming Federal District Court agreed that Frank Robbins should be able to bring his claims in court, and the Tenth Circuit Court of Appeals, in a unanimous panel that refused an en banc review agreed that Mr. Robbins should be able to bring his claims in the Federal court, unfortunately, the Supreme Court, based on a split decision, ruled that only Congress could create a cause of action to allow individual citizens to sue individual employees for abuses of their office.

Justice Ruth Bader Ginsberg, writing for the dissent in that case, offered that there are cases in which bureaucrats go too far, and use the power of their office to harass and take private property rights. But, in the end, the court's majority held that it was up to Congress to create a path to court. And that is why we are here today.

Members of this committee, the ownership and use of private property is the economic backbone of this Nation. The citizens here before you today are the backbones of their rural communities, and these small businesses provide jobs, wages, taxes, and spend their earning to keep their economic communities alive. I am the fifth generation rancher on a family owned ranch in Wyoming. And my ranch is just as important to my town of 570 people as are car-makers in Detroit. We are not asking for a bail-out; we are asking for a path into court.

American citizens have access to the courts when State or local bureaucrats take their constitutionally guaranteed or civil rights, and Federal bureaucrats should be subjected to the same rules. Thank you.

[The prepared statement of Ms. Budd-Falen follows:]

PREPARED STATEMENT OF KAREN BUDD-FALEN, CHEYENNE, WYOMING

My name is Karen Budd Falen. I am attorney and a fifth generation rancher from a family owned ranch, west of Big Piney, Wyoming. I grew up in the same house as my father and we still own the ranch, surviving generations of bad winters, drought, tough cattle markets, devastating wildfires and now wolves. My father, like everyone testifying today, is tough, independent, smart and the proud owner of a small business that is fueling the economy in our town and feeding the Nation.

And while my father, as well as the other ranchers and private property owners, can survive droughts, fires, and low market prices, we cannot survive the heavy hand of the Federal bureaucracy—particularly those within the bureaucracy who use the power of the Federal Government to violate our Constitutionally guaranteed rights. While some may claim that we are here to ask Congress to eliminate the Federal bureaucracy or the Federal agencies, we are not. What we are asking for you to do is open the court house door to individuals who believe that their civil and Constitutional rights are being violated by individual Federal employees, using the power of their offices. While I would absolutely agree that most Federal employees are hard working individuals dedicated to trying to do their jobs to the best of their abilities, that is not always the case. But unlike the case with State and local governmental employees who can be sued under the Civil Rights Act when they use the power of their governmental offices to deprive an individual of his Constitutionally guaranteed rights, there is not a similar option against federally employed individuals. All we want is the chance to go to court to present our facts; Articles I, II, and III of the U.S. Constitution set forth three branches of government and every American citizen should be allowed to access all three branches to redress their grievances, particularly those grievances alleging an abuse of power.

I. BACKGROUND OF *BIVENS* AS APPLIED TO THE PROTECTION OF PRIVATE PROPERTY

In 2007, the United States Supreme Court reversed decisions by the Wyoming Federal District Court and Tenth Circuit Court of Appeals by holding that a private property owner could not avail himself of a *Bivens* common law cause of action to protect his private property rights from "taking" by intimidation and harassment from Federal officials. Neither the Justices voting to affirm nor reverse the lower courts' decisions seemed to question that there had been a degree of harassment and intimidation against private property owner Frank Robbins because Mr. Robbins would not surrender an easement across his private property to the Federal Government, without due process and just compensation. However, the Justices writing for the Court's majority, as well as the two concurring Justices, did not believe that the Court should expand its 40-plus year old precedent in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), to the Fifth Amendment property protec-

tions. However, the Justices for the Supreme Court suggested that the U.S. Congress could create a *Bivens* "cause of action" to protect private property and property rights from actions outside the mandates of the Fifth Amendment. This testimony urges Congress' consideration for adopting that type of protection for America's property owners, and treating the Fifth Amendment private property protections with the "comparative importance of [other Constitutionally guaranteed] classes of legally protected interests." *Wilkie v. Robbins*, 551 U.S. 537, 577 (2007).

At its simplest, the Supreme Court in *Bivens* allowed a type of Civil Rights Act "Section 1983" claim to lie against Federal officials. The Civil Rights Act of 1871 prohibits governmental employees, "acting under the color of state law," from proximately causing the depravation of certain Constitutionally guaranteed rights. The Civil Rights Act however only applies to State officials. In *Bivens*, a private individual (Petitioner) complained that agents of the Federal Bureau of Narcotics, acting under claim of Federal authority, entered his apartment and arrested him for alleged narcotics violations. The agents manacled Petitioner in front of his wife and children, threatened to arrest the entire family, and searched the apartment. Petitioner also alleged that the arrest was conducted with unreasonable force and without probable cause. Petitioner sought monetary damages against the Federal officials. The issue before the Supreme Court was whether "a Federal agent acting under color of his authority" gives rise to a "common law" cause of action for damages based upon his unconstitutional conduct. In *Bivens*, the Supreme Court agreed that it would recognize this type of common law cause of action for this unreasonable action in violation of the U.S. Constitution's Fourth Amendment protection of an individual from an unreasonable search and seizure. As stated by the Court, it was damages or nothing against the Federal officials causing this harassment. After *Bivens*, the Supreme Court recognized this same cause of action to protect against harassment and intimidation when dealing with Fourteenth Amendment protection of the "due process" of law and the Eighth Amendment's protection against cruel and unusual punishment.

In its opinion, the Supreme Court held that Robbins had to pass a two-part test for his case to continue. First, the Justices considered whether they believed that Robbins had any alternative remedies for his harassment. Although the Court seemed to recognize that Robbins was suffering "death by a thousand cuts" because of the 6-year span and dozens of administrative charges filed against him, false criminal complaints against which Robbins had to defend, trespass on his private land by Federal officials and other forms of harassment, the Court's majority opinion believed that Robbins should have administratively challenged or otherwise fought these dozens of actions individually. While the majority opinion seemed to recognize that Congress had never created a "step by step" remedial scheme to remedy this array of harm, the majority believe that each alleged form of harassment had to be considered individually, despite the recognition that:

> It is one thing to be threatened with the loss of grazing rights, or to be prosecuted, or to have one's lodge broken into, but something else to be subjected to this in combination over a period of 6 years by a series of public officials bent on making life difficult. Agency appeals, lawsuits and criminal defense take money, and endless battling depleted the spirit along with the purse. The whole here is greater than the sum of its parts.

551 U.S. at 555.

The next step, which the Court's majority also found against Robbins, was whether there 'special circumstances counseling hesitation" against allowing Robbins to enforce a *Bivens* cause of action. With regard to this element, the majority was concerned that allowing a common law cause of action to protect private property owners from Federal officials' harassment and intimidation would "open the floodgates of ligation" against Federal officials. The majority also determined that "legitimate zeal of [Federal officials] on the public's behalf in situations where hard bargaining is to be expected," was not harassment.

Despite these findings, the Court's Justices recognized that Congress could correct this deficiency. In this regard, the majority opinion, written by Justice Souter, with Justice Roberts and Justice Kennedy, stated:

> We think accordingly that any damages remedy for actions by Government employees who push too hard for the Government's benefit may come better, if at all, through legislation. "Congress is in a far better position than a court to evaluate the impact of a new species of litigation" against those who act on the public's behalf. And Congress can tailor the remedy to the problem perceived, thus lessening the risk of a rising tide of suits threatening legitimate initiative on the part of Government's employees.

551 U.S. at 562. Citations omitted.

The concurring opinion of Justices Thomas and Scalia opined that a *Bivens* common law cause of action should not be extended in any circumstances "by the Court." 551 U.S. at 568.

Finally, the dissenting opinion, written by Justice Ginsberg with Justice Stevens would have extended a *Bivens* common law cause of action to Robbins. They perceived the question in the Robbins case to be "Does the Fifth Amendment provide an effective check on Federal officers who abuse their regulatory powers by harassing and punishing property owners who refuse to surrender their property to the United States without fair compensation? The answer should be a resounding 'Yes.'" 551 U.S. at 569.

In addition to placing the creation of a cause of action in the hands of Congress, the Court's dissenting opinion also suggested a similar statute containing enough checks to bar every complaint of wrong from reaching the courts. As stated by Justice Ginsberg, "Sexual harassment jurisprudence is a helpful guide. Title VII, the Court has held, does not provide a remedy for every epithet or offensive remark." After citing several cases limiting the situations in which a suit for sexual harassment could be brought, she concluded:

> Adopting a similar standard to Fifth Amendment retaliation claims would "lesse[n] the risk of raising a tide of suits threatening initiative on the part of Government's employees." Discrete episodes of hard bargaining that might be viewed as oppressive would not entitle a litigant to relief. But where a plaintiff could prove a pattern of severe and pervasive harassment in duration and degree well beyond the ordinary rough-and-tumble one expects in strenuous negotiations, a Bivens suits would provide a remedy. Robbins would have no trouble meeting that standard.

551 U.S. at 582. Internal citations omitted.

Based upon this Supreme Court opinion, other private property owners who believe that they are being harassed and intimidated because they refuse to turn over their private property outside the mandates of the Fifth Amendment have no forum in which they can vindicate their claims. The Robbins case now acts as a complete bar to the judicial branch of the government, regardless of the extreme nature of the Federal officials' actions. That is not to say that every action or decision by a Federal employee should give rise to a judicial cause of action, but there are cases where the harassment and intimidation is so severe that, in the words of the U.S. Supreme Court, "it is damages, or nothing." However, without the intervention of Congress, now it is "nothing."

II. TITLE VII OF THE CIVIL RIGHTS ACT

As stated above, one of the stark inequities in current statutes is that while State and local governmental employees can be held personally liable for the violation of an individual's Constitutional or civil rights, Federal employees acting with the same intention and animus cannot. This contrast is based upon Congress' adoption of the Civil Rights Act, which does not extend its protections to individuals dealing with the Federal Government. At its core, the Civil Rights Act of 1964 "outlawed discrimination based on race, color, religion, sex, or national origin." Although originally the Act focused on protection of the rights of black males, the bill was amended to protect the civil rights of all individuals in the United States from abuses of those State and local governmental employees "acting under color of law."

Title VII of the Civil Rights Act states:

> It is unlawful to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of an individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000(e)–2(a)(1). The regulations implementing this statute provide:

> Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11(a).

"For sexual harassment to be actionable, it must be sufficiently severe or persuasive to alter the conditions of the victim's employment and create an abusive working environment." *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986), citation and quotation omitted. "A hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice." *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101, 115–117 (2002); 42 U.S.C. § 2000e–5(e)(1), quotations omitted. "In determining whether an actionable hostile work environment claim exists, we look to all the circumstances, including 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" 536 U.S. at 115–117 (2002). Citations and quotations omitted.

Using this type of analysis, I believe that a statute could be enacted to protect private property owners from intimidation and harassment from Federal employees acting under color of law. Such statutory language could include the following:

> *The attempted taking of private property or private property rights by means of governmental employee harassment or intimidation, under color of law, is hereby declared to be a violation of Civil Rights Act. Harassment or intimidation against the owners of private property or private property rights constitutes such violation when (1) a property owner's relinquishment of his property or property rights is made explicitly or implicitly a term or condition of receipt of a permit or license from a governmental agency, (2) submission to or rejection of such conduct by a property owner is used as the basis for the grant of or conditions included in a permit or license, or (3) the conduct of the governmental employee has the purpose or effect of unreasonably interfering with an individual's private property or private property rights. An attempted taking of private property or property rights under this section can be composed of a series of separate acts that collectively constitutes a significant deprivation of the ownership or use of private property or property rights. In determining whether the activities of a governmental employee are actionable under this section, consideration can be given to the frequency of the discriminatory conduct, harassment or intimidation, its severity, and whether such governmental action interferes with the ownership, use or legitimate investment backed expectations of the property owner.*

III. THE WITNESSES TODAY ARE NOT THE END OF THE STORY

Today, you are going to hear compelling and heartfelt stories of individual families and businesses who are only asking to be able to walk in the doors of the Federal courts to plead their cases. But these are not the only stories in existence. To prepare for this hearing, my office talked to over a dozen other individuals and their representatives who are also willing to tell you their stories and ask your help in getting to the courts for justice. The Constitution created three equal branches of government to provide a system of checks and balances over the actions of each other. Yet today, there is no adequate check over the actions of the Federal governmental individuals who abuse their power against the American property owner. We are not asking to win every case, but simply to be able to make our case. We respectfully request that Congress make the same avenue available to us as it does to other Americans.

Mr. BISHOP. Thank you.

Mr. Robbins. I give you 5 minutes now to go through your story.

STATEMENT OF FRANK ROBBINS, THERMOPOLIS, WYOMING

Mr. ROBBINS. I appreciate the opportunity to be here this morning. I bought a ranch in 1994. And between the time of the signing of the contract and the closing of the ranch, the BLM acquired from the previous owner an easement, or a right of way, through a strategic portion of my ranch. I was unaware of that. After closing, they did not record their easement. The government failed to do that.

A week after our closing, I got a call from Joe Vessels at the BLM office, stating that a mistake had been made and he needed to send me some papers to sign, and so forth. I said, "What is it?" And the more questions I asked, the more irritated he got. But the end result was I said, "I will be glad to look at your easement when I get to Wyoming." And he said, "Well, if you don't mind, I am going to go ahead and survey the right-of-way on this easement." I said, "No, no, I don't want you to do any surveying until we decide whether we are going to allow this easement to take place." And he continued to insist that he was going to. And I told him no, absolutely not. And he actually made me very irritated.

So, anyway, when I returned to Wyoming, I had a meeting with him. As I walked into the office, he was coming down the hall and he smiled and his buddies were there, and he said, "Oh, yes, Mr. Robbins, I went ahead and surveyed that right-of-way in," and walked off.

We ended up, before that day was out, at a meeting about this easement, and he explained it to me this way. And I will repeat it to you the best I can, and you decide if you would like to take this deal or not. He wanted a easement across 8 miles of my private property for a half-mile across public lands. He wanted to restrict my access to my personal use. He wanted his access to be public. And he wanted me to pay for this easement.

And I said, "Based on what you are describing to me, I will turn this down." And I said, "I will be glad to negotiate with you." He said, "No, the Federal Government doesn't negotiate." I said, "OK. It is what it is."

And on July 16, 1995 that right-of-way that I had into my property was taken away. And then, on September 1, 1995—I am kind of giving you a 5-minute synopsis of my situation—Gene Leone, which was a part of the RUP, he decided to take it away—and this is his statement made to Ed Parodi, who was a BLM employee who testified on my behalf—he said, "I think I finally got a way to get his permits and get him out of business." And on October 5, 1995, the SRUP was removed, which my guest ranch business depended on.

In May 1996, Parodi came to my house—and this is sworn testimony—and he said that, "They are out to get you from day one," that it was a shame, the petitioner's treatment of Robbins, that he was sick and tired of doing the dirty work of the petitioners, and that he had had enough of it, he must find a way out if he could. Parodi later testified, "I didn't think I could do the job any longer. It is one thing to go after someone that is willfully busting the regulations and going out of their way to get something from the government. I only saw Mr. Robbins as a man standing up for the rights of his property."

I think that you are crossing a very gray area in the area of trespass. I made these comments when they trespassed me on my own private property. I said, "Nowhere in the AMP am I required to give up property rights."

There is—I see that I am running out of time, and I am not even going to get close to covering this. I would like to make a statement of what a judge said, and I think this kind of gives you—or should

give you—an idea of what the attitude of these people was. It is toward the end, here.

The district court dismissed the case as moot, because they did provide the information to me the day of court. But he said, "I did not condone the Barnes conduct"—Darrell Barnes was the head of the BLM—"This result should not be interpreted as a condoning of the BLM's conduct in this matter. Arrogance of authority and indifference to citizens' legitimate interests, even the appearance of such vices, should be avoided by public servants. The BLM's conduct in this matter is troubling to this court, and will not soon be forgotten. A matter of this nature that involves this agency—should not appear on my desk again."

One year later I was back in front of the same judge for the same things, and eventually they did settle and pay me in that particular case.

[The prepared statement of Mr. Robbins follows:]

PREPARED STATEMENT OF FRANK ROBBINS, THERMOPOLIS, WYOMING

My name is Frank Robbins and I am the owner of a ranch that includes private land and Bureau of Land Management ("BLM") and Forest Service livestock grazing permits and preference rights, known as the High Island Ranch, in Hot Springs County, Wyoming. I purchased the High Island Ranch from George Nelson on May 31, 1994 as a cattle ranching and a guest ranch operation. Although I had owned another ranch in Montana prior to purchasing the High Island Ranch, my goal was to move my wife and two children to Thermopolis and make that my home—then pass the ranch on to my children and grandchildren.

Just prior to the sale of the ranch, Mr. Nelson granted a non-exclusive easement to the BLM across the High Island Ranch, on a private road known as the Rock Creek Road. The BLM failed to properly record this easement so when I purchased the ranch, I was unaware of the BLM easement and when I recorded my title to the ranch, the BLM easement was extinguished.

Upon realizing the easement Mr. Nelson had granted to the BLM was no longer valid, BLM employee Assistant Area Manager Joe Vessels contacted me to demand that I sign a new easement across my private lands to the BLM, and to warn me that if I did not give the easement to the BLM, the BLM would deny me access to my private property. Vessels stated to me that there would be no negotiation regarding this easement. Because the BLM would not negotiate to pay compensation or provide due process for the taking of my private property, I declined to just give the BLM one of my property rights. In response to my decision, Vessels told me that the BLM would get the easement "one way or another."

From that point on, the BLM began engaging in a pattern of intentionally abusive conduct to coerce me to grant my property rights to BLM and to punish me for not immediately capitulating to the BLM's demands. For example:

Ed Parodi, a BLM employee, was sent to my home to explain what the BLM would do to me if I did not acquiesce to the BLM demands. At that meeting, Parodi stated, "if you keep butting heads, things are going to get pretty ugly" and "[t]hey [the BLM] have more resources, more time and money than you." "If you keep butting heads with them, it will come to war." Parodi also stated that the BLM was out to give me a "hardball education."

In June of 1994, Vessels twice wrote to me requesting permission to survey for the BLM's desired easement across the private lands of the High Island Ranch. I unequivocally declined to allow the survey. However, Vessels disregarded my clear instructions and orchestrated a survey anyway without my permission, then later bragged to me that I could not stop the BLM.

A policy was also developed by the BLM whereby the terms and conditions of the High Island Ranch Allotment Management Plan ("AMP") were not followed in good faith. Although the High Island Ranch AMP, signed by both the BLM and my predecessor-in-interest, included significant opportunities for flexibility for my cattle operation, the BLM refused numerous requests for flexibility. Additionally, a BLM employee, Teryl Shryack, made handwritten changes to the AMP without my knowledge and then tried to apply those changes to me.

The BLM also prohibited me from maintaining a portion of the Rock Creek Road, located on BLM land, that was necessary for me to access parts of the Ranch's pri-

vate property. Eventually the BLM ultimately canceled my access rights across BLM land to my private property.

Under Vessels' direction, the BLM also made trouble for me with my neighbors. In one instance, a BLM officer urged neighbor Pennoyer to file a criminal complaint with the Sheriff against me (although the Sheriff did not follow up on the neighbor's claims.) In another instance, BLM employee Leone provoked an incident between Mrs. Pennoyer and I, whereby Mrs. Pennoyer drove a motor vehicle into and struck me and the horse on which I was riding.

Vessels also charged me with repeated livestock trespass prosecutions, 27 in all. In these prosecutions, the BLM asserted that my cattle were in trespass, even though the livestock were located on my unfenced *private* property. These prosecutions were brought under the theory that the High Island Ranch cattle allegedly could "access" the adjoining and unfenced public lands. This legal theory has been rejected by the court however, I had to appeal each and every one of the decisions individually to try to keep my grazing permit.

Although I was willing to grant to the BLM the right to cross my private land to get to BLM land for lawful purposes, the BLM wanted the complete and unconstrained right to trespass on my private property. Because BLM wanted this complete access, they took an easement which only allowed the BLM to maintain a 276-foot strip of fencing on a remote corner of a parcel owned by me and tried to argue it gave the agency complete and unrestrained access. Using this Fence Easement, BLM employees Shryack and Merrill went onto my private property. When I encountered the BLM trespassing and stopped them to ask what they were doing, Shryack and Merrill showed me the Fence Easement, claiming it allowed them to drive on my private property. In frustration, I tore up the copy of the Fence Easement and told Merrill and Shryack to turn around and leave, which, without any protest, they did. Several days later, after lying to me to get me to come to the BLM office, the BLM, through its law enforcement officers, notified me that I was being criminally charged with "intentional interference with a BLM officer" for telling Shryack and Merrill to leave my private property. Based upon this criminal charge, a lengthy and expensive criminal jury trial was held in the Federal District Court for the District of Wyoming. However, after only 25 minutes of deliberation, the jury acquitted me of all charges, commenting that I could not have been railroaded any more unless I worked for the Union Pacific Railroad.

Due to the BLM employees egregious conduct, I have suffered significant economic injury to my business (both in terms of direct lost revenues for loss of my grazing use and my outfitting business) and personal reputation. I am only running one-half on my cattle numbers I once did and I cannot operate any of my guest ranching business on the Federal lands. I also spent a significant amount of money on legal fees, individually appealing all of the decisions as well as defending myself at a 3-day criminal jury trial. The economic damage to both me and my family—as well as to the local community—are still present today.

Some BLM employees, and based upon the press coverage, some of the public, believe that I deserved to lose much of my ranch, simply because I would not give my private property to the Federal Government. However I have never had the chance to argue my case before a judge and jury. Administratively appealing dozens of trespass decisions before an administrative law judge does not even begin to address the allegations that have been leveled against me. My Supreme Court case was not based upon the facts of the case—rather the question before the Court was simply whether I could even get to court. That is the question before this Congressional Committee. Win or lose, should private individuals and businesses have the chance to prove that they have been harassed, punished and bullied by Federal bureaucrats. There needs to be more accountability of Federal employees and opening the courthouse door is one way to provide for that accountability.

Mr. BISHOP. Thank you, sir.

Mr. ROBBINS. Thank you.

Mr. BISHOP. I appreciate your story. And, obviously, everything that is written there will be part of the record. If you have anything more you want to add to what you submitted to us as the written record, please feel free to do that, as well.

Mr. Lowry, if we can go through your situation in Oregon.

STATEMENT OF TIM LOWRY, JORDAN VALLEY, OREGON

Mr. LOWRY. Chairman Bishop and members of the committee, I ranch in the Pleasant Valley community of Owyhee County, Idaho, with my wife, Rosa, and parents, Bill and Nita. And we want to thank you for the opportunity to describe how the use of threats, intimidation, and bullying are used by Federal land management agencies to take, without just compensation, private property. In this case, namely, privately held water rights.

When the Snake River Basin Adjudication, or SRBA, began, we filed our water rights claims for irrigation, domestic use, and stock watering with documentation of the historic beneficial use by our predecessors in interest. The United States, through the Department of the Interior, filed competing stock water claims to the same water, and objected to ours. This put the issue into the SRBA court.

The SRBA judge ordered a settlement meeting between the United States and us in an attempt to settle the case without a trial. This meeting was held at the Owyhee County courthouse in Murphy, Idaho, and was attended by Justice Department attorneys, BLM personnel, and myself.

The United States insisted that only the United States could hold a water right on Federal land, and that we must withdraw our claims. Knowing that the United States' position was contrary to the Idaho constitution, Idaho and Federal statutes, and Supreme Court decisions, I refused to abandon our vested rights.

When I did not acquiesce to their convoluted legal theories, as they were aptly described by the judge in one decision, the United States changed tactics. I was pointedly told that, to proceed, we would need an attorney. I was also pointedly told that the United States would pursue this case to the Supreme Court, if necessary, that it would be extremely expensive for us, and that we should consider the cost. This began a 10-year litigation battle.

This tactic of a veiled threat of financial ruin must have been effective. Of all the ranchers who filed their vested stock water rights claims, only one other, Paul Nettleton of Joyce Livestock, continued through to the end. The others felt constrained to give up their claims, rather than incurring a debt that could cost them their ranch.

After 10 long years of appeals and delays by the United States, and over $800,000 of attorney fee debt for us, and a similar amount for Paul Nettleton, the Idaho Supreme Court completely vindicated our position, and utterly rejected that of the United States. The court ruled that the United States cannot hold a stock water right, because it does not put it to beneficial use. The stock water rights belong to the stockmen who do put the water to beneficial use, and that the stock water rights are an appurtenance to the base property of the rancher.

Unfortunately, despite ruling in our favor on every point of law, we were denied being awarded attorney fees under the Equal Access to Justice Act. What is most discouraging to me is that the United States knew that their position was contrary to Western water law and court decisions. This was simply a continued deliberate attempt to overthrow Western water law and to send a message to other private claimants to water on Federal lands.

Sadly, the United States, through its land management agencies, continues to ignore the clear policy regarding water set by Congress. This disdain of Congress is further evidenced by the United States Forest Service's recent actions disregarding State law and attempting to take private water rights, prompting Representatives Mark Amodei and Scott Tipton to introduce the Water Rights Protection Act in order to protect privately held water rights from Federal takings, and uphold long-standing State water law.

The question I would have, however, is that even if the Water Rights Protection Act becomes law, what will prevent these same agencies from ignoring it, as well?

Again, I want to thank you, Mr. Chairman, and the committee, for holding this hearing. I feel it is imperative that Congress rein in these out-of-control Federal agencies.

[The prepared statement of Mr. Lowry follows:]

PREPARED STATEMENT OF TIM LOWRY, JORDAN VALLEY, OREGON

I am Tim Lowry and with my wife, Rosa, and parents, Bill and Nita Lowry, ranch in the Pleasant Valley community of Owyhee County, Idaho. The future of this rural, family ranching community is in jeopardy due to Federal Government actions, policies, and direction.

On June 6, 1994 a public hearing was held in Boise, Idaho on Secretary of the Interior Bruce Babbitt's proposed Rangeland Reform '94 regulations. In preparation for the hearing, the Natural Resources Committee of Owyhee County carefully studied the proposed regulations and identified the areas that were problematic. In order to get all the points into the hearing record given the short amount of time allowed for testimony, the testimony was divided between over 30 individuals. This strategy worked well except for the fact that three of those testifying were World War II veterans, brothers Don and Gene Davis and my father, who were struck by the sad irony that the hearing on regulations that would undermine their rights was being held on the fiftieth anniversary of D-Day.

These veterans used their allotted time to very movingly explain how 50 years ago from that date they never dreamt a time would come when the greatest threat to their rights would be coming from their own government. I will never forget Gene Davis of Bruneau, Idaho who, with tears running down his face, recounted the names of his Army friends who had died around him on the beach that morning to preserve our rights and liberties.

It is with that thought in mind that I would like to thank the Committee for holding this hearing. I appreciate the fact that you, who represent us, are concerned with abuse of power. The issue of preserving and protecting the individual rights and freedoms of the citizens of the United States is not a partisan issue, but one that is vitally important to us all.

There are several examples of abuse by the BLM that could be the topic of my testimony. I shall relate one of them before detailing my main topic of the attempt of the Federal Government to usurp State law and steal a private property right—namely, stockwater rights.

In 1984, our family purchased a ranch with a grazing preference right that lay partially within the newly designated North Fork Wilderness Study Area. This allotment is a common use allotment shared with two other permittees—the Stanfords and the Andersons. Approximately 1 month after purchasing the ranch, a BLM employee told me, off the record, that he wished he had known we were purchasing the ranch so that he could have warned us not to because the grazing allotment in the WSA was targeted in the Boise District BLM Office to "have its head cutoff". I assured him that I was confident that working together we could solve any issues relating to grazing in the WSA.

I was wrong. When some resource concerns were identified by the BLM, we worked with a range consultant to devise a grazing rotation system that would address the resource concerns and also be economically feasible. In order to implement the system, approximately 3 miles of fence needed to be constructed with a little more than a mile of it in the WSA.

The BLM refused to agree to the fence, citing the WSA as the reason, despite the fact that the Interim Management Policy for the WSA and the Wilderness Act al-

lowed for such improvements. The BLM's solution for the perceived resource issues was to drastically reduce grazing.

After a couple of years of meetings and on-the-ground tours with the permittees, range management experts, Congressional staff personnel, and conservation group representatives, the BLM issued a decision to build the fence. However, the decision to allow us to build the fence contained provisions designed to ensure that the fence would never happen.

The national BLM director had issued a directive that any range improvements in a WSA had to be completed by September 30, 1992 when Congress was expected to act on designating wilderness. The Idaho State Director issued an order that improvements in WSA's in Idaho must be completed by September 30, 1991 in order to ensure that the national directive be met. We received word of the decision allowing us to build the fence the afternoon of September 26, 1991. We were told that the fence had to be completely finished by midnight September 30, 1991—including the portion not in the WSA. We were also emphatically informed that if the fence was not completely finished, then the entire fence had to be removed. For three men and their wives to build approximately 3 miles of fence in 3 days was an impossible task in such rough country, and not being able to use motorized vehicles in the WSA portion made it even more impossible. However, neighbors heard of our plight and came from miles away to assist. With the generous help of 32 caring neighbors, the fence was completed by 4:00 p.m., Sunday, September 30, 1991.

On Monday morning, October 1, 1991, a BLM employee called Jeannie Stanford and told her to tell her husband, Mike, and me that we had to stop working on the fence. Jeannie informed him that the fence was completed and that Mike and I were simply gathering up the excess material from the fence line. Jeannie recounted to us that there was a long pause and then he told her to tell us that we could not install the cattle guard because it was considered part of the fence. When Jeannie explained to him again that the fence was done, including the cattle guard, another long pause ensued and then he said he had to tell his supervisor and hung up.

The rotational grazing system was utilized during the 1992 grazing season and monitoring indicated that it was working to meet the resource objectives. However, in 1992 the BLM settled an environmental group's appeal of the fencing decision by agreeing to remove the fence. The fence was removed by the BLM in the fall of 1992 after only one season's use. Incidentally, Jeannie took pictures of the tire tracks the BLM made in the WSA and of materials they left scattered in it after the fence was removed; illustrating that two sets of rules must apply regarding what is allowable in a WSA. Our grazing season was subsequently reduced from 3½ months to 1 month and our AUMs from 666 to 244. The Stanfords and Andersons suffered AUM reductions of the same ratio. Because sound scientifically recognized management tools were denied us, our ranch is greatly devalued and our ability to make a living is a huge challenge.

It was only a few years after receiving this body blow, that the Federal Government forced us into court and massive debt in an attempt to steal our stockwater rights. The United States objected to our stockwater rights claims that were filed pursuant to the Snake River Basin Adjudication and filed its own stockwater rights claims to the same water.

Before this case was to be heard, the Judge scheduled a settlement meeting between the United States and us to see if the case could be settled without a trial. At that meeting, which was attended by Justice Department attorneys, BLM personnel, and me, the United States insisted that only the United States could hold a water right on Federal land and that we must withdraw our claim. I knew that the United States' position was contrary to the Idaho Constitution, Idaho Law, Federal Law, and court decisions, and refused to abandon our vested rights.

When the United States became convinced that we were not going to capitulate, I was told by the United States that we would need to retain an attorney. I was further informed that the United States would pursue the case to the Supreme Court if necessary, that it would become extremely expensive for us, and that we would be wise to consider if the cost would be worth the effort. Knowing that the United States' arguments lacked any basis in law and not willing to give in to the veiled threat of financial ruin, we embarked on a litigation journey that spanned 10 years. Of all the ranchers who filed for their stockwater rights when the adjudication began, only one other rancher, Paul Nettleton of Joyce Livestock, continued through to the end. The others settled with the United States rather than risk incurring a huge debt and losing their ranch.

Despite the fact that the legal theories raised by the United States were contrary to the established law and were rejected by the courts at each step, the United States continued to appeal each loss all the way to the Idaho Supreme Court. The Supreme Court upheld the District Court and ruled that the United States could

not hold a stockwater right because it was not the entity putting the water to beneficial use. It further ruled that stockwater rights belonged to the grazers who put the water to beneficial use and that the water rights were an appurtenance of the permittee's base property. All of the assertations of riparian rights and other contentions of the United States were utterly dismissed by the Court.

With the appeals and delays obtained by the United States, they managed to extend the litigation 10 years and saddle us with attorney fees in excess of $800,000. Paul Nettleton owes a similar amount. I am convinced that those responsible for pursuing the position that the United States took were intelligent people who were not simply mistaken, but were deliberately attempting to overturn western water law and were sending a message to other claimants that challenging the United States is a costly endeavor. They had to know that water rights are created under State law and confirmed by Federal law, including the Mining Act of 1866, Act of 1870, Desert Land Act of 1877, Taylor Grazing Act, and the Federal Land Policy Management Act. They also had to be aware that courts have consistently held that water rights may be appropriated on Federal lands by private parties and that these rights, once acquired, will be afforded all protection. In spite of the clear and unambiguous policies enacted by Congress and the consistent recognition of those policies by the courts, they pursued their illegitimate theories ignoring Congressional policy and Supreme Court decisions.

During the 10-year litigation ordeal we were worried about the escalating attorney fees that we could not afford, but we were certain that at a successful conclusion, attorney fees would be awarded under the Equal Access to Justice Act. Unfortunately, the Idaho Supreme Court determined that as a State court, it lacked jurisdiction to apply the EAJA to this case and rejected our EAJA claims. They reached this decision despite the fact that the Nevada Supreme Court, in a similar type of case, awarded attorney fees to the prevailing private party litigant, holding that "it would be an injustice to deprive a prevailing party of attorney fees and costs merely because that party chose to litigate in a State court, as specifically authorized by Federal statute."

The EAJA clearly provides at 28 U.S.C. § 2412(b) that "any court having jurisdiction of such action" may award attorney fees and expenses to the prevailing party against the United States. The McCarran Amendment gave jurisdiction to State courts over the United States in water rights adjudications. Therefore, State courts are the "any court having jurisdiction" and thereby should have authorization to award attorney fees under the EAJA.

Because we believed that the Idaho Supreme Court erred in its decision regarding awarding attorney fees, we filed an appeal of that portion of the Supreme Court of Idaho's decision with the Supreme Court of the United States. We had hoped that the United States Supreme Court would take the case in order resolve the conflicting opinions of the Idaho Supreme Court and the Nevada Supreme Court. Unfortunately, they did not take the case, leaving the conflicting opinions intact.

Congress needs to amend the EAJA to clarify that State courts having jurisdiction over the United States in an action are included in the definition of courts in the EAJA. Failure to do so will act as a deterrent to private parties trying to protect their rights against unwarranted and unjustifiable litigation and actions initiated by the Federal Government. The EAJA was designed to protect the rights of individuals and small businesses in litigation against the United States by leveling the playing field given the extreme disproportionate resources at the disposal of the United States.

Many other instances of abuse could be cited which have led to the present time where a scenario is unfolding in the Owyhee Resource Area of the Boise BLM District that threatens the viability of the family ranches, the economy of Owyhee County, and circumvents provisions of the Owyhee Initiative Agreement which led to designation of wilderness and wild and scenic rivers in Owyhee County. The BLM is under a court order to complete the Environmental Impact Statements on a large number of allotments for the permit renewals by the end of 2013. Although the BLM has known this for several years, they are now at this late date rushing through the process.

This does not allow time for meaningful consultation, cooperation, and coordination with the affected permittees as required. With time rapidly running out, it is questionable if the majority of the decisions will be issued in time for comments, protests, and appeals before the end of 2013. Permittees are wondering how their due process rights are going to be affected. By bunching up all these decisions and issuing them at the last minute, the BLM will effectively negate the science review process of the Owyhee Initiative Agreement which was the foundation for an agreement to designate wilderness and wild and scenic rivers in Owyhee County. There

will simply not be enough time or personnel available to perform a science review of all the decisions.

I want to again thank the Committee for holding this hearing. If family ranches are to remain intact, a functioning un-fragmented landscape maintained, the economy of Owyhee County protected, and access for recreationalists preserved, then this broken, dysfunctional land management must be fixed. More importantly, we all have a sacred obligation to not let the sacrifices of Gene Davis' fallen friends be in vain. We must not allow the rights and freedoms they died for to be lost through bureaucratic tyranny.

Mr. BISHOP. Thank you. I appreciate your testimony. I appreciate your shout out to Tipton and Amodei. It is going to be much more difficult to work with them now in the future. I apologize for that.

[Laughter.]

Mr. BISHOP. Ms. Richards.

STATEMENT OF BRENDA RICHARDS, MURPHY, IDAHO

Ms. RICHARDS. Chairman Bishop and members of the subcommittee, I am here today in my capacity as the Owyhee County Treasurer and tax collector representing Owyhee County, Idaho. I have served in this capacity for the past 8½ years. And, in addition to serving as treasurer, my husband Tony and I ranch in Owyhee County, where our sons are carrying on this business into a fifth generation. I have extensive experience in natural resource issues, and, along with my accounting background, this lends well to my position as treasurer in a county that largely depends on public lands and the ranching communities for its economic backbone.

Owyhee County is comprised of 4.9 million acres, with a population of only about 11,000. The county is 77 percent Federal land, 6 percent State land, leaving only 17 percent privately owned, which comprises the tax base of our county. The communities in the county are rural and small, and the decisions that are made on public lands have direct impacts and effects on these communities, thus affecting the county and the businesses within. Our beef industry in the county produces over 19.76 million pounds of edible meat per year, which is enough to feed 300,000 people, which is the entire population of the city of Boise and our county.

It has become apparent over the past 20 years in our county that threats, intimidation, and bullying do not always present themselves in obvious ways or methods, but that does not make them any less damaging, any less wrong. Nor does it lessen their impact. These quieter, behind-the-scene forms often have more significant impacts and damages over a longer period of time. It would take me several hours to go over the numerous ways the county has been affected over the past years of actions and non-actions by the BLM, but today I will give you several recent examples.

The Gateway West Power Transmission Line is an example of the BLM bullying their way to push through the system to get their end result. After hundreds of hours of meetings involving elected officials, the residents, environmental groups, the power company, and other interested parties, an agreed-upon route was chosen, with everyone signing off on it, and presented. Soon after that was presented, a representative from the BLM in Washington, DC flew out, and that one person was able to negate this entire process, and put the lines back over private land, much to the dis-

tress of the county and those land owners, as it affects the value of the property, and thus, the tax base.

Grazing permit renewal is another challenge we constantly face in our county. Lack of action by the agency in the early 1990s continues to this day to have direct effects on the county, with legal counsel and consulting fees spent protecting their property rights and grazing rights. Both the county and the individuals have spent hundreds of thousands of dollars to protect these rights, and the costs are still accruing.

However, the cost of losing would be even higher, as it changes the entire dynamic not only of the communities within our county, the county's economic base, but it also eliminates some of the prime wildlife habitat and water resources in the West.

The county also has a county land use plan and a signed coordination agreement between the county commissioners and the Bureau of Land Management outlining protocol and expectations for monthly coordination meetings. Yet, over the past 3 years, our commissioners have had to send over 25 letters to the BLM, asking them why they were not coordinated or communicated with on different issues.

The Owyhee Initiative was developed and designated wilderness and wild and scenic rivers, first in an agreement signed off by all the collaborative groups, and then in legislation. During the past year, we had many meetings where we were working on the wilderness management plan, only to find out that, internally, the BLM was also working on guidelines that negated one of the main principles we had brought forward with the initiative agreement. And, ironically, that factor that is not allowed in the new guidelines is one that the BLM had awarded the permittee an environmental stewardship award on a national level for that practice.

Each of these examples holds either direct or indirect impacts to our county. As treasurer, the economic stability of the county is first and foremost in my mind, as it is of our county commissioners. We still continue to stand up to the threats and intimidation, because we believe in the property rights and doing what is right, and hope that justice will prevail.

We hope that by presenting this information, it may help you to see the need for changes in the law to protect these rights, and not to allow actions by our government to be taken in the matter of threats, intimidation, or bullying, whether first and foremost, or a quieter action, but to be done in the ways that were intended, and in ways that you can hold your head up, be proud of the results, and find success in supporting them.

Thank you for this opportunity.

[The prepared statement of Ms. Richards follows:]

PREPARED STATEMENT OF BRENDA RICHARDS, MURPHY, IDAHO

I am Brenda Richards, and I am here today in my capacity as the Owyhee County Treasurer, representing Owyhee County, Idaho. I have served in this elected position for the past 8½ years. In addition to serving as the Owyhee County Treasurer, my husband, Tony and I ranch in Owyhee County. My extensive experience in natural resource issues, along with my accounting background lend well to my position as treasurer in a county that largely depends on the ranching community for its economic backbone.

Owyhee County is Idaho's oldest county and was established and settled, as many places in the western United States were, around its natural resources. In our coun-

ty those two draws were mining of gold and silver and grass for cattle and sheep grazing. The gold and silver are not nearly as abundant as they once were; the renewable natural resource of grass continues to help sustain the county. Owyhee County is Idaho's oldest county and is the second largest county in the State of Idaho covering 7,639 square miles—or 4.9 million acres. Yet the population of approximately 11,000 in the entire county averages out to 1.2 people per square mile. Owyhee County is 77 percent public lands; 6 percent State land; leaving a mere 17 percent privately owned land. That 17 percent is the tax base of the entire county. Owyhee County does receive PILT (Payment in Lieu of Taxes) for the public lands in our county, but every year the county has to wait and see what will actually be allowed for that payment though we certainly feel this is the Federal Government's duty of paying the property tax owed to the county as those acres cannot be developed or taxed in any other way.

Of the 4.9 million acres in the county, approximately 191,700, or about 4 percent, are agriculture with just a bit over 4.5 million acres in rangeland, and of that approximately 3.7 million of those rangeland acres are Federal lands. With the numbers just given, you can see that a very small amount of the land in our vast county serves as the private, taxable base, yet this privately owned tax base is largely dependent upon the Federal lands for rangeland grazing accompanying their private lands through their BLM permits. In addition, the communities in this county are rural and small, and whatever decisions are made for the public lands have effects on those communities.

Over the past 20 years in this county there is one thing that has become very apparent. Threats, bullying, and intimidation do not always present themselves in obvious ways or methods, but that does not make them any less damaging, any less wrong, nor does it have any less impact. As a matter of fact, these quieter, "behind the scenes" forms of threatening, bullying or intimidating often have huge impacts and significant damages over a longer period of time. I would like to share with you a few examples of the Bureau of Land Management actions that can certainly be seen as threats and intimidation to Owyhee County and the residents that live here.

No matter that the tax base in the county may only be 17 percent, those taxpayers and the county are responsible for providing services within the county, some are mandated by either Federal or State laws, and some are elected county services. Many of those services, such as roads maintenance, law enforcement, safety matters, and search and rescue are provided to all—whether you live in the county, visiting the county's vast area, just passing through. With Owyhee County's close proximity of being not much more than an hour away from the Treasure Valley with its larger urban population, there are many visitors each day that come across the Snake River to enjoy its vast expanses that surround our rural, and some very remote, communities. Owyhee County offers diverse recreational experiences both motorized to non-motorized, hunting, fishing, and sight-seeing, wilderness experiences, white water rafting at the right time of the year, and a host of other activities. Many of these activities are on the public lands, but much of it is either accessed by going through, around, or across the small amounts of private ground. Almost any BLM decision that is made has an effect in some fashion on the county's well-being and that of its rural communities due to the large amount of Federal land around each of these communities. Often the costs of these decisions, both financially, and also to the health of the natural resource are not fully vetted, leaving that expense on the local taxpayer's budget.

One such decision we have recently been dealing with in Owyhee County is the Gateway West transmission line. The county residents, and those of us serving as their elected officials have attended hundreds of hours of public meetings, written pages and pages of comments, and found ways we thought could be used to compromise to and solution. The player in this game that we have found to be playing by their own set of rules—and truly that is a form of bullying when you are aware you can get away with it—is the Bureau of Land Management. Early on in this process the lines were to come across the public land, leaving as much private ground as possible (remember the ratio of private acres to public in Owyhee County) alone as the necessary power lines were to be brought in. This was agreed to by the power company, the diverse interest groups attending these meetings such as conservation and recreational groups, the county elected officials, and the residents. After all this was agreed to over months and months of meetings—some of them even held in Ontario, Oregon that people attended—and all of them documented with minutes, the Washington BLM office, in one person's decision, negated all that time, money, and effort by putting it right across much of the limited private ground in our county. This is one example of costs to the county in attending and participating in the government's dog and pony shows of public meetings for months and months; resources and time spent to have maps made of the outcome of those meet-

ings proposed routes; legal advice on the matter; time invested, only to have that thrown back in the face and put where they wanted it any way. This cost comes down to the county and the taxpayers here in more than one way. The initial investments of time, money, and sincere participation in a process to come up with a viable solution with the other "players" in this process, most who do not even live in the county, but have conservation, recreational, or special interests in the area is the first cost; the second is the cost to the county and the land owners as their property is devalued due to huge transmission lines being placed across their land; and last, this cost goes out to those land owners who have not had the decision directly affect them, but will feel the indirect impact of tax increases as the same services are still required to be met within the county, but the tax base of some property has decreased leaving that hole to be filled by those properties whose value held to absorb the increase that will be required in the county tax levy rate. Does this not pose a direct threat to the county, through a process that surely can be viewed as intimidating?

Ranching has long played a role in Owyhee County and continues to do so today. Since the early 1990s, the challenges from the Bureau of Land Management and their decisions, or lack thereof have had significant impact on the county government and the residents within the county. These impacts have been financially, emotionally, and on the ground. Probably the longest running threat and intimidation within Owyhee County has been that which has come from the BLM neglecting to fulfill their obligations of renewing permits; neglecting to gather necessary information in a consistent, accurate, timely manner lined out in their own guides; not involving the permittees as is required by those same rules and regulations; and the results of all of this is the permittees and the county then end up in court battling on the same side as the BLM to defend their rights, permits, and livelihood. This is at the expense of the county and the permittee as the BLM has the Federal Government to cover their attorney costs and time, which means it costs all taxpayers and those in our county twice.

Prior to 1997 the BLM failed to complete the permit renewal work that necessary to keep 10-year grazing permits current, and as stated before, public lands ranching is the backbone of this vast county that is 77 percent Federal land. Grazing continued for over half the permits by annual authorizations since the permits had been allowed to expire by the BLM. The 1995 changes to the BLM grazing regulations required a valid grazing permit in lack of action by the agency have direct effects on the economic base and also on costs of litigation to challenge these decisions order to graze on public lands, so this immediately put the permittees out of compliance due to BLM lack of doing their job, and brought radical environmental groups to file suit. The lack of action by the agency had, and is still having direct effects on the economic base of the county and the land owners here as the costs of litigation to challenge these decisions continue to be paid. The threat to the economic viability of the county, and the threat to the land owner and permit owner cannot be ignored as this is the backbone of the county. Legal counsel and consulting to protect themselves and their interests can cost an individual hundreds of thousands of dollars, but the cost of losing that is even higher to them and the county, not to mention it is a property right. Costs to defend several of these cases already have come in, with $100,000 for one allotment to reach a permit renewal; and two others at $55,000 currently where they are not even half way through defending themselves to get to the end result of the permit being renewed.

As I have mentioned several times, the economic backbone of Owyhee County and the rural communities is largely dependent on the ranching industry and grazing on public lands. The beef industry in Owyhee County accounts for approximately 19,760,000 pounds of edible meat per year—which is enough to feed 300,000 people or the entire population of our county plus the population in the State capitol city of Boise. The total number of acres these ranches occupy is at just over 435,000, and the approximate assessed value for the county is $28,815,299. Please realize this is the assessed value for county tax purposes, not what the land could be sold for if it was to be parceled out and developed, yet much of this private land is remote, and assures unfragmented habitat and water sources for many forms of wildlife. Many of these ranches are located in small, very rural communities throughout the county that have schools and smaller businesses depending on their success to keep those communities healthy and vibrant. Because of that, and because of the continued unpredictability and up and down relationship the county has had with the Bureau of Land Management, the county developed a county land use plan in the early 1990s in an effort to address matters relating to State and Federal lands and to help protect their interests and assure input in decisions. The plan is reviewed regularly and updated, with most recent update to this plan being 2009, and reviews are more regular.

The county also has a signed Coordination Agreement with the Bureau of Land Management that dates back more than 15 years. This agreement was also established to help assure the county—which in turn represents the residents—is included and involved in decisions the agency makes. As the largest land owner in Owyhee County, these decisions often have significant impacts or effects on or within the county, which in turn can also affect the economic stability and well-being of the county, and have effect on the livelihood of the residents. Over the years the Coordination Agreement has been in effect, the Owyhee County Commissioners spend a tremendous amount of time reminding the BLM of their obligation to coordinate; reinforced by the signed coordination agreement. In the past 3 years over 25 letters have been addressed to the BLM by the commissioners on matters and decisions that have direct effect on the county. Many of letters have been written when the BLM either intentionally, or due to lack of management's attention or new management, ignores the coordination process. The number of times this happens could certainly be seen, not only as a veiled threat to the county in that the BLM does not feel they have to comply, but it also comes across as a form of intimidation trying to get the county to back off of expecting them to follow the law and requirements of including them in decisions and planning processes.

Both of these have taken much time, resource and dedication by the elected officials, those participating in the public meetings to develop these and then keep them updated and reviewed, and the different groups, agencies, and others that use these in their decisionmaking process within Owyhee County. The one agency that has given the county the most problem with these aspects is again, the BLM.

Every one of these examples given have either direct or indirect impact to the county financially. The cost to our county residents on grazing decisions is astronomical, and the county has often weighed in over the years with their own financial contribution to the litigation because it is a vital component of the economic stability within the county. The economic stability of the county is first and foremost in my mind and duty as county treasurer, as it is with the commissioners. The costs to both the individuals and the county have effects on those communities as to dollars that could be spent in schools, business, or other areas having to go to threats and litigation caused by BLM decisions or lack thereof. The permit renewal process continues here in the county under a court ordered mandate now. That mandate came down in 2008, yet the BLM did not start on the 125 out of 150 permits included in that order until 2012 and the deadline is December 31, 2013. If that deadline is not met, the court stated the BLM will be held in contempt. Even though the process was not started in a timely matter, the ones paying the ultimate price, both financially and in emotional duress are the taxpayers. The documents the BLM is putting out to be reviewed and commented on, and ultimately end up having to be challenged are over 500 pages long, and some of them are over 1,000. If that is not intimidating to a common person, I do not know what is. Yet, the county and our land owners will not take it lying down. We will stand up to intimidation and threats and bullying because we believe in our property rights, in doing what is right, and have hope that justice for what is right will prevail. The cost to the county in tax dollars, time, and stress is substantial, but the people of Owyhee County prove to be resourceful, resilient, and show the American grit that settled the West in the first place and continues to capture the trust and wonder of many people not only in the United States but across the world. We only hope that by presenting some of these aspects we have had to fight for years to continue to remain viable, productive and responsible citizens in our county that we love, that the very laws and Federal agencies threatening our existence may be changed to protect those rights and to not allow things to be done in bullying or threatening or intimidating ways, but in ways that you can hold your head up and be proud and successful in supporting.

Thank you for the opportunity to share this testimony with your subcommittee, and I would stand for any questions.

Mr. BISHOP. Thank you, Ms. Richards. So we have heard of problems in Wyoming and Idaho. Now let's go down to Northern New Mexico and see the same situation appearing.

Mr. Valdez.

STATEMENT OF LORENZO VALDEZ, FAIRVIEW, NEW MEXICO

Mr. VALDEZ. Honorable Chairman Bishop and members of the committee, with all due respect, and with your permission, I am a resident of Rio Arriba County, New Mexico, in the north-central part of the State, valleys and pastures that have been used by——

Mr. BISHOP. Mr. Valdez, could I just ask you to move the mic closer to you? I don't know if you can move it physically there, as well. Thank you.

Mr. VALDEZ. I am a descendent of Native American tribal peoples and colonial settlers that came up with the first herd to come into the United States proper, 7,000 head driven by native peoples and families out of Chihuahua Santa Barbara region, 1590. That was the first cattle herd that was brought to the United States, and it actually was brought primarily by Native Americans, including Mexico as America. They settled themselves in the New Mexico mountains, where pastures were cycled in the way that wildlife uses them, upland, lowland cycling, the natural way of using the environment for the purposes of producing beef.

I am here on behalf of two allotments, Jarita Mesa and Alamosa Grazing on the Carson National Forest. I, myself, graze on the Santa Fe National Forest, just across the Chama River from my friends. They were uncomfortable in coming here, because—I believe, because they have suffered so much retaliation from the district ranger, Diana Trujillo.

The Jarita Mesa and Alamosa Grazing Association members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District on the Carson National Forest. The two allotments are all part of the Vallecitos Sustained Yield Unit, an area of the Carson National Forest designated by an Act of Congress for special treatment, because of the mix of intermingled private land and Federal lands, and its particularized uses. Dating back to before the Treaty of Guadalupe-Hidalgo between Mexico and the United States, the ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Association have been grazing livestock on these lands for generations. And, in fact, most of these families were grazing livestock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating into the 1940s, the Forest Service instituted management practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock, and were dependent on the availability of their former common lands that were within their land grants for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa allotments have repeatedly exercised their First Amendment rights to petition their congressional delegation. For this activity, Diana Trujillo, the district ranger, retaliated and desired to punish them for engaging in

speech critical of Forest Service policies. They filed suit eventually, because she refused to reduce the wild horse herd which was 12 to 14 head, and currently runs at about 150 head, severely impairing the ability to provide fodder for the livestock.

They filed suit. And despite adequate proof that retaliation had occurred, the Federal District Court, in a 115-page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive, but citing *Wilkie v. Robbins*, they could not sustain a *Bivens* cause of action, even though there was ample evidence that the judge saw regarding bad behavior.

And we are seeking remedy from Congress, which is the only body able to give it to us. Thank you.

[The prepared statement of Mr. Valdez follows:]

PREPARED STATEMENT OF LORENZO VALDEZ, FAIRVIEW, NEW MEXICO

Honorable Committee Chair Representative Hastings, Subcommittee Chair Bishop and all the Members of this Committee. I want to thank the Committee for this opportunity to present testimony on a very serious matter that will take Congressional and Presidential action to remedy. The management of the National Forests and Grasslands falls on shoulders of the staff of the United States Forest Service, who have the very important charge of keeping our public lands productive. The ecosystem services produced by those lands meet the needs of life in a concentric circle, or connectivity, the closer you are to the land, the more dependent you are on the land. Human needs or services are generally grouped into three categories economic, social and cultural. We all understand that the ability of the ecosystem to deliver services depends on the well-being of the whole, including all dependent species, humans included. There is no time in human existence when we have not managed the landscape to serve our needs; some critters do that also to a lesser extent. It has evolved into a very complex management task worldwide with important decisions to be made. Regardless of what stressors you believe or agree with, there is no doubt that to have those services in the future, we have to protect them now. And there lies the dilemma; power dictates management, and the constructs that emerge in the discourse affiliate closely with power emerge as specific actions on the ground. Power differentials in the United States are supposed to be tempered by Justice, a responsibility borne by all branches of our government.

I was asked to come here today to tell a story of how unjust acts in managing Forest lands push people closest to the landscape off of it and create scenarios that are replete with what the esteemed Economist and Nobel Laureate, Dr. Ronald Coase termed "negative externalities." "Mr. Coase's revolutionary insight was that you and I have a shared interest in minimizing the total harm suffered." "*The Problem of Social Cost," Ronald Coase, a Pragmatic Voice for Government's Role; Robert H. Frank*. Victimizing folks or creating unmanaged casualties is not an efficient option. That process is inefficient. The Government has a responsibility to mitigate the "negative externalities" to a Federal action. On the ethical or moral plane, I turn to Pope John XXIII's Encyclical for Pacem in Terris, Establishing Universal Peace in Truth, Justice, Charity and Liberty; "when one reflects that it is quite impossible for political leaders to lay aside their natural dignity while acting in their country's name and in its interests they are still bound by the natural law, which is the rule that governs all moral conduct, and they have no authority to depart from its slightest precepts."

My livestock graze on lands in the Santa Fe National Forest, Coyote Ranger District which was titled originally as a Spanish Land Grant to Juan Bautista Valdez in 1807. I do not like the term "Permittee" when referring to indigenous Northern New Mexico Forest users. We were denied U.S. title by the Court of Private Land Claims. My family has been in the Jemez Mountains for thousands of years; I am descended from southwest tribal ancestors as are most Northern New Mexico Villager commonly called Hispanic but most scholars refer to the group as indiohispano. On the colonial side we have been grazing cattle since 1590; we are the first herders on U.S. soil. We brought 3,000 year old grazing culture to the new world. I run 20 pair and a bull, on an allotment that includes 15 relatives; some of them are near full blood Native American. Together we run 750 pair and 20 bulls. These historical and social elements also apply to the folks that are the focus of this tragic narrative. I agreed to bring their message to you because they couldn't be

here. It is however my story as well, I was intimately involved with these folks as Rio Arriba County Manager. The message is that the "government" has a duty to hold its managers accountable, just like I was as County Manager. All the constitutional protections should be available to those on public lands including the courts as appropriate. There are many good managers in the Forest Service ranks, we have such managers "this year" on the district I'm in; they carried us through to rainfall this year, and they could have done what was done in this story. I have supplied for the record a research document by Dr. David Correa that provides a more painful look at the history of the Vallecitos lands that are at the basis of this story.

Jarita Mesa and Alamosa Grazing Association Ranchers

The Jarita Mesa and Alamosa Grazing Associations' members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District of the Carson National Forest. The two allotments also are part of the Vallecitos Federal Sustained Yield Unit ("Unit"), an area of the Carson National Forest designated by an act of Congress for special treatment because of its mix of intermingled private and Federal lands and its particularized use, dating back to before the Guadalupe-Hidalgo Treaty between Mexico and the United States. The ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Associations have been grazing livestock on these lands for generations, and, in fact, most of these families were grazing stock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating in the 1940s, the Forest Service instituted "management" practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock and were dependent on the availability of their former common lands (common lands designated by the King of Spain or Mexico prior to the creation of the National Forest) for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa Allotments have repeatedly exercised their First Amendment rights to petition their Congressional delegation and other elected officials for the purpose of protesting what they believe have been unlawful actions by Forest Service officials that have served to destabilize and degrade the private property rights and cultural/social fabric of the communities where these ranchers reside. The lawful conduct of the ranchers has been met by punitive acts by Forest Service officials, particularly Forest Service District Ranger Diana Trujillo, including the reduction of their grazing permits. These ranchers believe that they can prove that many of the decisions by the Forest Service District Ranger were motivated by a desire to punish them for engaging in speech critical of Forest Service practices and by racial animus and a bias against traditional Hispanic culture and its traditional agro-pastoral way of life.[1] Based upon such animus, the Forest Service has made it nearly impossible for these ranchers to sustain their grazing permits which results not only in a loss of their private property but in the slow destruction of their cultural fabric.

For example, the Forest Service understands that wild horses are eliminating forage and damaging the soil, and that any significant increase in the size of the wild horse herds in this area could significantly impact the local Hispanic communities in an adverse manner because it eliminates forage needed for the permitted cattle. Despite this knowledge and the existence of the Forest Service Region 3 Policy, the District Ranger decided to increase the wild horse herd beyond the numbers authorized in its 1982 Management Plan from the 12–14 head to between 20 and 70 head. However, the Forest Service 2002 Decision Notice expressly provided for measures to be taken to reduce the herd if it ever exceeded that number, recognizing that allowing the wild horse herd to increase to even 120 head "may cause some permittees to be forced out of the livestock business by competition for forage from the wild horses." However, in disregard for the needs of these local ranchers who live within

[1] This bias has subtly existed against this land use and the relationship of these ranchers to the land for many years. For example, in 1935, Roger Morris, a Forest Service grazing assistant, issued a report concerning grazing issues entitled "A Dependency Study of Northern New Mexico," wherein it was stated that "[Hispanos] are sedentary in character living in the present and with no thought for the future. They accept conditions as they are and make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extinction by starvation and disease before they would migrate."

the Vallecitos Federal Sustained Yield Unit, the Forest Service has now allowed the wild horse herd to increase far beyond the number permitted by the Forest Service's 2002 decision. In fact, Forest Ranger Trujillo has chosen to allow the wild horse herd to grow to over 150 head, rather than attempt to alleviate this problem so as to be responsive to the needs of the Hispanic people in the area.

To deal with these problems, the ranchers sought the assistance of then-U.S. Senator Pete Dominici in May 2006. Senator Dominici took up the issue with one of Ranger Trujillo's supervisor. Upset with ranchers for their having exercised their right to petition the government for redress of grievances, on July 5, 2006, Ranger Trujillo issued a decision ordering all cattle removed from the Jarita Mesa Allotment by July 31, 2006. Her decision was purportedly based on a reported June 22, 2006 inspection of range conditions that found the ocular estimate of forage stubble height was less than 1–2 inches at each of the key areas visited by Forest Service. On July 20, 2006, ranchers Sebedeo Chacon, Gabriel Aldaz, and others appealed Ranger Trujillo's decision based upon the significant rains since June 22, 2006 which greatly improved conditions on the range. In light of these changed circumstances, the ranchers implored the Forest Service to recognize that there was no justification for forcing them to go through the significant economic harm that would accrue as a result of having to remove all their cattle prior to the end of the permitted grazing season in October, 2006. Ranger Trujillo refused but, after Congressional inquiry, was forced to reverse her position.

Ranger Trujillo then tried to force an end to the grazing season in September 2006, instead of on October 31, 2006, based on an allegation that the permittees had failed to meet certain conditions she had imposed. At the end of the grazing season, rancher Chacon was having difficulty locating a small number of cattle that had strayed in the forest. This is a common problem and is due, in part, to the number of hunters and wood haulers who come onto the allotments and leave gates open and the fact that these allotments cover thousands of acres in the mountains. According to Ranger Trujillo, on October 5, Mr. Chacon had 17 cows that needed to be located and removed. On October 6, 2006, only 4 days after her arbitrarily imposed removal "deadline," Ranger Trujillo issued a decision suspending 20 percent of Mr. Chacon's authorized grazing for 2 years, a decision which had a profound economic impact on Mr. Chacon and his family, costing him tens of thousands of dollars. Mr. Chacon believes that he was singled out for disparately harsh punishment by Ranger Trujillo because she perceived him, correctly, as a leader of the permittees in the area due to the letters he had written to government officials protesting Ranger Trujillo's conduct.

On June 1, 2009, Mr. Chacon and Thomas Griego responded to Ranger Trujillo with a letter signed by 26 permittees which criticized her poor management style and her mismanagement of the two allotments. The letter was also sent to the New Mexico Congressional Delegation, Governor Richardson, and Ranger Trujillo's immediate supervisor, Kendall Clark. In the letter, the ranchers' stated that they were insulted by Ranger Trujillo's past letters and accused her of attempting to intimidate them. The ranchers pointed to Ranger Trujillo's unsuccessful effort to force them to remove their cattle from the allotments during July 2006. The ranchers also alleged that Ranger Trujillo and her staff had continually failed to install needed cattle guards or to fix plugged ones, and that Ranger Trujillo then used the fact that cattle would drift from one allotment to another, as a basis to threaten and/or sanction the permittees.

According to the ranchers, in retaliation for these letters, in 2010, District Ranger Trujillo made a decision to reduce the ranchers' use of their allotments by 18 percent—a decision that ignored the scientific analysis in a Forest Service environmental assessment ("EA") that such a reduction was not necessary. Despite the fact that it was a well-established practice and policy of the District Rangers in the different ranger districts within the Carson and Santa Fe National Forests (as well as in other Forests) to adopt the Proposed Action in the EA (the proposed action would have maintained the status quo with regard to permitted use), Ranger Trujillo disregarded the analysis contained in the EA and, making good on her predetermined decision to punish the ranchers by selecting an alternative calling for a substantial reduction in grazing. The decision of the Forest Service's Interdisciplinary Team contained in the EA did not support the action of Ranger Trujillo. However, Ranger Trujillo was angry with and determined to retaliate against Plaintiffs

for having the temerity to point out her errors and criticize her mismanagement of the two allotments and the entire Sustained Yield Unit.[2]

Although the ranchers had availed themselves of all known administrative and other remedies, on January 20, 2012, they filed a case in the Federal District Court for the District of New Mexico alleging, among other things, that they were being singled out through harassment and intimidation by Ranger Trujillo under color of law in retaliation for the ranchers' exercise of their First Amendment right of free speech and the right to petition the government for a redress of grievance. The Federal District Court, in a 115-page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive against them. However, citing to *Wilkie v. Robbins*, 551 U.S. 537, 550, the court held that the ranchers could not sustain a *Bivens* cause of action against Ranger Trujillo personally for damages sustained due to her acts of intimidation and harassment allegedly undertaken in retaliation for the ranchers exercise of rights guaranteed to them by the First and Fifth Amendment guaranteed rights. *See Jarita Mesa Livestock Grazing Association, et al. v. United States Forest Service, et al.*, Civ. No. 12–69–JB (Memorandum Opinion and Order, Docket 49, filed January 24, 2013). In essence, this meant that the district ranger remains free to engage in further acts of retaliation and the ranchers have no way of deterring her unconstitutional conduct.

Mr. BISHOP. Thank you, I appreciate that. Once again, your full testimony is part of the record. If there is anything additional you have, we will be happy to have that.

OK, Mr. Hage, we will come to you and show that this goes through several generations.

STATEMENT OF WAYNE HAGE, JR., TONOPAH, NEVADA

Mr. HAGE. Chairman Bishop and members of the committee, thank you for having me here today.

Yes, it does go several generations. In fact, my father and my mother were first involved, filed the first action in the court against the Federal Government for takings. We have buried both of them. The case outlasted them. My dad then—before my dad died, he had remarried to Congresswoman Helen Chenoweth of Idaho. We lost her, as well, and buried her, as well. And the second executor of my mother's estate—or, sorry, the first executor of my mother's estate, we also lost him, as well. So we have gone through quite a few people here, and now it fell on my shoulders.

Talking about governmental abuses, for the most part it is all a matter of record in three courts. The takings court, Federal takings court, court of claims, the ninth circuit, and the Federal District Court of the State of Nevada. Most of it is on record. I can highlight some of the abuses that have taken place.

One thing I will say, though, is what Judge Jones talked about in the Federal district court case that is still pending on appeal to

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[2] In order to create the appearance that her decision was based on science rather than an arbitrary determination to punish Plaintiffs for having engaged in conduct protected by the First Amendment, Ranger Trujillo falsely stated that the Forest Service had determined the current level of permitted livestock to be "unsustainable." In fact, the EA had not concluded that the current level of livestock grazing was unsustainable but had proposed that grazing continue at current numbers under Alternative 2. Furthermore, despite the fact that the 2002 Decision Notice on the wild horse herd required the Ranger to attempt to reduce the wild horse herd by taking certain measures set forth in that decision, Ranger Trujillo failed even to consider any alternative that would achieve the required reduction in the wild horse herd prior to reducing the number of Plaintiffs' livestock permits. Instead, Ranger Trujillo claimed the herd contained only 67 horses when 2010 Forest Service documents showed the herd was over estimated the herd was over 100 and, as a 2011 Forest Service survey showed, was close to 150. Ranger Trujillo had to know that the herd had grown well beyond 67, figure from a 2008 estimate, because almost no horses had been removed in the 2½ years since the study. In sum, although the EA proposed action was Alternative 2 (status quo) Ranger Trujillo selected Alternative 3.

the ninth circuit, what he talked about in those few instances—and the record is rich with his language—is very, very few of the instances that actually took place. Because when we went to that court, we were not—we were just trying to defeat the claim that we were trespassing, and we were trying to prove that, no, we were exercising our property rights, and just trying to make an honest assertion of those rights.

The actual abuses that were highlighted was evidence that was presented by the Department of Justice, through their own witnesses, trying to show that I was a bad guy. And it backfired on them, instead. So, I mean, the record is just a small record in front of that court. But in actuality, the abuses were so great I can tell you stories that would make the hair stand on the back of your neck.

But the main thing—and I don't want to say too much here today, because we always get retribution from the Federal employees, and they are never held accountable. Now, in our case, they were supposed to be held accountable. Two of the employees were sent to the U.S. Attorney for prosecution of conspiracy, because the judge found conspiracy between—by the BLM and by the United States Forest Service against our family to deprive us of our water rights and our grazing rights.

Now, nothing has happened so far. The judge even told the U.S. Attorney, he said, "I think you have a problem with this. I think there is a conflict of interest, and I think you need to find a U.S. Attorney from a different district, because your office is involved." So it goes higher up.

During the contempt hearing, the judge found two of the Federal employees—a Mr. Tom Seley and Mr. Steve Williams—in contempt of court for trying to pursue their own action and their own remedy outside the courtroom, even after, as he explained, they brought the case against me, they chose the jurisdiction.

So, when they were held in contempt—and this was, I thought, very revealing—they flew—in the contempt hearing they flew a lot of the Department heads from Washington, DC and the regional office to testify on behalf of the Federal employees, which was very kind of them to make that trip out there. However, the thing that became very apparent, when on the stand and being asked the questions, they said, "We expected this behavior out of the employees." Now, keep in mind, that was the behavior that the court found contemptuous and that the court was outraged with. They said they expected that behavior out of them.

So, this is not just—I mean it is isolated employees, yes. It is not, by any means, every single employee. But these guys were getting their direction, evidently, from the top. Now, I am probably going to get retribution for just being here and talking to you about this. I will take it. I hope they don't—well, I will take it. I am still in court.

But anyway, I do feel that we have a good system of law in the United States. Our court systems are still very good. And there is a reason for all these court rules and the court process. And I have found it to be, actually, very just in many cases.

What I would like to see is a remedy, a remedy to where they would be held accountable to the law, just the same as we are. I

mean we are darn sure held accountable. And thank you very much.

[The prepared statement of Mr. Hage follows:]

PREPARED STATEMENT OF WAYNE N. HAGE, TONOPAH, NEVADA

Since 1978 the employs of these agencies have demonstrated a disregard for my families' property rights and have punished us for making an honest use and assertion of these rights. The reason I accepted the invitation to testify here today is that I believe that it is so important for Congress to be aware of the atrocities that are being committed against my family and countless other ranchers. It is worth the risk or retribution from the agency employees. I would not be surprised if the BLM, USFS, and DOJ try to make my life difficult because I am testifying before this committee.

Many ranchers have a problem with the BLM and USFS. They have conducted themselves in a criminal manner and destroyed many ranchers. I personally have been at the receiving end of this criminal conduct. This problem however does not stop with the Hage family. The number of other ranchers that have suffered like my family is too numerous to count. I know many. In fact you can talk to almost any rancher who has to deal with the BLM and USFS and hear about another incident where a Federal employ has broke the law and was never held accountable. You will only once in a great while hear of minor punishment.

My family has spent over 23 years in the court protecting our property and liberties from these Federal employs. During these 23 years we have had eight published decisions and findings of Takings of our property by the Federal agencies, and findings of Conspiracy by the Federal employs.

Three courts have been witness to and addressed the government threats, intimidation and bullying. The Ninth Circuit Court of Appeals overturned a criminal conviction obtained by the USFS against my father for cleaning out brush from a ditch with hand tools.

The Federal Court of Claims trial Judge realized and found that it would have been futile for the Hage family to comply with all of the demands of the BLM and USFS employs. He thus ruled the Federal Government had taken our water rights. As potential cost to the taxpayer of $14,000,000 for the criminal acts of employs of the BLM and USFS.

The Chief Judge of the Federal District Court of the District of Nevada was so shocked by their behavior that he had found and ruled that the Federal Government employs engaged in a conspiracy against the Hage family. He also was convinced that the employs of the BLM and USFS would not stop and therefore gave my family a permanent Injunction against the Federal Government. (I pray that the Ninth Circuit Court of Appeals does not overturn the injunction, it is our only protection.)

The employs of the agencies, namely Tom Seley of the BLM and Steve Williams of the USFS were also held in contempt of court for trying to seek their own remedy after they realized the court process was not going their way.

The bosses (agency heads some from Washington DC) of Tom Seley of the BLM, and Steve Williams of the USFS, testified in a show cause hearing for their contempt that they expected Seley and Williams to conduct themselves in this manner that the court found contemptuous and which shocked the conscious of the court. This tells me the problem goes to the agency heads. The conduct, which the court saw as unlawful and vindictive was actually expected out of the Federal employs by the Agency heads.

The Federal District Court of the District of Nevada has referred the Tonopah BLM Field Manager and the Austin Forest Ranger to the U.S. Attorneys office for the District of Nevada, for prosecution of the conspiracy against my family, but then explained that there is a possible conflict of interest. The Court then suggested that a U.S. Attorney from another district handle the case. To this date I am not aware that anything will be done to hold these employs accountable for this conspiracy. I also do not expect that the U.S. attorney will ever hold these employs accountable for their actions. Thus they know they have enough protection from prosecution that they will not be deterred from acting this way in the future. It is for this reason and others that I believe I will be punished by employs of the BLM, USFS and DOJ for testifying before this committee. The dangerous part of this is that now the Federal employs will be braver than ever.

One of the main problems is that the employs of the USFS and BLM have the protection of the DOJ lawyers. They will go to great lengths to protect the employs of the USFS and BLM even to the extent of violating their ethics rules. One exam-

ple; The USFS claimed that we needed a 'special use permit' to maintain a July 6, 1866 Act ditch right of way with heavy equipment. The July 6, 1866 Act ditch right of way is a Congressionally granted and recognized right of way that preexisted the USFS and did not have any requirements or limitations for obtaining any permission for its maintenance and use. The USFS however claimed we could not maintain our July 6, 1866 Act ditch right of way without first obtaining a 'special use permit' from them, or we could only use hand tools. Even though we believe the USFS is incorrect in requiring us to obtain a 'special use permit,' (which supposedly they can deny) for any maintenance, we chose to only use hand tools to remove 'brush' that was obstructing water flow in the ditch. Nonetheless, the USFS prosecuted my father for cleaning this ditch. The prosecution was overturned by the Ninth Circuit court of appeals. However the DOJ lawyer, Elizabeth Ann Peterson, in clear violation of the ethics rules and with no support of the record, represented to the Federal Circuit Court in the case *Hage v. U.S.* that my father was using 'heavy equipment' and a dozer to clean this ditch. She argued that since we did not first seek a 'special use permit' from the USFS and were not denied this permit that our case was not ripe. The Federal Circuit Court based its ruling on these misrepresentations of the facts and partially overturned the decision in *Hage v. U.S.* on the grounds that the case was not ripe because we did not first seek and get denied a 'special use permit' from the USFS. Again the USFS even argued that we did not need this 'special use permit' if we only used hand tools, and the facts are only hand tools were used. Thus one intentional lie from a DOJ lawyer cost my family immeasurable hardship.

I have included some excerpts from the case *U.S. v. Wayne N. Hage, Executor of the Estate of E. Wayne Hage, and Wayne N Hage, Individually*. Case No. 2:07-cv-01154-RCJ-VCF. I find it best to read the Judges own words on this matter.

In the present case, the Government's actions over the past two decades shocks the conscience of the Court, and the burden on the Government of taking a few minutes to realize that the reference to the UCC on the Estate's application was nonsensical and would not affect the terms of the permit was minuscule compared to the private interest affected. The risk of erroneous deprivation is great in such a case, because unless the Government analyzes such a note in the margin, it cannot know if the note would affect the terms of the permit such that the acceptance is in fact a counteroffer.

The Government revoked E. Wayne Hage's grazing permit, despite his signature on a renewal application form, because he had added a reference to the UCC to his signature indicating that he was not waiving any rights thereby. Based upon E. Wayne Hage's declaration that he refused to waive his rights—a declaration that did not purport to change the substance of the grazing permit renewal for which he was applying, and which had no plausible legal effect other than to superfluously assert non-waiver of rights—the Government denied him a renewal grazing permit based upon its frankly nonsensical position that such an assertion of rights meant that the application had not been properly completed. After the BLM denied his renewal grazing permit for this reason by letter, the Hages indicated that they would take the issue to court, and they sued the Government in the CFC. The Government, having already denied the renewal grazing permit arbitrarily, then chose to interpret the initiation of the CFC Case as a refusal to appeal its administrative decision, despite the issuance of further protests by the Estate's attorneys. The Government refuses to consider any applications from Hage at this point. The entire chain of events is the result of the Government's arbitrary denial of E. Wayne Hage's renewal permit for 1993–2003, and the effects of this due process violation are continuing.

In 2007, unsatisfied with the outcome thus far in the CFC, the Government brought the present civil trespass action against Hage and the Estate. The Government did not bring criminal misdemeanor trespass claims, perhaps because it believed it could not satisfy the burden of proof in a criminal trespass action, as a previous criminal action against E. Wayne Hage had been reversed by the Court of Appeals. During the course of the present trial, the Government has: (1) invited others, including Mr. Gary Snow, to apply for grazing permits on allotments where the Hages previously had permits, indicating that Mr. Snow could use water sources on such land in which Hage had water rights, or at least knowing that he would use such sources; (2) applied with the Nevada State Engineer for its own stock watering rights in waters on the land despite that fact that the Government owns no cattle nearby and has never intended to obtain any, but rather for the purpose of obtaining rights for third parties other than Hage in order to interfere with Hage's rights; and (3) issued trespass notices and demands for payment against persons who had cattle pastured with Hage, despite having been notified by these persons and Hage himself that Hage was responsible for these cattle and even issuing such demands for payment to witnesses soon after they testified in this case.

By filing for a public water reserve, the Government in this case sought specifically to transfer to others water rights belonging to the Hages. The Government also explicitly solicited and granted temporary grazing rights to parties who had no preferences under the TGA, such as Mr. Snow, in areas where the Hages had preferences under the TGA. After the filing of this action, the Government sent trespass notices to people who leased or sold cattle to the Hages, notwithstanding the Hages' admitted and known control over that cattle, in order to pressure other parties not to do business with the Hages, and even to discourage or punish testimony in the present case. For this reason, the Court has held certain government officials in contempt and referred the matter to the U.S. Attorney's Office. In summary, government officials, and perhaps also Mr. Snow, entered into a literal, intentional conspiracy to deprive the Hages not only of their permits but also of their vested water rights. This behavior shocks the conscience of the Court and provides a sufficient basis for a finding of irreparable harm to support the injunction described at the end of this Order.

The Court will not award punitive damages under State law, because there is not "clear and convincing" evidence of "oppression, fraud, or malice, express or implied" on behalf of Defendants. See Nev. Rev. Stat. § 42.005(1). Defendants clearly had a good faith belief in their right to use the land as they did and had no intention to disregard the right of others. This does not prevent a trespass claim, but it does prevent punitive damages.

Defendants are also entitled to an injunction, as outlined, infra. There is a great probability that the Government will continue to cite Defendants and potentially impound Defendants' cattle in the future in derogation of their water rights and those statutory privileges of which the Government has arbitrarily and vindictively stripped them.

IT IS FURTHER ORDERED that to the extent not inconsistent with this Order, the Court adopts Defendants' Proposed Findings of Fact and Conclusions of Law (ECF No. 392).

The conspiracy ruling was much more limited than what it could have been. Had we presented all of our evidence the court would still be trying to write its decision.

It is warming to know that with regard to the Courts that we still have the Rule of Law. Although as I have found out it is nearly impossible to defend a persons property and rights in the courts due to the financial burdens and the length of time involved. (My Mother and Father filed the original case and were not able to live long enough to see the end of the litigation. My stepmother died before there was an end to the litigation and it is looking like my siblings and I may be in old age before this is concluded.) However, there it is becoming very apparent that there is no rule of law with regard to the employs of the BLM, USFS and perhaps the DOJ, there we have the rule of man. I remind Congress that Aristotle explained that the difference between a correct form of government and perverse form of government is that the former is the Rule of Law and the latter is the rule of man.

What solution may I offer?

The Citizens of this great country need to have the means to hold the employs of these agencies accountable for their actions. I believe that only if they are held accountable will they stop the Threats, Intimidation and Bullying. To accomplish this we need at least two things from Congress:

1. We need harsh penalties to be placed upon the employs who break the law and violate a persons rights. They are using the color of law in the performance of their actions, and they have the force of the Federal Government to protect them.
2. There must be an easier way to be able to hold them accountable. One of the biggest problems is that they claim their actions are actions of the Federal Government and thus they claim sovereign immunity. The individual is then forced to go up against the full force and might of the Federal Government and prove that it was not an action of the government in order to proceed. This is a very difficult to do. We need to take the sovereign immunity away from Federal employs who break the Law.

Thank you for allowing me to testify before this committee

Mr. BISHOP. Thank you. I appreciate your testimony. You could have gone on to the hair-raising stories; I had my hair cut specifically for this.

[Laughter.]

Mr. BISHOP. Representative Grijalva hasn't done that, but I did.

For a questioning period, we will turn to the members of the committee. You have 5 minutes, again, for questioning.

I am going to yield my time originally to Mr. Tipton—I think you were here first—if you have questions for this panel.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to thank all the panel for taking the time to be able to be here.

Mr. Chairman, you are probably like me. I am a little disturbed when I am hearing Mr. Lowry talk about intimidation when it comes to being able to protect those private property rights, when I hear Mr. Hage talk about being worried about retribution for simply coming here to be able to tell your story about being able to protect a private property right.

Mr. Hage, could you maybe expand just a little bit more for us? Your family spent 23 years, you have gone through both your folks passing away, 8 different court cases, in terms of trying to be able to protect your private property rights. And that is part of the reason we appreciate Mr. Lowry pointing out, as well, the water rights protection bill that Mr. Amodei and I have introduced.

Do you believe it is important that the Federal Government—that Congress, specifically—finally address this, and tell those agencies that it is your water, and it needs to be protected as a private property right?

Mr. HAGE. Oh, for sure, it is very important. I mean, even Aristotle will tell us, you know, the difference between the correct form of government and a perverse form of government is whether we have the rule of law or the rule of man. And we don't have the rule of law with some of these agencies, with some of the individuals in some of the agencies. I am not going to just say agency only. I am going to say, you know, certain individuals in some of these agencies. And when that rule of law breaks down, well, then there is nothing protecting us.

Now, you can tell the agency to stop doing what you are doing, but unless you give the actual people the power to hold them accountable, they are not going to hold each other accountable. In other words, the bosses are not going to hold them accountable. I am convinced of that. I have seen that in the past.

So, it is a matter of great importance, in my opinion. We have got some great decisions out of the courts. But still, there is no remedy for us, no guarantee that our property rights are going to be held sacred or valid.

Mr. TIPTON. Under Equal Access to Justice have you ever been reimbursed for your financial costs?

Mr. HAGE. No, no, I have not. Now, there is a reason for that, too. It is still on appeal, so the time has not told. So in the court process that has not completely gone through. When the appeal is over, there is a certain time period afterwards that we get to submit our bill. And, supposedly, under the Equal Access to Justice Act, we will get reimbursed for the cost.

However, myself personally, I won't. I represented myself pro se in the court. And the Equal Access to Justice Act does not apply to me. The lawyer that I hired to represent my father's estate, that will get reimbursed. But myself, personally, I devoted 3 years and studied the law myself to try to defend myself in these courts. We got a really great decision, but I am out every penny of it.

Mr. TIPTON. Yes. Mr. Valdez, your family has been here since the 1500s. Did you put that water to beneficial use when you described bringing in those first cattle herds, before the Forest Service even existed? Did your family feel that they were putting that water to good beneficial use?

Mr. VALDEZ. Absolutely. In fact, we engaged with the people that were already there in expanding on irrigation infrastructure to enhance production of fodder for winter use, and we improved springs, and continued to improve water supply sources on Federal public lands.

Mr. TIPTON. Would you concur that it is important at this time that we do pass that message, we do pass through Congress the—what is just your right, to be able to hang on to that private property water right that is so dear to the West?

Mr. VALDEZ. Absolutely. Water is everything,

Mr. TIPTON. Great. Mr. Lowry, you talked about compiling better than $800,000, I believe it was, in terms of costs, just to be able to protect your private property rights. How is your family going to be able to sustain that? You had mentioned about intimidation, and many people just dropping out and giving up under the threat of Federal intimidation. How is your family dealing with that?

Mr. LOWRY. Well, we are surviving. I would say one thing, that I do want to give compliments to our attorneys who fought that case. They have not been pressuring us to get that paid. They are giving us a very generous amount of leeway on that. Otherwise, we would be out of business right now. And not to put too fine a point on it, $888,440.07 was the last bill.

And, if I could address the question you posted to the other two gentlemen on the importance of passing the Water Rights Protection Act, I would concur with that. And I think, in addition to that, I do not believe that the agencies are going to give up, because it has been an ongoing policy for decades to obtain the water.

I read a transcript of a speech that Secretary——

Mr. BISHOP. We are out of time, I am sorry. We will come back to those questions again, as well. And I will ask how you came up with $.07, too.

But, Mr. Grijalva, do you have questions?

Mr. GRIJALVA. Yes. Thank you, Mr. Chairman. A long question, and hopefully some—for the panelists, all of them.

The Federal Land Policy and Management Act of 1976 requires that BLM manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values that, where appropriate, will preserve and protect certain public lands in their natural condition that will provide food and habitat for fish and wildlife and domestic animals, and that will provide for outdoor recreation and human occupancy land use."

I understand, from all the testimony of the witnesses, that there are grievances with Federal land management agencies over specific cases. But, correct me if I am wrong, and from what I understand you are not saying that BLM or the Forest Service never has a legitimate reason to restrict grazing and other uses to protect land that is the property of the entire American people. Am I correct in that assumption, from the witnesses, that there is a—just go down——

Ms. BUDD-FALEN. Yes, you are correct.

Mr. GRIJALVA. Sir? Do you feel——

Mr. ROBBINS. I would say that they do have a management right. And I don't think any of us would disagree with that.

Mr. GRIJALVA. OK, thank you. Sir?

Mr. LOWRY. Yes, Congressman, I agree with that. They have the right and a duty and the responsibility to manage, and manage according to the law and to the Constitution, sir.

Mr. GRIJALVA. And the law we are referencing is the 1976 law that I am referencing.

Mr. LOWRY. Yes, and I believe not only FLPMA, but all laws pertaining——

Mr. GRIJALVA. Ms. Richards?

Ms. RICHARDS. I would also agree that the land management agencies have the charge to manage correctly.

I would also add to what you have stated with the laws. They also require that economic analysis is done on their decisions, allow for multiple use and——

Mr. GRIJALVA. OK.

Ms. RICHARDS [continuing]. That sound science is used to make those decisions.

Mr. GRIJALVA. Sir?

Mr. VALDEZ. I agree that FLPMA generally outlines the responsibilities of land management. In our particular area, we dispute that the government legitimately acquired the lands that they are managing; that is a separate issue. And I think they have to manage in the——

Mr. GRIJALVA. That is the land grant issue that——

Mr. VALDEZ. Yes.

Mr. GRIJALVA. Historic—yes. Sir?

Mr. HAGE. Yes, sir. Thank you. I do agree with your statement about FLPMA concerning public lands. The one thing that I will highlight, though, is they can manage those lands, but even with the savings clauses in FLPMA, they cannot do so with—and destroy property——

Mr. GRIJALVA. OK.

Mr. HAGE [continuing]. Private property in that respect.

Mr. GRIJALVA. One more follow-up question for all the witnesses. In 2000, the *Public Lands Council v. Babbitt*, the Supreme Court looked at the language in the Taylor Grazing Act of 1934, which was intended to address the deterioration of Western range lands due to over-grazing them. Ranchers argued that new regulations infringed on their rights to graze. The Supreme Court unanimously ruled that there was no right to graze. Land management decisions should be guided by broader public interests.

I would like our witnesses' view on this case. Do you believe it was correctly decided? Do you believe the Federal Government has a duty to protect those grasslands, forests, and wildlife for future generations? And, when ranching activities threaten these natural resources, that these activities should be regulated? And I will just go down.

Counsel.

Ms. BUDD-FALEN. Your Honor, actually, what the United States Supreme Court said is that a challenge to the Bruce Babbitt regulations as a whole was incorrect. But if you read the concurring opinions, particularly that of Justice O'Connor, she said that, absolutely, individual instances of abuse, or individual instances of challenge to the grazing regulations based on——

Mr. GRIJALVA. But the fundamental issue of no absolute right to graze, and the land management decisions must be guided by a broader public interest, that is the crux of that decision.

Ms. BUDD-FALEN. But she didn't—they didn't say that, blanket, there was no absolute right to graze. What they said was that the Taylor Grazing Act was in full force and effect, and they upheld the tenth circuit's ban on saving the land or creating the land for——

Mr. GRIJALVA. Yes, but——

Ms. BUDD-FALEN [continuing]. Use.

Mr. GRIJALVA. You have me at an advantage or disadvantage, depending on your point of—on your frame of reference. I didn't go to law school, but that is kind of the text that I looked at.

Sir.

Mr. ROBBINS. Well, when we bought these ranches, we bought a preference right and we paid for a permit. And these go back before there was even a State. My ranch goes back to 1871, before the State of Wyoming was even incorporated. And those rights have been with the ranch since then. I lost——

Mr. GRIJALVA. Yes, you don't agree with the decision.

Mr. ROBBINS. I don't agree with it, and I say that since 2004 I have not had those grazing privileges. OK?

Mr. GRIJALVA. Thank you.

Mr. BISHOP. Mr. Daines, do you have questions?

Mr. DAINES. Thank you, Mr. Chairman. I represent the State of Montana, so we are very familiar with the issue of public lands, Federal lands, and private property rights.

I have to tell you that the title of this hearing is "Threats, Intimidation, and Bullying by Federal Land Managing Agencies." Boy, the last few weeks out in Montana we have had hunters trying to walk across public lands to be shut out, trying to access State lands to be shut out and closed to the public. And I have had many, many hunters come to me and say, "Steve, for the first time we realized these aren't public lands, they are government lands." And the government is shutting out these lands to their own people, and it is outrageous.

Well, let me pivot back over to the panelists here, and thanks for the testimony. Some of my constituents have had similar experiences with the Federal Government operating near public lands in Montana. I will tell you the Federal Government must be a better steward of public resources, and must become a better neighbor of the private landholders.

It is interesting to hear many of you talk about the cost of litigation you have had to endure with the Federal Government. In Montana we witnessed that firsthand with these fringe extreme groups that fight our Forest Service in court, holding up and stopping important timber sales. In fact, I think region one has one of the worst trends, worst records of habitual litigants of any region. And to make this situation worse, adding insult to injury is when these groups receive compensation from the Federal taxpayers when they prevail for the Equal Access to Justice Act.

Now, it is my understanding that EAJA was intended to help citizens who are directly harmed by the Federal Government. That is the small business owner, the private rancher, many of you who have testified here today. However, I also understand you are having a hard time maybe getting compensated for your—for the work that you have done fighting on behalf of your rights.

First of all, Mr. Lowry, do you think we should have some reforms to the Equal Access to Justice Act that might facilitate helping the people it was originally intended to help, which was the little guy, not the habitual litigant?

Mr. LOWRY. Yes, Congressman. Thank you. In our particular case—you have probably seen in the written testimony—the Idaho Supreme Court denied awarding EAJA claims on their belief that it was—State court did not fall under the jurisdiction of that. And there is a Nevada Supreme Court that takes a different view. And I think that could be resolved by amending EAJA. And I would suggest, in the definition section on "court," that it would state that court includes State courts having jurisdiction over the subject matter.

They had to do that with veterans' courts. I read the Congressional Record on why veterans' courts is listed under "court," and it was because veterans' courts were not awarding EAJA fees. And so it was amended to redress that problem. So I think it could be handled the same way.

Mr. DAINES. I appreciate that input. And I am a cosponsor of Representative Lummis of Wyoming's—her Government Litigation Savings Act, which is going to help improve this law. And I look forward to working with her and the team here to that end.

Perhaps—could you also expand—we talked a bit about looking out for the little guy, which was the intent of EAJA in the first place, the private land owner, the little guy who was taking on the Federal Government? Could you also maybe expand on the needs for Equal Access to Justice Act reforms that might address the habitual obstructionist lawsuits that are a big problem in many of the Western States? Yes, please.

Ms. BUDD-FALEN. Thank you. That is actually one of the problems that the Governmental Litigation Savings Act is supposed to take care of, are these habitual litigants.

One of the problems that you have under the Equal Access to Justice Act is that the statutory cap on your net worth only applies to businesses and individuals, because the Act was truly meant to help protect small businesses and individuals. So there is a $7 million net worth cap. But that doesn't apply to litigant environmental groups, such as the Sierra Club, whose net worth is $56 million. They can get attorney's fees. Center for Biological Diversity's net

worth is $10 million. But because they are "non-profit public interest," they can be awarded attorney's fees.

And so, often what you have is not just awards, but simply the Justice Department willing to settle these cases with these groups, some of which, for undefined amounts that are not noticed to the public, and so at this point, without any transparency, this Congress and members of the public have—absolutely have no idea how much in attorneys' fees are going to groups that are worth $56 million, and could certainly afford their attorney, whereas these individuals who are fighting for their livelihoods cannot get that same money, because they own land.

Mr. BISHOP. Thank you. I am sorry, I am going to have to cut you off there. I appreciate it.

Mr. Huffman, do you have questions?

Mr. HUFFMAN. Thank you, Mr. Chair, and thanks very much for the witnesses.

You know, I think our Federal Government, our Federal land managers, should always be good neighbors. They should always comply with the law. And so, I am always concerned when I hear where a court has actually found wrongful conduct. I appreciate your testimony, Mr. Hage.

But I do think it is important also to acknowledge that BLM administers 18,000 grazing permits in this country, that the U.S. Forest Service administers 8,000 such permits. And if we could stipulate that we should be concerned when there is a violation of law and when there is bad conduct, and if it were approached in that manner there would be a spirit of great bipartisanship in trying to make sure there is accountability and lessons learned and better conduct from that.

But when we title hearings with loaded terms, such as today, when we bring forward not only cases that have been validated by courts, but cases that are unsubstantiated hearsay, all manner of allegations, when we characterize the Federal Government as a hotel thief, going room to room, trying to find who they can fleece, things quickly rise to the level of caricature. And, unfortunately, that is what I am afraid we are talking about here today.

So, I just want to express my dismay that, instead of what could be a bipartisan serious oversight approach to incidents that I don't think anyone on this panel would tolerate, regardless of their party, that we are once again trying to stage a whole bunch of mini-sagebrush rebellions because we don't like the Federal Government. And that is just not a constructive place to be.

If we want to look at habitual litigation and that problem, I sure hope that scrutiny includes groups like the Pacific Legal Foundation, Cause of Action, the Competitive Enterprise Institute, who I see ever-present in these proceedings, who simply troll around, looking for opportunities to bring property rights cases against the government, often unsuccessfully. And we could certainly take a good, hard look at some of the frivolous litigation that is constantly being asserted in the name of property rights. But, again, we don't see that kind of balanced approach. And I just want to express my concern.

With that, I will yield the balance of my time to the Ranking Member, Mr. Grijalva.

Mr. GRIJALVA. I appreciate it. Ms. Richards, the Gateway West Transmission Line, a route that you suggest would go through the heart of the specially designated public land, the Birds of Prey National Conservation Area, which Congress established 20 years ago. And last year, on behalf of the county initiative, you wrote to Secretary Salazar saying, "Let's pause the permitting process, convene a collaborative effort to address that." Obviously, more local work needed to be done on the route.

When the BLM released their final Environmental Impact Statement for public comment in April, the Agency said it might delay making a decision on parts of the line in your area in order to continue to work with local stakeholders. Do you support that BLM decision?

Ms. RICHARDS. The BLM decision that we have right now we currently do not support. There was a totally collaborative effort that took part, including former BLM employees that worked at the Birds of Prey that have the history and the scientific background to—for the county on this matter.

Mr. GRIJALVA. So the decision to hold in abeyance any final decision on the route in those areas that you raised as concerns in your letter, you don't agree with that decision by the BLM?

Ms. RICHARDS. I am sorry. I am not understanding what you are asking.

Mr. GRIJALVA. When the BLM released that final Environmental Impact Statement in April, the Agency said it might delay making a decision on parts of the line in your area that were raised to Secretary Salazar in order to continue to work collaboratively with local stakeholders to find the best solution. My question is, do you support that decision by the——

Ms. RICHARDS. I support the decision to delay that, but I would also, with due respect, say that we have gotten a letter since, in September, that shows the lines still coming across our private ground. That came from the BLM, from the Washington, DC level.

Mr. GRIJALVA. So, in response to the request for collaboration, there is a pause in the permitting process. The statement itself says, "We are not going to go forward with that route until we have more involvement." You support at least that part of the involvement. It kind of seems opposite of bullying and threatening at this point, doesn't it?

Ms. RICHARDS. I do support that part of the involvement, as long as it is upheld by both parties, the agencies and those that are in the county.

Mr. GRIJALVA. OK, thank you.

Mr. BISHOP. Thank you. You all should have seen what I wanted to call this hearing. This is a soft version of it.

[Laughter.]

Mr. BISHOP. Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman.

You have been an excellent panel. I represent northeast California, the top of the State where it borders Nevada and Oregon. So we feel a great kinship to you folks from the other Western States. Indeed, we feel like all of us in the West are targeted by urban areas, the East Coast, people that—understand what we do

or seem to have an appreciation for it in agriculture, in ranching, in resource management and extraction.

And to the idea that somehow farming and ranching are harmful to the Federal lands, the public lands, I have never seen any really good evidence of normal practices, good, sound stewardship, having it be harmful. It seems to be a shift in opinion by those that govern or regulate us, a different type of people in government these days than what maybe previous generations—that look at it not as just public lands, but their lands, or government lands, as was asserted a while ago.

So, to hear that—what you all go through, it really breaks my heart, what you have to do to defend things that have been practices of your families or your neighbors or your neighborhoods for decades or, in the case of Mr. Valdez, even centuries of what you have done in good faith as good stewards.

And so, I appreciate greatly your willingness to fight back. Because, again, like in the area where I represent, the area of Siskiyou County, places like that, they do feel like they are being abused and that people show up with more ideas or more visions for how they should manage their land, or a reintroduction of the gray wolf to their area. Now, if you have ever seen what those creatures do to livestock, to game, they are not happy with more government intervention thinking that, oh, wouldn't it be nice to introduce these species, et cetera.

So, to get to Mr. Lowry there, you talked about a $888,000 bill so far that maybe your legal team is working with you on that. If you have already been rejected—well, is that the final answer under Equal Access to Justice there, or do you have any other recourse, as that was, again, brought on by a Federal action that you were even in that court?

Mr. LOWRY. No, we have no other recourse. We applied to the U.S. Supreme Court concerning the Idaho Supreme Court's decision on that issue, on the awarding of attorney fees. And we were hoping that perhaps, with the differing opinions between the Idaho and the Nevada Supreme Courts, that they would take that case, but they did not. So, as I understand it, we have exhausted our abilities in that arena.

Mr. LAMALFA. So, to a farmer or rancher at my level, our level, that is real money. How does a person come up with that at the end of the day?

You know, Mr. Hage, you have been through—I have known your family name for many years before I have been in this role here, and I don't want to ask you personally what your numbers are, but I imagine they are pretty extensive, as well.

And one more side question, too. Did you grow up with the idea that you were going to become—you are an attorney, correct?

Mr. HAGE. I am not a licensed attorney; I am a pro se litigant.

Mr. LAMALFA. OK.

Mr. HAGE. Yes.

Mr. LAMALFA. But you have done much—is that what you grew up to do?

Mr. HAGE. No, sir, your Honor. I grew up on the back of a horse in the middle of the sagebrush. But it is what I had to do in order to protect our rights.

Talking about numbers, I mean, our number is just about as—well, it is outrageous. It is about—4.3 million is what I currently owe on one attorney bill, and quite a bit on another attorney bill. How do we get compensation? We are hoping that the court will give us compensation in the court of claims. And the trial court certainly awarded it to us, but the appeals process has been years and years. And——

Mr. LAMALFA. Does anybody on this panel feel like—that your access to justice, when you have to bring lawsuits to defend yourself, that these are frivolous?

Mr. ROBBINS. I have spent around a million dollars myself, and it is absolutely not frivolous. And I would be glad to meet with Mr. Huffman and discuss what he considers frivolous.

And when they try to put you in jail for 2 years, when they audit you within 3 weeks of winning that decision, and all the economic losses from the guest ranch business to running 50 percent for the last 10 or 12 years, it is $20 or $30 million worth of losses to us and to that community, 15 jobs, just in the guest ranch business, that went away. It is huge for a small community of 4,000 in the whole county. We are the largest ranch there, the largest agricultural enterprise there, even at 50 percent. So, it is huge for us, and we would like some relief.

Mr. LAMALFA. Thank you all for coming the distance you have come here today, and for fighting back, and for not just taking it sitting down. So we all appreciate it, and we will be with you.

I yield back.

Mr. BISHOP. Thank you. Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. You have all told heartrending stories of threats by your own government, of everything from jail time to financial ruin. My colleague from California says that this is caricature. Caricature is defined as exaggerations by means of often ludicrous distortion. Do any of you—would any of you want to make a reply to that charge?

Mr. ROBBINS. I will make a reply. I had a meeting in—with the Department of the Interior and the BLM in Washington, DC. I brought to that meeting—there were 12 people in the room. I was sitting at the end of this table with Department of Justice microphones here, Department of Justice lady here, on the right. I brought the transcript from the trials. I proved perjury against the number two man in the organization. I read the transcripts, turned to the Department of Justice lady and said, "What are you going to do?"

She said "Oh, well"—I said, "Let me tell you, folks. If they had just proved perjury on me, they would be hauling me out of here right now." And everybody in that room didn't say a word. You could have dropped a pin in that room. Every one of them in that room went just like this. They know the power of the Federal Government. And that has been back in 2004. Nothing has been done to any of them for perjury.

The reason I didn't get to go to court is because I had so much perjury involved in the case that they were going to lose, and that is why it went to the Supreme Court. It is ridiculous that somebody that is abused the way I have been abused cannot get his day in court. That is all I wanted, give me my day in court.

Mr. MCCLINTOCK. Anyone else want to respond?

Ms. RICHARDS. If I could respond on behalf of our county and the county residents, we are plagued right now with a permit renewal process that is 150 out of—or 125 out of 150 allotments in our county, which, as I stated, is 77 percent Federal land.

It is not caricature when those small rural communities are affected. We have schools, we have small businesses that are dependent upon that. And when we have agency people that are making decisions that are not coordinating as they are charged with on the county level, and those citizens do not have any recourse, it is time for a change in the law.

So, I would say that when you go out to these small rural communities and see these people and how it affects their lives—Tim Lowry is from Owyhee County. We know how that has affected him. We have many others in there. We have got current cases right now where one is only a third of the way into the process, and they are at $55,000.

And so, I would say that it definitely has effect, and we definitely need a change, and it is definitely something that needs to be heard, because it is out there.

Ms. BUDD-FALEN. Your Honor, the other thing that I would say is that we are only asking to be able to go to court. I am not telling you that all these people would win, I am not telling you that every Federal employee is bad, that every employee has an agenda. But each of these people here have suffered through individual employees.

When we were called for this hearing, I personally just did some research, because I don't represent a group. We found 12 additional stories of people that have these kind of stories, but we don't have a recourse. We don't have a way to go to court and plead our facts.

Mr. MCCLINTOCK. Well, let me ask you this.

Ms. BUDD-FALEN. That is what this is.

Mr. MCCLINTOCK. What would you have Congress do? How much of this requires changes in law, and how much of it extends to the attitude of public officials?

Ms. BUDD-FALEN. You can't legislate the attitude of public officials any more than you can legislate the attitude of the citizens here. But right now it is up to Congress to waive the sovereign immunity of individuals, so that we have a cause of action in court. If we bring a frivolous case, a Federal judge has all the power under the Federal rules of civil procedure to dismiss the case. You can bring sanctions against the attorney.

We are not asking to be able to bring all sorts of frivolous cases against general policy. We need Congress to waive the immunity of Federal officials, just like Congress did with State officials and local officials under the Federal Civil Rights Act, so that we can bring our individual cases to a Federal court and have a Federal judge look at the rule of law and make a determination.

Mr. MCCLINTOCK. Sovereign immunity, I think, is itself a puzzling concept in a republic like America. In the European countries, sovereignty flows from the government. America has a very different foundation, and that is its sovereignty flows from the people. The people are sovereign, the government is their servant. And it seems to me that we are moving more and more toward a Euro-

pean model vision of sovereignty, where your rights are derived not from what the founders call the laws of nature and of nature's God, but rather, from the government, itself.

And, as the French discovered when they tried to mimic the American Revolution, if you place that source of rights within the government, you have a very, very unstable situation. And maybe that is something we need to consider.

Mr. BISHOP. Thank you. Mr. Amodei? Happy to have you come back. Do you have questions for this panel?

Mr. AMODEI. Just briefly. Mr. Hage, thank you for your testimony. You used to be in my district, but obviously you didn't like the representation. So you fixed that.

[Laughter.]

Mr. AMODEI. Can you tell me if the folks in your statement that are with the Federal land management agencies in Nevada—does Mr. Seley still work for BLM in Nevada?

Mr. HAGE. He retired—talking about Mr. Seley, Congressman. Mr. Seley retired, I believe it was, right at the end of May. And I think it was right about the time the decision in my case came down.

Mr. AMODEI. OK.

Mr. HAGE. He retired at the same time——

Mr. AMODEI. Was he headquartered out of the Ely office, the Tonopah District?

Mr. HAGE. No, he was——

Mr. AMODEI. Where was he?

Mr. HAGE. He was right there in the Town of Tonopah. He was in the Tonopah field office, as they call it, in the Battle Mountain Grazing District.

Mr. AMODEI. The Battle Mountain District, OK. And what about Mr. Williams? Still employed by the Forest Service?

Mr. HAGE. I assume he is. I have no idea. Now, my correspondence with the Federal agency no longer has Mr. Williams's signature on it. It was another individual. I do believe he is still there. I haven't heard that he is retired. I believe I would have heard that——

Mr. AMODEI. But he is out of the Austin Ranger District?

Mr. HAGE. Austin Ranger District in the Toiyabe National Forest, yes.

Mr. AMODEI. Thank you. Thank you, Mr. Chairman, I yield back.

Mr. BISHOP. Thank you. Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. I have a quick question for Ms. Budd. You got into a little exchange about a Supreme Court decision with the Ranking Member, and you seemed to have a different interpretation. The Ranking Member seemed to be interpreting the Supreme Court decision as there is no right to grazing. And I kind of heard you going back and forth.

Can you explain that decision, in your opinion, what you think it means? It seems like it was being mischaracterized a little bit by the Ranking Member, so I just want to make sure that we understand that Supreme Court decision better.

Ms. BUDD-FALEN. Certainly, sir. The case is *Public Lands Council v. Babbitt*. It was a case that was brought as a general challenge to the regulations that Bruce Babbitt put into place when he

was Secretary of the Interior that, in the Public Lands Council's view, actually changed the focus of grazing under the Taylor Grazing Act.

If you look at the Federal Land Policy and Management Act, it does not repeal the Taylor Grazing Act. It adds additional things to be considered, but it never repealed that Act. The case was brought in the Federal District Court in Wyoming. It went to the Tenth Circuit Court of Appeals. The Tenth Circuit Court of Appeals actually rejected some of the range land reform regulations and accepted others, but it did so only on the basis that, because the regulations were changed as a whole, and not considering specific fact situations, that certain portions of those regulations could go forward.

The Supreme Court, and particularly the concurring opinions, said that, "When we view these regulations as a whole, they may or may not be valid. But you are free to bring individual factual situations challenging these regulations in individual places." And that concurring opinion was by Sandra O'Connor.

Mr. LABRADOR. All right, thank you. Ms. Richards, welcome. It is good to have you here again.

How has the BLM's management of the Gateway West project negatively impacted Owyhee County, which is in my district, by the way?

Ms. RICHARDS. Yes. I guess—and thank you for allowing us to be here today—some of the negative impacts have been, as I indicate in my testimony, there have been hundreds of hours that have been spent not only from residents of the county, but we have environmental groups, many of the environmental groups that are participants on the Owyhee Initiative. And, as Mr. Grijalva alluded to, we also—the initiative wrote a letter of concern about the steps that were being taken.

The county has produced numerous maps to help in this coordination. They have gone out and ground-truthed a lot of the paths. And we have actually hired people to look at the Birds of Prey aspect and make sound, science-based resolutions about the project that we could have, going forward.

Mr. LABRADOR. And I think you testified that the Birds of Prey experts are actually disagreeing with the Federal authorities over here. Isn't that correct?

Ms. RICHARDS. Actually, on the local level they are, and we have former employees that are retired now that are in consulting that have also wrote opinions of that.

Mr. LABRADOR. OK. And I think you were just recently quoting the Idaho statesman speaking favorably about the collaborative process. Isn't that correct?

Ms. RICHARDS. You are correct. Rocky Barker did come out to an event that was held in the Owyhee. And yes, we are still in favor of collaborative processes, inviting all——

Mr. LABRADOR. So you are not here testifying against the collaborative process.

Ms. RICHARDS. Absolutely not.

Mr. LABRADOR. Which—it seems like that was what was trying to be implied by Mr. Grijalva.

Ms. RICHARDS. Correct.

Mr. LABRADOR. So, tell me why you think the collaborative process works, and why you think, in this case, the Federal agencies are actually not complying with the collaborative process?

Ms. RICHARDS. I am going to make a clarifying statement there. The collaborative processes work, as I indicated in response to Mr. Grijalva's question, when both sides are playing by the same rules. What we see as veiled threats or possibly, I would say, intimidation is when the Federal agency goes along, leads everybody to believe that they are playing by the same rules, and then oversteps their boundaries by changing the rules in the middle as, I would say, of a card game.

Mr. LABRADOR. Can you give an example of how that happened in Owyhee County?

Ms. RICHARDS. Actually, there have been two of them. One of them was in a wilderness management plan, where the BLM wrote new guidelines after legislation was passed on something they already agreed on.

The other would be in the Gateway West Transmission and what came forward from a collaborative effort, and then what came down as the preferred alternative.

Mr. LABRADOR. Thank you. And I want to welcome Mr. Robbins and Mr. Hage, Jr. Mr. Hage, Jr. was actually the stepson of my predecessor, who was a very fine congresswoman from the State of Idaho. So thank you very much for all of you being here, and thank you for your service. And I think it is a shame that anybody would imply that anything that you do is a caricature. And I think it is a pretty shameful statement, and I hope someone can retract that.

Thank you very much, and I yield back my time.

Mr. BISHOP. Thank you. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I want to thank all of our witnesses for being here, especially our witnesses from my home State of Wyoming. And I want to thank Mr. Robbins and Karen Budd-Falen for making this long trip.

Now, let me get this straight, Mr. Robbins. I just came out of a different hearing, so I want to make sure I understand the facts. You own a ranch in Hot Springs County. The BLM reduced your grazing allotment, canceled your right of access across BLM land to your own property, charged you with 27 livestock trespasses on to BLM, brought criminal charges against you which were dismissed by a jury after only 25 minutes of deliberation. Is my memo correct? Is that what happened to you?

Mr. ROBBINS. You left—well, they did reduce, but they have eliminated—I haven't had a grazing permit since 2004. So——

Mrs. LUMMIS. And most of these actions stemmed, as I understand it, from your refusal to grant the BLM an easement across your own property. Is that true?

Mr. ROBBINS. I discussed that in the beginning. And they—I know it is hard for a lot of people to believe, that they would be so intent on doing something like this. But it really comes down to an attitude that you have to understand, that is when they ask you something they expect you to say yes.

Mrs. LUMMIS. Yes.

Mr. ROBBINS. And when you say no, then it creates an atmosphere that led to the intimidation that has been 19 years and

going. And that intimidation included trying to put me in jail for 2 years, and also, you know, within 3 weeks I got an IRS audit, and it was a direct tie between the——

Mrs. LUMMIS. Did you ever meet a woman by the name of Lois Lerner?

[Laughter.]

Mr. ROBBINS. No, but——

Mrs. LUMMIS. I digress.

Mr. ROBBINS [continuing]. She is probably calling right now.

Mrs. LUMMIS. I apologize for that. Hey, Mr. Robbins, were you aware of the BLM's expired easement when you bought the property?

Mr. ROBBINS. No, I was not. It was a conspiracy of sorts. And, really, what I would have to say to you is that the previous owner was under the threat of blackmail. He was in a very bad financial position. He could not resist this, because they would not have transferred the permits, and it would have killed the deal. He kept it quiet until after—and I wouldn't have known about it until after the event, unless they called and didn't have their recorded easement. That is the only way——

Mrs. LUMMIS. Yes, because, as I understand it, they failed to record it under Wyoming law when the ranch was sold to you, so you had no knowledge of this easement. Am I correct about that understanding?

Mr. ROBBINS. That is right, yes.

Mrs. LUMMIS. OK. Did the BLM ever give you any consideration to your offers to sell them an easement?

Mr. ROBBINS. Well, you know, I explained that earlier. The 8 miles to their half-mile, and public versus private, and then I get to pay them for that privilege, I told them then that I would have been willing to negotiate something. But under the circumstances, I was not willing to do that. And they said——

Mrs. LUMMIS. Ms. Budd-Falen——

Mr. ROBBINS. They said to me that the Federal Government does not negotiate.

Mrs. LUMMIS. Only with terrorists, apparently. OK.

Ms. Budd-Falen, did the BLM have any other options at their disposal to get the easement that they didn't pursue?

Ms. BUDD-FALEN. Absolutely. The Fifth Amendment provides that the Federal Government can take private property, but it has to be for a public purpose with due process and just compensation. But, rather than going through those requirements, the BLM—specific employees, in this instance—simply believed that they could harass and blackmail Mr. Robbins into just giving up an easement outside of the Fifth Amendment protections.

Mrs. LUMMIS. Mr. Robbins, these dozens of legal actions against you, you won a few of those on the merits. Isn't that correct?

Mr. ROBBINS. I did. Actually, I began a process—I actually believed that the system was not broken at the time, and I began to fight these trespasses. I fought three of them, $111 worth of trespass fees. I spent $250,000 to defend myself there. I proved in that hearing perjury was—the second guy in there was impeached by the court, and I still lost. OK? I lost.

Mrs. LUMMIS. At any point during this nearly decades-long harassment campaign against you, did you ever consider just giving in to the BLM, just to make it go away?

Mr. ROBBINS. I wish I could say yes to that, but I just—you know, what is right is right, and what is wrong and wrong.

Mrs. LUMMIS. Yes.

Mr. ROBBINS. And if I had to give up everything, I was willing.

Mrs. LUMMIS. Ms. Budd-Falen, back to the legal side. While a majority of the Supreme Court declined to recognize that Mr. Robbins had a claim against the BLM for the entire course of conduct, they did, nonetheless, recognize the need for an effective remedy for people in Mr. Robbins' situation. Is that correct?

Ms. BUDD-FALEN. Yes, both the majority opinion written by Justice Roberts, as well as a very strong dissent written by Justice Ginsberg, both recognize that Congress should give us a path to the Federal court.

Mrs. LUMMIS. I want to apologize to you for what you have been through, and thank you for your tenacity in upholding the constitutional rights of Americans.

Mr. Chairman, I yield back.

Mr. ROBBINS. Thank you.

Mr. BISHOP. Thank you. Allow me to ask a couple of questions. Let me follow up on where Mrs. Lummis was, originally.

Ms. Budd-Falen, if Congress fails in some way to take up the court's challenge to find a legislative remedy, is there any way that a poor rancher—which is our ranchers here, land rich and money poor—or a modest means rancher, could they ever survive the kind of assaults we have heard about today?

Ms. BUDD-FALEN. Mr. Chairman, I honestly do not believe that is possible. I represent ranchers all over the West. And when you go against the Federal Government, represented by the Justice Department that has all of the money and resources in the world, it is very difficult, if not impossible, to be able to win these cases.

Mr. BISHOP. All right.

Ms. BUDD-FALEN. Additionally, because we are not as easily accessed—Equal Access to Justice Act for judgment fund monies, we don't even have the chance to get our money back. None of these people have received payment for their work.

Mr. BISHOP. For all of you, keep in touch with Mrs. Lummis. We will be talking about EAJA later on, as well.

Let me—Mr. Robbins, let me follow up with the kind of approach that Mr. Amodei was starting with Mr. Hage. The ones—the BLM people that were egregious in their conduct, were they ever punished administratively by the agency, to your knowledge?

Mr. ROBBINS. No, there wasn't ever any—some of them got promotions, OK? And a few retired. And I don't know the——

Mr. BISHOP. But none were demoted or fired.

Mr. ROBBINS. No, nobody was fired.

Mr. BISHOP. What about the one guy who basically came to your aid and would not push the attack, admitted some of his colleagues were out to get you? What did his honesty get him with the agency?

Mr. ROBBINS. He had to—he retired and left the agency and moved completely out of the area to protect himself, basically,

from—there was a lot of animosity. I have to admit, though, that there were a lot of people within that organization down there that were actually on my side.

When I rode a mule around that office for 21 days in the middle of the winter, I created a lot of friends inside the organization. And they would feed me lunch and different things and say, "Don't tell anyone what is going on here." But there were a lot of people inside the organization that were not agreeing with what was going on besides Ed Parodi.

Mr. BISHOP. I appreciate that. And telling me about riding a mule is too much of a straight line, but I am going to resist it.

Let me ask two other questions of you. Justice Ginsberg said that the BLM officials invaded the privacy of your ranch guests during a cattle drive. To what was she referring?

Mr. ROBBINS. They followed our guests and videotaped us. And this particular time, they were on a hill and the ladies that were on the drive with us only had sagebrush to do their—to go to the bathroom. And the positioning of the BLM, they were videotaped in that process of going to the restroom. And it created such a hostility, you know, that our guests, you know, "We get this kind of treatment back in New York City; we don't need to come to Wyoming to have to go through this," so it really put us out of business, was a part of putting us out of business, because of that, those threats.

It was every day. Every day they were there, videotaping us, sitting there watching, creating all sorts of hindrances——

Mr. BISHOP. I hope they got copyrights on it. Listen, I have one last question for you. How, in heaven's name, did you come up with $.07 that you owed? Was there a tax added to it or something?

Mr. LOWRY. I would have to defer that to the billing department of the attorneys.

Mr. BISHOP. All right. Thank you, Mr. Lowry.

Mr. Valdez, do you think that the problems you faced were directed at you personally in New Mexico, or other Hispanic ranchers who were similarly situated by the people who were in authority and showed some hostility? Was this personal?

Mr. VALDEZ. This one individual who was dealing with the folks on Jarita Mesa and Alamosa definitely made it personal, and it was personal attacks. And it is a lot of people, it is not a few. I, myself, am not on those allotments, but I work closely with them.

Mr. BISHOP. Then if, indeed, you face something that is—what you think is vindictive and retaliatory, what response do you have? What options do you have in that situation?

Mr. VALDEZ. Well, there is a case filed in Federal District Court, the first case filed by traditional villagers in Northern New Mexico, by the way, against the Forest Service in this type of environment.

Mr. BISHOP. So, court access, going back to what Ms. Budd-Falen said, is really the only thing we have to deal with, and we have to make sure that that has a fair access, which is what the Supreme Court told Congress it needed to do. Not going through the court system, but that Congress had to make sure there was a judicial remedy for that.

I have a couple other questions, but my time is almost up here. Let me——

Mr. VALDEZ. May I just say that is what the judge in this case recommended. That was the only remedy.

Mr. BISHOP. OK, thank you. I appreciate that. Mr. Grijalva, do you have other questions?

Mr. GRIJALVA. Yes, a couple. In the Babbitt opinion, I think it is stated pretty clearly, just for the record, so that it is not misconstrued, what I was trying to say, it says that there is no absolute security for grazing permits. And I think it is—I think that sets the tone of that decision, and that is why I was following up with other questions.

Also, the—again, to set the record a little bit straight, when I was commenting on the Gateway, the reason I asked the questions about the collaborative effort, and the fact that there was a positive response on behalf of BLM and the Secretary to allow more time for route examination which—that was being opposed by the area, I wanted to make sure that we understood that, in some instances—because today we are hearing a lot of individual issues, and rightfully so—that that was an effort to kind of avoid litigation, avoid a lawsuit, avoid bringing that whole project to a halt. And so, I think that has to also be noted, to try to come to consensus and avoid a lawsuit.

The other point is that even though this hearing is entitled, "Threats, Intimidation, and Bullying by the Federal Land Management Agencies," and we have had some instances, this hearing is not about policy disputes, but it is about those kinds of actions that my colleague, Mr. Huffman, pointed out that should not be tolerated at a professional level at any place. And I appreciate people bringing that to light.

Because we are not having policy disputes, Ms. Richards, have there been any instances in which a BLM employee has personally threatened, intimidated you, bullied you? And, if so, can you identify that BLM employee involved, and describe how he or she threatened, intimidated, or bullied you?

Ms. RICHARDS. Mr. Grijalva, I am here on behalf of Owyhee County, and we do have situations like that. We do have incidents that are on the record, they are in the court case in the grazing permit renewal process. In respect to those individuals and possible retaliation for the names, I am choosing not to bring that forward, because I do not want to put those individuals into that capacity.

However, I am going to ask to clarify two things here. The Gateway West may very well end up in litigation, not from the predatory environmental groups, possibly, but from our county aspect, due to the county is the only one—the individuals cannot file a lawsuit, but the county government can file for the economic aspect.

Second, in the *PLC v. Babbitt*, one of the things that the county advocates for is that it did affirm the property right interest of preference as a grazing right in there.

So, again, I am not going to go into—we do have specifics, there have been employees. That started clear back in the 1990s. Those employees, a couple of them, now work in the Oregon BLM offices. They are in court records back in Idaho. And just to protect those interests that are still in litigation, I am not going to bring that forward at this time.

Mr. GRIJALVA. I appreciate that. And I think there is a balance to be sought here that—I am not going to sit here and say that what you provided to us under oath is not the truth, but I think there are other stories dealing with collaboration, communities working together, solving problems before they become bigger problems that I think also is part of a fair hearing.

And thank you for the hearing, Mr. Chairman.

With Mr. Valdez, I kind of—you know, I think we could solve a lot of the problems, sir—and being a student of all that stuff—that we just implement the Treaty of Guadalupe-Hidalgo, and we wouldn't be having this hearing, and some of us would be better off, and some wouldn't. But that is a whole other story.

[Laughter.]

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. BISHOP. I am assuming that was a yield back, then, right?

Mr. GRIJALVA. I yield back, sir.

Mr. BISHOP. Fine, good, good. Do you have other questions? Mr. Tipton.

Mr. TIPTON. I just have, really, one more, Mr. Chairman. And I would like to follow up, really, on my good friend, the Ranking Member's question, in regards to feeling threatened, intimidated, and bullied.

Mr. Lowry, when the BLM came to you and said that only the United States can hold a water right on Federal land, and that you must withdraw your claim, did you feel a little bullied, intimidated, and threatened?

Mr. LOWRY. I felt intimidated walking into that room, a room full of Justice Department attorneys, BLM personnel, who had been dedicated to the—trying to obtain those water rights in the adjudication, and being told that we had no position, no legal position to hold a water right, that we were mere permittees there at the permission of the U.S. Government, and had no rights.

The only thing is I didn't feel too intimidated, because I knew what my rights were, I knew what the congressional policy had been since the mid-1860s, and I knew what the court decisions, including the *U.S. v. New Mexico*, had said. So, I knew going in what my rights were. But the pressure was applied.

Mr. TIPTON. That is the good part about being a Westerner, a little harder to be able to intimidate. I saw Mr. Valdez nodding his head up and down, as well.

Just for clarification, private property rights, water rights in the Western United States, you own them. How much was the Federal Government willing to compensate you for those water rights?

Mr. LOWRY. They were not willing to compensate anything.

Mr. TIPTON. So the Federal Government can just jump in, take your private property rights, take your water rights that you paid for, you have developed, with no compensation. That is their opinion?

Mr. LOWRY. That was the course they were taking, and what was being attempted, yes.

Mr. TIPTON. OK. Mr. Robbins, how intimidated, bullied—well, you aren't intimidated, I can tell—but bullied and threatened have you felt?

Mr. ROBBINS. Well, actually, I came from Alabama, originally, and I really thought that the government—I had worked with the farmer services. I thought they were looking out for my best interest. I learned differently, when I got to Wyoming, that that was not the case.

Let me just say as far as intimidation, I have got the actual quotes from sworn testimony from two employees: Leone, saying, "I think I finally got a way to get this permit, get his permits and get him out of business"; and Parodi, which testified on my behalf, states that—he was a BLM employee, also—states that this statement became a daily admission of Leone, and an attitude shared by the other defendants in the case.

So they—when they make their mind up to go after someone, they can certainly intimidate you, and it comes from every area and every power within government.

Mr. TIPTON. Well, thank you. And, Mr. Chairman, again, thank you for holding this hearing. I think that, from the testimony that we have heard today—yes, sir, Mr. Lowry, do you have one more comment?

Mr. LOWRY. If I could, Congressman, I would like to add seriously that it was quite intimidating, and that is evidenced by the fact that, of all the ranchers that filed for their stock water rights in the Snake River Basin adjudication, as I mentioned in my testimony, only two of us went through to the end. The rest could not, or felt they could not, because of the overwhelming disparity in the resources between themselves and the U.S. Government to defend their rights. And they have lost their rights in the Snake River Basin adjudication because they could not and would not—and I understand their position.

Mr. TIPTON. Mr. Lowry, I think that is ultimately very important to be able to note, because this is just not a Forest Service water grab, it is a BLM water grab in the West. That is the lifeblood of the Western United States. And I will certainly take issue with anyone who feels that—our ranchers who have those BLM permits on Forest Service lands, they are some of the best custodians, actually, of our public lands, going in and supporting those who value the environment. Nobody but our farmers and ranchers value it more.

So I thank you again for holding this hearing, and I thank all of you for taking the time to be able to be here. I yield back.

Mr. BISHOP. Thank you. Mr. Huffman, do you have other questions?

Mr. HUFFMAN. Just very quickly, Mr. Chair. I appreciate the witnesses, once again. I will just close with what I said at the outset in my remarks. Our Federal Government should always be a good neighbor, should always comply with the law, and all of us should be concerned when there are incidents that suggest misconduct by Federal employees.

So, I appreciate the testimony. I am sorry that some of those experiences occurred in this—in the situation of these witnesses. And there is a way of having the conversation about holding our government to high standards and making sure there is accountability that could be constructive. And I hope that we can perhaps, at an-

other time, have that more constructive conversation about how to do that. Thank you for your testimony.

Mr. BISHOP. Mr. Amodei, do you have other questions?

Mr. AMODEI. Just briefly, Mr. Chairman. Ms. Budd-Falen, are you aware of any draft legislation to kind of deal with—I mean in Mr. Hage's testimony he says, "Hey, we need to do a couple things." Is there any—and I am sorry if there was testimony to that while I was gone, but is there anything out there that has been drafted in terms of speaking about governmental immunity or things like that in extraordinary cases where, in sum, where a judge finds people in contempt, and finds that they have perjured themselves? Are you aware of anything?

Ms. BUDD-FALEN. No, I have never seen any draft legislation. But I can tell you that we would be happy to work with both sides of the aisle to come up with a solution.

Mr. AMODEI. And then, just finally—and this may be something for staff—but have any of you or the organizations you are affiliated with done a litigation study to say, you know, of all these times, like the Hage deal, and whoever else's, when these go to court, how often does the Department of Justice prevail, versus the permittee? I know it doesn't go very often. It is phenomenally expensive, and that.

But have we done anything to kind of say, hey, when people finally get to the point where they are saying, "You know what, I am tossing it all in and I am going to court, even though that is expensive and time consuming," what the likelihood is that they prevail, or if they come out in some sort of a stipulated agreement? Is there any track record of that?

Ms. BUDD-FALEN. The problem is, Mr. Amodei, that we can't affirmatively bring those kind of cases. Frank Robbins tried to affirmatively bring a case. The Jarita Mesa permittee is trying to affirmatively bring a case, and they lost those cases.

Mr. AMODEI. Well, I am talking about the permitting cases, not the——

Ms. BUDD-FALEN. Oh, the grazing cases?

Mr. AMODEI. So it is like when you say, "Hey, I am suing you because you don't have an easement across my land." I am talking about the substance, not the abuse of discretion.

Ms. BUDD-FALEN. Actually, your Honor, the problem is that the Federal Government, because the Administrative Procedures Act requires only an administrative record review, the only thing the Court ever sees is the record that the agency creates and the agency wants the Court to see. So, while there are cases where we are successful, we are starting so far behind the Federal agency in terms of litigation strategy and information, we can't depose Federal witnesses, we can't get in our own information.

And so, I would tell you that the court system right now is stacked against us, and that we do not prevail near as much as the Federal Government prevails.

Mr. AMODEI. OK. Finally, if you went to one area first, would you go to the Administrative Procedures Act first and make changes in that that are specific to land use things, or would you try to go in an overall global thing for all Federal employees?

Ms. BUDD-FALEN. I think that they are apples and oranges. The Administrative Procedures Act only applies to Federal agency decisions and policies made based on an administrative record, and that is not what we are talking about. Those are the tools that are brought against these individuals to force them into compliance.

Mr. AMODEI. Well, but I am thinking, if I may, that if the Administrative Procedures Act was made to allow you the ability to depose and create more due process and change that administrative procedure, that it may be more fruitful, in terms of providing a quicker, cheaper, rather than marching to Federal court to make the administrative processes more user-friendly.

And you don't have to answer that today, but you can get back to me and say, you know——

Ms. BUDD-FALEN. I would be happy to do that. My initial thought, quite honestly, is what we need to do is to actually tie this to the Civil Rights Act, because that Act already waives sovereign immunity for State employees and local employees. And if you read Justice Ginsberg's dissent, that is actually where she believed that a cause of action should be placed, as part of the Civil Rights Act.

Mr. AMODEI. OK, thank you. Thank you, Mr. Chair. I yield back.

Mr. BISHOP. Thank you. Or just empowering States.

Mr. LaMalfa, do you have other questions?

Mr. LAMALFA. Oh, just a quick follow-up. You know, the idea that this isn't threatening or bullying, I mean, just ask an elderly ranching lady up in my area what it feels like to have two agents show up with badges and a gun on the hip and wearing the boss, shiny sunglasses, like that, saying, "You need to sign this form that has to do with your water rights, or you could be subject to arrest and have your rights read to you," you know, when her husband is not home. And so—no, that is not threatening or bullying in any way.

So, when you have abuse after abuse, and people that are normally just productive people that are good citizens, that are paying their taxes and part of the community having to get wrenched out of the farms and ranches and homes to go to Sacramento in California, or come back here to Washington, DC, this is really not what you prefer to be doing. And so, for anybody who had the notion that it is anything different than that, then they are way out of touch, because your traditions—our traditions, I am a farmer, too—go back hundreds of years, thousands of years, even.

And for us to not take action here with, you know, Mrs. Lummis's bill or other efforts that are—we want to be effective in letting you feel like you don't need to use legal remedies to just do what you do. If we do anything short of that, then I think we are falling down on our jobs. And so, that is what I am back here to try and do and trying to help you with. So I really, really want to encourage you to keep fighting the battle with your neighbors.

And I am sorry, sir, for your neighbors that couldn't do the battle, because I don't know how you afford $800,000 or millions of dollars to do this, knowing how it is for many ranchers and farmers and timber operators. Maybe you should all apply for non-profit status, too, and then you will be eligible, like those $56 million organizations, to get compensated for something you didn't bring upon yourself.

So, I greatly appreciate, and God bless all of you. So, thank you.

Ms. BUDD-FALEN. Thank you.

Mr. BISHOP. Mrs. Lummis, do you have more questions?

Mrs. LUMMIS. I do, Mr. Chairman. I would like to follow up a little bit with Ms. Budd-Falen about the line of questioning Mr. Amodei was pursuing about a congressional remedy. Certainly the Supreme Court declined to recognize Mr. Robbins' claim against the BLM for the entire course of conduct, but they did recognize the need for an effective remedy. They just thought it should come from Congress, and not be fashioned by the court. So, that is what I want to pursue, Ms. Budd-Falen.

You took a cue from Justice Ginsberg's dissent, which would have expanded the Bivens Doctrine, as I understand it. So that would suggest a remedy similar to that for sexual harassment. I would like you to expound on, if you were crafting some legislation, taking a cue from Justice Ginsberg, what kind of parameters would you put around this to make sure that there is not a flood of challenges to any and all Federal decisions a property owner might not like, but is narrowly targeted to the type of egregious conduct that we have seen here, as was applied to Mr. Robbins?

Ms. BUDD-FALEN. I think that the first thing that I would do is look at the pattern or practice of the individuals. I think one bad agency decision is something that we can remedy, or at least we can challenge under the Administrative Procedures Act. But these people didn't suffer just one bad decision; it was truly an animus by the Federal individuals, that they can name, against their rights.

One of the things that Justice Ginsberg also talked about was that the Fifth Amendment protections for private property were not receiving equal consideration under the laws, as were the Eighth Amendment protection against cruel and unusual punishment, or Fourth Amendment protection against unwanted search and seizure. And she argued that we need to raise the Fifth Amendment's protections for property rights to the same level as the other constitutional guarantees.

Mrs. LUMMIS. Does that include access to the courts that right now is not as—Federal courts?

Ms. BUDD-FALEN. Yes, that includes that. Because, right now, the only way you can get a "Bivens cause of action" is if you bring a cruel and unusual punishment case or an unwanted search and seizure case, and it has to be a physical search, not the kind that Frank Robbins had to endure, where Federal officials actually broke into his private guest lodge on his private land to search through things.

Mrs. LUMMIS. Mr. Chairman, if I might ask, I know that Ms. Budd-Falen, based on her representation of clients with regard to these specific types of cases, has a unique area of expertise. I wonder if I might ask that you give us some suggested language that you think could be narrowly tailored to address these "death by 1,000 cuts" situations that amount to a course of conduct that constitutes harassment that could be narrowly construed by the court to prevent a bevy of litigation, but nevertheless protects American citizens' Fifth Amendment rights appropriately, and provides them, at times when appropriate, access to the Federal courts.

Obviously, I am asking you to do something pro bono from Congress——

Ms. BUDD-FALEN. I would be pleased to help you. These citizens need a path to court. They need some relief. Other Fifth Amendment—and American citizens don't have the push and the backbone, because they are afraid and because they have permits that, if the Federal Government decides they don't like you, they can punish you. And I would be happy to work on legislation to try to protect these citizens and their neighbors from this abuse.

Mrs. LUMMIS. I would be most grateful for that help, because I do think that we need the assistance of someone who can help narrowly construe such a cause of action that will address these types of really egregious courses of conduct by Federal agencies that even, you know, our colleagues in the Minority recognize are entirely inappropriate, given our constitutional rights and Fifth Amendment rights.

So, thank you all, once again. Mr. Chairman, I yield back.

Mr. BISHOP. Thank you. Ms. Budd-Falen, would you take Representative Lummis' request, verbal request, as an actual question that would ask for a written response to come back to the committee?

Ms. BUDD-FALEN. Yes. Yes, I would.

Mr. BISHOP. Thank you. I appreciate that.

We have had four people here talking to us about—these are questions—four people talking to us about situations that have happened to them. These are not isolated situations, unfortunately. I think these are simply the tip of the iceberg that is going down there. And I appreciate your willingness to come and share, even though all of you have mentioned that there is some trepidation in doing so, because you still actually have fear of retribution, intimidation, just by being here at this particular time. It also does go to some kind of policy issue. It is not just access, it is policy.

Ms. Richards, you mentioned, in talking about the collaboration process that was done in Idaho, that you had made a decision that was supposedly done on your wilderness areas, and then the wilderness management plan was changed that contradicted the collaboration that had been agreed, and also had been passed in legislation. Is that accurate, then?

Ms. RICHARDS. Correct, Mr. Chairman.

Mr. BISHOP. What recourse did you have for that?

Ms. RICHARDS. Right now, the recourse that we have, the Owyhee Initiative concept started in 2000. In 2009 we signed an agreement with the Tribes, the county, and diverse collaborative groups. And that agreement is quite extensive, and I will ask to send that within this time period so you have that for the record. Within that, the wilderness management took a lot of time on designating the boundaries, and also activities that would be grandfathered in. Those are in recorded minutes that are signed off by the committee.

After the legislation was passed in 2009, about 2011 we started working, we were brought into the process of making comments on the draft wilderness management plan for the Owyhee Wilderness Area. BLM has been at the table, we are actually assigned a BLM person that participates in all of our meetings, is supposed to bring

information, help us in making our decisions, and the collaborative effort came forward on that.

And just earlier this year, we were to the process where we thought we were done with our comments to go forward. And, lo and behold, we found out that, at the same time we were working on this, the BLM had issued new guidelines that were internally drafted for internal guidelines on wilderness management, and those were issued in July of 2013. And, as I stated in my testimony, they go contrary to one of our permittees who had won a national award, and that was supposed to be taken care of in that wilderness policy as an allowed practice.

Mr. BISHOP. So what your testimony is telling us is also a deeper systemic problem, that issues may be settled, but then within the agencies they are making internal regulations that change what had been settled, that even change what had been legislatively decided at the same time.

Ms. RICHARDS. Correct. And the effects upon this permittee, again, he has no initial recourse to come back and challenge it. On the county level, though, we are challenging, because it was an agreement that we went into. The goal of the Owyhee Initiative is the economic stability of our county livestock grazing system.

Mr. BISHOP. All right.

Ms. RICHARDS. So I would agree with your statement.

Mr. BISHOP. That is one of the things extremely troubling for us.

Mr. Hage, I think I will—let me end with you, if we could. You mentioned that what treatment you received was supposedly—the local officials were supposed to expect that behavior. What, in reality, is at stake in this issue in your case, beyond the effect on you, personally?

Mr. HAGE. What is at stake is my family's property, our water rights, range rights, whatever you want to call them. But more than that, I mean, it is other people. If they can get away with what they have done to us, then hold on. They will go after other people, as well.

Mr. BISHOP. And so we are really talking about what we deal with—private property rights, what we deal with——

Mr. HAGE. Yes, our whole issue is private property rights.

Mr. BISHOP [continuing]. The entire bundle, for everyone.

Mr. HAGE. Yes. And to make something clear, I mean, I don't know—myself, as the judge explained it, and as I understand it, he said, "Look, the Federal Government cannot break the law. The Constitution does not allow for it. If there is any law-breaking going on, it has to be done by the individual in the agency, not the agency itself, not the Federal Government, but the individual."

So, what we are talking about is law-breaking, not something in general that would be just bad government or bad agency. We have got to get down to the heart of the matter and only punish that which was done wrong.

Mr. BISHOP. Thank you, I appreciate that.

Are there any other questions we have?

[No response.]

Mr. BISHOP. If not, I want to thank the witnesses for your testimony, for you coming here today. As I said, unfortunately, these are not the only isolated examples we can find. I think your exam-

ples show a deeper problem, and truly a systemic problem that we need to address as best we can, not only in access, but in how policies are originated.

Members of the subcommittee may have additional questions for the witnesses, including the verbal one, and we would ask that you would be able to respond to those in writing. The hearing record is going to be open for 10 days to receive responses.

If there is no further business, without objection, we stand adjourned.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF GEORGE MATELICH, SWEET GRASS COUNTY, MONTANA

THE SAGA OF THE CHERRY CREEK "ROAD"

The Black Butte Ranch was purchased by George Matelich and Michael Goldberg (the "Owners") in May of 1997. The ranch is located in Sweet Grass County, Montana, adjacent to property owned by descendants of the original homesteaders. Prior to purchasing the property, the Owners did "due diligence" in examining the title, and checking on what appeared to be an old jeep trail on the property. After finding no easements recorded, and no documentation suggesting that the jeep trail was a public road, they closed on the purchase and took possession of the property. Upon taking possession of the land the Owners closed a gate through which people had reportedly occasionally used the jeep trail to access the Gallatin National Forest. This trail extends from the Boulder Road through the adjacent property and the Black Butte Ranch to the National Forest boundary. In January of 1999 the Owners were sued by the Public Lands Access Association, Inc. ("PLAAI") who claimed that Cherry Creek "Road" was a public road, notwithstanding the fact that the County did not claim the road, and refused to claim it under R.S. 2477. In defense of the suit, the Owners filed a quiet title action, naming the PLAAI, the United States Forest Service ("USFS") and the public at large as defendants. A FOIA request disclosed that the USFS was engaged with PLAAI in planning the litigation and strategic options for opening the road, including condemnation. Nevertheless, rather than litigate the issue on its merits, the USFS filed a Disclaimer of Interest, disclaiming any interest in Cherry Creek "Road".

The PLAAI litigation was resolved by a settlement agreement in which the Owners agreed to allow limited public access on the Cherry Creek "Road" for a period of 10 years, after which the parties all agreed the owners could shut the gate and permanently discontinue the access. The quiet title action proceeded to judgment, which was entered in favor of the Owners. The decree included a finding that the use of the Cherry Creek "Road" for the past 60 years had been permissive, no prescriptive easement existed, R.S. 2477 did not provide for access under the circumstances and that Congress did not envision rights of way for hunting, fishing, snowmobiling and similar activities when enacting R.S. 2477. Additionally, the easement granted to the public for a 10-year period could be extinguished after August 3, 2009, and the Owners' interest in the property was free and clear of any and all estate, right, title, lien, encumbrance, interest or claim by any third-party defendants. No appeal was filed after judgment was entered. Following the conclusion of the litigation, and after the court had entered the judgment in the quiet title case, the USFS revised its Travel Management Plan for Gallatin Forest. As part of that process, the USFS closed other existing roads and area access into the forest, and labeled all but the pipestem of land through the Owners' property for the Cherry Creek "Road" as "roadless." The USFS essentially limited the travel access alternatives to the one that had been litigated, and in which they had disclaimed all interest.

Pursuant to the settlement agreement, after the 10-year period had run in 2009, the Owners exercised their rights as contained in the agreement and closed the gate to the jeep trail (Cherry Creek "Road") traversing their property.

Shortly before the end of the 10-year period, the USFS made an attempt to reach an agreement with the Owners for access to this area, including a potential land

exchange, as well as pursuing the purchase of an easement over the Owners property. The Owners declined to sell an easement to the USFS which would have had the effect of splitting their property, but did offer to engage in a land exchange, even offering at their own expense to build the new road on USFS administered lands. The USFS rejected all offers for limited access, and in a Letter to the Editor published on June 17, 2010 in the Big Timber Pioneer, made it clear that the only alternative the USFS was willing to consider was a road with unlimited vehicular access across the Owner's property.

Sometime in 2010 the USFS notified Congress of their intent to pursue acquisition of the Cherry Creek "Road" through eminent domain. The Owners followed, bringing their story before the Montana Congressional Delegation and other relevant Federal parties. After the expenditure of countless hours and hundreds of thousands of dollars over the course of 3+ years, the matter was finally settled; the Owners are building a road at their own expense on their own land and will be granting a perpetual easement to the public as the settlement required.

The Owners were fortunate in that they had the resources to fight the USFS and ultimately build a road at their own expense that did not result in the splitting of their property. That they had to do this at all is a matter of public policy which cries out for a systemic remedy. The Owners were forced into this situation only through the USFS wielding the cudgel of eminent domain authority. The USFS did not pursue this road access because they needed to, rather the USFS did so because they wanted to, and because by their own actions in closing all other access and designating the entire area as "roadless" they created a lack of public access. The record is clear that numerous other access points to this area of the Gallatin existed. The record is equally clear that in the ensuing decade following the litigation in which they professed no interest, the USFS took actions which had the obvious impact of vitiating the court decision. In all likelihood they behaved in such a fashion because they were confident that they had the unfettered power to simply take property they wanted, regardless of need. This crude and purposeful abuse of the Federal Government's power of eminent domain must be remedied.

The Government's power of eminent domain has always been viewed as one that should be used sparingly and with great restraint. Preservation of private property rights is a fundamental right of our constitution, subject to taking only when there is a public need that has been proven and when appropriate compensation is provided.

However, there is no sufficient compensation to assuage disingenuous behavior of the Government in purposefully turning a want into a need to justify condemnation.

Thank you for this opportunity to tell our story and express our opinions.

STATEMENT BY LELAND F. POLLOCK; GARFIELD COUNTY, UTAH COMMISSIONER

BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION HEARING ON JULY 24, 2014

"Threats, Intimidation and Bullying by Federal Land Managing Agencies, Part II."

Thursday, July 24, 2014 at 2:00 p.m. Room 1324 Longworth House Office Building Chairman Bishop, Ranking member Grijalva and members of the committee:

My name is Leland Pollock and I am a County Commissioner from Garfield County, Utah. I also serve as a member of the National Associate of Counties Public Lands Committee and have been designated by my fellow commissioners in Utah as the Chairman of the Utah Association of Counties Public Land Steering Committee.

Garfield County is a scenic rural area roughly the size of Connecticut. 93% of the land base is under federal ownership, and I believe we are the only U.S. County that contains portions of 3 National Parks (Bryce Canyon, Capitol Reef and Canyonlands). We are also home to significant portions of the Glen Canyon National Recreation Area, the Dixie National Forest, the Grand Staircase-Escalante National Monument, two BLM field offices, and a small segment of the Fish Lake National Forest.

I grew up cherishing the lands in Garfield County as the son of a Park Service employee. An ex-marine, my father worked for Bryce Canyon National Park. My father's employment was outside strict law enforcement responsibilities, but because of his military experience, he was often called upon to assist NPS officers – especially in the most volatile situations. I observed with my own eyes proper methods for protecting and serving the people of the United States.

I am here today to testify regarding two issues regarding BLM law enforcement activities that have moved away from a public service philosophy: 1) Militarization of BLM law enforcement personnel / movement toward a police state; and 2) Cancellation of cooperative law enforcement agreements between BLM and local governments.

As a preface to my remarks I want to inform you that Garfield County has a cooperative and productive relationship with Park Service and Forest Service law enforcement personnel. Things are not always perfect, but we work them out within the confines of the law and with honest consideration for the American public. I also want to let you know we enjoy a very positive and productive relationship with Juan Palma, Utah's State BLM Director. We meet and talk on the phone frequently; and he has been attentive to our requests and has responded expeditiously and appropriately within his authority.

Unfortunately, we cannot make the same statement regarding BLM law enforcement personnel in Utah that fall under a different line of authority. Discussing BLM law enforcement operations is my purpose today.

This is not our first attempt to resolve issues of bullying, intimidation and lack of integrity exhibited by BLM law enforcement agents. We have tried locally, and earlier this spring Utah's Lieutenant Governor convened an executive level meeting to discuss law enforcement on federal lands in Utah. The meeting was attended by the Lieutenant Governor, Utah's Attorney General Sean Reyes, the Regional Forester, the Regional Chief of Law Enforcement for the Forest Service, Utah's State BLM Director, BLM's Chief of Law Enforcement, and numerous federal, state and local leaders. The meeting was open, cooperative and productive, except for participation of the BLM's Chief of Law Enforcement. To put it frankly, he lied to the group and was exposed in his deception. His arrogant behavior lacked integrity and was illustrative of his department's unacceptable culture.

Our concerns/complaints are not just a matter of hurt feelings, bullying, intimidation, lack of integrity, and a host of social issues. BLM's Chief of Law Enforcement has cost Garfield County real dollars. Last year Garfield County and the Utah State BLM Director worked out a cooperative agreement providing Garfield County Sheriff's office law enforcement on BLM land. The BLM was to reimburse the county a set amount that resulted in significant savings to the federal government. The County – with BLM concurrence hired law enforcement staff, acquired vehicles and equipment, provided training and preceded with implementation of the agreement. Contrary to the State BLM Director's orders and without concurrence, BLM's Chief of Law Enforcement cancelled the agreement leaving Garfield County with a significant budget shortfall and staff operating in an area without agreement. We are befuddled how one individual can override a State Director and negatively impact an entire county with impunity.

We need your help to correct these serious problems. Let me address the two issues cited above:

Militarization of BLM law enforcement personnel

Over the past decade or so we have observed and experienced a militarization of BLM's officers. I am confident you are aware of recent, highly publicized actions involving BLM agents in Nevada. But you may not be aware that much of the support for the rancher by everyday citizens may have resulted from a growing frustration from the way they are treated by local BLM officers. Right or wrong, some equate BLM's law enforcement operations to the Gestapo of the World War II era.

Submitted under separate cover is a list of actions that illustrate BLM's heavy handed authority. Three additional examples from only one BLM unit in Garfield County illustrate the problem.

Example 1. BLM law enforcement officers have been known to block open public roads asserted under Revised Statute 2477 and maintained by Garfield County with rocks, logs and debris. Such actions constitute a Class B Misdemeanor under Utah law.

Example 2. Immediately prior to a big game hunt authorized under Utah Law by the Utah Division of Wildlife resources, a BLM agent placed road closed signs in several County roads that accessed the hunting area. The BLM land manager heard about the problem and took a field trip to investigate. The land manager reports that during the investigation he was harassed and intimidated by the law enforcement officer. At one point the officer put his hand on his gun in an

effort to discourage the land manager from continuing. This was a direct threat to an individual with management authority in the officer's own agency.

Example 3. BLM requested the County's help to install an underground waterline to serve wildlife, livestock, recreation and other public interests. The County offered to put the waterline in a County road to minimize any disturbance on federal land. A BLM back country ranger observed County equipment being transported to the jobsite and followed County crews for more than 20 miles. When the County crews stopped the BLM officer got out of his vehicle and walked behind crew members harassing and interrogating them. Some crew members became so upset they returned to their vehicle to cool down. This occurred on a project where the County was donating thousands of dollars of equipment time and a road easement just to help BLM.

BLM law enforcement in Garfield County is totally uncooperative and unresponsive. Dispatchers have been rebuffed so many times by BLM agents that the County only contacts them as a last resort and with little hope for assistance.

Cancellation of cooperative law enforcement agreements between BLM and local governments

As mentioned above, we have a positive and healthy relationship with many federal agencies and especially with Juan Palma, Utah BLM State Director. We have worked with Mr. Palma to develop a cooperative law enforcement agreement similar to those executed for neighboring counties; and he is supportive of moving forward in accordance with federal law.

The Federal Land Policy Management Act (FLPMA) states that the Secretary of the Interior shall contract with local law enforcement *to the greatest extent possible* for law enforcement services on public lands. Typically, BLM has cooperated with local county sheriff departments to enforce state, local, local BLM laws on federal land. Yet lately, BLM has refused to enter into such contracts due to resistance from BLM's Chief of Law Enforcement in Utah.

Earlier this spring Utah's Lieutenant Governor took steps to develop cooperative agreements and contracts in accordance with federal law. The BLM agent in charge opposed such contracts but agreed to provide some additional information. However, to date, no communication has been received from him and no improvement has occurred in BLM's heavy handed actions.

This testimony is not intended to just document complaints. We offer a simple solution: Comply with FLPMA by contracting with local law enforcement to the greatest extent possible for law enforcement services on public lands. This may require direction to BLM's Chief Law Enforcement Officer, but it is compliant with federal law and is supported by local BLM leadership. Such contracts will also cut federal administrative costs, provide better service and increase public safety at a time when fiscal constraints demand more efficiency.

We are hopeful that after careful consideration, the BLM will take appropriate steps to better coordinate law enforcement with local governments in Utah and BLM law enforcement will enter into contracts as directed by federal law. Thank you for the opportunity of speaking today.

Armed BLM 'Gestapo' Threatening Rural Citizens

by S. Noble • July 25, 2014

The Bureau of Land Management is a 'gestapo' according to officials who testified at a House hearing yesterday.

We have the beginnings of gestapos in every government agency and they are growing in power under the perceived authority of the President of the United States who rules this country via executive orders and "guidance" memos without any congressional oversight. He is militarizing his executive branch agencies and letting them run roughshod over citizens largely without restraint and supervision. They can't be fired as we know.

One of the agencies that has become militarized and which has gone rogue is the Bureau of Land Management.

A hearing in the House on July 24th exposed a dangerous and persistent threat to our nation coming from the Bureau of Land Management (BLM) which is allegedly intimidating citizens, threatening their rights, and creating a hostile environment.

At the hearing this week, the following was uncovered:

- BLM has threatened witnesses to give up their property rights.
- Overreaching and malicious employee behavior goes without retribution.
- BLM does not care about any authority by law enforcement and will not coordinate with them. "BLM law enforcement in Garfield County is totally uncooperative and unresponsive," Garfield County Commissioner Leland Pollock said in written testimony. "Dispatchers have been rebuffed so many times by BLM agents that the county only contacts them as a last resort and with little hope for assistance." Law enforcement have been told BLM doesn't care about any authority they think they have.
- BLM's Chief of Law Enforcement overrides State Directors and costs counties a fortune.
- BLM is stealing land and buying up land under the endangered species act which is being abused and misinterpreted deliberately.

The House Natural Resources Committee chaired by Doc Hastings released the following:

WASHINGTON, D.C., July 24, 2014: Today, the Subcommittee on Public Lands and Environmental Regulations held an oversight hearing on "Threats, Intimidation and Bullying by Federal Land Managing Agencies." This hearing continued Committee oversight into bullying by federal land management agencies and federal law enforcement agencies on private, state, and federal lands.

State and local governments, ranchers, business owners, and private citizens have been subject to threats, lack of cooperation, and numerous unfair or heavy-handed tactics which threaten public safety, the environment, endangered species, and the livelihoods of communities. Congressional oversight is necessary to provide an effective check on federal officials who abuse their regulatory powers.

"Today we took a second look at threats, intimidation and bullying by Federal Land Managing Agencies. During a hearing the Committee held last year and again today, we heard first-hand accounts of mistreatment at the hands of federal officials seeking to extort the witnesses into relinquishing their property rights," said Representative Doug LaMalfa (CA-01). "These firsthand accounts give the victims

of abusive conduct by a federal land managing official a chance to tell their story to Congress. Status quo agency oversight, policies and procedures are inadequate for addressing or deterring employee abuses and may instead embolden overreaching or malicious employee behavior with little risk of retribution for their actions."

Witnesses highlighted examples of flagrant intimidation met by citizens who refuse to surrender their constitutional rights, land and water rights, grazing permits and other multiple-use benefits.

Sheriff James Perkins, Garfield County, UT, highlighted his perspective from 27 years of law enforcement and experience working with various federal law enforcement agencies.

"BLM's attitude towards coordinating with local law enforcement is summed up best by a conversation I had with a BLM law enforcement officer while we were attending a drug task force meeting in Cedar City, Utah. He told me point blank that he didn't care about any authority that I thought I had as the Garfield County Sheriff, and that he did not feel like he had to coordinate anything through my office… This refusal to coordinate, coupled with a lack of any meaningful oversight, has created a perfect environment where the abuse of federal law enforcement powers can occur."

Leland Pollock, Garfield County Commissioner, Garfield County Utah, testified on how BLM law enforcement has moved away from a public service philosophy due to polarization of personnel and bullying and cancellation of cooperative agreements.

"Our concerns/ complaints are not just a matter of hurt feelings, bullying, intimidation, lack of integrity, and a host of social issues. BLM's Chief of Law Enforcement has cost Garfield County real dollars… We are befuddled how one individual can override a State Director and negatively impact an entire county with impunity."

A. Grant Gerber, Elko County Commissioner, Elko Nevada, discussed specific examples of wrongdoings, threats, intimidation, and bullying by both BLM law enforcement and a district manager.

"When I was a boy and as I grew up the few Federal Agents were mainly local or from rural areas and fit in well with the local area. They knew the people and worked cooperatively. Now the Federal agents are predominantly from outside the area and do not develop connections with the locals as was done previously. Many start off with a belligerent attitude, even a commanding presence. They are especially offended if anyone opposes any Federal Government actions. The worst are the Federal Law Enforcement Agents that arrogantly announce that they are not governed by Nevada law, but can enforce it if they choose. Now we have been informed, that without notice of hearings, the BLM has determined that two more BLM Law Enforcement Agents are necessary to control the people in the Elko area. All of this is resulting in less use of Federal Lands by citizens as the citizens become afraid of being accosted and berated."

Jose Valera Lopez, President of the New Mexico Cattle Growers' Association, Rancher, Santa Fe New Mexico, testified on current justifications Federal Land Managers use to intimidate and bully including Endangered Species protection and resource protection.

"Endangered species 'protection' is the biggest culprit. At the moment the Fish and Wildlife Service is considering critical habitat for the lesser prairie chicken, the New Mexico meadow jumping mouse, and

two varieties of garter snakes. Expansion of the Mexican wolf habitat is expected as early as tomorrow. We have had 764,000 acres in New Mexico and Arizona recently designated critical habitat for the jaguar although only a few male jaguar have been sighted in the U.S. over the last 60 years… In my own case, the BLM has been buying up private lands near my family ranch within the boundaries of an Area of Critical Environmental Concern that they designated part of their Resource Management Plan. They not refer to our ranch as an in-holding. What this designation has done is de-valued our land and effectively prohibits any type of future development on the ranch."

The armed BLM even intimidates visitors to the county according to Pollack.

Rep. Chris Stewart, a Utah Republican whose district includes Garfield County, pushed for his legislation that would defund what he says are paramilitary units within federal agencies that don't need such heavily-armed forces, including the BLM.

Every government agency is armed with paramilitary teams serving as law enforcement who believe their authority supersedes that of all law enforcement. They are rogue law enforcement since they operate only under one man – the president – without any oversight from Congress.

Listen to what one rancher is going through and understand this is going on throughout the country and particularly the West.

We recently witnessed the BLM raid the Bundy ranch wearing full armor, carrying assault rifles and positioning themselves behind berms as the rancher, his family and workers sat helpless. Bundy had not paid his grazing fees but that was irrelevant to the obvious problem here. What is relevant is that the BLM was empowered to shoot and kill anyone on the ranch over grazing fees.

Government agents aren't like our trusted law enforcement who will not fire on innocents. They are arrogant bureaucrats with guns. They are a protected class of people, protected by an overreaching government and their crony unions. Sentinel supports private unions but government unions are problematic and present serious conflicts of interest.

Armed militias flooded onto Bundy's ranch and the BLM stood down, but that was after the bureaucrats cordoned off free speech areas far from the ranch and shut down Bundy's access to the outside world while conducting air surveillance drills.

The BLM is in the process of confiscating 90,000 acres along the Red River based on an uncontested ruling thirty years ago. The owners of the land have deeds to their land, some dating back to 1804. The land in question is rich in minerals.

Private property is being taken and public lands are being kept from use by the public to allegedly protect obscure and unimportant animals.

Nature weeds out creatures and plants. It happens every day. It's the way of things. They weren't all meant to survive indefinitely.

It isn't the issue really, the animals are an excuse to steal and control land and the money it can bring in.

Unfortunately, if the government can't win through misuse of laws and rules, they will use physical force and they feel empowered to do so.

AFFIDAVIT OF AMMON BUNDY

I, James Magee, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading: I am functioning in the capacity as a next friend under Rule 17, 28 USCA for Ammon Bundy who was arrested and in prison.

> **Next Friend:** "*A next friend is a person who represents someone who is unable to tend to his or her own interest*." Federal Rules of Civil Procedures, Rule 17, 28 USCA; Haines v. Kerner, 404 U.S. 519 (1972)

The following is a true and accurate transcript from a video posted on Youtube[1] by Ammon Bundy who is incarcerated in the Multnomah County Jail, Portland Oregon who made the recording before he was incarcerated.

TRANSCRIPT: Of Video Recording, April 25, 2015, Nevada Water Rights. Good morning, I'm Ammon Bundy. I want to talk to you a little bit about what's happening in Nevada; a little bit about AB-408 which was killed on the Assembly Floor two days ago. I wanted to ask a question; and, then try to emphasize a certain point about that question.

"Do Nevada legislators support the Federal takeover of Nevada's Water Rights; or, are they just ignorant to the fact that the waters are being stolen from the Nevada people?"

Two days ago in a late assembly floor session, Assemblyman Jim Wheeler stood in testimony against AB-408. AB-408 would have made it illegal for the Federal Government to own Water Rights in Nevada. Jim Wheeler testified that AB-408 was messing with Nevada water laws; and, that the water was too sacred in Nevada to be doing this. So this question is in order.

"If Legislators such as Jim Wheeler, Robin Titus and Chris Edwards, who are supposed to be Conservative, are concerned about Nevada water, then why do they assist the Federal Government in stealing thousands of Water Rights away from the people of Nevada?"

To help bring some light to this bloody massacre of individual Water Rights in the West, 20 let me explain. The Nevada Division of Water Resources maintains a Water Registry where of all of the deeds to Nevada Water Rights are listed. You can view the actual deed on-line; see who originally established them; and, see who owns them now.

Most Water Rights were created by our pioneer forefathers who established these rights by being the first to beneficially use the water. In 1880, the state of Nevada created the Water 25 Rights Registry; and, made it possible for our pioneers to file the rights with the state. Nevada's laws, and most other states for that matter, specify that in order to retain Water Rights, you have to prove that you are putting the water to beneficial use; that you're using it. If you fail to use them, someone else may

[1] https://www.youtube.com/watch?v=JfFZTdBq-Xc&feature=youtu.be

prove beneficial use and the right can become theirs. - Use it or Lose it! This good law keeps an individual or a corporation from hoarding water and not allowing people to benefit from it.

So, this is where our federal government in sheep's clothing comes in. Knowing that water is a limited resource; and, one that will warrant wealth and power, especially in the future; and, desiring that power for them-selves, our Federal Government began a campaign against the citizens of the western states to steal away their Water Rights; and, other resources, for that matter.

But, when it comes to water, all they have to do to accomplish this is to get that owner of the Water Rights to stop using them. Once the owner stops using them, then they can file 40 up on the right and make it theirs. You may be asking yourself: *"Has this ever happened?"*

Well, in Nevada alone the BLM has done this two thousand, seven hundred and fifteen (2,715) times. The US Forest Service has done it two thousand, three hundred and thirteen 45 (2,313) times. The Department of Interior has done it twenty-six (26) times and the National Park Service has done it fourteen (14) times.

Those four (4) federal entities in total have stolen five thousand, sixty-eight (5,068) Water Rights from individuals in Nevada alone. With self-appointed power to regular people off the lands, these federal agencies restrict ranchers, miners, loggers and other land users 50 from using the land and subsequently the water.

Grazing Fees - Mining Fees - Water Fees - Park Fees

In some cases the federal agencies have later leased or rented the water and other rights back to the very families from whom they stole them from making the family pay a fee to 55 use what these federal agencies claim as their own, their right. In other cases, the agencies have forced the Water Rights owners to give up claim of the water in order to continue to use the land.

There are several other adverse ways in which these agencies have manipulated the resources away from the families; these families that established these rights through hard 60 work and much suffering many, many years ago. Time will not allow me to explain all of them. Needless to say, our Federal Government is in business for themselves and not for the people.

You may recall a year ago I was tasered three times. Around thirty-four (34) overaggressive federal agents in thirteen (13) armed vehicles were escorting a BLM dump truck pulling a backhoe. They had just come off the mountain range on the Bundy Ranch. These federal agents were trying to keep the protestors from seeing what was inside the dump truck. Coming from behind I sacrificed my ATV by driving in front of the dump truck.

After the initial crunch I calmly stepped off; and, inquired about what they were doing in our mountains with that backhoe. My answer came in the form of an attack dog and a fifty thousand-volt, double-barbed shock of my life; three times in a row. Since the answer did not give me much clarification, I crawled upon the dump truck to see for myself. What I saw was even more shocking to me than the taser. I saw pipes, concrete and cut up water tanks that had been ripped out of the

mountain. These were part of a water infrastructure that my family and other ranchers had established in those lands over 100 years ago.

As you may have put together, the Feds are after my father's Water Rights. He owns eleven (11) of them. They are deeded to him and filed in the State Registry. If the Feds could remove the cattle, which they tried, killing around sixty (60) head, then destroy any 80 way to use the waters, this would make it impossible for my dad to claim Beneficial Use. After that, all the Feds would need to do is claim those waters for themselves; the same way they stole the other five thousand, sixty-eight (5,068) Water Rights from the Nevada people.

You may also find it interesting that the Grazing Rights in Nevada are deeded with the stock Water Rights. So, destroying my father's water was killing two birds with one stone in the eyes of our so-called Federal Government.

Now we have come full circle, AB-408 was drafted to restore the Resource Rights back to the people; and, prevent these grievous actions from happening again. So, why would Jim Wheeler, Robin Titus and our very own representative Chris Edwards, District 19, fight against this? I hope it is out of ignorance. I hope it is simply because they are disconnected with what is really happening in the state of Nevada; and, in the West. I hope they just simply don't realize how the people of this state are suffering.

After being up in Carson City, our state capital, for much longer than I wanted; and, after experiencing what I did, I am left to wonder. I would like to personally thank the over fourteen thousand, three hundred (14,300) acting supporters of this bill; and, all those who came up by bus or in their own vehicles to come to the Hearing in support. I also want to thank the hundreds of thousands of people that have been keeping an eye on my family. We are extremely grateful; and, we know and appreciate your sacrifice.

Thank you, Ammon Bundy

_____

James Magee, Next Friend

NOTARY

In _____ State, _____ County, on this ____ day of August, 2016, before me, _____, the undersigned Notary Public, personally appeared James Magee, to me known to be the living man described herein, who executed the forgoing instrument, and has sworn before me that he/she executed the same as his free-will act and deed.

_____

(Notary seal) Notary

My commission expires: _____

AFFIDAVIT OF AMMON BUNDY

I, James Magee, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading: I am functioning in the capacity as a next friend under Rule 17, 28 USCA for Ammon Bundy who was arrested and in prison.

> **Next Friend:** "*A next friend is a person who represents someone who is unable to tend to his or her own interest*." Federal Rules of Civil Procedures, Rule 17, 28 USCA; Haines v. Kerner, 404 U.S. 519 (1972)

The following is a true and accurate transcript from a video posted on Youtube[1] by Ammon Bundy who is incarcerated in the Multnomah County Jail, Portland Oregon who made the recording before he was incarcerated.

Transcript [video] 15-12-05 Feds Burning Cows, Homes, Imprisoning Rancher

Ammon Bundy here. Trying to keep a smile on my face. This Hammond case really digs deep into the soul; and, makes you wonder what's going on. 5 I do need to give you a more thorough update; and, I'll prepare that showing how the due process was not due process at all; how there was a tremendous amount of corruption in its origin; a tremendous amount of corruption on in the Indictment, in the trial, in the sentencing; and, then of course, in the resentencing; and, then even now. 10 A couple things that I talked to you about before: about the Sheriff feeding information to the FBI. That has been confirmed again. Also, the threats that were given to Hammonds if they continued to communicate with me. They were confirmed that they [the threats] came from the US Attorney's Office; and, that his words were that the Hammonds, if they did not cease communications with Ammon Bundy, that the Hammonds would be detained early and put in a less-desirable prison.

You have to understand, the Hammonds the preparing to be gone from their families for five (5) years; and Frank Papagni is threatening to shorten that period of time so that they can't prepare their wives to take care of the ranch when they're gone. Also, it means to Dwight, who's seventy-four (74) years old, if he gets thrown into a less desirable prison he'll probably be abused to the point where he won't live. And, so, these threats are very real; and, they're very intimidating to the Hammonds.

Now I want to show you a video of a rancher that ranches just a few miles from the Hammonds. It shows how the BLM cares about the ranchers; and, cares about the community. This was done in July; and, the BLM started some fires in July. 25 Prescribed fires are not done in July because they [the ranchers] have all summer that they need to feed their animals; and, so, basically, the BLM was burning the ranchers' grass; and, as the video will show, many other things. But, I want you to understand also that this video was filmed less than two (2) weeks from the day the Hammonds were sentenced for starting a fire. 30 Days after the Hammonds were sentenced as "Arsonal Terrorists", the

[1] https://www.youtube.com/watch?v=Aeeclad8G3E

BLM started multiple fires that killed and injured cattle; and, burned homes and destroyed other property. BLM agents are destroying ranches by fire.

The BLM went in and lit fire along the hillside here by the dump; but, there's nobody here. It would be easy for a couple of 35 *guys with shovels right now to put this out; and, we'd have a good firebreak. But, when the wind hits it, it's going to carry it right on along the hill and down to Frenchglen which is right there. So, if it creeps away from the hill, obviously in the foreground there's a lot of fuel. So, it looks like it's set to burn Frenchglen; and, that's what they said they would do. So, here we go.*

Prescribed burns in the area are done in late fall. BLM started this fire in early July, 2015. It burned most of the summer feed needed for the cattle. Frenchglen is a small town to the south.

So, as you can see, they brought the fire right to us. It was way west last night. When the sun went down, it was dying down. Somehow, overnight, it ended up right here. It's pretty obvious that this is man-lit. Well, I'm at Gary's corrals here; and, last night while nobody's around they lit the fire right here close to everybody's houses; and, we're going to have a hell of a lot of fire come evening.

A BLM agent with a torch is standing along the roadside.

They're not putting it out. They're lighting it. This is a bunch of bullshit, let me tell you. We're standing at the corrals; and, them Sons-of-Bitches started at the corner of the road where it [the fire] leaves the pavement; and, they're lighting that Son-of-a-Bitch on fire all the way around us. They're going right down the... I'm standing here... me and John Whistle... We've got a water truck and stuff; and, the grater is building a fire wall; and, they're [the BLM] building a fire all the way around us.

And, man, it's a flaming. We're up wind of it. Yeah. Well, that smoke's coming right at us. John's a taking pictures right no; and, he said that they [the BLM] told him they're going to torch her all the way around to the "C" Bar "C" Road and Bruce Wilder's cows are cornered up down there right now. Gary's lost eleven (11) already. They're just about to burn that outfit up. Nobody's there [at the family home on the hill]. They [the BLM] lit the fire and moved right on.

A Rancher is making a fire break with equipment and water trucks while BLM agents build a fire around them. Cattle are cornered by the BLM fire. There are already eleven (11) head of cattle dead. It's burning a family home on the hill.

This is what they've got upwind of us right now. They're putting in a whole line of fire right along that juniper post fence. They're burning the fence. Somebody ought to get his head rubbed in the ground out there. They're going to continue right on to the west, sounds like, clear past Leon's cows so his cows are going to be wrapped in it here pretty quick. And, they're still lighting; burning fences, power poles, you name it. This is the fire that would endanger Frenchglen. There's still nobody around. This guy down the road told us he didn't have any resources to put it out. But, down the road about two (2) miles beyond the turn, out of sight, is at least a dozen (12) pumpers sitting there; eating snacks and what not. By God, they're determined they're going to burn everybody out. They're lighting it up here again.

This is about control. They [the BLM] terrorize the ranchers to get them get them off the land so politicians can use it for profit.

We've got Jimmy and Gary and those guys right downwind of where these guys are lighting fire again. We're heading... trying to go around to save the corral system; and, getting to bail Jimmy out of trouble.

BLM Agents are threatening to arrest the ranchers. *The guy [BLM agent] said: "I will arrest you." I said: "Well, I have to get on the other end of the fire." He said: "You ain't going." I said: "Well, we have to get over there because you burned me out over here."*

Yeah. This is what we have. Those guys that we just went by upwind; they're lighting it; have it coming right to us here. We're going to try to spray this down. There's no place to go with the cows except in the corral. A lot of them are already burnt really bad from them guys lighting them and trapping these cattle in the fire. They trapped a bunch of them last night. And, then they went upwind from us here and lit it up. So, we're at Gary's corrals. There's a cow that's been burnt really bad. We got... These guys are going to light fire upwind from us again. They don't care where we are or what's going on; but... So, here's what we got.

BLM agents are starting fires within 100 feet of the corral. BLM fires have injured several cattle and reportedly killed over 80 head of cattle. *Well, there goes the house up in smoke that they surrounded with fire earlier; that house is going up; totally caused by BLM.*

All the structures on the property were destroyed. This BLM fire reportedly killed more than 80 head of cattle; put ranchers trying to save their cattle in extreme danger, injured other cattle, burnt homes and structures, burnt fences and power poles and threatened the town of Frenchglen. Even though all the fires were started by the BLM and most of the fires were left unattended, the BLM refused to pay for the loss of cattle, homes, fences and corrals. While the federal government is burning up homes, cattle and terrorizing entire communities, the Hammond's are being prosecuted as "Terrorists" by the federal government for starting a backfire that saved land, homes, cattle and harmed no one.

_____

James Magee, Next Friend

NOTARY

In _____ State, _____ County, on this ____ day of August, 2016, before me, _____, the undersigned Notary Public, personally appeared James Magee, to me known to be the living man described herein, who executed the forgoing instrument, and has sworn before me that he/she executed the same as his free-will act and deed.

_____

(Notary seal) Notary

My commission expires: _____

AFFIDAVIT OF AMMON BUNDY

I, James Magee, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading:

I am functioning in the capacity as a next friend under Rule 17, 28 USCA for Ammon Bundy who was arrested and is in prison.

The following is a true and accurate transcript from a video posted on Facebook[1] of a recorded phone call on August 9, 2016 between Ammon Bundy who is incarcerated speaking from the Multnomah County Jail, Portland Oregon and Shannon A Bushman who made the recording and posted it on face-book.

> **Next Friend:** "*A next friend is a person who represents someone who is unable to tend to his or her own interest.*" Federal Rules of Civil Procedures, Rule 17, 28 USCA; Haines v. Kerner, 404 U.S. 519 (1972)

AMMON BUNDY: This morning I woke up to pounding on the door on my cell. It was Ryan (Bundy) at 6 AM. He quickly told me that they were trying to transport him to force him to have surgery to take the bullet out of his arm. He also slipped me a note under the door that said they were taking him to Oregon State University Hospital to have surgery forced on him. The guard would not let him use the phone to call the attorney. He was calm but firm that they did not have consent to take the bullet out of his arm, to have surgery on him.

He told the guard that he did not know about any of this, and neither did his legal team. Nothing was on the court docket, no orders were made and nobody knew anything about it. The guard called in a sergeant, Sanders, and he told Ryan that the marshals were ready to transport him. I only briefly heard this, and then Ryan ran upstairs again to tell me that the marshals were here to take him, but they did not have his consent!

The Sergeant ran up the stairs after him and then Ryan walked calmly back down the stairs. The Sergeant began pushing Ryan violently and then slammed him against the wall. Ryan was calm and non-aggressive. He said over and over again. "I am going. I'm consenting, I'm going." The Sergeant then slammed him into the sally port door, and violently shoved him through it. Ryan was continually saying "I am going, I'm complying, I am going."

The Sergeant then grabbed him by the body and swung him around and rammed Ryan's head into the metal door jam. I heard a grunt from Ryan, but he kept saying "I am going, I am going, I'm complying." The Sergeant then slammed Ryan to the floor on his face. After a few grunts, he

[1] https://www.facebook.com/bundyranch/videos/vb.623383454405133/1074391485970992/?type=2&theater

continued to say, "I am going, I am complying, I'm going." Shortly after, three or four men came into the sally port and forcefully handcuffed Ryan and drug him out. I could not see Ryan's face where he was slammed into the metal door jam.

Ryan has never refused to go to court before or anything else for that matter. He was afraid and had every reason to believe that they were going to force him to surgery. Just a few days before, the Department of Justice, I believe it was the Department of Justice, had a hearing and was trying to get the courts to force Ryan to surgery. They already forced him to x-ray, and one doctor refused to do the surgery. He was informed that another doctor said he would do it.

This bullet is one of the bullets that was shot by the FBI, or Oregon State police when LaVoy was killed. Ryan said he was shot in the arm before LaVoy left the vehicle. Ryan believes the FBI were going for his head and when it hit the glass, it deflected to his shoulder. The bullet is one that is unaccounted for, and part of the FBI shooting cover-up. He also knows that another shot came through the roof that the FBI did not report, possibly others as well.

He also believes that LaVoy was shot at least once when he was still in the truck. The shots and holes in the roof are possibly why the FBI or Oregon state police will not release LaVoy's truck. The FBI and Department of Justice want to take the bullet by force without anyone present. Ryan told them that if he consents, the bullet will remain in his custody and go through the Grand Vic investigation by a private neutral party. They did not like his terms.

This was just a few days ago, and then this morning, without any warning, the deputies come to take him down to be transported by the US marshals. No warning, nothing on the court docket. Ryan had every reason to believe that he was forcefully going to surgery. I have not talked with Ryan, other than a few quick words this morning. I am not sure where he is at, but have some reports that say that he is in the "hole" for disciplinary reasons, for resisting being taken.

A few of the inmate workers said that they heard the guard's joking and laughing about it downstairs. These workers saw the whole incident themselves this morning and then hearing the guards joke and make fun with it this afternoon upset them. I have several affidavits from those that heard and saw what they did to Ryan. All of them say that Ryan was non-aggressive and was calmly trying to help the deputies understand his concern. Even when they used excessive force, Ryan remained calm.

It was difficult to see my brother abused. I watched the entire event, locked in while I pounded on the doors to wake others to witness. I do not believe that any man, woman, or child should be forced to let another person enter their body without consent. And then, to use drugs to sedate the person without consent even makes it more egregious. This appears very close to be something that we call rape.

When they finally let me out of my cell a few hours later, Deputy Rose would not give me a form to report the incident. Then later, a sergeant came in and he told me to use the "general request form" to report it if I would like. Rose was one of the guards joking and making fun of what was going on downstairs. He also refused my attorney from calling in to get my report and seek help. The phone

receipts will prove this. My attorney tried to call through all afternoon to help. They were denied access to me multiple times for several hours.

Finally, my attorney decided to get on a plane and to speak to me in person. Need I say Ryan nor I have been convicted. We are only accused by a lady with an affidavit that has more inaccurate statements in it, than my seven-year-old daughter would make. Any just grand jury would have seen through it. But of course we know the grand jury is controlled by the prosecutors.

So much for the fourth amendment, so much for being innocent until proven guilty. So much for the 1st, 2nd, 5th, 6th, 7th, 8th, 9th, and 10th, amendments, the Bill of Rights. In fact, so much for the entire Constitution! Just like Sergeant Jacobs said to me today. "I don't know, I don't care, I don't want a history lesson, I don't want to listen to you. We just do to you what the feds tell us to do."

So much for federalism, where the county, state and federal government are for the people and designed to say no to each other when the rights of the people are being violated. The people's guards have become the offenders and the people have no defense. What are we to do?

Thank you, Ammon Bundy

James Magee, Next Friend

NOTARY

In Montana State, Flathead County, on this 12 day of August, 2016, before me, Melanie A. Pickar, the undersigned Notary Public, personally appeared James Magee, to me known to be the living man described herein, who executed the forgoing instrument, and has sworn before me that he/she executed the same as his free-will act and deed.

Melanie A. Pickar
Notary

(Notary seal)

MELANIE A PICKAR
NOTARY PUBLIC for the
State of Montana
Residing at Columbia Falls, Montana
My Commission Expires
February 05, 2017

My commission expires: 2/5/2017

Affidavit of Shawna Cox

I, Shawna Cox, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading:

Approximately January 1996 I met Cliven Bundy and his son Ryan in Kanab, my home town. He had come to speak at our political group meeting. Cliven explained that the Bureau of Land Management (BLM) had been harassing him because he had canceled his contracts with the BLM. Cliven had canceled his contracts because the BLM was managing him out of business.

In March 2012 Cliven contacted me, saying he needed my political group's help. He said government agents were coming to steal his cattle on a Wednesday morning at 6 AM. He asked if we could come and help. I called many political people I knew and the action of stealing Cliven's cattle was postponed for another day.

On 25 March 2014 (two years later), Cliven told me that government agents again intended to steal his cattle. Cliven had taken a reporter from Las Vegas Channel 13 on a tour of his ranch and on that tour he accidently came upon government agents setting up corrals in Toquop Wash, just north of I-15. Government agents started gathering Cliven's cattle on 4 April, using contract cowboys.

On 30 March 2014 Carol, Cliven's wife, showed me the contract between the BLM and a cowboy from Utah by the name of Shane Simson. Simson was contracted by the BLM for a sum of $961,000 to gather 1,000 head of Cliven Bundys' cattle. Cliven told me that he didn't have that many cattle. He said that he only claimed 500 head and there were possibly another 100 head that had not been branded yet (new calves). He told me also that the BLM had planned to sell the cows at the " R" Livestock Auction in Richfield, Utah.

During the week I made a number of calls to Mike, my state representative. He had informed me that he had information, that the gathering of Bundy cattle had been changed to the 4th of April. That made much more sense to me. I was also told the Utah State legislature and governor were trying to keep them out of Utah. Another bit of information was that the owner of the "R" Livestock Auction had been prepaid to sell the Bundy cattle there at their auction. The dollar amount was unknown, but was first rumored about $100,000, then someone said it was more like $300,000. The last figure I heard was more like $48,000. The prepayment was needed to build some corals to keep the cattle in. The auction owner, Scott Robins (a young family man), was behind on some property taxes and needed the money.

I interviewed Dave Bundy after he had been arrested. He told me the following story, that on 5 April his family and his brother's, Ryan, family stopped on state highway SR 71, because they saw a convoy of vehicles coming off Gold Butte Mountain, including cattle trucks. The Bundy family stopped to take pictures of the convoy. The first three vehicles stopped and six agents jumped out and told the Bundys to disperse. Dave told the agents his family had a First Amendment right to take pictures. The agents pointed guns at Ryan, Angie (Ryan's wife) and their children, forcing them at gunpoint to get back into their vehicle. Dave continued taking pictures, stating again he had a First Amendment right. The others of the Bundy family would not drive off, leaving Dave behind.

Dave said all six agents and a dog surrounded him with tasers in their hands, threatening him with force. Dave set his iPad on the hood of his own car as the agents closed in. Two agents each grabbed Dave's arms, pulling him side to side, and then tried to pull his arms behind his back. At that point Dave pulled his arms

toward his chest. The agents forced Dave to the ground and he put his hands in front of his face to protect his face from the gravel. The agents tried pulling his arms away, out from under Dave's face, leaving his face in the gravel. Dave gave up one arm and the agents twisted that arm, causing Dave pain. Then they pulled Dave's other arm out from under his face and handcuffed him behind his back. A third agent knelt on Dave's neck, pushing his face into the gravel. That same agent got up and placed his boot on Dave's head and ground Dave's face into the gravel. Then two agents pulled Dave to his feet by his arms. Dave was facing the agent who had ground his face into the gravel. Dave recalled his name tag reading "J. Cox".

The agents put Dave into a truck and took him to the compound yard in Toquop Wash, where they were gathering cattle. They paraded Dave around the compound like a trophy for 3-1/2 hours, taking pictures all the while. Then the agents put him back in the truck and took him to the Henderson city jail. On the way Dave tried teaching the agents about the Constitution and Bill of Rights. Because of the recent passing of the NDAA bill by Congress, Dave was worried and concerned that they could keep him for a very long time. His thoughts turned to his wife and children, wondering what would become of them. He couldn't bear the thought of not being with his family. He knelt in prayer and poured his heart out and then began to sing hymns, which brought him peace. He knew his heavenly father was there.

The next morning agents put handcuffs on Dave's hands so tight that his hands began to swell. Dave was put in the back seat of a police SUV, behind a metal mesh plate, in a seat that was too short to put his knees in, because he was such a big guy, and caused terrible pain. He tried to lean forward on his forehead to relieve the awful pressure on his bound hands and arms. He asked the agents to please release his arms or to loosen them, because it created terrible pain and was very inhumane. Agents put legcuffs on Dave's feet so tight they made his feet swell. They led him up and down to different rooms to be questioned by different people. After waiting about an hour to see the federal judge, an officer came into the room, handed Dave two citations, removed the cuffs, shackles, chains and orange jump suit, returned his personal belongings, gave him a sack lunch and released him through a door onto the streets of Las Vegas. He had no money, no cell phone and no iPad, but was now free to leave. The citations were for "failure to disperse" and avoiding arrest". His cell phone and iPad were never recovered. He was 80 miles from home with no way to contact his family. He finally found a woman who let him use her cell phone. Dave called his home and his father, Cliven came to pick him up.

On Monday, 7 April 2014, two of my friends and myself drove back to the Bundy Ranch. As I drove past the Utah Port of Entry I stopped and took pictures of the signs that had been covered up dark brown plastic and another covered in paper. The “All Livestock must stop” signs were in fact covered up.

Just after we exited on the Bunkerville Exit 112, we immediately came upon orange plastic net fencing and an area about 200' by 200' with signs on it that read “First Amendment Area”. There was one Gold Suburban parked there with a man inside holding a sign. I also learned that there had been set up another such “Area” on the West End of Bunkerville. The rules had been posted that only 25 people at a time could occupy these areas and only occupy one of the areas at a time.

I took pictures and then went over to the man and asked what he was doing? He said this was the "First Amendment Area", where we could protest for the Bundy's. I asked him where everyone else was. He stated that they were down the road towards Bunkerville.

We drove on for another 3 miles as we came across the huge 50' poles that were being erected by a group of folks. They had set up a travel trailer. There were about 50 to 60 people there with many parked cars. Signs were already posted on the chain link fence and people with picket signs were walking up and down the

roadway. They were trying to get the big sign hung up at the top of the 50' poles. We joined them and got out our signs, posting on the fence and carrying them with us as we paraded up and down the roadside. There was a sign posted on the fence that Dave Bundy has been illegally arrested, It gave a phone number for everyone to call for his release. Which many did!

We had been there for just a few hours when Cliven pulled in with Dave from Las Vegas. He was still in his clothing he had on in the attack on Sunday. I asked him if I could interview him. He agreed and I recorded that interview live with many of his friends and family standing nearby. The interview can can still be seen on YouTube. The interview describes the events he had previously experienced and are described above.

My friends wanted to go home, so I took them home back to Utah.

I left home the next day, Tuesday 8 April 2014, for Bunkerville again, this time alone. After I passed Mesquite, I was watching for the BLM area and compound. I slowed up to about 65 mph and got in the right lane as close as I could to get the best pictures. There was a blue Metro police car there with his lights on as well as a new black unmarked SUV.. They were watching me as I drove by.

The black SUV pulled out just behind me. I sped up and passed a diesel Truck to put distance between us. As I exited right onto the Bunkerville Exit 112, I pulled off the road to stop and take pictures again of the "First Amendment Area". While I was standing out of my truck on the running board, the black unmarked SUV with dark tinted glass windows came off the exit and slowed down as it passed by me. I got back in my truck and headed towards the ranch. A new looking light gray unmarked truck passed me on the road and stopped just ahead on the left side of the road to meet up with the black SUV, which I noticed had Colorado license plates.

I arrived at the Bundy Ranch house about 8:30 a.m. I was interviewing Cliven when his youngest daughter came screaming out through the front door that “they” had Arden and Clancey (sons of Cliven's) down by the river, meaning the Virgin River.

I was later told that one of the older Bundy relatives was down along the road when he noticed a white helicopter trying to herd the cattle along the river. He didn't have a camera, but a cell phone instead. He called for someone to come with a camera and get pictures, because the cattle were being driven and the poor little calves couldn't keep up with their mothers. The calves were being left in the underbrush hiding, or trying to run to keep up, but would stumble and fall as the helicopters would keep pushing them, even hitting them with their landing runners! Arden and Clancey went to get pictures, as others followed.

When I arrived at the river, there were approximately a dozen white SUV's, gray trucks and black SUVs, along with the white trucks that were blocking the gravel roadway. Behind them was a red pickup, which the boys were in. A silver SUV was parked in front of the whole situation, with at least one man who looked like he had on a uniform. I took pictures and video footage of the men standing at each window of the pickup who were asking for the boys id's. The boys gave them their driver's licenses.

A crowd of people were clamoring for the two boys to be left alone. The two men standing at the red pickup were approached by another man, and were told something about backing off. One agent handed back the drivers license to the driver. The other one tossed the other license back into the truck on the passenger side and both headed for their truck. They had to wait for 3 other pickups to back out so they could leave.

Cliven never got involved with any of these things. In fact he instructed his whole family: " be peaceful and not threatening because how could they be guilty of crimes they did not yet commit? Just let them do their evil deeds and the Lord will tell us when to stand up".

I had never been able to finish my interview with Cliven from that morning about the fees. Nevertheless, I did find out that the BLM had stated that on a Monday he owed $300,000 in back fees for the past 20 years. The following Wednesday they stated it was over $1,000,000 and by the next Friday it had gone up to $10,000,000.

Cliven did explain to me that in 1877 his maternal grandmother had settled this ranch, and it had been in the family ever since. Cliven had purchased more personal property to make it the 150 acre ranch it is today. He said his range land was about 95 square miles.

He further explained that there were 53 ranchers in Clark County in 1993. That year the BLM gave the ranchers a new contract. This new contract said the ranchers had to reduce their herds of cattle to 150 head each. Even after that, the BLM required an open door to establish new guidelines at their discretion. He explained that such parameters would not allow him to make a profit. Cliven was the only rancher that did not sign the contract.

Cliven explained to me that he didn't feel right about not paying grazing fees, when his neighbor ranchers were paying. So Cliven said he made his check out to Clark County, because he had no contract with the BLM. When he went again to pay his fees, they refused to accept the fees. Instead Clark County gave Cliven a check for all fees he had paid earlier, but he has never cashed it.

On Wednesday 9 April 2014 a group of people, Bundy family members and media were gathered at the area around the 50' flag polls. They had seen a caravan of vehicles come down from Gold Butte Mountain, after which Ammon Bundy and Margaret Houston had been injured. I arrived at the scene just as medics were arriving to assist Ammon and Margaret.

On Thursday 10 April 2014 a friend flew me over the area. I got pictures of the corral full of cattle that the BLM had set up on the north side of I-15 in Toquop Wash. I could see trucks posted in twos all across the desert. The BLM had spotters who were watching us with their rifle scopes and binoculars. I could see a distinct difference in the quality of the ranch managed land and the dry desolate desert. The range land Cliven had been ranching was well manicured.

That afternoon a press conference was held at which Nevada Assemblywoman Michele Fiore and Nevada US Senator Dean Heller attended. They both said they supported our cause to support the Bundy Ranch.

We had heard that there were some protesters in Overton Beach, about 40 plus miles away. We drove to the area, but the protest was over and all the government agents were gone. However, one of the protesters had bruises over his face and head from the beating he had received from government agents. He said they had knelt on his head in the gravel.

On Saturday 12 April 2014 a rally was taking place at the flag poles with a flatbed trailer converted to a stage. As I approached the area I could see Sheriff Gillespie and about a half dozen of his deputies. I turned around to see three or more trucks full of militia men all dressed up in their camo and gear. In the middle of them was a Hummer with a couple and Cliven and Carol.

Ryan Bundy, Cliven's eldest son, began the program with a prayer, Pledge of Allegiance and the Star Spangled Banner. The Sheriff was offered the microphone. He told us that he would be happy to sit down and negotiate some terms with the people etc. He didn't take long and then Cliven was welcomed to the microphone. Cliven said to the Sheriff, “Negotiations are past. If you were going to negotiate, why didn't you last Tuesday when I was at your office? Today 'We the People' are going to tell you what our demands are!" and continued with his speech.

There was a parade of about 50 horse and riders marched across the bridge toward us, carrying the American Flag, the State Flag and a Flag representing all the divisions of the US Military, Navy etc. They paraded past us and up the road in rank and order. They rode up the hill carrying flags.

Cliven made demands of the Sheriff and gave them 1 hour to return. The media was to follow and return and report. They all departed People were invited to the stage to sing, speak, recite poetry etc. as everyone stood at attention waiting for the Sheriff to return and report. The hour went by and someone shouted, “It's been an hour and 10 minutes.” Cliven really didn't want to hear that. He returned to the microphone. “Does anyone see the Sheriff or his deputies?” “No!” the crowd yelled. “Where is the Media that was suppose to return and report?” “Not here” some yelled. Just then a metro police car drove by. Hoping it might be the Sheriff's report, Cliven asked” should we give them any more time?” “Five minutes” was the answer.

All during this time I was texting on my cell phone to my Congressman from Utah, Chris Stewart, letting him know what was going on. He texted me back with “I just got off the phone with Neil Korntz, head of the BLM. They are backing down. They will be pulling out within the hour. You win! Don't do anything crazy! They are backing down.” I hurried to the stage to show the text to Cliven, but too late. He was already at the microphone. He said that the cowboys were going to go up the Toquop Wash, open the gates and let the cattle go. The cattle know how to get home to the river. We just have to let them go and they will go home. He said anyone, that wants to follow Ryan up to the wash and open the gates, is welcome. All who want to can get in your cars and drive up to the freeway. Then he said, “Git 'er Done!”

As I reached the bottom of the hill I was met by Ammon, another of Cliven's sons. His arms were outstretched. He instructed us not to enter the wash yet. There were agents parked in front of the fence panels that were crouched down behind their open doors in a defense pattern with weapons drawn. I had to look through a mesquite bush there to observe for myself. Sure enough there were the white Ranger trucks parked side to side with both doors open and men dressed in army looking gear. I pulled my head back behind the hill.

We stood and together we formed a line a few deep and swung out and across the wash. The bull horns from the Rangers began to shout demands for us to “Stop and Disperse”. We stood still, instructed to not do anything crazy. Don't try to be brave, just sit and wait for the 50 or so cowboys on horses. In spite of all the shouts from the bull horns we slowly inched forward to the shade and stopped! The rangers/agents looked more like they were dressed for war. They never dropped their weapons they had pointed at us.

As I looked around at the people that were with us I noticed that there were “Oath keepers”, “militia men”, body guards, family members, friends, patriots, men, women, and a couple of teens and some brave media. We could hardly tell what they were yelling in the bull horns because the sound would echo back under the

two overpasses. The little bit of wind was blowing towards the Rangers. I heard someone say that those with rifles should leave the rifles back behind the bridges. There were only two men carrying rifles that I witnessed. There were mostly unarmed citizens! The men with rifles stayed back and put them down.

When Ammon noticed a couple of guys beginning to back off and retreat, he called to all of us, "Don't back down, don't anyone back down. We must stand together for however long it takes. If it takes two days we will stay here. We will bring in food, water, toilets. Whatever it takes. Don't back down or we will lose the war!" Everybody stayed still.

We did have a young reporter, David Michael Lynch, that stepped out ahead and began to walk towards the armed rangers with his large camera in one hand and his other outstretched hand in the air to show he had no weapons. He walked slowly towards them stopping now and again he got closer and closer for the live video.

More and more ranger vehicles were arriving with more men. They were stacking in rows just like in war. We could zoom in on them with our cameras. They looked like they were dressed in army fatigue only a different shade of green even to the helmets. It was about 1 ½ hours before the cowboys on horses finally arrived. They were led by Clancy, another of Cliven's sons. Their instructions were to stay in formation, don't break the lines, don't get brave and crazy, just be humble and stay together. No talking nor shouting etc. Just stay in formation.

Dave Bundy was on the other side of the fence panels and the cameras were rolling as they talked with Daniel P Love, BLM Agent in Charge and then the county deputies began to appear. Some of us were up to the fence panels by now and I was able to get some up close pictures of the ranger/agents. Some of them did Not look like Americans. They looked more like they were from the Middle East by their dark skin, long noses and dark eyes. One reporter told me that when he had approached them before, that even when he called them by name (they had on name tags) they never responded to their own names. In fact they didn't even speak English he said. I found that very easy to believe after seeing them myself.

The horses were carrying the American and Title of Liberty flags with them, as we all waited under the bridge. Ammon, Dave, and Ryan Bundy were all there. Ammon told the Deputies that all we wanted was to go open the gates and let the cattle out. We would do it however they wanted us to, but our objective was to let the cattle out and we weren't backing down. Ammon pulled a sign down off the fence that said: "CLOSED AREA Temporary Closure of Pubic Land in Effect 18 USC 1509 You may be officially charged with obstruction of a court order." Such signs had been placed all over the roads every 30-50 ft.

We were instructed to back off the fence 10 feet, for whatever reason that was about but we obliged and retreated. Then we were told that we had to give them another hour to pack up their things and pull out. So we sat and waited another hour and a half as all the vehicles and men began to walk backwards still facing us. After a little way they got in the vehicles and turned around and drove away slowly. We waited!

The deputies instructed us that we needed to all get back and line the wash as the cattle came out so nobody would get run over. He was only going to let the horses and the 3 Bundy sisters in to open the gates and let the cattle out. At first he told Ammon that they could only open one coral at a time and let the out but Ammon explained that would not be a good idea. We need to let them all go at once because they were going to travel quickly together to the water, and these cowboys were very experienced and knew exactly

how to work the cows. The deputy finally agreed. It wasn't long before a cowboy come out behind a cow and then shortly here they came. A man standing next to me was counting them. He said he counted about 350 head he thought. The cowboys followed up behind them all the way down to the river. We all headed back to our vehicles

Shawna Cox

NOTARY

In Utah, Kane County, on this 25th day of March, 2016, before me, Marjorie Heyborne, the undersigned notary public, personally appeared Shawna Cox, to me known to be the living woman described herein, who executed the forgoing instrument, and has sworn before me that she executed the same as her free will act and deed.

(Notary Seal)

MARJORIE HEYBORNE
Notary Public
State of Utah
My Commissiones Expires October 23, 2016
Commission No. 660307

Notary

My commission expires: 10/23/16

DRAMA ERUPTS AT BUNDY RETRIAL AS JUDGE SCOLDS DEFENDANT, ORDERS HIM OFF STAND

By Robert Anglen, The Republic | azcentral.com

Published 7:25 p.m. MT Aug. 10, 2017 | Updated 10:53 a.m. MT Aug. 11, 2017

A Las Vegas courtroom erupted in drama Thursday when a federal judge ordered a defendant in the Bundy Ranch standoff trial to get off the stand, struck his testimony, dismissed jurors and abruptly left the bench. Jurors looked stunned as Eric Parker returned to the defense table with his head hung and then buried his face in his hands, according to lawyers in the case. "He put his head down on the counsel table and appeared to be crying," defense lawyer Shawn Perez said. "My observation of the jury was they were looking at everybody in the courtroom and going, 'What just happened?' "

Perez, who represents Richard Lovelien of Oklahoma, one of four defendants being retried for their roles in the 2014 Bundy Ranch standoff, said everyone in the courtroom — from jurors to lawyers to observers — was stunned into momentary silence. "I've never seen anything like it," he told *The Arizona Republic* in a phone interview Thursday. "It would not surprise me if there is a call for a mistrial."

Parker, of Idaho, was testifying in his own defense just before 3 p.m., when U.S. District Court Judge Gloria Navarro stopped him from talking and said she was going to strike his words from the record. She then told Parker to step down. Parker's lawyer, Jess Marchese of Las Vegas, said he is still trying to wrap his head around what happened, saying he's never experienced anything remotely similar. "I looked at some of those jurors and they looked aghast," Marchese said Thursday. "I looked at one woman (juror), and she looked like she had just seen someone get their head cut off." Marchese said Parker was distraught and started crying when he sat down.

Parker was attempting to tell jurors what he saw during the standoff over a barrage of objections from prosecutors, who said he was violating court orders not to talk about what happened in the run-up to the standoff. Defense lawyers said Navarro called them to the front of the courtroom and told them Parker could testify only about what he saw during specific moments of the standoff. As soon as Marchese resumed questioning, prosecutors intensified objections, and that's when lawyers said Navarro halted the testimony and shut down the courtroom for the day.

Lawyers said after Navarro removed Parker from the stand, she asked them if they were prepared to call additional witnesses. Then she ordered the parties to return to court Monday morning and told jurors they could leave. The judge left the courtroom before jurors filed out. "We were really trying to be careful not to violate the court order," Marchese said. "But it was very restrictive and difficult."

Across from the aisle from the defense, federal prosecutors appeared as troubled by the developments as the defense, Perez said. Supporters of defendants in the Bundy Ranch standoff trial stand outside U.S. District Court in Las Vegas on Aug. 14, 2017. Lucas M. Thomas/The Spectrum Acting Nevada U.S. Attorney Steven Myhre, who is leading the prosecution, could not be reached for comment. A spokeswoman for his office said Thursday the U.S. attorney would not comment on the case.

Parker, Lovelien and Steven Stewart and O. Scott Drexler, both of Idaho, are accused of conspiracy, extortion, assault and obstruction for helping rancher Cliven Bundy fend off a government roundup of his cattle in what became known as the Battle of Bunkerville.

Navarro's rulings have severely limited defense arguments to avoid what she has described as jury nullification. Navarro has barred defendants from discussing why they traveled thousands of miles to join protesters at the Bundy Ranch. She will not allow them to testify about perceived abuses by federal authorities during the cattle roundup that might have motivated them to participate. Navarro also has restricted defendants from raising constitutional arguments, or mounting any defense based on their First Amendment rights to free speech and their Second Amendment rights to bear arms. In her rulings, Navarro has said those are not applicable arguments in the case.

Retrial delays trial of Cliven Bundy, sons - A jury in April deadlocked on charges against the four men. It convicted two other defendants on multiple counts. But it could not agree on conspiracy charges — a key component of the government's case — against any of the six.

Jurors found Todd Engel of Idaho guilty of obstruction and interstate travel in aid of extortion and Gregory Burleson of Arizona guilty on eight charges, including threatening and assaulting a federal officer, obstruction, interstate travel in aid of extortion and brandishing a weapon. Navarro sentenced Burleson to 68 years in prison last month.

The trial was supposed to serve as a strategic springboard for prosecutors — the first of three trials involving 17 defendants prosecuted in groups based on their levels of culpability in the standoff. The second trial, which will include Cliven Bundy and his sons, Ammon and Ryan Bundy, who are considered ringleaders in the standoff, was supposed to start 30 days after the first trial ended in April. But Navarro ordered the second trial delayed until after the retrial of Parker, Drexler, Lovelien and Stewart.

What happened near Bundy Ranch?

The Bundy Ranch standoff is one of the most high-profile land-use cases in modern Western history, pitting cattle ranchers, anti-government protesters and militia members against the Bureau of Land Management. For decades, the BLM repeatedly ordered Bundy to remove his cattle from federal lands and in 2014 obtained a court order to seize his cattle as payment for more than $1 million in unpaid grazing fees. The Bundy family issued a social-media battle cry. Hundreds of supporters from every state in the union, including members of several militia groups, converged on his ranch about 70 miles north of Las Vegas.

After the BLM abandoned the roundup, the standoff was hailed as a victory by militia members. Ammon and Ryan Bundy cited their success at Bundy Ranch in their run-up to the siege of an Oregon wildlife refuge in 2016, also in protest of BLM policies. An Oregon federal jury acquitted Ammon and Ryan Bundy and five others in October. A second federal jury in Oregon delivered a split verdict against four others in March, acquitting two men on conspiracy charges and convicting two others. No arrests were made in the Bundy Ranch case until after the Oregon siege ended.

The BLM abandoned the roundup because they were afraid they were going to die, federal prosecutors told jurors. They said law-enforcement officers were surrounded and outgunned in a dusty arroyo beneath Interstate 15 where they had penned the cattle.

Local, state and federal law-enforcement officers testified they believed they would be drawn into a bloody shooting war with unarmed men, women and children in the crossfire.

Images of Parker have come to epitomize the standoff. He is pictured in an iconic photo lying prone on an overpass and sighting a long rifle at BLM agents in the wash below. The image galvanized the public and brought international awareness to the feud over public lands and the potential consequences of such a dispute.

The site of the Bundy Ranch standoff in the Toquop Wash below Interstate 15 about 70 miles north of Las Vegas near Bunkerville, Nevada.
(Photo: Robert Anglen/The Republic)

But jurors in the first trial couldn't agree on whether Parker brandished a weapon, assaulted officers or even posed a threat to them.

Marchese said Thursday the judge's actions put him in "uncharted waters," and he had no idea what to expect when court resumes on Monday. He said there was no question the jury had strong reactions to what happened.

"I personally was stunned," he said. "I am still stunned. If my recollection of things is what happened, then I have no words."

Judge declares mistrial in Bundy Ranch case

Robert Anglen, The Republic | azcentral.com
Published 8:57 a.m. MT April 24, 2017 | Updated 7:12 p.m. MT April 24, 2017

A federal judge declared a mistrial Monday after jurors deadlocked in the case of six men accused of taking up arms against federal agents during the Bundy Ranch standoff in 2014. Jurors convicted two defendants on multiple counts but could not reach a unanimous verdict against four others. Jurors told lawyers after court Monday they never came close to convicting four defendants, voting 10-2 in favor of acquitting two and splitting on the others, according to one of the defense lawyers.

Moreover, jurors did not find any of the six defendants guilty on the two main conspiracy charges that made up the core of the government's case, dealing a blow to federal prosecutors who have not won a clear victory against Bundy defendants in three separate trials. "They thought there wasn't enough evidence," Las Vegas lawyer Shawn Perez told *The Arizona Republic*. "At one point, they voted not guilty for two (defendants)."

Perez, who represents Richard Lovelien of Oklahoma, said jurors told him they didn't believe some government witnesses were credible and they were unmoved by Acting Nevada U.S. Attorney Steven Myhre, who argued defendants were armed vigilantes. "They didn't feel as if the government's closing was that impactful," Perez said. Federal prosecutors declined comment Monday, citing ongoing litigation.

The six men were described by prosecutors as the least culpable of 17 defendants charged with conspiracy, extortion, assault and obstruction for helping rancher Cliven Bundy fend off a government roundup of his cattle in what became known as the Battle of Bunkerville. Their trial was supposed to serve as a strategic springboard for prosecutors; it was the first of three separate trials scheduled in the Bundy Ranch case. U.S. District Court Judge Gloria Navarro ruled Monday the four men will be retried beginning June 26.

Navarro's decision will delay the planned start of the second trial, which will feature Cliven Bundy, his sons Ammon and Ryan Bundy and two others described by prosecutors as the leaders of the standoff. The jury told Navarro on Monday morning that it was "hopelessly deadlocked" and could not reach verdicts on the four defendants. Navarro ordered jurors to continue deliberating to see if they could reach additional verdicts. But just before 1 p.m., she declared a mistrial and excused the jurors.

Jurors found Gregory Burleson of Arizona guilty on eight charges, including threatening and assaulting a federal officer, obstruction, interstate travel in aid of extortion and brandishing a weapon. Burleson told a video crew after the standoff that he'd gone to the Bundy Ranch to kill federal agents. The video crew was made up of undercover FBI agents. Jurors found Todd Engel of Idaho guilty of obstruction and interstate travel in aid of extortion.

The Bundy Ranch standoff is one of the most high-profile land-use cases in modern Western history,pitting cattle ranchers, anti-government protesters and militia members against the Bureau of Land Management.

Trial began in February Jurors began deliberating April 13 after two months of testimony involving 35 prosecution and four defense witnesses. For decades, the BLM repeatedly ordered Bundy to remove his cattle from federal lands and in 2014 obtained a court order to seize his cattle as payment for more than $1 million in unpaid grazing fees. The Bundy family issued a social-media battle cry. Hundreds of supporters from every state in the union, including members of several militia groups, converged on his ranch about 70 miles north of Las Vegas.

After the BLM abandoned the roundup, the standoff was hailed as a victory by militia members. Ammon and Ryan Bundy cited their success at Bundy Ranch in their run-up to the siege of an Oregon wildlife refuge in 2016, also in protest of BLM policies.

An Oregon federal jury acquitted Ammon, Ryan and five others in October. A second federal jury in Oregon delivered a split verdict against four others in March, acquitting two men on conspiracy charges and convicting two others. No arrests were made in the Bundy Ranch case until after the Oregon siege ended.

The BLM abandoned the roundup because they were afraid they were going to die, federal prosecutors told jurors. They said law-enforcement officers were surrounded and outgunned in a dusty arroyo beneath Interstate 15 where they had penned the cattle. Local, state and federal law-enforcement officers testified they were afraid they would be shot or be drawn into a bloody shooting war with unarmed men, women and children in the crossfire.

For many, the standoff was represented by a single iconic photograph of a figure lying prone on an overpass and sighting a long rifle at BLM agents in the wash below. The image galvanized the public and brought international awareness to the feud over public lands and the potential consequences of such a dispute.

But jurors in Las Vegas couldn't agree on whether the man in that picture, Eric Parker of Idaho, brandished a weapon, assaulted officers or even posed a threat to them.

Attorney: Jury questioned conspiracy charges - Perez said jurors told him they had trouble linking the six men to the government's alleged conspiracy. He said jurors referenced his own closing arguments, in which he described the case against his client as a game of "Where's Waldo?". "Jurors used my 'Where's Waldo?'. That's the truth," Perez said, adding jurors couldn't put some defendants on the overpass or in the wash when the standoff reached its climax. "They didn't know where (defendants) were."

Jurors agreed federal prosecutors tried to paint all of the defendants with the same brush and did not establish cases against them as individuals, Perez said. Perez said all six defendants were pleased with the verdict, but recognized that Engel and Burleson face lengthy prison sentences.

Lovelien and Steven Stewart, of Idaho, came the closest of the six defendants to being found not guilty, Perez said. Jurors told him at one point last week they voted to acquit the two men but two jurors changed their minds when they returned to court Monday, he said.

Perez said jurors told them they were more evenly split on verdicts against Parker and O. Scott Drexler, also of Idaho.

"Now I will see if I can deal him out on a misdemeanor," Perez said of Lovelien. "I don't think (prosecutors) can get a guilty verdict ... I'm confident I'm going to get a not-guilty verdict."

No information was presented in court to explain what led prosecutors to file charges against the six men out of the hundreds of protesters at the Bundy Ranch. Lawyers said their clients were singled because of comments they made online and in interviews before and after the standoff.

Defendants denied they conspired to help Bundy and told jurors the case had nothing to do with cattle. They said they came to protect the public from overzealous and aggressive law-enforcement officers. Defendants said they were moved to join Bundy after seeing internet images of officers throwing an elderly woman to the ground, loosing dogs on one of Bundy's sons and shocking protesters with a stun guns.

Defense lawyers attempted to cast the case as a constitutional issue and said their clients were exercising their First Amendment right to assemble and Second Amendment right to bear arms.

Judge limits witnesses, arguments by defense attorneys - Navarro would not allow the defense to argue about constitutional protections to the jury. Navarro also prevented the defense from calling a string of witnesses about what happened in the run-up to the standoff, ruling they could only testify about what happened on the final day of the standoff.

Federal prosecutors argued defendants joined a conspiracy when they knowingly agreed to help Bundy resist federal agents in the roundup of the cattle. Myhre challenged suggestions that defendants were exercising constitutional rights. He said the First Amendment right to free speech does not allow you to threaten officers and the Second Amendment right to bear arms doesn't give you the right to threaten someone with a gun. "These people took the law into their own hands and used guns to take something that didn't belong to them," he said. Perez said jurors clearly didn't agree. "Now we start the trial all over again," he said. "I don't think we are going to change our strategy."

Phoenix man gets 68 years in Bundy Ranch standoff

Robert Anglen, The Republic | azcentral.com
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A Phoenix man was sentenced to more than 68 years in federal prison for his role as a gunman in a standoff that stopped federal agents from rounding up cattle near Cliven Bundy's Nevada ranch in 2014.

Chief U.S. District Judge Gloria Navarro in Las Vegas cut five years off the maximum recommended sentence of 73 years, taking into consideration that Gregory Burleson, 53, has serious health issues and once was an informant for the FBI. Burleson didn't apologize for going to the Bundy ranch in April 2014 but said he had no intention of assaulting anyone.

A jury found Burleson guilty in April of threatening and assaulting a federal officer, carrying a weapon in a crime of violence, obstruction and traveling across state lines in aid of extortion. Burleson was convicted as much for what he said after the standoff as for what he did during it. Months after the standoff, Burleson was interviewed by undercover FBI agents posing as a film crew working on a documentary about the standoff called "America Reloaded."

Burleson told the video crew that he'd gone to the Bundy Ranch to kill federal agents, and that he hoped to see them die in a hail of gunfire. Burleson said he rallied armed opposition during the Bundy standoff because federal agents were abusing their authority and violating the law.

For decades, the BLM repeatedly had ordered Bundy to remove his cattle from federal lands and in 2014 obtained a court order to seize his cattle as payment for more than $1.1 million in unpaid grazing fees. Bundy issued a social-media battle cry. Hundreds of supporters, including members of several militia groups, streamed to the ranch from several Western states. Protesters maintained they were responding to the use of dogs and stun guns by federal land management agents against Bundy family members. They also opposed an effort by agents to create a so-called First Amendment zone that limited where protesters could gather. Burleson was one of two protesters convicted during the first of three trials involving 17 defendants in the most high-profile land-use case in modern Western history.

Todd Engel of Idaho was convicted of obstruction and interstate travel in aid of extortion. He is due for sentencing September 28th The jury in the first trial deadlocked on charges against four co-defendants. Moreover, jurors did not find any of the six defendants guilty on the two main conspiracy charges that made up the core of the government's case. The judge declared a mistrial and the co-defendants are being retried, while Bundy and other defendants remain jailed pending trial later in the year.