IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLORADO

RALPH D. ROUND,

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE; **SONNY PERDUE,** individually and as U.S. Secretary of Agriculture; **VICKI CHRISTIANSEN,** individually and as Chief of the United States Department of Agriculture, Forest Service; **JENNIFER EBERLIEN,** individually and as Acting Regional Forester for the Rocky Mountain Region; **DIANA TRUJILLO,** individually and as Forest and Grasslands Supervisor for the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands; **JOHN LINN,** individually and as Comanche National Grassland District Ranger; **PATRICIA HESSENFLOW**, individually and as Comanche National Grassland Range Staff; the **COLORADO PARKS & WILDLIFE COMMISSION;** and **STEVE KEEFER,** individually and as District Wildlife Manager for Colorado Parks & Wildlife District 242,

Defendants.

Case No._____

COMPLAINT

Jury Trial Demanded

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO 28 U.S.C. §§2201 *et seq.*; AND FOR JUDICIAL REVIEW PURSUANT TO 5 U.S.C. §§ 701 *et seq.*

COMES NOW the Plaintiff, Ralph D. Round, by and through his attorney, Hayden L. Ballard of Ballard Law, P.L.L.C., Beaver, Utah, for his Complaint against Defendants, and based upon personal knowledge, information and belief, and investigation of counsel, alleges as follows:

I. PRELIMINARY STATEMENT

1. In this case, the Plaintiff, surface estate fee-title owner of the Crooked Arroyo and Rock Fall Grazing Allotments ("Allotment Owner") asks for Declarative Judgment and Injunctive relief to prevent employees of the United States Department of Agriculture, namely John Linn, Diana Trujillo, and Jennifer Eberlien, (and their respective agents, employees and subordinates) acting under alleged color of authority of the United States, from removing "Keep Out" signs from the private property of Plaintiff, and allowing hunters to destroy the private property of Plaintiff, specifically the Crooked Arroyo and Rock Fall Grazing Allotments (or "Grazing Allotments"), the improvements thereon and cattle owned by the Plaintiff.

2. Further, in this case the Plaintiff asks for the same relief as stated in Paragraph 1 to prevent employees of the Colorado Parks &Wildlife Commission, namely Steve Keefer (and any other agents, employees and subordinates) from removing said "Keep Out" signs for the same reasons as stated above.

3. Plaintiff alleges that the Defendants by and through its agencies and employees, have actively engaged and interfered with the quiet use and enjoyment of their property rights, and deprived Plaintiff of the value of their property interests. Defendants have arbitrarily and capriciously acted contrary to the laws of the United States to deny Plaintiff the exercise of his property rights by denying the Plaintiff the ability to protect both his private real and personal property, impairing his property interests, value and by allowing members of the general public as

"hunters" to destroy the Plaintiff's private real and personal property, and Plaintiff seeks Judicial Review of these actions.

4. That according to the allegations contained in the Complaint herein, the Plaintiff requests that the Court issue a Declaratory Judgment pursuant to 28 U.S.C. §§2201 *et seq.*, declaring the property rights of Plaintiff to be valid existing rights; asks for equitable relief consisting of an injunction against the Forest Service Defendants and the Colorado Parks & Wildlife Defendants, prohibiting the further destruction of Plaintiff's property pursuant to 28 U.S.C. §§2201 *et seq.*, and Judicial Review of the agencies actions pursuant to 5 U.S.C. §§ 701 *et. seq.*

II. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 USCA §1331, because the matter in controversy poses a federal question arising under the Constitution and laws of the United States, including but not limited to:

(a) the General Land Law Revision Act of 1891. 26 Stat. 1103.

(b) the Forest Service Organic Act ("Organic Act"), 16 U.S.C. §§ 473-82, 551;

(c) the National Forest Management Act ("NFMA"), 16 U.S.C. § 1600 *et seq.;*

(d) the Multiple Use and Sustained Yield Act ("MUSYA"), 74 Stat. 215;

(e) the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.;*

(f) the Bankhead-Jones Farm Tenant Act ("BJFTA"), 50 Stat. 522;

(g) the Farmers Home Administration Act ("FHAA"), 60 Stat. 1062;

(h) the Stock Raising Homestead Act ("SRHA"), 39 Stat. 864;

(i) the Cooperative Funds Act of 1914, 16 USC 498 *et seq.;*

(j) the Clarke-McNary Act of 1923; 16 USC 568 *et seq.;*

(k) a series of related federal land disposal laws applicable to National Forests including but not limited to:

(i) the Mineral Land Acts of 1853, 1866, 1870, 1872, and 1878;

(ii) the Grazing Act of 1875, 18 Stat. 481;

(iii) the Relief Act of 1880, 21 Stat. 141 *as amended* 1912, 37 Stat. 267;

(iv) the Validating Act of 1890, 26 Stat.391;

(v) the Forest Acts of 1891 and 1897, 26 Stat. 1095; 30 Stat. 34;

(vi) the Reservation Disposal Act of 1913; and

(l) a series of related "reconstruction", "relief" and/or "resettlement" federal laws passed during the Great Depression era, including but not limited to:

(i) the Relief Act of March 31, 1933, 48 Stat. 22;

(ii) the Emergency Relief Act of April 18, 1935, 49 Stat. 115;

(iii) the Act of April 27, 1936, 49 Stat. 163;

(iv) the Act of June 22, 1936, 49 Stat. 1601; and

(v) the Jurisdiction Act of June 29, 1936, 49 Stat. 115.

6. This Court may grant the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201-02, and 5 U.S.C. § 706 for Defendants' unlawful actions.

7. Venue rests properly in this Court pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1)(B), because "a substantial part of the events or omissions giving rise to the claim occurred" and "a substantial part of property that is the subject of the action is situated" within this judicial district.

III. PARTIES

8. The Plaintiff, Ralph D. Round, is a U.S. citizen. He is an individual and resident of Otero County in the State of Colorado, with an address of 12010 County Road 22, Model, Colorado 81059. The Plaintiff, Ralph D. Round is a cattle rancher in Southeast Colorado, and is the owner of two grazing allotments within the administrative boundaries of the Timpas Grazing District of the Comanche National Grassland, namely the Rock Fall Allotment and the Crooked Arroyo Allotment. His allotments fall within the administrative boundaries of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC). Mr. Round's grandfather first homesteaded in what is now the Rock Fall and Crooked Arroyo Allotments in 1891. Mr. Round was born on this ranch in 1937 and has lived on his ranch/allotment for his entire life. Mr. Round, along with his son Russell, both currently live and work on these two grazing allotments as their sole livelihood. The Plaintiff owns several thousand acres of deeded land as the "base" property for his Grazing Allotments, however, the remainder of the Grazing Allotments were once homesteaded land that were part of the Resettlement Projects under the BJFTA and FHAA.

9. Upon information and belief, the Defendant, the United States Department of Agriculture, Forest Service, (hereinafter referred to as "USDA-FS") is an agency of the United States Federal Government, with its national headquarters office being located at 1400 Independence Ave., SW, Washington, District of Columbia, 20250-0003. The USDA-FS is responsible for administering National Forest lands under the Forest Service Organic Act, 16 U.S.C. §§ 473-82, 551 ("Organic Act"), and the National Forest Management Act ("NFMA"), 16

U.S.C. § 1600 *et seq.*, including the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (hereinafter referred to as "PSICC").

10. Upon information and belief, the Defendant Sonny Perdue ("Defendant Perdue") is employed by the United States Department of Agriculture, as the United States Secretary of Agriculture, with his office being located at 1400 Independence Ave., SW, Room 200-A, Whitten Building, Washington, District of Columbia, 20250-1111. As Secretary of the United States Department of Agriculture ("USDA"), Defendant Perdue oversees the agencies falling under the management of the USDA, such as the Forest Service, 16 U.S.C. §§ 472, 524, 554.

11. Upon information and belief, the Defendant Vicki Christiansen ("Defendant Christiansen") is employed by the United States Department of Agriculture, Forest Service, as the Chief of the United States Department of Agriculture, Forest Service, with her office being located at 1400 Independence Ave., SW, Room RPE-6, Whitten Building, Washington, District of Columbia, 20250-1111. As Chief of the Forest Service, Defendant Christiansen, under the direction of the Secretary of Agriculture, "administers the formulation, direction, and execution of Forest Service policies, programs, and activities." 36 C.F.R. § 200.1.

12. Upon information and belief, the Defendant Jennifer Eberlien ("Defendant Eberlien") is employed by the United States Department of Agriculture, Forest Service, as the Acting Regional Forester for the Rocky Mountain Region, also known as Region 2, with her office being located at 1617 Cole Blvd., Building 17, Lakewood, Colorado, 80401. As Acting Regional Forester, Defendant Eberlien "is responsible to the Chief [of the Forest Service] for the activities assigned" to the Rocky Mountain Region, including the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands. 36 C.F.R. § 200.2(a).

13. Upon information and belief, the Defendant Diana Trujillo ("Defendant Trujillo") is employed by the United States Department of Agriculture, Forest Service, as the Forest and Grasslands Supervisor for the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands, with her office being located at 2840 Kachina Drive, Pueblo, Colorado, 81008. As Forest and Grasslands Supervisor, Defendant Trujillo is responsible to the Regional Forester for the management of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands, as well as, the coordination of the ranger districts within the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands, including the Carrizo Unit and Timpas Unit. 36 C.F.R. § 200.2(a)(1).

14. Upon information and belief, the Defendant John Linn ("Defendant Linn") is employed by the United States Department of Agriculture, Forest Service, as the District Ranger for the Comanche National Grassland within the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands, with his office being located at 27204 US Highway 287, PO Box 127, Springfield, Colorado, 81073. As District Ranger, Defendant Linn is responsible to the Forest Supervisor for supervising the Comanche National Grassland, including the areas designated as the Carrizo Unit and Timpas Unit within the Comanche National Grassland. 36 C.F.R. § 200.2(a)(2).

15. Upon information and belief, the Defendant Patricia Hessenflow ("Defendant Hessenflow") is employed by the United States Department of Agriculture, Forest Service, as the Rangeland Management Coordinator for the Comanche National Grassland within the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands, with her office being located at 1420 East 3rd Street, La Junta, Colorado, 81050. As the Rangeland Management

Coordinator, Defendant Hessenflow is responsible to the District Ranger, and manages range vegetation within the Comanche National Grassland boundaries, and works closely with livestock producers as the designated Range Staff.

16. Together, the USDA-FS and its employees named above are hereinafter, if referred to collectively, referred to as the "Forest Service Defendants."

17. Upon information and belief, the Defendant Colorado Parks & Wildlife Commission ("CPW") is an agency of the Colorado Department of Natural Resources, with its state headquarters office being located at 1313 Sherman Street, 6th Floor Denver, Colorado, 80203. The CPW is an enterprise agency, relying primarily on license sales, state parks fees and registration fees to support its operations, including: 42 state parks and more than 350 wildlife areas covering approximately 900,000 acres, big-game management, hunting, fishing, wildlife watching, camping, motorized and nonmotorized trails, boating and outdoor education. The CPW is responsible for administering hunting permits / licenses within the State of Colorado. C.R.S.A. § 33-1-106.

18. Upon information and belief, the Defendant Steve Keefer ("Defendant Keefer") is employed by the Colorado Parks & Wildlife Commission, as the District Wildlife Manager for CPW District 242, Area 12 with his area office being located at 2500 South Main Street, Lamar, Colorado, 81052. As District Wildlife Manager, Defendant Keefer is the peace officer responsible for enforcing the wildlife provisions and regulations of Title 33, Articles 1 - 6 of the Colorado Revised Statutes Annotated, namely those regulations related to wildlife management and hunting. C.R.S.A. § 33-6-101.

IV. LEGAL BACKGROUND

A. SPLIT-ESTATE GRAZING LAND DISPOSAL ACTS

19. From the earliest settlement, the Western States and Territories recognized grazing or range rights as property and a claim of land ownership to the surface of arid Western grazing lands. *See generally* Laws and Ordinances of the State of Oregon 1845, Kearney's Code 1846, Laws and Ordinances of California 1850, Laws and Ordinances of The State of Deseret 1851.

20. The U.S. Congress gave sanction to these local enactments by Section 8 of the Survey Act of 1853 (10 Stat. 247), which granted "the right of occupation and cultivation only" to settlers "on or near the mineral lands".

21. By the Mineral Land Acts of 1866/1870/1872 (14 Stat. 253, 16 Stat. 218, 17 Stat. 91), Congress declared all the "valuable mineral deposits in lands belonging to the United States…are…open to exploration and purchase" AND "the lands in which they are found to occupation and purchase". These Acts clearly recognize "adverse" or "surface" claims separately from the "mineral deposits". The Supreme Court has held that the term "mineral lands" used after 1865 more accurately referred to "mineral rights". *See generally Barden v. Northern Pacific R.R.*, 154 US 288 (1894), *Great Northern R.R. Co. v. United States*, 315 US 262 (1942), *United States v. Northern Pacific R.R.*, 353 US 112 (1957).

22. By the Grazing Rights Act of 1875 (18 Stat. 481) Congress recognized "grazing" as a cultural practice equivalent to "cultivation" under the Homestead or Preemption Laws and equivalent to "mining" in establishing a "surface" claim under the Mineral Land Law.

23. By the Desert Land Act of 1877 (19 US 377) Congress granted the right of an individual person to claim six hundred forty (640) acres by conducting water onto the land for

"irrigation" and "reclamation" (which included grazing 25 Stat. 618). However, where two or more stockraising settlers associated together to claim land for grazing purposes that land was removed from the mass of the "public lands" (*Atherton v. Fowler*, 96 US 518 (1877), *Hosmer v. Wallace*, 97 US 575 (1878)) and the stockraising settlers "claim" could be made up of any number of stockwater "locations" and connecting "locations" (*St. Louis Smelting & Refining Co. v. Kemp*, 104 US 636 (1881)).

24. By the Relief Act of 1880 (21 Stat. 141), and the "surface" claim provisions of the Mineral Land law, construed together with the Grazing Rights Act and Desert Land Act, Congress allowed two or more associated stockraising settlers to "claim" surface title to any number of six hundred forty (640) acre stockwatering "locations" and "connecting locations" under the Enclosure Act of 1885 (23 Stat. 321). *See St. Louis Smelting & Refining Co. v. Kemp, supra*, Griffith v Godey, 113 US 89 (1885), *Cameron v. United States*, 148 US 301 (1893), *Grayson v. Lynch*, 163 US 468 (1896), *Ward v. Sherman*, 192 US 168 (1904), *Curtin v. Benson*, 222 US 78 (1911).

25. By the Additional Entry Application Acts of 1879, 1886 and 1889, Congress provided for Homestead settlers to make an "additional entry" of grazing land without further cost, fees, or proofs of cultivation, by submitting an application and advertising the land claimed for sixty (60) days. The original Homestead patent would be sufficient to evidence title to the "additional entry" of grazing land. *See* 20 Stat. 472, 24 Stat. 22, and 25 Stat. 22.

26. By the Validation Act of 1890, Congress "validated" or made legal all "occupation, entry and settlement" West of the 100th Meridian. *See* 25 Stat. 527, 25 Stat. 618, 26 Stat. 391. Because Congress had "validated" all settlement, occupancy and entry West of the 100th Meridian,

it became necessary for them to revise the existing land disposal laws, resulting in the General Land Law Revision Act of 1891 (also known as the Forest Reserve Act). 26 Stat. 1095.

27. By the 1891 Act, Congress required the Secretary of Interior to "confirm" all settlement in the West within 2 years, and stated that the Interior Department only had 5-6 years thereafter to challenge any title of a stockraiser who was (or would thereafter) be an actual settler (*see generally Lane v. Hoglund*, 244 US 174 (1917), *Payne v. United States*, 255 US 438 (1921) *Stockley v. United States*, 260 US 532 (1923)). The 1891 Act further stated there was no acreage limit on land entered under the Mineral Land laws. The 1891 Act further required the Secretary to survey all land "occupied by actual settlers" and that those surveys would have the legal effect of passing surface "title" to those settlers (27 Stat. 369, 30 Stat. 32-36).

B. CREATION OF THE FOREST SERVICE AND NATIONAL FORESTS

28. The U.S. Congress passed the General Land Law Revision Act (also known as the Forest Reserve Act) in 1891. 26 Stat. 1103.

29. The General Land Law Revision Act of 1891 gave the President of the United States authority to establish Forest Reserves, specifically stating "He shall, by public proclamation, declare the establishment of such reservations and their limits."

30. The U.S. Congress passed the Organic Administration Act ("Organic Act") in 1897. 16 U.S.C. §§ 473-482, 551.

31. The Organic Act established the purpose of the National Forests, specifically stating, "no national forest shall be established, except to improve and protect the forest within the boundaries, *or* for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is

not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, *or for agricultural purposes*, than for forest purposes." (*emphasis added*). *Id.* § 475.

32. After stating the general purpose of the National Forests in §475, quoted above, the Organic Act further provides that "nothing in sections 473 to 478, 479 to 482 and 551 of this title shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture." *Id.* § 478

33. To effectuate the purposes of the National Forests, the Organic Act gave the Secretary of Agriculture limited authority to "make such rules and regulations and establish such service as will insure the objects of such reservations," such as "to regulate their occupancy and use…" *Id.* § 551.

34. The Organic Act contains a Jurisdiction section, which states: "The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State." 30 Stat. 36.

35. The USDA-FS in its current form was established in 1905 when under The Transfer Act of 1905 (33 Stat. 628), the administration of the National Forest Reserves was transferred from the General Land Office of the Department of the Interior to the Department of Agriculture, and the Division of Forestry was renamed the United States Forest Service.

C. THE NATIONAL FOREST MANAGEMENT ACT (NFMA)

36. The U.S. Congress passed the NFMA in 1976. 16 U.S.C. §§ 1600-14.

37. The NFMA mandates that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans of units of the National Forest System." *Id.* § 1604. These land and resource management plans are commonly known as forest plans.

38. The NFMA further mandates in Section 6(i) that: "(i) Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section *shall be subject to valid existing rights*." (*emphasis added*). Pub.L. 94–588, Oct. 22, 1976, 90 Stat. 2949.

D. THE MULTIPLE USE AND SUSTAINED YIELD ACT (MUSYA)

39. The U.S. Congress passed the MUSYA in 1960. 74 Stat. 215.

40. Under MUSYA, "it is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." *Id.* at §1.

41. Nowhere in MUSYA does it state that the multiple-use policies applicable to national forests would also apply to National Grasslands, and in fact it states: "Nothing herein shall be construed so as to affect the use of administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests." *Id.*

42. The term "National Grassland" was first used in federal law in 1960 in 36 C.F.R. §213.1, which states in subsection (a) that: "The land utilization projects administered by Department of Agriculture…hereafter shall be named and referred to as National Grasslands."

43. In 36 C.F.R. 213.1 it further states in subsection (c) that: "The National Grasslands shall be administered under sound and progressive principles of land conservation and multiple use, and *to promote development of grassland agriculture* and sustained-yield management of the forage, fish and wildlife, timber, water and recreational resources in the areas of which the National Grasslands are a part." (*emphasis added*).

E. THE ADMINISTRATIVE PROCEDURE ACT (APA)

44. The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

45. The APA provides that "[a]n agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.

A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action." *Id.* § 704.

46. The APA defines "agency action" as "the whole or a part of an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or failure to act…" Id. § 551(13).

47. The APA further requires that the reviewing court "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action," and shall "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right…" *Id.* §§ 706(2)(A)-(C).

F. THE BANKHEAD-JONES FARM TENANT ACT (BJFTA)

48. The U.S. Congress passed the BJFTA in 1937. P.L. 75-210, 50 Stat. 522 (1937).

49. Under the BJFTA Congress authorized the Secretary of Agriculture to make loans to struggling farmers, but also authorized the Secretary of Agriculture to purchase farmland from bankrupt and/or failing farmers during the Great Depression for the purpose of resettling the land in large enough acreages to enable families to make a living, in what were known as "Resettlement Projects*." Id.* at §43.

50. As stated in the Title of the BJFTA, the BJFTA was "An Act…to promote secure occupancy of farms and farm homes, to correct the economic stability resulting from some present forms of farm tenancy, and for other purposes" which, along with the "resettlement project" provisions in Section 43, shows that the intent of Congress was never to acquire and retain large

tracts of land in the West, but to "promote secure occupancy of farms and farm homes" and dispose any acquired land through "resettlement projects."

G. THE FARMERS HOME ADMINISTRATION ACT (FHAA)

51. The U.S. Congress passed the FHAA in 1946. 60 Stat. 1062.

52. Under the FHAA, Congress directed the Secretary of Agriculture to dispose of the Resettlement Project lands, specifically stating in Section 43(a): "The Secretary shall do all things necessary to complete the liquidation as expeditiously as possible of *all* resettlement projects and rural rehabilitation projects for resettlement purposes…" (*emphasis added*). 60 Stat. 1062 §43(a).

53. Further, under Section 43(b) of the FHAA, Congress set time frames for the liquidation, or disposal, of resettlement project lands, specifically directed that "*Within six months after the effective date of the Farmers' Home Administration Act of 1946*, the Secretary shall determine which of the lands comprising the projects described in (a) hereof are suitable for use, either with or without subdivision, as farms of sufficient size to constitute efficient farm management units and to enable diligent farm families to carry on farming of a type which the Secretary deems can be carried on successfully in the localities in which the lands are situated…All lands which the Secretary determines are suitable for farming and all personal property incident to or comprising such projects and usable in farming operations *shall, wherever practicable, be sold by the Secretary as expeditiously as possible to individuals*…" (*emphasis added*). *Id*. at §43(b).

54. Further, under Section 43(d) of the FHAA, Congress directed that "Real and personal property comprising such projects which is property not determined by the Secretary to be suitable for sale as family-size farms as provided in (b) hereof, or which is not granted or dedicated as provided in (c) hereof, *shall, within eighteen months after the effective date of the*

Farmers' Home Administration Act of 1946, either be transferred by the Secretary to appropriate agencies of the United States for *disposition as surplus property of the United States or be sold by the Secretary at public or private sale* to any individual or corporation at the best price obtainable…" (*emphasis added*). *Id.* at §43(d).

55. The above language from Section 43 of the FHAA again shows that the intent of Congress was never to acquire and retain large tracts of land in the West, but to encourage the disposal and liquidation "as expeditiously as possible of *all* resettlement projects and rural rehabilitation projects for resettlement purposes."

V. FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

56. The Plaintiff, Ralph D. Round is a cattle rancher in Southeast Colorado, and is the owner of two grazing allotments within the administrative boundaries of the Timpas Grazing District of the Comanche National Grassland, namely the Rock Fall Allotment and the Crooked Arroyo Allotment. His allotments fall within the administrative boundaries of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC). Mr. Round's grandfather first homesteaded in what is now the Rock Fall and Crooked Arroyo Allotments back in 1891. Mr. Round was born on this ranch in 1937 and has lived on his ranch/allotment for his entire life. Mr. Round, along with his son Russell, both currently live and work on these two grazing allotments as their sole livelihood. All his life, the Plaintiff has done his best to be a good citizen and "good neighbor" with the Forest Service, and until 2020, had served for multiple decades as the President of the Timpas Grazing District Board of Directors.

57. The Plaintiff owns several thousand acres of deeded land as the "base" property for his Grazing Allotments, however, the remainder of the Grazing Allotments were once homesteaded land that were part of the Resettlement Projects under the BJFTA and FHAA.

58. The Plaintiff claims that he is the "surface owner for all agricultural and ranching purposes" of the land area enclosed within the Grazing Allotments and that the Grazing Allotments are a fee-title property right of the Plaintiff.

59. By a series of "legislative grants" from 1853 to 1891, Congress granted specific rights to actual ranch settlers occupying the "arid region" "mineral lands" west of the 100th Meridian (*Basey v. Gallagher*, 87 US 670 (1874), *Kinney Coastal Oil v. Kieffer*, 277 US 488 (1928), *United States v. New Mexico,* 438 US 696 (1978), *Watt v. Western Nuclear,* 462 US 36 (1983)).

60. A legislative grant is the highest muniment of title and more powerful than a patent. *See Whitney v. Morrow*, 12 US 693 (1885).

61. Once the right to a patent for an allotment has been earned no federal employee afterwards can take that right. *See generally Nobel v. Union River Logging R.R. Co.*, 147 US 165 (1893); *Ballinger v. Frost*, 216 US 240 (1910).

62. Where no procedure is made for issuance of a patent, an official survey map is title evidence. *See Shaw v. Kellogg,* 170 US 312 (1898). There is no acreage limit on land located or claimed under the "mineral land" laws. *See St. Louis Smelting & Refining Co. v. Kemp,* 104 US 636 (1881).

63. On January 30, 2020, on behalf of the Plaintiff, the Plaintiff's counsel submitted a request for documents under the Freedom of Information Act (FOIA), requesting, among other

things, "a current, government approved allotment map of" both the Crooked Arroyo and Rock Fall Allotments. Attached hereto as Exhibit 7 is a true and correct copy of the January 30, 2020 FOIA Request, which is incorporated herein by reference.

64. In response to the January 30, 2020 FOIA Request, Plaintiff's counsel received a letter from Defendant Trujillo dated March 3, 2020, as well as a partial fulfillment of the records requested. Attached hereto as Exhibit 8 is a true and correct copy of the March 3, 2020 FOIA Response Letter, which is incorporated herein by reference.

65. In the March 3, 2020 FOIA Response Letter, Ms. Trujillo stated that in regard to the request for "a current government approved allotment map" of both the Crooked Arroyo and Rock Fall Allotments, that "a map is attached." Attached hereto as Exhibit 9 is a true and correct copy of the Forest Service map of the Crooked Arroyo Allotment attached to the March 3, 2020 FOIA Response Letter. Further, attached hereto as Exhibit 10 is a true and correct copy of the Forest Service map of the Rock Fall Allotment attached to the March 3, 2020 FOIA Response Letter.

66. As part of the January 30, 2020 FOIA Request, Plaintiff's counsel also requested "the official government survey(s) establishing the boundaries of" the Crooked Arroyo and Rock Fall Allotments.

67. In the March 3, 2020 FOIA Response Letter, Defendant Trujillo stated that in regard to the request for "the official government survey(s) establishing the boundaries of" the Crooked Arroyo and Rock Allotments that "Grazing allotment boundaries are not surveyed by the Forest Service. These boundaries are designated for administrative purposes only, not as legal property boundaries."

68. Under *Kellogg*, "where no procedure is made for issuance of a patent, an official survey map is title evidence" it is the Plaintiff's position that Defendant Trujillo's statement that "Grazing allotment boundaries are not surveyed by the Forest Service. These boundaries are designated for administrative purposes only, not as legal property boundaries," is incorrect. Further, it is the Plaintiff's position that to establish the boundaries of the Grazing Allotments, a government survey of the Grazing Allotments must have been performed at some point in time, and that said survey map(s) is/are title evidence, and said survey map(s) are upon information and belief in the possession of either the Forest Service or another government agency.

69. As part of the January 30, 2020 FOIA Request, Plaintiff's counsel also requested "any and all communications and records pertaining to the formation of the" Crooked Arroyo and Rock Fall Allotments."

70. In the March 3, 2020 FOIA Response Letter, Defendant Trujillo stated that in regards to the request for "any and all communications and records pertaining to the formation of the" Crooked Arroyo and Rock Fall Allotments that the Grazing Allotments were "formed prior to being managed by the Forest Service. The documents I am providing indicate changes that occurred after initial allotment formation."

71. Because under NFMA "any revision in present or future permits, contracts, and other instruments made pursuant to this section *shall be subject to valid existing rights*." (*emphasis added*), Pub.L. 94–588, Oct. 22, 1976, 90 Stat. 2949, it is the Plaintiff's position that this statement from Defendant Trujillo stating that Plaintiff's Grazing Allotments were "formed prior to being managed by the Forest Service" is correct, and therefore his private property rights in his Grazing

Allotments constitute "valid existing rights" under the NFMA that pre-date any actions taken by the Forest Service or its administrative involvement.

72. The "valid existing rights" of the Plaintiff in his Grazing Allotments, namely use of the surface estate fee-title ownership of the Grazing Allotment includes (among other things) water rights, the right to graze his livestock upon the grass or forage crops, to fully utilize the value of the land for grazing, to use all ornamental, shade, timber and other trees for ranch purposes, to utilize coal and common variety minerals for ranch purposes, to construct roads and other improvements, and the right of ingress and egress to utilize the Grazing Allotments and all stock watering "locations" within the Grazing Allotments.

73. Furthermore, the Plaintiff asserts that the "Grazing Allotments" constitutes an "additional entry" or "stock range"/"grazing unit", that together with the "base property" or original homestead, the stock watering "locations", and other improvements, form a "surface claim" and "grazing unit" recognized, "conferred" and granted to Plaintiff by Acts of Congress.

74. The Allotment Owner further asserts that actions and/or inactions of the individual Federal Employees and CPW employees involved in this case, have led to the destruction of his Grazing Allotments. Hunters allowed onto the Grazing Allotments by the individual Forest Service employees and CPW Defendants involved in this case, have caused significant damage to both real and personal property of the Plaintiff, in the amount of at least one-million dollars ($1,000,000.00).

75. Specifically, in recent years, multitudes of hunters on Mr. Round's Grazing Allotments (acting under license or permission from the USDA-FS and/or the CPW) have blocked access to key water supplies for his cattle, and hunters have verbally and physically threatened

both Mr. Round and his son when they have attempted to resolve the matter peacefully. As a result of the blocked access, each year cattle have died for lack of water. Additionally, for the past few years, each year the Rounds have had cattle die both from being ran into by hunter's vehicles, but also young calves have died from dust pneumonia caused by the ~70-100 hunters who will drive up and down the allotment roads each day during the hunting season.

76. Additionally, other hunters and members of the public (acting under license or permission from the USDA-FS and/or the CPW) have trespassed on Mr. Rounds land, and vandalized/destroyed various fences and corrals throughout his allotments. The hunters have created new roads throughout the allotments, cut down fences and then used the fence posts for campfires. The replacement costs incurred by the Rounds associated with the public's actions on lands "managed" by the U.S. Forest Service and the individual USDA-FS employees involved herein, total at least one-million dollars ($1,000,000.00).

77. Further, actions taken by Defendant Linn and Defendant Hessenflow has resulted in the Plaintiff's inability to fully take advantage of the Noninsured Crop Disaster Insurance Program (NAP) administered by the USDA Farm Service Agency (FSA). This interference has led to the loss of potentially thousands of dollars to the Plaintiff.

78. The Plaintiff has made proper demand of the Forest Service to remedy the current situation, but Forest Service employees have refused to remedy the situation in any way or cooperate with Mr. Round as the allotment owner, as shown by Section VI of this Complaint.

79. The Plaintiff has made proper demand of the CPW to remedy this situation, but the CPW has refused to remedy the situation in any way or cooperate with Mr Round as the allotment owner. For example, on September 22, 2018 the Plaintiff's son, Russell, sent an email to a CPW

official outlining the damage and injury being suffered by the Plaintiff at the hands of CPW licensed hunters. Attached hereto as Exhibit 11 is a true and correct copy of the September 22, 2018 email, which is incorporated herein by reference.

80. Instead of remedying the situation, the USDA-FS and CPW officials involved herein have in essence simply told Mr. Round that these grasslands are "public lands" and the hunters have just as much a right to be there as the Rounds. These officials have responded with harassment and intimidation.

81. Because of the Forest Service's refusal to protect his rights, in early 2020, the Plaintiff placed "Keep Out" signs close to his water tanks in an effort to protect not only the lives of his livestock, but also protect his private water rights.

82. Not long after the Plaintiff placed "Keep Out" signs close to his water tanks, in one location individuals who are, upon information and belief, employed by a government agency (either the USDA-FS or the CPW) tore an old windmill brake off the windmill where the sign was placed, and placed the broken handle across the sign. Again, another example of destruction of private property and improvements owned by the Plaintiff.

83. The Plaintiff asserts that as the Allotment Owner and the owner of the water rights on his Grazing Allotments, he has the right to protect said property rights by placing "Keep Out" signs close to the watering locations. Furthermore, as the Allotment Owner, the Plaintiff asserts that he has the right to place "Keep Out" signs around the entire Grazing Allotments to prevent further destruction of his private property.

84. The Allotment Owner further asserts that the Federal Employees involved are possessed of authority to "permit the use of timber and stone", or enter into voluntary "cooperative

agreements", however they are not authorized to allow hunters to destroy private property under the guise of permitting the use of "timber and stone".

85. That employees of the USDA, Forest Service may enter into voluntary "cooperative agreements" with the surface land owners and may "permit the use of timber and stone" reserved to the United States within split-estate reservations is not denied. However, the Allotment owner is not engaged in commercial timber harvest or mineral development activities that would require them to obtain a "permit" (Forest Reserve Organic Act, 1897 30 Stat. 34).

86. No authority for the issuance of "Grazing Permits" within National Forests existed until 1950 when under the Granger-Thye Act, Congress authorized the Secretary of Agriculture to consult with grazing advisory boards prior to setting livestock numbers or seasons of use for livestock grazing in National Forests (64 Stat. 82).

87. Grazing permits were originally issued in National Forests for the purposes of protection the "young growth of trees" from persons who did not own "grazing rights" or stock "range" rights. *See United States v. Grimaud,* 220 US 506 (1911), *see also Light v. United States,* 220 US 523 (1911)).

88. Grazing permits cannot be used to prevent owners of pre-existing "grazing rights" or "range rights" from using those valid existing rights and the absence of a "grazing permit" cannot be use to prevent the owner of those grazing rights from using his property. *See Curtin v. Benson,* 222 US 78 (1911).

89. The same nine Supreme Court Justices who ruled against the transient grazers in *Grimaud* and *Light,* shortly thereafter distinguished *Light* from the *Curtin* case cited above, and unanimously ruled in favor of rancher Curtin who claimed valid existing rights.

90. In *Curtin* the Supreme Court unanimously held that a rancher claiming 23,000 acres of range rights could NOT be required to obtain a "permit" to graze stock within a federal reservation (Yosemite National Park).

91. The question in this case is similar to the question in *Curtin,* supra: Can a Grazing Allotment owner whose surface property rights have been included within a federal reservation be forced to obtain a "permit, contract or other instrument" before he can use his valid existing property right or consequently protect said right?

92. Congress made "grazing" an authorized cultural practice equivalent to "cultivation" and "mining" in terms of obtaining title to land under the general land laws as of March 3, 1875. Since there was no acreage limit on the amount of land that could be claimed under the Mineral Land laws (*see generally St. Louis Smelting & Refining Co. v. Kemp, supra*), Congress authorized actual stock-grazing settlers (such as the Allotment Owner and his predecessors) to enclose their surface grazing land "claim or asserted right" under the Enclosure Act of 1885 (23 Stat. 321), and such asserted right was good against the United States (*Cameron v. United States,* 148 US 301 (1893).

93. The question in this case is also similar to the question in the recent case of *Herr v. U.S. Forest Service,* 865 F.3d 351 (6th Cir. 2017), wherein the 6th Circuit Court of Appeals affirmed that under NFMA, the USDA-FS's regulatory authority is limited by, and subject to, valid existing rights (in *Herr* said valid existing rights being littoral surface use rights). Here, like *Herr*, the surface rights of the Plaintiff pre-date the administrative involvement of the Forest Service Defendants, and therefore their actions are subject to the Plaintiff's valid existing rights.

94. The Defendants will likely insist that the land in question was never settled on as a "grazing allotment" but instead has remained unclaimed "public land" or, is "national forest system land" by virtue of a cooperative agreement (i.e. "permit, contract or other instrument") previously signed by the Allotment Owner (but now non-existent).

95. The Defendants will also likely insist that this case is similar to *Diamond Bar v. United States,* 168 F.3d 1209 (10th Cir. 1999), a case that mistakenly relied on State law, custom and "possessory rights" alone to support their claim of valid existing grazing rights.

96. In *Diamond Bar,* the court cited as authority for their decision the cases of *United States v. Grimaud*, supra, and *Light v. United States*, supra, and *Buford v. Houtz*, 133 US 320 (1890). Those three cases involved individuals that (unlike the Plaintiff in this case and Curtin, supra), claimed no prior valid existing property rights granted and "conferred" by Acts of Congress.

97. By attempting to prevent the Plaintiff from posting Keep Out signs on his property, the Defendants have, in an abuse of power, attempted to deprive the Allotment owner of property rights granted by Acts of Congress and protected by the 4th and 5th Amendments to the Constitution.

98. For the federal employees to conspire together to unlawfully destroy the Allotment owners personal property and/or negligently allow the same, is a violation of the 4th Amendment and for them to claim the Grazing Allotment is "public land" in order to deceive the Court and deprive the Allotment owner of their property by the use of other employees under their direction is additionally a taking of property contrary to the 5th Amendment and a Deprivation of Constitutionally protected property rights (arguably a violation of 18 USC Section 241).

VI. ADMINISTRATIVE PROCEDURAL BACKGROUND

99. In an effort to resolve the issues described above, on **September 20, 2019**, the Plaintiff, sent a letter to Ms. Diana Trujillo, the Forest and Grasslands Supervisor for the PSICC. In his September 20 letter, the Plaintiff asserted several concerns regarding abuses of his private property rights, namely government interference with his grazing surface rights in his grazing allotments. In his September 2019 letter, Mr. Round clearly asserts that he is the owner of the surface rights of his two allotments, and that his rights have been interfered with by Forest Service employees in various ways. Attached hereto as Exhibit 1 is a true and correct copy of the September 20, 2019 Letter, which is incorporated herein by reference.

100. In response, to the Plaintiff's September 20 letter, the Plaintiff received a letter written by Defendant Trujillo dated **November 14, 2019.** It is the Plaintiff's position that Defendant Trujillo's November 14 letter contains multiple errors of law and denies the use of the private property rights of the Plaintiff. Attached hereto as Exhibit 2 is a true and correct copy of the November 14, 2019 Letter, which is incorporated herein by reference.

101. As it is the Plaintiff's position that Defendant Trujillo's November 14 letter contains multiple errors of law and denies the use of the private property rights of the Plaintiff, in response to Defendant Trujillo's November 14 Letter, counsel for Plaintiff sent a letter dated **January 7, 2020** addressed to Defendant Trujillo's direct supervisors, namely Defendant Jennifer Eberlien as Acting Regional Forester for the Rocky Mountain Region, and Defendant Vicki Christiansen as Chief of the United States Department of Agriculture's Forest Service, appealing Defendant Trujillo's decision. Copies of the January 7 letter were also sent to Defendant Trujillo, Defendant John Linn, the Comanche National Grassland District Ranger, as well as to Defendant

Patricia Hessenflow, the Comanche National Grasslands Rangeland Management Coordinator. All copies of the January 7, 2020 letter were sent certified mail / return receipt. Attached hereto as Exhibit 3 is a true and correct copy of the January 7, 2020 Letter, which is incorporated herein by reference.

102. After waiting sixty (60) days, neither the Plaintiff nor his counsel, received any official response from any of the Forest Service employees named in the January 7, 2020 Letter. Accordingly, counsel for Plaintiff sent a letter dated **March 7, 2020** addressed to Defendant Trujillo's and Defendant Eberlien's direct supervisors, namely Defendant Vicki Christiansen as Chief of the United States Department of Agriculture's Forest Service, and Defendant Sonny Perdue as the U.S. Secretary of Agriculture - appealing Defendant Trujillo's decision, and appealing the inaction of her direct supervisors. Copies of the March 7 letter were also sent to Defendant Eberlien, Defendant Trujillo, Defendant Linn, as well as to Defendant Hessenflow. All copies of the March 7, 2020 letter were sent certified mail / return receipt. Attached hereto as Exhibit 4 is a true and correct copy of the March 7, 2020 Letter, which is incorporated herein by reference.

103. In response to the two previous letters (the January 7, 2020 Letter and the March 7, 2020 Letter) counsel for Plaintiff finally received a response from Defendant Eberlien's office in a letter dated **April 1, 2020**. However, the April 1 Letter did very little to rectify the situation, because in regard to the Plaintiff's private property concerns, the letter simply said to "*please refer to the Forest Service's November 14, 2019 letter for more detail regarding the Forest Service's jurisdiction over National Forest System lands within national grasslands and Mr. Round's*

assertion of private property rights on these allotments." Attached hereto as Exhibit 5 is a true and correct copy of the April 1, 2020 Letter, which is incorporated herein by reference.

104. The April 1, 2020 Letter did little to rectify the situation besides refer the Plaintiff back to the November 14 Letter, and because no response was received from the primary addressee's on the March 7 letter, namely Defendant Christiansen and Defendant Perdue, counsel for Plaintiff sent a letter dated **May 18, 2020** again addressed to Defendant Trujillo's and Defendant Eberlien's direct supervisors, namely Defendant Christiansen as Chief of the United States Department of Agriculture's Forest Service, and Defendant Perdue as the U.S. Secretary of Agriculture – again appealing the decisions of Defendant Trujillo and Defendant Eberlien. Copies of the May 18, 2020 Letter were also sent to Defendant Eberlien, Defendant Trujillo, Defendant Linn, as well as to Defendant Hessenflow. All copies of the May 18, 2020 letter were sent certified mail / return receipt. Attached hereto as Exhibit 6 is a true and correct copy of the May 18, 2020 Letter, which is incorporated herein by reference.

105. The May 18, 2020 Letter was again addressed to the same two officials as the March 7, 2020 Letter, namely Defendant Christiansen and Defendant Perdue, because as shown, attempts to rectify the situation with Forest Service officials in Colorado had led nowhere except in a circular "holding" pattern. This is why the letter was addressed to the same two officials, in hopes that by appealing this issue beyond the local Forest Service officials in Colorado, and their actions, that the parties could resolve the situation. Accordingly, in that letter, the Plaintiff again respectfully requested that Defendant Christiansen and Defendant Perdue review the five previous letters (the September 20, 2019 Letter, the November 14, 2019 Letter, the January 7, 2020 Letter,

the March 7, 2020 Letter, and the April 1, 2020 Letter) "and issue a written response/decision in a timely manner."

106. As of the time of the filing of this Complaint, sixty (60) days has now passed since the May 18, 2020 Letter was sent and the Plaintiff has still received no official response from Defendant Christiansen nor Defendant Perdue in regard to the May 18, 2020 Letter or the March 7, 2020 Letter.

107. By reason of the Plaintiff having exhausted his administrative remedies over the course of the approximately past ten (10) months, this Complaint ensued.

VII. FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

108. Plaintiff hereby incorporates herein by reference, Paragraphs 1 through 107.

109. Plaintiff requests that the Court declare and enter judgment in favor of Plaintiff, ordering that the Plaintiff is the owner of the property rights included in the surface estate referred to as the Grazing Allotments.

110. Plaintiff requests that Court declare that as owner of the Grazing Allotment property rights that Plaintiff is entitled to continue to graze cattle on the Grazing Allotments to the full extent of the rights associated thereto, and to declare that Plaintiff be allowed to protect his valid existing property rights in the Grazing Allotments by placing Keep Out signs not only around his stock water locations, but around the entire Grazing Allotments.

VIII. SECOND CAUSE OF ACTION - DECLARATORY JUDGMENT

111. Plaintiff hereby incorporates herein by reference Paragraphs 1 through 110.

112. Plaintiff has vested property rights to the surface estate consisting of the property rights making up the Grazing Allotments. Said property rights are "valid existing rights" that

existed prior to the Forest Service's management of the Grazing Allotments, and therefore, any actions taken by the Forest Service are subject to those rights.

113. Defendants have interfered with Plaintiff's vested property rights and damaged such rights.

114. The Court should declare that the Plaintiff's vested surface estate property rights, water rights, grazing rights and all other rights of use as granted by Congress (as described in Paragraphs 72 – 73 of this Complaint) are "valid existing rights" and under NFMA, any further regulatory or administrative actions taken by the Forest Service are subject to those rights.

IX. THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF

115. Plaintiff hereby incorporates herein by reference Paragraphs 1 through 114..

116. Plaintiff will be irreparably harmed by the Defendant's continued allowance of hunters to destroy Plaintiff's privately owned surface grazing allotment in violation of Federal Law and U.S. Constitution by their actions depriving Plaintiff of his cattle and property rights in the Grazing Allotments based on Defendant's general position that Plaintiff's property rights are "public land" or "national forest system land". Plaintiff will be irreparably harmed by the Defendants actions, destroying his ability to earn a living through the loss of improvements, water rights, forage, wood and timber use rights, and other surface rights, as well as the damage to title and interest he has to the grazing allotment.

117. As a result of the existence of the vested surface estate grazing allotment rights described above in Paragraph 114 and in the Second Cause of Action, issuance of a permanent injunction barring Defendants from further interference with Plaintiff's access to his property, interference with Plaintiff's ability to protect said rights, and interference with Plaintiff's property

rights and value, is warranted; and the Plaintiffs' claim for permanent injunctive relief is favored by the public interest and the balance of equities.

118. Further, as a result of the existence of the vested surface estate grazing allotment rights described above in Paragraph 114 and in the Second Cause of Action, pending the final outcome of this case, issuance of a temporary injunction barring Defendants from further interference with Plaintiff's access to his property, interference with Plaintiff's ability to protect said rights, and interference with Plaintiff's property rights and value, is warranted; and the Plaintiffs' claim for temporary injunctive relief is favored by the public interest and the balance of equities.

X. PRAYER FOR RELIEF

119. **WHEREFORE,** Plaintiff requests relief as follows:

A. That this Court order, declare, adjudge, and decree under 28 U.S.C. § 2201 and 5 U.S.C. §§701, *et seq.* that Defendants' interference with Plaintiff's valid existing rights is arbitrary, capricious, an abuse of discretion and/or otherwise unlawful; further that said actions taken by the Forest Service Defendants is contrary to constitutional right, power, privilege or immunity, and/or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

B. That this Court order, declare, adjudge and decree under the Declaratory Judgment Act, 28 U.S.C. § 2201 that the Plaintiff is the surface owner "for all agricultural and ranching purposes" of the land area enclosed within the Crooked Arroyo Grazing Allotment (Exhibit 9) and the Rock Fall Allotment (Exhibit 10) by operation of specific legislative grants, and other Acts of Congress referenced herein, and that the Grazing

Allotments are a fee-title property right of the Plaintiff that constitute valid existing rights under NFMA.

C. That this Court order, declare, adjudge and decree under the Declaratory Judgment Act, 28 U.S.C. §2201 and §2202 that the Plaintiff, as owner of the Grazing Allotments, be allowed to protect his valid existing rights by posting Keep Out signs around not only his stock water locations, but his entire Grazing Allotments, thereby preventing hunters from destroying his property.

D. That this Court issue both permanent and temporary injunctive relief under 28 U.S.C. §2201 and §2202 preventing the Forest Service Defendants from disallowing the Plaintiff to protect his private property rights by posting Keep Out signs around not only his stock water locations, but his entire Grazing Allotments, thereby preventing hunters from trespassing upon, and destroying his property. Further, that the Plaintiff be allowed to continued grazing on his Grazing Allotments pursuant to Section 6(i) of the National Forest Management Act of 1976 (90 Stat. 2955), which states all present and future "permits, contracts and other instruments shall be subject to valid existing rights."

E. That this Court issue both permanent and temporary injunctive relief under 28 U.S.C. §2201 and §2202 preventing the Colorado Parks & Wildlife Commission (and its agents, employees and subordinates) from disallowing the Plaintiff to protect his private property rights by posting Keep Out signs around not only his stock water locations, but his entire Grazing Allotments, thereby preventing hunters from trespassing upon, and destroying his property.

F. That the Court award Plaintiff his costs of suit, including reasonable attorneys' fees and expenses, including costs of consulting and testifying experts; and

G. That the Court award any and all such other relief as this Court may deem just and proper.

XI. JURY DEMAND

120. Pursuant to Federal Rule of Civil Procedure 38(b), if any of the above matters are triable by jury, then the Plaintiff demands a trial by jury on all matters so triable.

DATED this 17th day of July 2020.

Respectfully submitted,

/s/ Hayden L. Ballard
Hayden L. Ballard,
BALLARD LAW, P.L.L.C.
PO BOX 334
190 N. 100 E., UNIT 3
BEAVER, UTAH 84713
(435)899-1520
BALLARDLAWPLLC@GMAIL.COM

Attorney for Plaintiff

EXHIBIT 1

To Pat Hassenflow , U.S.F.S .

John Linn, U.S.F.S. (Springfield Office)

And Forest Supervisor (Pueblo Office)

Pat, it seems by our last conversation you do not seem to wish to abide by what is our legal rights to post and keep all outside people , hunters, and so on off of all our watering systems within our grazing allotments. It was just out of courtesy that we thought to let you know our plans, knowing full well you might be hearing about it from numerous hunters or other public concerning any signs we decide to post. So we just wanted to let you know what our plans are. It IS our legal right both Federal and State to act on our rights, of which you seem to disagree. We do not need your , or any Federal Employees in any of the offices affecting this Timpas Grazing district "Grazing Allotments" permission to carry out our legal rights concerning our surface rights on our grazing allotment. . We have full ownership of all surface rights and have for over 100 years. It is also a State Law that no hunter, or any one else can hunt, camp or interfere at all with any livestock watering system, weather be steel tank or dirt tank ect. Pat you stated that we should wait until we might get permission ?? We Do Not need any such permission to post, put keep out signs, or any type of posting we wish to do in such circumstances defending our legal right to do so. In reality it is not only the water systems we have the right to post and stop all hunting traffic on, it is legally our right to Post all the

Grazing Allotments in full. The National Forest Management Act Section 6(i) makes all permits, contracts and other instruments subject to our valid existing rights.

The grazing allotments here did not arrive from U.S.F.S. owned land that they then decided to "rent " to us for grazing. The "national grasslands" actually originate from " resettlement projects " . And our grazing allotments are the result of the Bankhead-Jones Farm Tennant Act, and the Farmers Home Administration Act. Which certainly means all our rights still stand on this land.

And it has been stated that the local U.S. Forrest Service has a "legal obligation" to inform the Fish and Game dept. , DOW of Colorado that they have NO right at all to have ever hunt on these Grazing Allotments. Which makes sense since it was the U.S. Forrest Service that invited them to hunt here in the first place.

Any attempt by state, federal, or private citizens to remove our signs, or stand in the way of our legal rights leaves the landowner with no other choice than to pursue legal action to whatever degree deemed necessary. And we have been advised by legal counsel to do just that if the such situations occur. Also it has come to light amongst the Allotment Owners that the so called U.S. Forest Service Law Enforcement has absolutely NO authority on ANY of the Grazing Allotments unless in concerns something to do with U.S Forrest Service Mineral Rights, so in the case of Oil companies or Miners

breaking the law. (And during fire fighting if needed). Therefore any ticketing, or other commands they make on this land is absolutely illegal and will not hold up in any court. Such actions on Ranchers can just be seen as Harassment on Ranchers by a Fed. Employee!. Something the public needs to be made aware of also for the cases in which they might have been ticketed on the grazing allotment areas. The ONLY Law enforcement that has ANY Jurisdiction rights on these allotments is the local Law Enforcement (Otero County Sheriff) in our region, and that IS all. This has all been brought about by legal council and must be further looked at. We understand that you might have some objections to our views on this, we understand that. We would like to request any of your views and objections be written out in letter form as is usually what needs to be done in such matters. We would like to get started on many of these issues now and think it needs to be dealt with from both sides in a timely manner.

Thank You,

Round Ranch,

Ralph D. Round

9/20/2019

EXHIBIT 2

USDA United States Department of Agriculture
Forest Service
Pike and San Isabel National Forests
Cimarron and Comanche National Grasslands
Supervisor's Office
2840 Kachina Drive
Pueblo, CO 81008
719-553-1400
Fax: 719-553-1440

File Code: 2230; 2600; 5300
Date: NOV 14 2019

Ralph D. Round
12010 County Road 22
Model, CO 81059

Dear Mr. Round

This letter responds to your inquiry concerning the legal authorities that govern administration of National Grasslands by the U.S. Forest Service. The following link http://www.fs.fed.us/grasslands/resources/ provides a thorough discussion of the laws and regulations that pertain to administration of National Grasslands. As discussed therein, Congress provided for the acquisition of land, and administration of the acquired land as National Grasslands, under the Bankhead-Jones Farm Tenant Act (BJFT Act) of July 22, 1937, P.L. 75-210, Ch. 517, 50 Stat. 522, as amended; now codified at 7 U.S.C. §1010-1012. National Grasslands are administered by the U.S. Forest Service under the laws and regulations pertaining to the National Forest System. Specifically, I direct your attention to the following:

1) Section 31 of the BJFT Act, 16 U.S.C §1010. The Secretary must administer National Grasslands to assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public land, health, safety, and welfare.

2) Section 32 of the BJFT Act, 16 U.S.C §1011(f). Authorizes the Secretary of the Department of Agriculture to make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the above purposes.

3) 36 CFR 213.3(a). The rules and regulations applicable to the national forests are adopted as the rules and regulations to prevent trespasses on and otherwise regulate the protection, use, and occupancy and administration of the National Grasslands and all other lands administered by the U.S. Forest Service under the provisions of Title III of the BJFT Act.

4) 36 CFR 261.10(a). Prohibits constructing, placing, or maintaining any kind of structure or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan.

In response to your specific points:

Lands within the National Grasslands are administered under Federal law by the U.S. Forest Service as part of the National Forest System and are subject to the laws and rules pertaining to

the National Forest System. The majority of the lands in the National Grasslands were originally patented out of Federal ownership under various authorities, including laws such as the Homestead Act and Stock-Raising Homestead Act. Subsequently, the land was re-acquired by the United States, became Federal property again, and was included in the National Grasslands. The property rights of the United States in these lands are defined by the deeds through which the United States re-acquired the land. Absent specific reservations of property rights in the deed by the party that transferred the land to the United States, the United States acquired unrestricted fee title to the land, extinguishing all previously-existing non-Federal property rights in the land. To date, there is no available evidence of deed reservations that would have reserved "surface rights," or any other private property rights in the federal property within the grazing allotment where you have a permit, and therefore the Forest Service administers the property as it would any other federal property within the National Forest System.

Congress has given the Secretary of Agriculture the authority to administer and regulate the National Grasslands as he deems necessary under 16 USC §551. Although any Forest Service employee has statutory authority to enforce compliance with these regulations under 16 U.S.C. §559, according to agency policy only designated, trained, and certified full-time law enforcement officers and special agents may perform most law enforcement functions.

With regard to hunting National Grasslands, federal lands are open to the public, including for purposes of hunting, unless specifically closed by special order. The Forest Service has not issued any such closure orders for either the Rock Fall or Crooked Arroyo Allotments; therefore, they are open to public access.

The Forest Service recognizes that reasonable steps may need to be taken to protect livestock water developments from damage, and we are willing to discuss such measures with you. However, you may not erect signs or fencing or other steps to prevent public access to federal land without Forest Service authorization. 16 U.S.C. §551, 36 CFR §261.10.

I am open to further discussion on these topics; if you would like to meet in person, please contact John Linn at 719-523-1702. Also, if I have not interpreted your concerns correctly, please let me know.

Sincerely,

Diana M. Trujillo

DIANA TRUJILLO
Forest and Grasslands Supervisor

cc: John Linn, Angela Safranek

EXHIBIT 3

ELAND & PRATT, LLC
Attorneys at Law

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KEN ELAND

HARRY JOE PRATT

HAYDEN L. BALLARD, Associate

January 7, 2020

To: Jennifer Eberlien
Acting Regional Forester for the Rocky Mountain Region
United States Department of Agriculture's Forest Service
1617 Cole Blvd., Building 17
Lakewood, CO 80401
(303) 275-5350

Vicki Christiansen
Chief of the United States Department of Agriculture's Forest Service
1400 Independence Ave., SW
Washington, DC 20250-1111
(800) 832-1355

RE: Ralph D. Round / Comanche National Grassland Grazing Allotments

Dear Ms. Eberlien and Ms. Christiansen:

I write today on behalf of Ralph D. Round who has retained the firm of Eland & Pratt, LLC of Hoxie, Kansas, to represent him in this matter. This letter is an attempt to resolve several disputes my client has had with the U.S. Forest Service, and assert his property rights in his grazing allotments, the full use of said rights having been denied by Forest Service employees in recent years.

Introduction

By way of introduction, Mr. Round is a cattle rancher in Southeast Colorado, and is the owner of two grazing allotments in the Timpas Grazing District of the Comanche National Grassland, namely the Rock Fall Allotment and the Crooked Arroyo Allotment. His allotments fall within the boundaries of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC). Mr. Round's grandfather first homesteaded in what is now the Rock Fall and Crooked Arroyo Allotments back in 1891. Mr. Round was born on this ranch in 1937 and

has lived on his ranch/allotment for his entire life of 82 years. Mr. Round, along with his son Russell, both currently live and work on these two grazing allotments as their sole livelihood. All his life Mr. Round has done his best to be a good citizen and "good neighbor" with the Forest Service, and has served for multiple decades as the President of the Timpas Grazing District Board of Directors. Because of this, Mr. Round has a unique first-hand knowledge of not only his allotment, but the surrounding "national grassland."

Procedural History

This current letter is the third letter in a series of communications beginning last fall. On September 20, 2019, my client Mr. Round, sent a letter to Ms. Diana Trujillo, the Forest and Grasslands Supervisor for the PSICC. In his September 20 letter, my client asserted several concerns regarding abuses of his private property rights, namely government interference with his grazing surface rights in his grazing allotments. In response, Mr. Round received a letter written by Ms. Trujillo dated November 14, 2019. I have included copies of both letters herewith for your consideration, labeled as Attachment A and B, respectively. It is our position that Ms. Trujillo's November 14 letter contains multiple errors of law and denies the use of the private property rights of my client. Accordingly, I now write to both Ms. Eberlien as well as Ms. Christiansen in an effort to resolve this matter.

In his September 2019 letter, Mr. Round clearly asserts that he is the owner of the surface rights of his two allotments, and that his rights have been interfered with by Forest Service employees in various ways. Specifically, in recent years, multitudes of hunters on Mr. Round's grazing allotments have blocked access to key water supplies for his cattle, and hunters have verbally and physically threatened both Mr. Round and his son when they have attempted to resolve the matter peacefully. On one specific occasion, Russell approached a water trough which was completely surrounded by hunter's RV's/campers, in an effort to ask them to move and allow his cattle to drink but also to check a water valve. One belligerent hunter drew a gun on Russell and threatened him with not only violence but court action if Russell tried to walk through their camp to his water trough, stating these were "public lands." This is just one such occasion. As a result of the blocked access, each year cattle have died for lack of water. Additionally, for the past few years, each year the Round's have had cattle die both from being ran into by hunter's vehicles, but also young calves have died from dust pneumonia caused by the ~70-100 hunters who will drive up and down the allotment roads each day during the hunting season. With an average, young, bred cow worth upwards of ~$1,300[1] and a 375 lb. steer worth ~$670[2], it quickly becomes apparent that Mr. Round is losing thousands of dollars each year at the hands of the public, on lands "managed" by the U.S. Forest Service.

[1] *See* USDA, AMS, *Colorado Weekly Cattle Auction Summary*, United States Department of Agriculture – Agricultural Marketing Service, *available at:* https://www.ams.usda.gov/mnreports/lsd_mars_1907.pdf (Dec. 20, 2019).
[2] *Id.*

Additionally, other hunters and members of the public have trespassed on Mr. Rounds patented land, and vandalized/destroyed various fences and corrals throughout his allotments. Again, the replacement costs incurred by the Rounds associated with the public's actions on lands "managed" by the U.S. Forest Service, are upwards of thousands of dollars.

After proper demand was made, Forest Service employees have refused to remedy the situation in any way or cooperate with Mr. Round as the allotment owner. Instead, the officials have simply told Mr. Round that these grasslands are "public lands" and the hunters have just as much a right to be there as the Rounds. Because of the Forest Service's refusal to protect his rights, this year the Round's placed "Keep Out" signs close to their water tanks in an effort to protect not only the lives of his livestock, but also protect his private water rights. Since placing the "Keep Out" signs around the water developments, not only did the Forest Service employees not help find a solution, instead they have responded with intimidation and harassment. As the grazing surface rights owner of his two allotments, Mr. Round has a right to protect not only his cattle and infrastructure, but also protect his surface rights from being invaded by the reckless public in the face of government inaction/condonation. Mr. Round generally asserted this position in his September 2019 letter.

In response, Ms. Trujillo, in sum, stated in her November 14 letter that as the national grasslands are public land, that Mr. Round has no property rights in his allotments. Specifically, in regard to Mr. Round's grazing allotments, she stated:

> *"Absent specific reservations of property rights in the deed by the party that transferred the land to the United States, the United States acquired unrestricted fee title to the land…To date, there is no available evidence of deed reservations that would have reserved "surface rights," or any other private property rights in the federal property within the grazing allotment where you have a permit, and therefore the Forest Service administers the property as it would any other federal property within the National Forest System."*

She then further stated:

> *"With regard to hunting National Grasslands, federal lands are open to the public, including for purposes of hunting, unless specifically closed by special order. The Forest Service has not issued any such closure orders for either the Rock Fall or Crooked Arroyo Allotments: therefore, they are open to public access."*

While Ms. Trujillo did say that the Forest Service was "willing to discuss such measures" to protect livestock and water developments, she continued with "however, you may not erect signs or fencing or other steps to prevent public access to federal land without Forest Service authorization. 16 U.S.C. § 551, 36 CFR § 261.10."

It is our position that these statements from Ms. Trujillo as the Forest and Grasslands Supervisor for the PSICC, are a denial of Mr. Rounds property rights, and a denial of his ability to protect his water rights as well as grazing surface rights.

The Forest Service's Denial of Mr. Round's Property Rights in the Rock Fall and Crooked Arroyo Grazing Allotments

To address why Ms. Trujillo's statements are a denial of Mr. Round's property rights, it is beneficial to lay out the factual history and law pertaining to my clients grazing allotments, and the establishment of what are now referred to as "National Grasslands." First, the term "national grassland" never appeared anywhere in the Federal statutes until 1964[3] over 30 years after the first lands were purchased for "resettlement projects". One of the partially truthful statements in the November 14 letter, is "*the majority of the lands in the National Grasslands were originally patented out of Federal ownership under various authorities, including laws such as the Homestead Act…"*. While it's true much of the land in the Comanche Grasslands Resettlement Project, and in Mr. Round's allotments, was re-acquired homestead lands, it is also true that much of the land was "occupied grazing land" that Mr. Round's family already owned as a "stock range" under the same acts applicable to National Forests; such as the Mineral Land Acts 1853/1866/1870/1872/1878, Grazing Act 1875,[4] Relief Act 1880,[5] Validating Act of 1890,[6] Forest Acts of 1891/1897,[7] and Reservation Disposal Act 1913. Consequently, those allotments could never have been patented to any other third party, as the Round's had already claimed and occupied them under color of title.[8]

[3] *See* 78 Stat. 745.
[4] *See* 18 Stat. 481.
[5] *See* 21 Stat. 141 as amended 1912, 37 Stat. 267.
[6] *See* 26 Stat 391.
[7] *See* 26 Stat 1095 and 30 Stat 34.
[8] *See generally* ***Atherton v Fowler,*** **96 U.S. 513 (1877)** (No right of pre-emption can be established by settlement and improvement on a tract of public land where the claimant forcibly intruded upon the possession of one who had already settled upon, improved, and enclosed that tract); *see also* ***Cameron v United States*****, 148 U.S. 301 (1893)** (Suit brought under the Act of February 25, 1885, 23 Stat. 321, wherein defendant enclosed tract of 1,200 acres of "public land." Supreme Court held that the lands in question were not public lands of the United States within the meaning of that term as used in the acts of Congress respecting the disposition of public lands, and that where the defendant used them for grazing, the defendant held them under claim or color of title); ***Curtin v Benson*****, 222 U.S. 78 (1911)** (Numerous people, including defendant, claimed land in the Yosemite National Park as stock range, and had placed fences 'sometimes inclosing, instead of 160 acres which they had, as high as several thousand acres of land.' Held that the Secretary of the Interior cannot make the exercise by an owner and lessee of lands within the Yosemite National Park of his right to pasture his cattle upon such lands, and to use the toll roads leading thereto, conditional upon his compliance with certain rules and regulations prescribed by the secretary for the government of the park, as to marking and defining the boundaries, or obtaining the written permission of the superintendent); ***United States v Buchanan*****, (232 U.S. 72 (1914)** (Held that Congress could have legislated so as to make [the act of February 25, 1885] applicable until patent issued. But instead of doing so, it left the homesteader who had acquired a possessory title to avail himself of the same rights that were open to others holding lands by title absolute or inchoate. In both cases there was right of possession, and in both cases wrongs against possession could be redressed).

Additionally, the statement in the November 14 letter that *"subsequently, the land was re-acquired by the United States, became Federal property again, and was included in the National Grasslands"* is oversimplified and largely false. As pointed out above, the term "national grasslands" never existed until 1964. The land re-acquired by the United States and later disposed of under the Bankhead-Jones Farm Tenant Act (BJFTA)[9] and Farmers Home Administration Act (FHAA),[10] were purchased from bankrupt and failed farmers during the Great Depression for the specific purpose of "resettling" the land in large enough acreages to enable stock-raising families to make a living.

From the very beginning of the "Reconstruction", "Relief" or "Resettlement" program in 1932,[11] Congress NEVER intended to purchase these failed farms for permanent retention as Federal enclaves, but only to make loans available to farmers that would enable them to "resettle" the land as stock raising units of a size sufficient for the support of a family. This is evidenced by the language of the "Relief Act" of March 31, 1933,[12] which specifically authorized the President to acquire real property without regard to State approval (as required by Article 1, Section 8, Clause 17 of the Constitution and R.S. 355) for the very reason that Congress never intended to retain the land in federal ownership. By Executive Order 7027 of May 1, 1935, the President established the "Resettlement Administration" within the United States Department of Agriculture. A month later the "Relief Act" of 1933 was extended by the "Emergency Relief Act" of April 18, 1935[13] and incorporated all lands purchased through funds authorized by the "Relief Act" of 1933 as well as other Acts of Congress intended to relieve stricken agricultural areas by providing loans to establish stock farms.[14]

By the Acts of April 27, 1936[15] and June 22, 1936[16] Congress established the Soil Conservation Service and Civilian Conservation Corps to work with State or local government agencies and private land owners to prevent soil erosion by providing incentives of money, services or materials, or, making agreements or covenants as to land use to prevent erosion. To make it clear that they did not intend to exercise any Federal Jurisdiction over the lands purchased for "resettlement" disposal, Congress enacted the Jurisdiction Act of June 29, 1936[17] stating that the Federal government did not intend to exercise any enclave jurisdiction over those lands. All jurisdiction of the State would remain, and all settlers receiving those lands would maintain all their rights as citizens of their respective States.

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[9] *See* 50 Stat. 522.
[10] *See* 60 Stat. 1062.
[11] *See* 47 Stat. 5.
[12] *See* 48 Stat. 22.
[13] *See* 49 Stat. 115.
[14] *See generally* 48 Stat. 274; 48 Stat. 351; 48 Stat. 1095.
[15] *See* 49 Stat. 163.
[16] *See* 49 Stat. 1601.
[17] *See* 49 Stat. 115.

The manner of disposal of "resettlement project" lands was spelled out in the BJFTA of July 22, 1937.[18] Loans for the acquisition of resettlement lands were to be made only for "an amount of land sufficient to constitute an efficient farm-management unit, that would enable a farm family to carry on farming of a type that could successfully be carried on in the locality where the farm was situated." The land in Southeastern Colorado was designated as "stockraising" land and granted as grazing allotments under the provisions of Section 8 of the Stock Raising Homestead Act[19] *In Pari Materia* with Title I of the BJFTA and the FHAA. The only interests (if any) retained by the United States was a minimum of 3/4ths of the mineral rights.[20] Nowhere in the SRHA, BJFTA, or FHAA does Congress mention retention of hunting rights, or reserved access by the United States for public hunting. In the November 14 letter, Ms. Trujillo states that *"National Grasslands are administered by the U.S. Forest Service under the laws and regulations pertaining to the National Forest System."* She then cites specifically to the following:

> 1) *Section 31 of the BJFT Act, 16 U.S.C. §1010. The Secretary must administer National Grasslands to assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities…and protecting the public land, health, safety, and welfare."*

At first glance, it would appear that because the BJFT requires national grasslands to be administered in a way to protect fish and wildlife, and because "national grasslands are administered by the U.S. Forest Service under the laws and regulations pertaining to the National Forest System", including the Multiple Use and Sustained Yield Act (MUSYA)[21] that this would put grazing on the same footing as other uses, such as hunting and wildlife management. This is not true. In fact, there is authority claiming "that the Forest Plans do not apply to national grasslands, only national forests due to unique legal status and legal history of national grasslands."[22] "Thus, the national grasslands should still be adapted to the sole, most beneficial use (promoting grassland agriculture) rather than the multiple uses required under the MUSYA."[23] As such, where Southeastern Colorado was designated as "stockraising" land under the SRHA, and where the U.S. did not retain hunting rights, and where MUSYA does not apply, accordingly, Mr. Round's grazing allotments are to be adapted to the sole, most beneficial use – grazing, and not subjected to interfering hunters against his will who destroy his property rights.

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[18] *See* 50 Stat. 522.
[19] *See* 39 Stat. 864.
[20] *See generally* SRHA and BJFTA.
[21] *See* 74 Stat. 215
[22] *See* Cole Romey, *The Legal Landscape is Rough Country for South Dakota Ranchers Who Operate on Federal Lands,* 64 S.D. L. Rev. 148 (2019); *citing* Elizabeth Howard, *Management of the National Grasslands,* 78 N.D.L. REV. 409, 437 (2002) ("Congress has repeatedly recognized the unique legal status of the national grasslands and excluded them from laws applicable to other National Forest System Lands....Congress did not apply the sweeping requirements of the MUSYA to the national grasslands....Congress...exclud[ed] the national grasslands from the broad rangeland and grazing provisions of the 1976 Federal Land Policy and Management Act (FLPMA)).
[23] *Id.*; *citing* Howard at 438 (reasoning that the Forest Service must manage the grasslands so as "to promote grassland agriculture and stabilize local national grasslands communities.").

In Ms. Trujillo's November 14 letter, she erroneously states that the so-called "national grasslands" acquired under the "Resettlement" statutes were to be administered under Title III (Section 31 and 32 specifically) of the BJFTA (and NOT disposed of as described in Title I and II of the BJFTA or the FHAA). That statement is also incorrect. Title III of the BJFTA was by clear language applicable only to "submarginal" land. Submarginal land was land that was so devoid of vegetation as to render it unsuitable for any form of agricultural cultivation (which included grazing). This definition of "submarginal" is expressed in Title II of the contemporaneous Act of June 26, 1936[24] amending the Taylor Grazing Act (TGA) and establishing the "Badlands" national monument from lands thought to be unsuitable for inclusion in a TGA "Grazing District".

Ms. Trujillo's apparent argument is that there was great discretion on the part of the Secretary of Agriculture to classify all the "Resettlement" lands as "submarginal" under Title III and therefore leave them under bureaucrat authority (as described in the November 14 letter). However, Congress made it clear that their highest priority was to "promote private farm ownership" and that all the lands acquired for "resettlement and rural rehabilitation projects for resettlement purposes" were to be disposed of by the "Farmer's Home Administration Act of 1946."[25] Under the heading "Resettlement Projects" the Secretary of Agriculture was directed to dispose of ***all*** resettlement lands (in economic units) as expeditiously as possible and to report the disposal of the land to Congress within six months of passage of the Act. Mr. Round's family, as predecessors in interest, were actual occupants of the resettlement project land at the time. Accordingly, his family had the preferred right to receive their grazing allotments/privileges before anyone else.[26] Mr. Round, and his family predecessors in interest, have been the surface owners of their two grazing allotments ever since.

In the November 14 letter, Ms. Trujillo states that "*there is no available evidence of deed reservations that would have reserved "surface rights," or any other private property rights in the federal property within the grazing allotment where you have a permit."* However, private property rights within grazing allotments do not have to be evidenced by deed reservations or patents to constitute valid property rights. From as early as 1831[27] Congress has used government survey maps as evidentiary "title" documents, particularly where large areas of land are granted that do not necessarily conform to the Rectangular Survey System, and where there is no requirement in the granting Act that requires the issue of a "patent."[28] The "survey" system was

[24] *See* 49 Stat. 1976.
[25] *See* 60 Stat. 1062.
[26] *See* 60 Stat. 711.
[27] *See* 4 Stat. 494.
[28] *See* ***Shaw v Kellogg,*** **170 US 312 (1898)** (Grant of land challenged on the basis that there was no patent. Regardless, the grant was upheld as the statute did not order the issue of a patent, and that the case was one in which the granting act with the approved survey and location made a full transfer of title); ***Whitney v Morrow,*** **112 US 693 (1885)** (If, by a legislative declaration, a specific tract is confirmed to any one, his title is not strengthened by a subsequent patent from the government. That instrument may be of great service to him in proving his title, if contested, and the extent of his land, especially when proof of its boundaries would otherwise rest in the uncertain recollection of witnesses. It would thus be an instrument of quiet and security to him, but it could not add to the validity and completeness of the title confirmed by the act of congress).

used to pass "title" to the owners in the "occupancy" of stock-grazing range allotments in National Forests by the Forest Acts of 1891[29] and 1897.[30] The approved Allotment Map of the Rock Fall Allotment and the approved Allotment Map of the Crooked Arroyo Allotment, are both evidentiary Title documents. Although Mr. Round and his predecessors in interest have entered into cooperative permit agreements with the USDA (both Soil Conservation Service and Forest Service), since receiving title to his allotments in 1946, those agreements do not, and cannot, deprive Mr. Round of any of his rights as the surface owners of the Rock Fall and Crooked Arroyo Allotments.

As stated above, nowhere in any of the legislation dealing with disposal of "resettlement" project lands is there any mention of the retention of rights of access for hunting. All legislation in regard to "resettlement" land disposal clearly states the lands are to be disposed of for agricultural or farm use. Any use of Mr. Round's allotments in the past by the public for hunting has been done only by his giving permission through cooperative agreements between him and the USDA. The National Forest Management Act (NFMA)[31] clearly states that all permits, contracts and other instruments "shall be subject to valid existing rights." While Mr. Round has allowed hunting on his allotments in the past, the right to exclude the public/hunters, is a valid right that can be exercised at any time. Mr. Round's rights are not subject to the whim of a bureaucrat's interpretation of a "permit, contract or other instrument" because the NFMA clearly states that permits, contracts and other instruments are "subject to valid existing rights." As Mr. Round's surface rights in his allotments predate the passage of NFMA in 1976, it is our position that that "subject to" clause grandfathers in his valid, prior existing surface rights, and all grazing permits, contracts and other instruments (such as cooperative agreements and hunting permits) are subject to his grazing surface rights.

Ms. Trujillo and the other Forest Service employees in the PSICC have failed to hold up their side of the cooperative permit agreement. Mr. Round's surface rights are being violated and his livestock are dying. As surface owner of his allotments, he has the right to post "no trespassing" and "keep out" signs around his stockwater locations or anywhere else on his allotments where it's needed to protect property or life. Additionally, Mr. Round has the right to protect his allotment by keeping the gates closed to his allotments, and the gates to individual pastures within those allotments, closed. For the past ~7 years Mr. Round has been denied the right to keep his gates closed. It began when Jeff Stoney was in charge of the La Junta Forest Service Office, and he insisted that a provision be added into the grazing allotments Annual Operating Instructions that read "Gates will be left open when cattle leave the allotment." Although Jeff Stoney is no longer with the La Junta Forest Service Office, that provision has remained in all Annual Operating Instructions since that time. Leaving gates open to cattle pastures, particularly on busy county roads, is a recipe for disaster. It invites unwanted traffic and trespassers, plus if cattle manage to

[29] *See* 26 Stat. 1095.
[30] *See* 30 Stat. 34.
[31] *See* 90 Stat. 2955.

jump through the fence of the pasture they're currently in and get into one where the gate was left open, this allows them to get onto busy roads, leading to accidents and loss of life of both livestock and members of the public who use those roads. As surface owner of his allotments, Mr. Round has the right to keep his allotment gates closed where it's needed to protect property or life. It's true that "the grant of a property right to one person leaves others vulnerable to the will of the owner. Conversely, the refusal to grant a property right leaves the claimant vulnerable to the will of others, who may with impunity infringe on the interests which have been denied protection."[32] Here, Mr. Round's property rights have ben denied protection by the Forest Service, and consequently, the public has now with impunity infringed on his interests, as shown above.

It is our position that while the Federal government may hold title to various interests in the allotments, Mr. Round is the owner of the surface rights of his allotments for all range and agricultural purposes. In short, these allotments are not "Public Lands" these allotments are "split-estate" lands. This position that private property interests co-exist with federal interests in grazing allotments administered by the Forest Service, i.e., the split estate, has recently been upheld in Federal Claims Court.[33]As stated above, under the SRHA, BJFTA and FHAA, the only interests (if any) retained by the United States was the mineral rights.[34] Nowhere in the SRHA, BJFTA, or FHAA does Congress mention retention of hunting rights, or reserved access by the United States for public hunting. While the U.S. may claim some interest, however, as Mr. Round's surface rights in his allotments predate the passage of NFMA in 1976, it is our position that the "subject to" clause grandfathers in his valid, prior existing surface rights, and all grazing permits, contracts and other instruments (such as cooperative agreements and hunting permits) are subject to his grazing surface rights. In fact, surface use rights of property managed by the Forest Service have recently been upheld as being the type of "valid existing rights" that the Forest Service has no warrant to override.[35]

Mr. Round has not interfered with any mineral interest retained by the Federal government,[36] or other interests that may be owned by the Federal government, and wishes that

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[32] *See* John S. Harbison, *Hohfeld and Herefords: The Concept of Property and the Law of the Range,* 22 N.M. L. Rev. 459, 495 (1992); *citing* Singer, *Sovereignty and Property,* 86 Nw.U.L.Rev. 1, 41 (1991).

[33] *See* ***Sacramento Grazing Ass'n, Inc. v. United States*, 135 Fed.Cl. 168 (2017)** (the plaintiff held all "cattle, water rights, range rights, access rights, and range improvements on the base property, as well as the appurtenant federally-administered grazing allotment known as the Sacramento Allotment" in New Mexico. Court held that actions taken by USFS excluding Plaintiff's from their water sources "effected a taking under the Fifth Amendment to the United States Constitution of SGA's right to beneficial use of stock water sources").

[34] *See generally* SRHA and BJFTA.

[35] *See* ***Herr v. United States Forest Serv.*, 865 F.3d 351 (6th Cir. 2017)** (Congress gave the Forest Service authority to regulate any use of a certain lake within a wilderness area 'subject to valid existing rights.' The Forest Service promulgated two regulations, both of which exceeded the Forest Service's power. Under state law, lakeside property owners had property right constituting surface use of the same lake. Held that the right to use all of the lake in reasonable ways was the kind of 'valid existing rights' that the Forest Service has no warrant to override).

[36] *See* ***Kinney Coastal Oil v Kieffer*, 277 US 488 (1928)** (The acts of 1914 and 1920 express an intention to divide oil and gas lands into two estates for the purposes of disposal-one including the underlying oil and gas deposits and the other the surface, in other words, separate disposals of the split-estate).

the Forest Service not interfere with his. Today, we simply ask that the Forest Service refrain from attempting to interfere with, or deprive Mr. Round of his Constitutional and statutorily protected property rights in his grazing allotments. As also ask that the Forest Service refrain from attempting to interfere with his ability to protect said rights by posting signage around his allotments as needed and by keeping his gates closed.

The Forest Service's Interference with Mr. Round's Ability to Enroll in the Noninsured Crop Disaster Assistance Program

One further matter, while not addressed in the September 20 letter or the November 14 letter, deserves to be addressed here, as it is one more case of Mr. Round's ranching operation being interfered with by Forest Service employees. This issue is in regard to misconduct by John Linn, the Comanche National Grassland District Ranger, in interfering with the Round's ability to participate in the Noninsured Crop Disaster Assistance Program (NAP). As you may be aware, NAP is a program administered by the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA), which "provides financial assistance to producers of non-insurable crops to protect against natural disasters that result in lower yields or crop losses…"[37] Eligible crops under this program include "crops planted and grown for livestock consumption, such as grain and forage crops, including native forage."[38] Eligible causes of loss include natural disasters and "damaging weather, such as drought…"[39] Essentially, livestock producers seeking to take advantage of this program pay a premium before the beginning of the crop year, and in the event of a qualifying cause of loss (e.g., drought) "NAP provides basic coverage equivalent to the catastrophic level risk protection plan of insurance coverage, which is based on the amount of loss that exceeds 50 percent of expected production at 55 percent of the average market price for the crop,"[40] i.e., native forage grasses. Many ranchers/livestock producers in Southeastern Colorado have signed up for this program in recent years, as the region has faced drought in multiple years, and many times these payments are the difference between surviving and going under for some ranchers.

To sign up for NAP, "eligible producers must apply for coverage using form CCC-471, 'Application for Coverage,' and pay the applicable service fee at the FSA office where their farm records are maintained."[41] As part of their application, producers must also submit an "acreage report" specifying the amount of "acreage planted" to the "FSA at the administrative county office for the acreage no later than the date specified by FSA for each crop and location."[42] If livestock

[37] *See* USDA FSA, *Noninsured Crop Disaster Assistance Program for 2019 and Subsequent Years – Fact Sheet*, United States Department of Agriculture Farm Service Agency, *available at:* https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/noninsured_crop_disaster_assistance_program-nap-fact_sheet.pdf, (October 2019).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.; see also* USDA CCC, *CCC-471 NAP BP,* U.S. Department of Agriculture Commodity Credit Cooperation, *available at:* https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Disaster-Assist/NAP/ccc0471_nap_bp_2019_190422v01.pdf (04-22-19).
[42] *See* 7 CFR §1437.8.

producers do not submit this acreage report containing the number of acres of forage they intend to enroll in the program by the set deadline each year, then they are ineligible for any coverage for that year.

For livestock producers who operate strictly on patented land, this acreage report is fairly simple and straightforward. However, for livestock producers who own grazing allotments, the process can be more involved. This is because, specifically for ranchers in the Timpas Grazing District (such as the Round's) as well as the nearby Kim Grazing District, the local FSA offices require the rancher to submit an acreage report for all patented land, but also an acreage report for all land within the federally administered grazing allotment. Typically, the local FSA office has required the Round's, and surrounding ranchers within the Timpas and Kim Grazing District's, to not only file the acreage report for land within the allotment, but require that the acreage report to then be "signed off" on by the local Forest Service office, confirming the amount of acreage within the allotment. In years past, the local Forest Service office would sign off on, and then send in, the acreage report each year to the FSA by the annual deadline – allowing the ranchers to enroll.

However, things have drastically changed within the past 3 years or so, coinciding with the approximate timing when John Linn became the District Ranger for the Comanche National Grassland in the Springfield, CO Forest Service Office. Since John Linn has become the District Ranger, the local Forest Service employees refuse to process the acreage reports for the ranchers within the Timpas and Kim Grazing Districts, and refuse to send the reports in to the FSA office by the annual deadline. Multiple ranchers in the area, including Mr. Round, have attempted to get their acreage report approved by the local Forest Service employees, and they have simply been told "No." In fact, the local FSA office has even contacted the Forest Service offices under John Linn's supervision, but to no avail.

Specifically, two years ago, Mr. Round attempted to enroll his two allotments in the NAP program, but Mr. Linn and Patricia Hessenflow (Rangeland Management Coordinator in La Junta, CO Office), refused to sign off on the acreage report, as required by the local FSA offices. After much "back-and-forth" Ms. Hessenflow finally sent in the acreage report, but only included approximately half the acreage contained in Mr. Round's allotments. She refused to include the full acreage amount. The Round ranch has been adversely affected by drought in recent years, specifically two years ago. As such, ultimately that year Mr. Round received NAP payments in the approximate amount of $16,000. However, had the full acreage been included in the acreage report, it is believed his payment would have been approximately $31,000 - $32,000.

While I cannot speak on behalf of the various ranchers within the Timpas and Kim Grazing Districts, I can say that with certainty, because of the inaction of Mr. Linn as the District Ranger, my client has lost out on potentially thousands of dollars of livelihood supporting NAP payments. Whether Mr. Linn's inaction by himself or his subordinates is intentional or simple incompetence/negligence, it is unacceptable, and we ask that he be held accountable. Unfortunately, the enrollment deadline for forage coverage for 2020 has come and gone

(November 2019), without Mr. Round being able to enroll under these circumstances. Whether Mr. Linn's intent in the past was malicious or otherwise, we expect Mr. Linn and his subordinates, to cooperate in approving the acreage report in the future, as required by the FSA.

Conclusion

As stated above, it is our position that Mr. Round is the owner of the surface rights for all range and agricultural purposes in the Rock Fall and Crooked Arroyo Allotments, and that his right to protect those property rights has been denied / interfered with by Forest Service personnel. We hope to resolve these matters, and would expect a written response from your office in a timely manner. In the meantime, we ask that Forest Service employees within the PSICC cease and desist from any harassment or interference with Mr. Round's or Russell's activities necessary to carry on their ranching operation in peace. However, if the Forest Service refuses to recognize that Mr. Round is the owner of the surface rights for all range and agricultural purposes in the Rock Fall and Crooked Arroyo Allotments, and consequently that he has the right to protect said rights, we will have no choice but to pursue formal court proceedings in this matter.

If you have any questions regarding this matter, please feel free to contact our office at your convenience.

Sincerely,

Hayden L. Ballard
Eland & Pratt, LLC

Licensed In:
-Kansas
-U.S. District Court for the District of Kansas
-U.S. District Court for the District of Colorado

CC: Diana Trujillo
Forest and Grasslands Supervisor
Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands
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(719) 553-1400

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(719) 384-2181

Enclosures: Attachment A – The September 20, 2019 Letter
Attachment B – The November 14, 2019 Letter

EXHIBIT 4

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HAYDEN L. BALLARD, Associate

March 7, 2020

To: Sonny Perdue
U.S. Secretary of Agriculture
Room 200-A, Whitten Building
1400 Independence Ave., SW
Washington, DC 20250-1111
(202) 720-2791

Vicki Christiansen
Chief of the United States Department of Agriculture's Forest Service
1400 Independence Ave., SW
Room RPE-6, Whitten Building
Washington, DC 20250-1111
(800) 832-1355

RE: Ralph D. Round / Comanche National Grassland Grazing Allotments

Dear Secretary Perdue and Chief Christiansen:

I write today on behalf of Ralph D. Round who has retained the firm of Eland & Pratt, LLC of Hoxie, Kansas, to represent him in this matter. This letter is an attempt to resolve several disputes my client has had with the U.S. Forest Service, and assert his property rights in his grazing allotments, the full use of said rights having been denied by Forest Service employees in recent years.

Introduction

By way of introduction, Mr. Round is a cattle rancher in Southeast Colorado, and is the owner of two grazing allotments in the Timpas Grazing District of the Comanche National Grassland, namely the Rock Fall Allotment and the Crooked Arroyo Allotment. His allotments fall within the boundaries of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC). Mr. Round's grandfather first homesteaded in what is now the Rock

Fall and Crooked Arroyo Allotments back in 1891. Mr. Round was born on this ranch in 1937 and has lived on his ranch/allotment for his entire life of 82 years. Mr. Round, along with his son Russell, both currently live and work on these two grazing allotments as their sole livelihood. All his life Mr. Round has done his best to be a good citizen and "good neighbor" with the Forest Service, and has served for multiple decades as the President of the Timpas Grazing District Board of Directors. Because of this, Mr. Round has a unique first-hand knowledge of not only his allotment, but the surrounding "national grassland."

Procedural History

This current letter is the fourth letter in a series of communications beginning last fall. On **September 20, 2019**, my client Mr. Round, sent a letter to Ms. Diana Trujillo, the Forest and Grasslands Supervisor for the PSICC. In his September 20 letter, my client asserted several concerns regarding abuses of his private property rights, namely government interference with his grazing surface rights in his grazing allotments. In response, Mr. Round received a letter written by Ms. Trujillo dated **November 14, 2019.** It is our position that Ms. Trujillo's November 14 letter contains multiple errors of law and denies the use of the private property rights of my client.

Accordingly, I sent a letter dated **January 7, 2020** addressed to Ms. Trujillo's direct supervisors, namely Ms. Jennifer Eberlien as Acting Regional Forester for the Rocky Mountain Region, and Ms. Vicki Christiansen as Chief of the United States Department of Agriculture's Forest Service. Copies of the January 7 letter were also sent to Ms. Trujillo, Mr. John Linn, the Comanche National Grassland District Ranger, as well as to Ms. Patricia Hessenflow, the Comanche National Grasslands Rangeland Management Coordinator. All copies of the January 7, 2020 letter were sent certified mail / return receipt, and neither Ms. Eberlien nor Ms. Christiansen have responded to the letter to date. In fact, we have received no official response from any of the Forest Service employees named above.

I have included copies of the September 20th letter, the November 14th letter as well as the January 7th letter herewith for your consideration, labeled as Attachments A, B and C, respectively. Because we have received no response from Ms. Eberlien nor Ms. Christiansen, this current letter is now forthcoming.

In his September 2019 letter, Mr. Round clearly asserts that he is the owner of the surface rights of his two allotments, and that his rights have been interfered with by Forest Service employees in various ways. Specifically, in recent years, multitudes of hunters on Mr. Round's grazing allotments have blocked access to key water supplies for his cattle, and hunters have verbally and physically threatened both Mr. Round and his son when they have attempted to resolve the matter peacefully. On one specific occasion, Russell approached a water trough which was completely surrounded by hunter's RV's/campers, in an effort to ask them to move and allow his cattle to drink but also to check a water valve. One belligerent hunter drew a gun on Russell and threatened him with not only violence but court action if Russell tried to walk through their camp to his water trough, stating these were "public lands." This is just one such occasion. As a result of the blocked access, each year cattle have died for lack of water. Additionally, for the past

few years, each year the Rounds have had cattle die both from being ran into by hunter's vehicles, but also young calves have died from dust pneumonia caused by the ~70-100 hunters who will drive up and down the allotment roads each day during the hunting season. With an average, young, bred cow worth upwards of ~$1,300[1] and a 375 lb. steer worth ~$670[2], it quickly becomes apparent that Mr. Round is losing thousands of dollars each year at the hands of the public, on lands "managed" by the U.S. Forest Service.

Additionally, other hunters and members of the public have trespassed on Mr. Rounds patented land, and vandalized/destroyed various fences and corrals throughout his allotments. Again, the replacement costs incurred by the Rounds associated with the public's actions on lands "managed" by the U.S. Forest Service, are upwards of thousands of dollars.

After proper demand was made, Forest Service employees have refused to remedy the situation in any way or cooperate with Mr. Round as the allotment owner. Instead, the officials have simply told Mr. Round that these grasslands are "public lands" and the hunters have just as much a right to be there as the Rounds. Because of the Forest Service's refusal to protect his rights, this year the Round's placed "Keep Out" signs close to their water tanks in an effort to protect not only the lives of his livestock, but also protect his private water rights. Since placing the "Keep Out" signs around the water developments, not only did the Forest Service employees not help find a solution, instead they have responded with intimidation and harassment. As the grazing surface rights owner of his two allotments, Mr. Round has a right to protect not only his cattle and infrastructure, but also protect his surface rights from being invaded by the reckless public in the face of government inaction/condonation. Mr. Round generally asserted this position in his September 2019 letter.

In response, Ms. Trujillo, in sum, stated in her November 14 letter that as the national grasslands are public land, that Mr. Round has no property rights in his allotments. Specifically, in regard to Mr. Round's grazing allotments, she stated:

> *"Absent specific reservations of property rights in the deed by the party that transferred the land to the United States, the United States acquired unrestricted fee title to the land…To date, there is no available evidence of deed reservations that would have reserved "surface rights," or any other private property rights in the federal property within the grazing allotment where you have a permit, and therefore the Forest Service administers the property as it would any other federal property within the National Forest System."*

She then further stated:

[1] *See* USDA, AMS, *Colorado Weekly Cattle Auction Summary*, United States Department of Agriculture – Agricultural Marketing Service, *available at:* https://www.ams.usda.gov/mnreports/lsd_mars_1907.pdf (Dec. 20, 2019).
[2] *Id.*

"With regard to hunting National Grasslands, federal lands are open to the public, including for purposes of hunting, unless specifically closed by special order. The Forest Service has not issued any such closure orders for either the Rock Fall or Crooked Arroyo Allotments: therefore, they are open to public access."

While Ms. Trujillo did say that the Forest Service was "willing to discuss such measures" to protect livestock and water developments, she continued with "however, you may not erect signs or fencing or other steps to prevent public access to federal land without Forest Service authorization. 16 U.S.C. § 551, 36 CFR § 261.10."

It is our position that these statements from Ms. Trujillo as the Forest and Grasslands Supervisor for the PSICC, are a denial of Mr. Rounds property rights, and a denial of his ability to protect his water rights as well as grazing surface rights.

The Forest Service's Denial of Mr. Round's Property Rights in the Rock Fall and Crooked Arroyo Grazing Allotments

To address why Ms. Trujillo's statements are a denial of Mr. Round's property rights, it is beneficial to lay out the factual history and law pertaining to my clients grazing allotments, and the establishment of what are now referred to as "National Grasslands." First, the term "national grassland" never appeared anywhere in the Federal statutes until 1964[3] over 30 years after the first lands were purchased for "resettlement projects". One of the partially truthful statements in the November 14 letter, is "*the majority of the lands in the National Grasslands were originally patented out of Federal ownership under various authorities, including laws such as the Homestead Act…"*. While it's true much of the land in the Comanche Grasslands Resettlement Project, and in Mr. Round's allotments, was re-acquired homestead lands, it is also true that much of the land was "occupied grazing land" that Mr. Round's family already owned as a "stock range" under the same acts applicable to National Forests; such as the Mineral Land Acts 1853/1866/1870/1872/1878, Grazing Act 1875,[4] Relief Act 1880,[5] Validating Act of 1890,[6] Forest Acts of 1891/1897,[7] and Reservation Disposal Act 1913. Consequently, those allotments could never have been patented to any other third party, as the Round's had already claimed and occupied them under color of title.[8]

[3] *See* 78 Stat. 745.
[4] *See* 18 Stat. 481.
[5] *See* 21 Stat. 141 as amended 1912, 37 Stat. 267.
[6] *See* 26 Stat 391.
[7] *See* 26 Stat 1095 and 30 Stat 34.
[8] *See generally* ***Atherton v Fowler*****, 96 U.S. 513 (1877)** (No right of pre-emption can be established by settlement and improvement on a tract of public land where the claimant forcibly intruded upon the possession of one who had already settled upon, improved, and enclosed that tract); *see also* ***Cameron v United States*****, 148 U.S. 301 (1893)** (Suit brought under the Act of February 25, 1885, 23 Stat. 321, wherein defendant enclosed tract of 1,200 acres of "public land." Supreme Court held that the lands in question were not public lands of the United States within the meaning of that term as used in the acts of Congress respecting the disposition of public lands, and that where the defendant used them for grazing, the defendant held them under claim or color of title); ***Curtin v Benson*****, 222 U.S. 78 (1911)** (Numerous

Additionally, the statement in the November 14 letter that *"subsequently, the land was re-acquired by the United States, became Federal property again, and was included in the National Grasslands"* is oversimplified and largely false. As pointed out above, the term "national grasslands" never existed until 1964. The land re-acquired by the United States and later disposed of under the Bankhead-Jones Farm Tenant Act (BJFTA)[9] and Farmers Home Administration Act (FHAA),[10] were purchased from bankrupt and failed farmers during the Great Depression for the specific purpose of "resettling" the land in large enough acreages to enable stock-raising families to make a living.

From the very beginning of the "Reconstruction", "Relief" or "Resettlement" program in 1932,[11] Congress NEVER intended to purchase these failed farms for permanent retention as Federal enclaves, but only to make loans available to farmers that would enable them to "resettle" the land as stock raising units of a size sufficient for the support of a family. This is evidenced by the language of the "Relief Act" of March 31, 1933,[12] which specifically authorized the President to acquire real property without regard to State approval (as required by Article 1, Section 8, Clause 17 of the Constitution and R.S. 355) for the very reason that Congress never intended to retain the land in federal ownership. By Executive Order 7027 of May 1, 1935, the President established the "Resettlement Administration" within the United States Department of Agriculture. A month later the "Relief Act" of 1933 was extended by the "Emergency Relief Act" of April 18, 1935[13] and incorporated all lands purchased through funds authorized by the "Relief Act" of 1933 as well as other Acts of Congress intended to relieve stricken agricultural areas by providing loans to establish stock farms.[14]

By the Acts of April 27, 1936[15] and June 22, 1936[16] Congress established the Soil Conservation Service and Civilian Conservation Corps to work with State or local government agencies and private land owners to prevent soil erosion by providing incentives of money, services or materials, or, making agreements or covenants as to land use to prevent erosion. To

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people, including defendant, claimed land in the Yosemite National Park as stock range, and had placed fences 'sometimes inclosing, instead of 160 acres which they had, as high as several thousand acres of land.' Held that the Secretary of the Interior cannot make the exercise by an owner and lessee of lands within the Yosemite National Park of his right to pasture his cattle upon such lands, and to use the toll roads leading thereto, conditional upon his compliance with certain rules and regulations prescribed by the secretary for the government of the park, as to marking and defining the boundaries, or obtaining the written permission of the superintendent); ***United States v Buchanan*, (232 U.S. 72 (1914)** (Held that Congress could have legislated so as to make [the act of February 25, 1885] applicable until patent issued. But instead of doing so, it left the homesteader who had acquired a possessory title to avail himself of the same rights that were open to others holding lands by title absolute or inchoate. In both cases there was right of possession, and in both cases wrongs against possession could be redressed).

[9] *See* 50 Stat. 522.
[10] *See* 60 Stat. 1062.
[11] *See* 47 Stat. 5.
[12] *See* 48 Stat. 22.
[13] *See* 49 Stat. 115.
[14] *See generally* 48 Stat. 274; 48 Stat. 351; 48 Stat. 1095.
[15] *See* 49 Stat. 163.
[16] *See* 49 Stat. 1601.

make it clear that they did not intend to exercise any Federal Jurisdiction over the lands purchased for "resettlement" disposal, Congress enacted the Jurisdiction Act of June 29, 1936[17] stating that the Federal government did not intend to exercise any enclave jurisdiction over those lands. All jurisdiction of the State would remain, and all settlers receiving those lands would maintain all their rights as citizens of their respective States.

The manner of disposal of "resettlement project" lands was spelled out in the BJFTA of July 22, 1937.[18] Loans for the acquisition of resettlement lands were to be made only for "an amount of land sufficient to constitute an efficient farm-management unit, that would enable a farm family to carry on farming of a type that could successfully be carried on in the locality where the farm was situated." The land in Southeastern Colorado was designated as "stockraising" land and granted as grazing allotments under the provisions of Section 8 of the Stock Raising Homestead Act[19] *In Pari Materia* with Title I of the BJFTA and the FHAA. The only interests (if any) retained by the United States was a minimum of 3/4ths of the mineral rights.[20] Nowhere in the SRHA, BJFTA, or FHAA does Congress mention retention of hunting rights, or reserved access by the United States for public hunting. In the November 14 letter, Ms. Trujillo states that *"National Grasslands are administered by the U.S. Forest Service under the laws and regulations pertaining to the National Forest System."* She then cites specifically to the following:

> 1) *Section 31 of the BJFT Act, 16 U.S.C. §1010. The Secretary must administer National Grasslands to assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities…and protecting the public land, health, safety, and welfare."*

At first glance, it would appear that because the BJFT requires national grasslands to be administered in a way to protect fish and wildlife, and because "national grasslands are administered by the U.S. Forest Service under the laws and regulations pertaining to the National Forest System", including the Multiple Use and Sustained Yield Act (MUSYA)[21] that this would put grazing on the same footing as other uses, such as hunting and wildlife management. This is not true. In fact, there is authority claiming "that the Forest Plans do not apply to national grasslands, only national forests due to unique legal status and legal history of national grasslands."[22] "Thus, the national grasslands should still be adapted to the sole, most beneficial

[17] *See* 49 Stat. 115.
[18] *See* 50 Stat. 522.
[19] *See* 39 Stat. 864.
[20] *See generally* SRHA and BJFTA.
[21] *See* 74 Stat. 215
[22] *See* Cole Romey, *The Legal Landscape is Rough Country for South Dakota Ranchers Who Operate on Federal Lands,* 64 S.D. L. Rev. 148 (2019); *citing* Elizabeth Howard, *Management of the National Grasslands,* 78 N.D.L. REV. 409, 437 (2002) ("Congress has repeatedly recognized the unique legal status of the national grasslands and excluded them from laws applicable to other National Forest System Lands....Congress did not apply the sweeping requirements of the MUSYA to the national grasslands....Congress...exclud[ed] the national grasslands from the broad rangeland and grazing provisions of the 1976 Federal Land Policy and Management Act (FLPMA)).

use (promoting grassland agriculture) rather than the multiple uses required under the MUSYA."[23] As such, where Southeastern Colorado was designated as "stockraising" land under the SRHA, and where the U.S. did not retain hunting rights, and where MUSYA does not apply, accordingly, Mr. Round's grazing allotments are to be adapted to the sole, most beneficial use – grazing, and not subjected to interfering hunters against his will who destroy his property rights.

In Ms. Trujillo's November 14 letter, she erroneously states that the so-called "national grasslands" acquired under the "Resettlement" statutes were to be administered under Title III (Section 31 and 32 specifically) of the BJFTA (and NOT disposed of as described in Title I and II of the BJFTA or the FHAA). That statement is also incorrect. Title III of the BJFTA was by clear language applicable only to "submarginal" land. Submarginal land was land that was so devoid of vegetation as to render it unsuitable for any form of agricultural cultivation (which included grazing). This definition of "submarginal" is expressed in Title II of the contemporaneous Act of June 26, 1936[24] amending the Taylor Grazing Act (TGA) and establishing the "Badlands" national monument from lands thought to be unsuitable for inclusion in a TGA "Grazing District".

Ms. Trujillo's apparent argument is that there was great discretion on the part of the Secretary of Agriculture to classify all the "Resettlement" lands as "submarginal" under Title III and therefore leave them under bureaucrat authority (as described in the November 14 letter). However, Congress made it clear that their highest priority was to "promote private farm ownership" and that all the lands acquired for "resettlement and rural rehabilitation projects for resettlement purposes" were to be disposed of by the "Farmer's Home Administration Act of 1946."[25] Under the heading "Resettlement Projects" the Secretary of Agriculture was directed to dispose of ***all*** resettlement lands (in economic units) as expeditiously as possible and to report the disposal of the land to Congress within six months of passage of the Act. Mr. Round's family, as predecessors in interest, were actual occupants of the resettlement project land at the time. Accordingly, his family had the preferred right to receive their grazing allotments/privileges before anyone else.[26] Mr. Round, and his family predecessors in interest, have been the surface owners of their two grazing allotments ever since.

In the November 14 letter, Ms. Trujillo states that "*there is no available evidence of deed reservations that would have reserved "surface rights," or any other private property rights in the federal property within the grazing allotment where you have a permit."* However, private property rights within grazing allotments do not have to be evidenced by deed reservations or patents to constitute valid property rights. From as early as 1831[27] Congress has used government survey maps as evidentiary "title" documents, particularly where large areas of land are granted

[23] *Id.*; *citing* Howard at 438 (reasoning that the Forest Service must manage the grasslands so as "to promote grassland agriculture and stabilize local national grasslands communities.").
[24] *See* 49 Stat. 1976.
[25] *See* 60 Stat. 1062.
[26] *See* 60 Stat. 711.
[27] *See* 4 Stat. 494.

that do not necessarily conform to the Rectangular Survey System, and where there is no requirement in the granting Act that requires the issue of a "patent."[28] The "survey" system was used to pass "title" to the owners in the "occupancy" of stock-grazing range allotments in National Forests by the Forest Acts of 1891[29] and 1897.[30] The approved Allotment Map of the Rock Fall Allotment and the approved Allotment Map of the Crooked Arroyo Allotment, are both evidentiary Title documents. Although Mr. Round and his predecessors in interest have entered into cooperative permit agreements with the USDA (both Soil Conservation Service and Forest Service), since receiving title to his allotments in 1946, those agreements do not, and cannot, deprive Mr. Round of any of his rights as the surface owners of the Rock Fall and Crooked Arroyo Allotments.

As stated above, nowhere in any of the legislation dealing with disposal of "resettlement" project lands is there any mention of the retention of rights of access for hunting. All legislation in regard to "resettlement" land disposal clearly states the lands are to be disposed of for agricultural or farm use. Any use of Mr. Round's allotments in the past by the public for hunting has been done only by his giving permission through cooperative agreements between him and the USDA. The National Forest Management Act (NFMA)[31] clearly states that all permits, contracts and other instruments "shall be subject to valid existing rights." While Mr. Round has allowed hunting on his allotments in the past, the right to exclude the public/hunters, is a valid right that can be exercised at any time. Mr. Round's rights are not subject to the whim of a bureaucrat's interpretation of a "permit, contract or other instrument" because the NFMA clearly states that permits, contracts and other instruments are "subject to valid existing rights." As Mr. Round's surface rights in his allotments predate the passage of NFMA in 1976, it is our position that that "subject to" clause grandfathers in his valid, prior existing surface rights, and all grazing permits, contracts and other instruments (such as cooperative agreements and hunting permits) are subject to his grazing surface rights.

Ms. Trujillo and the other Forest Service employees in the PSICC have failed to hold up their side of the cooperative permit agreement. Mr. Round's surface rights are being violated and his livestock are dying. As surface owner of his allotments, he has the right to post "no trespassing" and "keep out" signs around his stockwater locations or anywhere else on his allotments where it's needed to protect property or life. Additionally, Mr. Round has the right to protect his allotment

[28] *See* ***Shaw v Kellogg,*** **170 US 312 (1898)** (Grant of land challenged on the basis that there was no patent. Regardless, the grant was upheld as the statute did not order the issue of a patent, and that the case was one in which the granting act with the approved survey and location made a full transfer of title); ***Whitney v Morrow,*** **112 US 693 (1885)** (If, by a legislative declaration, a specific tract is confirmed to any one, his title is not strengthened by a subsequent patent from the government. That instrument may be of great service to him in proving his title, if contested, and the extent of his land, especially when proof of its boundaries would otherwise rest in the uncertain recollection of witnesses. It would thus be an instrument of quiet and security to him, but it could not add to the validity and completeness of the title confirmed by the act of congress).
[29] *See* 26 Stat. 1095.
[30] *See* 30 Stat. 34.
[31] *See* 90 Stat. 2955.

by keeping the gates closed to his allotments, and the gates to individual pastures within those allotments, closed. For the past ~7 years Mr. Round has been denied the right to keep his gates closed. It began when Jeff Stoney was in charge of the La Junta Forest Service Office, and he insisted that a provision be added into the grazing allotments Annual Operating Instructions that read "Gates will be left open when cattle leave the allotment." Although Jeff Stoney is no longer with the La Junta Forest Service Office, that provision has remained in all Annual Operating Instructions since that time. Leaving gates open to cattle pastures, particularly on busy county roads, is a recipe for disaster. It invites unwanted traffic and trespassers, plus if cattle manage to jump through the fence of the pasture they're currently in and get into one where the gate was left open, this allows them to get onto busy roads, leading to accidents and loss of life of both livestock and members of the public who use those roads. As surface owner of his allotments, Mr. Round has the right to keep his allotment gates closed where it's needed to protect property or life. It's true that "the grant of a property right to one person leaves others vulnerable to the will of the owner. Conversely, the refusal to grant a property right leaves the claimant vulnerable to the will of others, who may with impunity infringe on the interests which have been denied protection."[32] Here, Mr. Round's property rights have been denied protection by the Forest Service, and consequently, the public has now with impunity infringed on his interests, as shown above.

It is our position that while the Federal government may hold title to various interests in the allotments, Mr. Round is the owner of the surface rights of his allotments for all range and agricultural purposes. In short, these allotments are not "Public Lands" these allotments are "split-estate" lands. This position that private property interests co-exist with federal interests in grazing allotments administered by the Forest Service, i.e., the split estate, has recently been upheld in Federal Claims Court.[33]As stated above, under the SRHA, BJFTA and FHAA, the only interests (if any) retained by the United States was the mineral rights.[34] Nowhere in the SRHA, BJFTA, or FHAA does Congress mention retention of hunting rights, or reserved access by the United States for public hunting. While the U.S. may claim some interest, however, as Mr. Round's surface rights in his allotments predate the passage of NFMA in 1976, it is our position that the "subject to" clause grandfathers in his valid, prior existing surface rights, and all grazing permits, contracts and other instruments (such as cooperative agreements and hunting permits) are subject to his grazing surface rights. In fact, surface use rights of property managed by the Forest Service have

[32] *See* John S. Harbison, *Hohfeld and Herefords: The Concept of Property and the Law of the Range,* 22 N.M. L. Rev. 459, 495 (1992); *citing* Singer, *Sovereignty and Property,* 86 Nw.U.L.Rev. 1, 41 (1991).

[33] *See* ***Sacramento Grazing Ass'n, Inc. v. United States*, 135 Fed.Cl. 168 (2017)** (the plaintiff held all "cattle, water rights, range rights, access rights, and range improvements on the base property, as well as the appurtenant federally-administered grazing allotment known as the Sacramento Allotment" in New Mexico. Court held that actions taken by USFS excluding Plaintiff's from their water sources "effected a taking under the Fifth Amendment to the United States Constitution of SGA's right to beneficial use of stock water sources").

[34] *See generally* SRHA and BJFTA.

recently been upheld as being the type of "valid existing rights" that the Forest Service has no warrant to override.[35]

Mr. Round has not interfered with any mineral interest retained by the Federal government,[36] or other interests that may be owned by the Federal government, and wishes that the Forest Service not interfere with his. Today, we simply ask that the Forest Service refrain from attempting to interfere with, or deprive Mr. Round of his Constitutional and statutorily protected property rights in his grazing allotments. As also ask that the Forest Service refrain from attempting to interfere with his ability to protect said rights by posting signage around his allotments as needed and by keeping his gates closed.

The Forest Service's Interference with Mr. Round's Ability to Enroll in the Noninsured Crop Disaster Assistance Program

One further matter addressed in the January 7th letter highlights yet another case of Mr. Round's ranching operation being interfered with by Forest Service employees. This issue is in regard to misconduct by John Linn, the Comanche National Grassland District Ranger, in interfering with the Round's ability to participate in the Noninsured Crop Disaster Assistance Program (NAP). As you are aware, NAP is a program administered by the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA), which "provides financial assistance to producers of non-insurable crops to protect against natural disasters that result in lower yields or crop losses…"[37] Eligible crops under this program include "crops planted and grown for livestock consumption, such as grain and forage crops, including native forage."[38] Eligible causes of loss include natural disasters and "damaging weather, such as drought…"[39] Essentially, livestock producers seeking to take advantage of this program pay a premium before the beginning of the crop year, and in the event of a qualifying cause of loss (e.g., drought) "NAP provides basic coverage equivalent to the catastrophic level risk protection plan of insurance coverage, which is based on the amount of loss that exceeds 50 percent of expected production at 55 percent of the average market price for the crop,"[40] i.e., native forage grasses. Many ranchers/livestock producers in Southeastern Colorado have signed up for this program in recent years, as the region has faced

[35] *See* ***Herr v. United States Forest Serv.,*** **865 F.3d 351 (6th Cir. 2017)** (Congress gave the Forest Service authority to regulate any use of a certain lake within a wilderness area 'subject to valid existing rights.' The Forest Service promulgated two regulations, both of which exceeded the Forest Service's power. Under state law, lakeside property owners had property right constituting surface use of the same lake. Held that the right to use all of the lake in reasonable ways was the kind of 'valid existing rights' that the Forest Service has no warrant to override).

[36] *See* ***Kinney Coastal Oil v Kieffer,*** **277 US 488 (1928)** (The acts of 1914 and 1920 express an intention to divide oil and gas lands into two estates for the purposes of disposal-one including the underlying oil and gas deposits and the other the surface, in other words, separate disposals of the split-estate).

[37] *See* USDA FSA, *Noninsured Crop Disaster Assistance Program for 2019 and Subsequent Years – Fact Sheet*, United States Department of Agriculture Farm Service Agency, *available at:* https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/noninsured_crop_disaster_assistance_program-nap-fact_sheet.pdf, (October 2019).

[38] *Id.*

[39] *Id.*

[40] *Id.*

drought in multiple years, and many times these payments are the difference between surviving and going under for some ranchers.

To sign up for NAP, "eligible producers must apply for coverage using form CCC-471, 'Application for Coverage,' and pay the applicable service fee at the FSA office where their farm records are maintained."[41] As part of their application, producers must also submit an "acreage report" specifying the amount of "acreage planted" to the "FSA at the administrative county office for the acreage no later than the date specified by FSA for each crop and location."[42] If livestock producers do not submit this acreage report containing the number of acres of forage they intend to enroll in the program by the set deadline each year, then they are ineligible for any coverage for that year.

For livestock producers who operate strictly on patented land, this acreage report is fairly simple and straightforward. However, for livestock producers who own grazing allotments, the process can be more involved. This is because, specifically for ranchers in the Timpas Grazing District (such as the Round's) as well as the nearby Kim Grazing District, the local FSA offices require the rancher to submit an acreage report for all patented land, but also an acreage report for all land within the federally administered grazing allotment. Typically, the local FSA office has required the Round's, and surrounding ranchers within the Timpas and Kim Grazing District's, to not only file the acreage report for land within the allotment, but require that the acreage report to then be "signed off" on by the local Forest Service office, confirming the amount of acreage within the allotment. In years past, the local Forest Service office would sign off on, and then send in, the acreage report each year to the FSA by the annual deadline – allowing the ranchers to enroll.

However, things have drastically changed within the past 3 years or so, coinciding with the approximate timing when John Linn became the District Ranger for the Comanche National Grassland in the Springfield, CO Forest Service Office. Since John Linn has become the District Ranger, the local Forest Service employees refuse to process the acreage reports for the ranchers within the Timpas and Kim Grazing Districts, and refuse to send the reports in to the FSA office by the annual deadline. Multiple ranchers in the area, including Mr. Round, have attempted to get their acreage report approved by the local Forest Service employees, and they have simply been told "No." In fact, the local FSA office has even contacted the Forest Service offices under John Linn's supervision, but to no avail.

Specifically, two years ago, Mr. Round attempted to enroll his two allotments in the NAP program, but Mr. Linn and Patricia Hessenflow (Rangeland Management Coordinator in La Junta, CO Office), refused to sign off on the acreage report, as required by the local FSA offices. After much "back-and-forth" Ms. Hessenflow finally sent in the acreage report, but only included

[41] *Id.; see also* USDA CCC, *CCC-471 NAP BP,* U.S. Department of Agriculture Commodity Credit Cooperation, *available at:* https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Disaster-Assist/NAP/ccc0471_nap_bp_2019_190422v01.pdf (04-22-19).
[42] *See* 7 CFR §1437.8.

approximately half the acreage contained in Mr. Round's allotments. She refused to include the full acreage amount. The Round ranch has been adversely affected by drought in recent years, specifically two years ago. As such, ultimately that year Mr. Round received NAP payments in the approximate amount of $16,000. However, had the full acreage been included in the acreage report, it is believed his payment would have been approximately $31,000 - $32,000.

While I cannot speak on behalf of the various ranchers within the Timpas and Kim Grazing Districts, I can say that with certainty, because of the inaction of Mr. Linn as the District Ranger, my client has lost out on potentially thousands of dollars of livelihood supporting NAP payments. Whether Mr. Linn's inaction by himself or his subordinates is intentional or simple incompetence/negligence, it is unacceptable, and we ask that he be held accountable. Unfortunately, the enrollment deadline for forage coverage for 2020 has come and gone (November 2019), without Mr. Round being able to enroll under these circumstances. Whether Mr. Linn's intent in the past was malicious or otherwise, we expect Mr. Linn and his subordinates, to cooperate in approving the acreage report in the future, as required by the FSA.

Conclusion

As stated above, it is our position that Mr. Round is the owner of the surface rights for all range and agricultural purposes in the Rock Fall and Crooked Arroyo Allotments, and that his right to protect those property rights has been denied / interfered with by Forest Service personnel. We hope to resolve these matters, and would expect a written response from your office in a timely manner. In the meantime, we ask that Forest Service employees within the PSICC cease and desist from any harassment or interference with Mr. Round's or Russell's activities necessary to carry on their ranching operation in peace. However, if the Forest Service refuses to recognize that Mr. Round is the owner of the surface rights for all range and agricultural purposes in the Rock Fall and Crooked Arroyo Allotments, and consequently that he has the right to protect said rights, we will have no choice but to pursue formal court proceedings in this matter.

If you have any questions regarding this matter, please feel free to contact our office at your convenience.

Sincerely,

Hayden L. Ballard
Eland & Pratt, LLC

Licensed In:
-Kansas
-U.S. District Court for the District of Kansas
-U.S. District Court for the District of Colorado

CC:

Jennifer Eberlien
Acting Regional Forester for the Rocky Mountain Region
United States Department of Agriculture's Forest Service
1617 Cole Blvd., Building 17
Lakewood, CO 80401
(303) 275-5350

Diana Trujillo
Forest and Grasslands Supervisor
Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands
2840 Kachina Drive
Pueblo, CO 81008
(719) 553-1400

John Linn
Comanche National Grassland District Ranger
P.O. Box 127
Springfield, CO 81073
(719) 523-6591

Patricia Hessenflow
Comanche National Grasslands Rangeland Management Coordinator
1420 E. 3rd St.
La Junta, CO 81050
(719) 384-2181

Enclosures:

Attachment A – The September 20, 2019 Letter
Attachment B – The November 14, 2019 Letter
Attachment C – The January 7, 2020 Letter

EXHIBIT 5

USDA United States Department of Agriculture
Forest Service
Rocky Mountain Region
1617 Cole Blvd
Lakewood, CO 80401
303-275-5350
Fax: 303-275-5366

File Code: 2300
Date: April 1, 2020

Hayden L. Ballard
Associate Attorney
Eland and Pratt, L.L.C.
P.O. Box 565
Hoxie, KS 67740

Dear Mr. Ballard:

Thank you for your attention to this issue. We acknowledge that both parties have made attempts to resolve this issue dating back to September 2019. This letter responds to your January 7, 2020, and March 7, 2020, letters regarding the Rock Fall and Crooked Arroyo Allotments in the Comanche National Grassland. These allotments are located on federal property owned by the United States in unrestricted fee title, which is administered by the Forest Service as part of the National Forest System. Please refer to the Forest Service's November 14, 2019 letter for more detail regarding the Forest Service's jurisdiction over National Forest System lands within national grasslands and Mr. Round's assertion of private property rights on these allotments.

National Forest System lands are open to the public unless access is closed or limited by the Forest Service. The public, including permittees, must comply with statutory and regulatory requirements while hunting, grazing, or otherwise using National Foreset System lands. 16 USC. §551; 7 USC. §1011(f). Mr. Round may not place signs or block, restrict, or otherwise interfere with the use of a road, trail, or gate on National Forest System lands without Forest Service authorization. 36 CFR §§261.10(a), 261.12(d). He must also comply with the terms and conditions of his grazing permits, such as keeping gates open when required. 36 CFR §261.10(l). If Mr. Round has evidence of a violation of Forest Service regulations, such as disorderly conduct (36 CFR §261.4) or damage to federal property (36 CFR §261.9(a)), he should notify the Forest Service of the violation at the time of the incident, so the Agency can investigate and enforce these regulations, if appropriate.

The Forest Service is available to meet with you and your client to discuss his concerns about access to livestock water developments and fence damage. Please contact Comanche District Ranger John Linn at 719-523-1702 if you would like to set up a meeting.

Regarding the Noninsured Crop Disaster Assistance Program (NAP), the Farm Service Agency (FSA) does not require the Forest Service to approve or submit acreage reports for NAP funding applicants. Applicants with federal grazing permits are required to submit their permit and final bill or invoice. *FSA* Handbook 1-NAP, Noninsured Crop Disaster Assistance Program for 2015 and Subsequent Years, ¶800. In some cases, the FSA may require two independent assessments of grazed forage acreage conditions to determine forage loss, which can be completed by a government agency, educational institution, or a private organization. *Id.* at ¶804.

For more information about the NAP Program, please contact Chuck Hanagan, Executive Director of the Otero County FSA Office, at 719-254-7672.

Sincerely,

TAMARA WHITTINGTON

Digitally signed by TAMARA WHITTINGTON
Date: 2020.04.01 13:51:44 -06'00'

JENNIFER EBERLIEN
Acting Regional Forester

cc: E. Lynn Burkett, John Linn, Chuck Hanagan, Chris Moyer

EXHIBIT 6

ELAND & PRATT, LLC
Attorneys at Law

736 MAIN
P.O. BOX 565
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TELEPHONE (785) 675-3217
FAX (785) 675-3983
elandlaw@ruraltel.net

KEN ELAND

HARRY JOE PRATT

HAYDEN L. BALLARD, Associate

May 18, 2020

To: Sonny Perdue
U.S. Secretary of Agriculture
1400 Independence Ave., SW
Room 200-A, Whitten Building
Washington, DC 20250-1111
(202) 720-2791

Vicki Christiansen
Chief of the United States Department of Agriculture's Forest Service
1400 Independence Ave., SW
Room RPE-6, Whitten Building
Washington, DC 20250-1111
(800) 832-1355

RE: Ralph D. Round / Comanche National Grassland Grazing Allotments

Dear Secretary Perdue and Chief Christiansen:

I write today on behalf of Ralph D. Round who has retained the firm of Eland & Pratt, LLC of Hoxie, Kansas, to represent him in this matter. This letter is again an attempt to resolve several disputes my client has had with the U.S. Forest Service, and assert his property rights in his grazing allotments, the full use of said rights having been denied by Forest Service employees in recent years.

Introduction

By way of introduction, Mr. Round is a cattle rancher in Southeast Colorado, and is the owner of two grazing allotments in the Timpas Grazing District of the Comanche National Grassland, namely the Rock Fall Allotment and the Crooked Arroyo Allotment. His allotments fall within the boundaries of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC). Mr. Round's grandfather first homesteaded in what is now the Rock

Fall and Crooked Arroyo Allotments back in 1891. Mr. Round was born on this ranch in 1937 and has lived on his ranch/allotment for his entire life of 82 years. Mr. Round, along with his son Russell, both currently live and work on these two grazing allotments as their sole livelihood. All his life Mr. Round has done his best to be a good citizen and "good neighbor" with the Forest Service, and has served for multiple decades as the President of the Timpas Grazing District Board of Directors until recently.

Procedural History

This current letter is the sixth letter in a series of communications beginning last fall. On **September 20, 2019**, my client Mr. Round, sent a letter to Ms. Diana Trujillo, the Forest and Grasslands Supervisor for the PSICC. In his September 20 letter, my client asserted several concerns regarding abuses of his private property rights, namely government interference with his grazing surface rights in his grazing allotments. In response, Mr. Round received a letter written by Ms. Trujillo dated **November 14, 2019.** It is still our position that Ms. Trujillo's November 14 letter contains multiple errors of law and denies the use of the private property rights of my client.

Accordingly, I sent a letter dated **January 7, 2020** addressed to Ms. Trujillo's direct supervisors, namely Ms. Jennifer Eberlien as Acting Regional Forester for the Rocky Mountain Region, and Ms. Vicki Christiansen as Chief of the United States Department of Agriculture's Forest Service. Copies of the January 7 letter were also sent to the local Forest Service officials involved. After sixty (60) days we had received no official response from Ms. Eberlien or any Forest Service employee. Accordingly, I sent a letter dated **March 7, 2020** addressed to Ms. Eberlien's direct supervisors, namely Ms. Vicki Christiansen and Sonny Perdue, U.S. Secretary of Agriculture, reiterating the concerns / issues of the January 7th letter.

Finally, in response to the January 7th letter and the March 7th letter, our office received a response from Ms. Eberlien's office in a letter dated **April 1, 2020**. However, this April 1st letter did very little to rectify the situation, because in regard to my client's private property concerns, the letter simply said to "*please refer to the Forest Service's November 14, 2019 letter for more detail regarding the Forest Service's jurisdiction over National Forest System lands within national grasslands and Mr. Round's assertion of private property rights on these allotments*."

Because the April 1st letter did little to rectify the situation besides refer my client back to the November 14th letter, and because our office received no response from the primary addressee's on the March 7 letter, namely Vicki Christiansen and Sonny Perdue, this current letter is now forthcoming.

I have included copies of the September 20th letter, the November 14th letter, the January 7th letter, the March 7th letter as well as the April 1st letter herewith for your review, labeled as Attachments A, B, C, D and E respectively.

The Current Issues at Hand

As Attachments C and D outline the factual and legal issues at hand here, there is no need to recount them again in this letter, and we would ask that you refer to those attachments for a full recounting of the dispute.

What is at issue in this letter is, first, that the response received from Ms. Eberlien did little to rectify the situation besides refer my client back to the original letter from Ms. Trujillo that is the main issue in this dispute. It's true that in her letter Ms. Eberlien did also state that "*The Forest Service is available to meet with you and your client to discuss his concerns about access to livestock water developments and fence damage. Please contact Comanche District Ranger John Linn…if you would like to set up a meeting*." While this may seem like a good faith attempt on her part to reach some sort of resolution, this offer to meet is somewhat devoid of any genuineness because as outlined in Attachments C and D, my clients and John Linn have attempted to resolve issues in the past with no success, which is why this series of letters up the Forest Service "chain-of-command" began in the first place.

So as stated, Ms. Eberlien did little besides refer my client back to the original Forest Service letter from last winter and instruct him to set up a meeting with the local ranger, which as shown, has been fruitless up to this point. As you can see, this "appeals" process is beginning to feel circular.

The second issue at hand is the fact that the March 7th letter was primarily addressed to Vicki Christiansen, Chief of the U.S. Forest Service, and Sonny Perdue, U.S. Secretary of Agriculture. This current letter is addressed to these same two officials because as shown, attempts to rectify the situation with Forest Service officials in Colorado has led nowhere except in a circular "holding" pattern. This is why we again address this letter to Ms. Christiansen and Secretary Perdue for your review, in hopes that by appealing this issue beyond the local Forest Service officials in Colorado, and their actions, we may resolve the situation.

As such, as the direct supervisors of Ms. Eberlien, we would respectfully ask that you review Attachments A, B, C, D and E and issue a written response/decision in a timely manner.

Respectfully,

Hayden L. Ballard
Eland & Pratt, LLC

Licensed In:
-Kansas
-U.S. District Court for the District of Kansas
-U.S. District Court for the District of Colorado

Enclosures: Attachment A – The September 20, 2019 Letter
Attachment B – The November 14, 2019 Letter
Attachment C – The January 7, 2020 Letter
Attachment D – The March 7, 2020 Letter
Attachment E – The April 1, 2020 Letter

EXHIBIT 7

ELAND & PRATT, LLC
Attorneys at Law

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FAX (785) 675-3983
elandlaw@ruraltel.net

KEN ELAND

HARRY JOE PRATT

HAYDEN L. BALLARD, Associate

January 30, 2020

To: John Linn
Comanche National Grassland District Ranger
United States Department of Agriculture's Forest Service
P.O. Box 127
Springfield, CO 81073
(719) 523-6591

RE: Ralph D. Round / Comanche National Grassland Grazing Allotments FOIA Request

Dear Mr. Linn:

As you are aware, I am an attorney and have been retained by Mr. Ralph D. Round to assist him in certain matters. Mr. Round is the owner of two grazing allotments within the boundaries of the Comanche National Grassland. Per our phone conversation yesterday afternoon, I am sending you this letter via email to make a formal request for certain records maintained or held by the United States Department of Agriculture's Forest Service.

Under the Freedom of Information Act (FOIA), I am requesting access to the following documents, to-wit:

1. **A current, government approved Allotment Map of the Crooked Arroyo Grazing Allotment,** said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).
2. **The official government survey(s) establishing the boundaries of the Crooked Arroyo Grazing Allotment**, said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).
3. **Any and all communications and records pertaining to the formation of the Crooked Arroyo Grazing Allotment,** said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San

Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).

4. **A current, government approved Allotment Map of the Rock Fall Grazing Allotment**, said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).
5. **The official government survey(s) establishing the boundaries of the Rock Fall Grazing Allotment**, said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).
6. **Any and all communications and records pertaining to the formation of the Rock Fall Grazing Allotment,** said allotment being situated in the Timpas Grazing District of the Comanche Ranger District of the Pike and San Isabel National Forest & Cimarron and Comanche National Grasslands (PSICC).

If the documents requested above can be sent in the form of a PDF file by email, that is preferable. If not, then said documents may be sent to Hayden Ballard at the mailing address listed above in the header of this letter.

As stated above, I am requesting these records in the capacity of representing Mr. Ralph D. Round as his attorney. If there are any fees charged for searching or copying the records, please supply the records without informing me of the cost if the fees do not exceed $50.00, which I agree to pay. If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information, and please include any applicable appeals information.

If you have any questions regarding this matter, please feel free to contact our office at your convenience.

Sincerely,

Hayden L. Ballard
Eland & Pratt, LLC

Licensed In:
-Kansas
-U.S. District Court for the District of Kansas
-U.S. District Court for the District of Colorado

EXHIBIT 8

USDA United States Department of Agriculture | Forest Service | Pike and San Isabel National Forests Cimarron and Comanche National Grasslands | Supervisor's Office 2840 Kachina Drive Pueblo, CO 81008 719-553-1400 Fax: 719-553-1440

File Code: 6270
Date: MAR - 3 2020

Hayden L. Ballard
Eland & Pratt, LLC
736 Main
P.O. Box 565
Hoxie, Kansas 67740

Dear Mr. Ballard:

This letter is in response to your Freedom of Information Act (FOIA) request dated January 30, 2020. It was assigned FOIA tracking number 2020-FS-R2-02144-F.

The information you requested is for the Crooked Arroyo and Rock Fall allotments. The Timpas Grazing District, through a Grazing Agreement with the Forest Service, has been given administrative authority to permit livestock use on these allotments to any of their members. Your client, Ralph D. Round, is currently a member of the Timpas Grazing District.

A thorough search of our records has been made and I am enclosing nine fully releasable documents (186 pages) on the enclosed CD. Please note that Crooked Arroyo Allotment was formerly known as Unit #11, and Rock Fall Allotment was formerly known as Unit #9.

Each of your requests is noted, and below each is an explanation in bold of what I am sending:

"A current government approved Allotment Map of the Crooked Arroyo Grazing Allotment."

A map is attached.

"The official government survey(s) establishing the boundaries of the Crooked Arroyo Grazing Allotment."

Grazing allotment boundaries are not surveyed by the Forest Service. These boundaries are designated for administrative purposes only, not as legal property boundaries.

"Any and all communications and records pertaining to the formation of the Crooked Arroyo Grazing Allotment."

The Crooked Arroyo Grazing Allotment was formed prior to being managed by the Forest Service. The documents I am providing indicate changes that occurred after initial allotment formation.

"A current, government approved Allotment Map of the Rock Fall Grazing Allotment."

A map is attached.

"The official government survey(s) establishing the boundaries of the Rock Fall Grazing Allotment."

Grazing allotment boundaries are not surveyed by the Forest Service. These boundaries are designated for administrative purposes only, not as legal property boundaries.

"Any and all communications and records pertaining to the formation of the Rock Fall Grazing Allotment."

The Rock Fall Grazing Allotment was formed prior to being managed by the Forest Service. The documents I am providing indicate changes that occurred after initial allotment formation.

Because I am providing a partial "no records" response, appeal rights will be coming in a letter from the Regional Forester in the near future. If you have any questions, please contact Misty DeSalvo, FOIA Coordinator, at 719-269-8525 or misty.desalvo@fs.fed.us.

Sincerely,

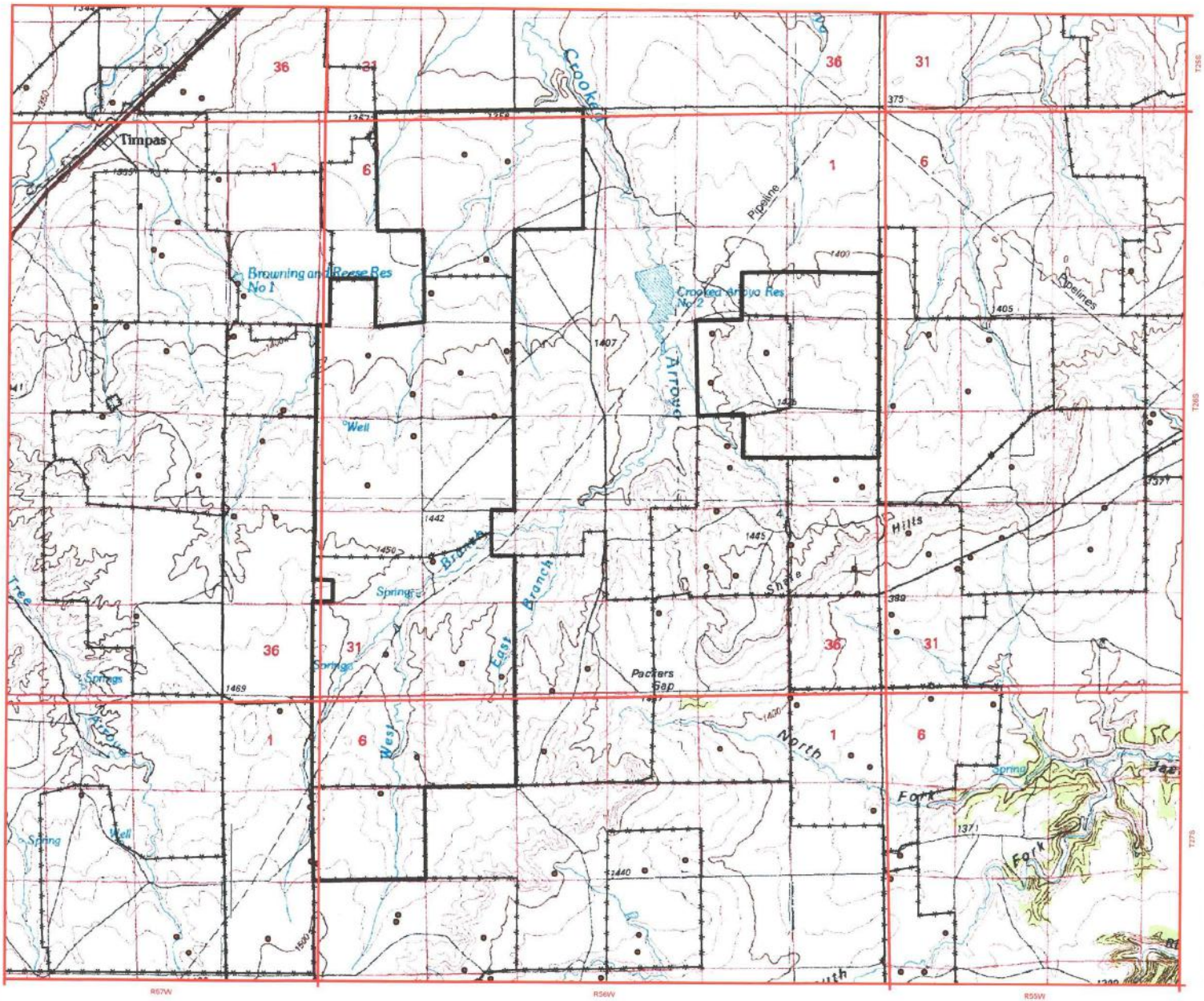
Diana M. Trujillo

DIANA TRUJILLO
Forest and Grasslands Supervisor

Enclosure (CD)

cc: John Linn, Angela Safranek, Misty DeSalvo, Jason Collins

EXHIBIT 9

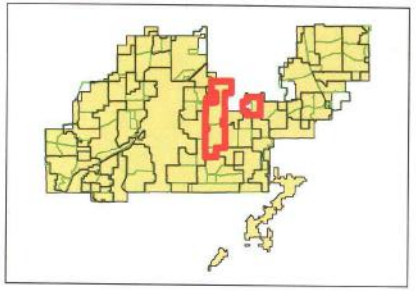


Allotment 4 of 24

Vicinity Map

COMANCHE NATIONAL GRASSLANDS

Timpas Unit Allotments



Allotment Name: CROOKED ARROYO

Allotment

Fence

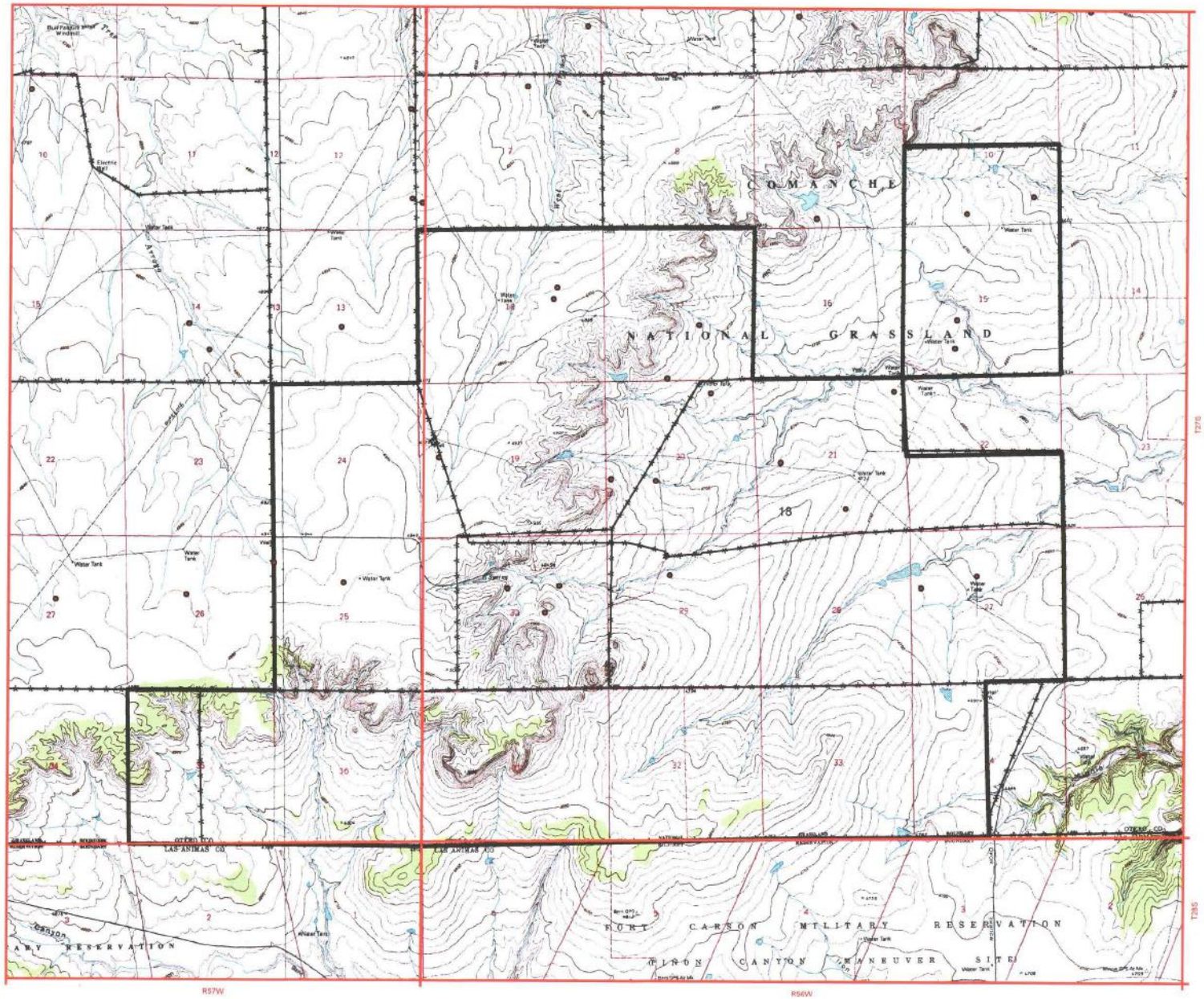
Improvements

0 Miles 3

GIS Disclaimer
The Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. They may be: developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. Using GIS products for purposes other than those for which they were created may yield inaccurate or misleading results. The Forest Service reserves the right to correct, update, modify, or replace GIS products without notification.

Map Reference
Pike and San Isabel National Forests
Cimarron and Comanche National Grasslands
NAD 1983 UTM Zone 13N
Projection: Transverse Mercator
Magnetic declination: 7° 6' EAST
Declination is POSITIVE
Date: 20120121
Map made by: Bill Pelowski,
US Forest Service,
Cimarron and Comanche National Grasslands
MXD:T:\FS\NFS\PikeSanIsabel\Program\6600SystemsManagement\GIS\Cimarron\BJP_Workspace\MXD
PDF:T:\FS\NFS\PikeSanIsabel\Program\6600SystemsManagement\GIS\Cimarron\BJP_Workspace\PDF

EXHIBIT 10

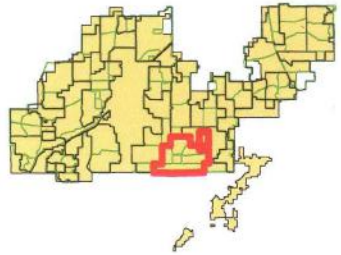


Allotment 18 of 24

Vicinity Map

COMANCHE NATIONAL GRASSLANDS

Timpas Unit Allotments



Allotment Name: ROCK FALL

Allotment

Fence

Improvements

0 Miles 1.5

GIS Disclaimer
The Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. They may be: developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. Using GIS products for purposes other than those for which they were created may yield inaccurate or misleading results. The Forest Service reserves the right to correct, update, modify, or replace, GIS products without notification.

Map Reference
Pike and San Isabel National Forests
Cimarron and Comanche National Grasslands
NAD 1983 UTM Zone 13N
Projection: Transverse Mercator
Magnetic declination: 7° 6' EAST
Declination is POSITIVE
Date: 20120121
Map made by: Bill Pelowski,
US Forest Service,
Cimarron and Comanche National Grasslands
MXD:T:\FS\NFS\PikeSanIsabel\Program\6600SystemsManagement\GIS\Cimarron\BJP_Workspace\MXD
PDF:T:\FSINFS\PikeSanIsabel\Program\6600SystemsManagement\GIS\Cimarron\BJP_Workspace\PDF

EXHIBIT 11

Prong Horn

RR Russell Round
Sat 9/22/2018 9:08 AM
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It is disgraceful to see an attempt to manage the hunting efforts in SE Colorado as you present here. All actually for the sake to line the pockets of another govt. entity. As Cattle ranching land owners, US Forest services permit ranchers suffer the consequences of battered and beaten lands and personal properties. What once amounted to a few weeks a year of hunting on the Eastern Plains of Colorado has now turned into to hunts from Aug till January!! All on what was once considered (and is) lands with a very fragile eco-system. It has become quite disgraceful. Not long ago the Fed. Lands in this and all area promoted the "Tread Lightly" program. A program which the ranching world highly supported having always been trying to be the best stewards of the land, both private and State and Federal. Well as ranchers we see the extreme damage that is now allowed to the lands just from extensive pounding of many hunts with many tags given on each hunt regardless of conditions of the land, muddy or drought. It is an absolute disgrace what the Wildlife people have and are doing just in the traffic they send each year. Through the years Wildlife will claim the money gained , while continuing to ignore their ability to police the situation. They used to claim they had no funds to supply staff, and yet now with all the hunting they allow, making millions of dollars they still make NO effort to properly supply Game Wardens to patrol, and needless to say, ask ANY land owner in these regions and they will tell you the behavior of the hunters has certainly taken a turn for the worse just because of the sheer numbers out there. If they can not supply the needed If the Dept. of Wildlife can't even supply the area with area staff to control the hunt in any area, should they be allowed to sell a Single hunt on any of the public lands there??

This all being done in a state that refuses to learn the actual laws concerning their right to , or not be out on the grazing permit land at all. According to the fed. Laws for over a hundred years no one has a right to interfere with any water systems of livestock. Meaning the blocking of any path to and from water, no camping, or parking with in 160 acres of any well, as it is private property of the rancher. All pipelines are private property of the rancher up to a hundred feet on either side. It is safe to say that 80% of the trail roads in the region is on privately owned water lines. Just recently the 9th circuit court of judges just ruled "again " on this . The case was the Hage Ranch in Nevada. All the Judges even went so far as to recommend that the ranchers even fence off the water lines a hundred feet on both sides. Time for the wildlife to take a hard look at these and other laws concerning these lands, (suggested "Property Rights on Western Ranches: Federal Rangeland Policy And a Model For Evaluation) . Other states in the west are having to, and some have made some significant changes on such issues to remain within the laws as they have been forced to by the courts. . If the Co. Wildlife would take a serious look into the laws they might be surprised to find they don't have the right to "Help Themselves" to the land, at least not in the same manner as they always have. So with all the court cases in all of the western states in the last 20 years, and most recently concerning such laws that have been on the books since 1833, it is ridiculous to seek input on managing the pronghorn.. It is sort of putting the cart before the horse at this point. THE whole of hunting in this state needs to take a deep breath and reevaluate it rights or lack of to hunt these lands. Any public that has concern for their public lands need to consider the severe damage to their public lands so that Wildlife Dept. can line their own pockets. This is Not management of wildlife if it is the serious destruction of the Eco-System of the very land the wildlife live on!

The lack of respect by the Wildlife Dept.'s to land owner and their livestock must be changed, . Laws must be both known and followed by these dept.'s in this sate , they must lessen their effect on the areas of eastern Colorado. Then and only then they can be taken seriously at their focus of Prog Horn Managements or any other. I can not help but feel this is going to need to go in to the courts in this state like it has in other to tame this "wealthy" Game Dept.'s. Remember a small number of ranchers, landowners, and people concerned for their public lands and the condition of them, combined with the Truth and the Laws is STILL the majority! It has come to the point where farmers, rancher, landowners and others are going to have to press this issue in our state as has been done in others, it must happen!

Round Ranch

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