[redacted]

7 December 2019

Ref: 2020 Thunder Basin Plan Amendment Draft Environmental Impact Statement

Russ Bacon, Forest Supervisor
Attention: Rob Robertson, Douglas District Ranger
Medicine Bow-Routt National Forest, Thunder Basin National Grassland
Douglas Ranger District
2250 East Richards Street
Douglas, WY. 82633

Dear Forest Supervisor and District Ranger,

The 4W Ranch is providing the following comments on the 2020 Draft Environmental Impact Statement to amend the Ferret Introduction Area, MA 3.63 of the 2001 Revised Thunder Basin National Grassland Land Resource Management Plan. The comments will be divided into individual papers relating to separate subjects covered or not covered in the 2020 Draft Environmental Statement. (2020 DEIS)

After reviewing, studying and researching federal and state laws regarding the 2020 DEIS, I have found numerous legal discrepancies that have been omitted in the draft. These discrepancies must be rectified before this plan can be considered valid. To put it bluntly, each individual rancher's property rights including all valid pre-existing rights of their ranch units that are being impacted within the Thunder Basin are not being protected as required by the U.S. Constitution, the State of Wyoming Constitution, congressional and state laws and court decisions.

Let us start first with the National Environmental Policy Act and the NEPA Process and the protection of the **"Valid Existing Rights"** which are a part of the **"Human Environment"** within the Thunder Basin.

EXCERPTS from THE NATIONAL ENVIRONMENTAL POLICY ACT, TITLE II, COUNCIL ON ENVIRONMENTAL QUALITY

PART 1500--PURPOSE, POLICY, AND MANDATE
Sec. 1500.1 Purpose.
(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act.

Sec. 1500.2 Policy.
Federal agencies shall to the fullest extent possible:
(a) Interpret and **administer** the policies, regulations, and **public laws** of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. **Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.**

(d) Encourage and facilitate public involvement in decisions which **affect the quality of the human environment.**

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions **that will avoid or minimize adverse effects of these actions upon the quality of the human environment.**

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, **to restore and enhance the quality of the human environment** and avoid or minimize any **possible adverse effects of their actions upon the quality of the human environment.**

Sec. 1508.14 Human environment.
"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) *This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated,* ***then the environmental impact statement will discuss all of these effects on the human environment.***

Sec. 1508.8 Effects.
"Effects" include:
Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on **natural resources** and on the components, structures, and functioning of affected ecosystems)**, aesthetic, historic, cultural[1], economic, social, or health, whether direct, indirect, or cumulative.** Effects may also include those resulting from actions which may have both beneficial and

[1] Culture, as used in NEPA, is defined as:
The body of "customary beliefs, social forms, and material traits' constituting a distinct complex of tradition "of a racial, religious or social group" that complex whole that includes knowledge, belief, morals, law, customs, opinions, religion, superstition and art

detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1500.3 Mandate.
Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended. The regulations apply to the whole of section 102(2). **The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law.**

Author's Statement: In the 2020 DEIS, the **"Human Environment"** is essentially ignored in favor of the Black-tailed Prairie Dog and the Mountain Plover.

NEPA and the NEPA Process requires that the **custom**[2]**, cultural and historic aspects** of an impacted community or **local area be protected by the federal agency (i.e. the local Rochelle Community of the Thunder Basin)** . This is not happening in this DEIS, nor was it addressed in the 2001 Thunder Basin Land and Resource Management Plan as required by law and court decisions. Valid Existing Rights are completely ignored in these documents. So what are the **Valid Existing Rights** and protections that should be enjoyed by the historic 4W Ranch and the historic Fiddleback Ranch? These two ranches were established and recognized in this area of the Thunder Basin along the Cheyenne River, Wyoming Territory in the year of 1880. Following is the establishment and recognition of these **"Valid Existing Rights"**

The Historic 4W Ranch is located in the Southwest corner of Weston County, Northwest corner of Niobrara County and the Northeast corner of Converse County and was founded by Cheyenne business man J.W. Hammond about 1878 or 1879. A Territorial Map of Wyoming dated 1880 shows the "Hammond Ranch" located on the Cheyenne River. No other ranches such as the AU7 or the Fiddleback are shown on this 1880 map. The first Brand Book dated 1873 - 1880 does not show any reference to J. W. Hammond or his 4W Brand. The 1881 - 1882 Brand Book does reference J. W. Hammond. The 1883 Brand Book references J. W. Hammond Cattle Company with its Range as the Cheyenne River, Wyoming. The brand being 4W.

An article in The Lusk Free Lance, Lusk, Wyoming, issue of May 17, 1934 titled "The Famous OW Roundup of 1884 by A. A. Spaugh, Foreman of Roundup No. 15. This was a letter address to Mr. Arthur F. Vogel, Editor. In this letter he listed all of the ranches participating in the 1884 Roundup. In that list is the "Hammond Cattle Co., 4W, Range Cheyenne River, 9,000 cattle."

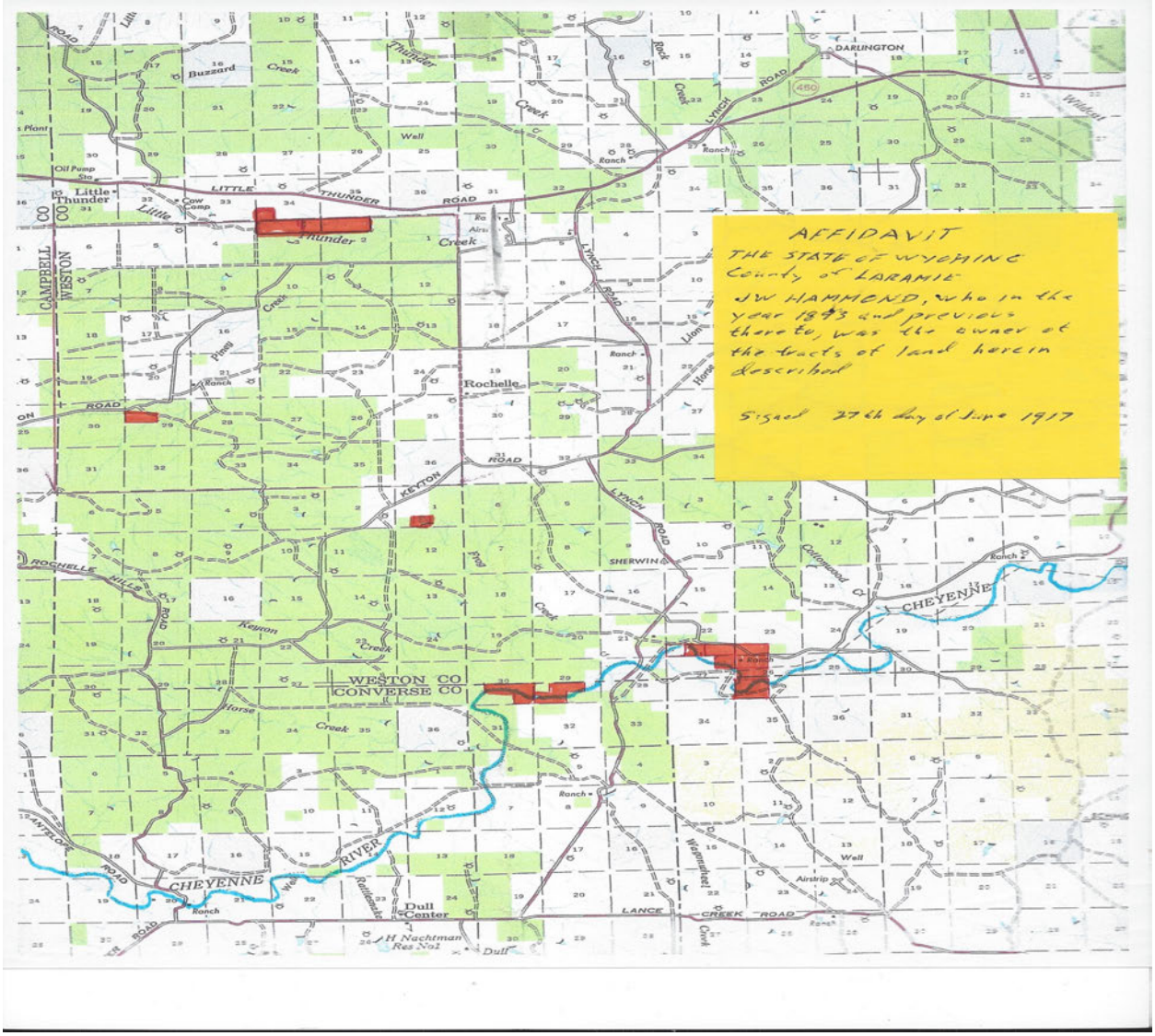
[2] Custom, is defined by Black's Law Dictionary as:
> A usage or practice of the people, which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject matter to which it relates... An habitual or customary practice, more or less widespread, which prevails within a geographic or sociological area.

Further Documentation on the establishment of the 4W Ranch is found in the book titled; Pioneering On The Cheyenne River, pages 8 & 9

4W RANCH

“The 4-W RANCH was built about 1880. It is located on the Cheyenne River, about 12 miles from the AU7 Ranch. This ranch was owned by the Hammond Cattle Co., and ranged about 10,000 head of cattle. ***Range was the Cheyenne River and tributaries.***

The three-room was substantially built of logs, roofed with boards covered with dirt (the same as all other old ranch houses), the outbuildings, bunk house, grub house, big barn, wagon shed, blacksmith shop, which was very necessary in those days were also built of logs. This old ranch house has been moved and remodeled and is still habitable.



The above map shows lands (in orange) owned by J.W. Hammond in the year 1893 and before. [Note] The 4W ran its large herd of cattle (9,000 to 10,000 head) on the open

range from its ranch headquarters on the Cheyenne River to Little Thunder Creek to the north and on the rangeland east of the Rochelle Hills to Lodgepole Creek and southeast into Niobrara County as far as Lusk, Wyoming.

Quoting from his Affidavit dated 27 June 1917: “James W. Hammond, being duly sworn, upon his oath deposes and says; that he is the identical James W. Hammond who in the year 1893 and previous thereto was the owner of the tracts of land herein described, to wit:” The tracts of land so described are shown in orange on the above map.

In the 1924 Contract For Sale of Real Estate between the Livestock Loan Company of Omaha and Len Sherwin (Jean Sherwin Harshbarger’s Grandfather) the above tracts of land in orange were also listed. Thus the chain of title for said tracts of land are intact to the present. Thus all of the “vested rights” that said James W. Hammond accrued on the public domain lands in the 1880’s when his livestock were grazing the open rangelands of this area of the Wyoming Territory are preexisting “rights” that are valid today.

Quoting from the Deed Record, Homestead Patent for the tract of Land consisting of the NE1/4 SW1/4, N1/2 SE1/4, SE1/4 of SE1/4, Section 30, Township 41 North, Range 67 West, 6th Prime Meridian, Total 160 acres:

“ To have and to hold the same together with all the rights, privileges and immunities and appurtenances[3] of whatsoever nature there into belonging, into the said James W. Hammond and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agriculture, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized or acknowledged by the local customs, laws and decisions of courts, “

Signed by Benjamin Harrison, President, United States of America.

Note: This Patent was issued according to the act of Congress of the 24th of April, 1820 entitled, An Act making further provisions for the sale of Public Lands and the acts supplemental thereto.

Fee Lands.

It is our position that when J. W. Hammond established the 4W Ranch in 1879 or 1880, he established the rights for the use of the surface water and the forage of the territorial lands he utilized for grazing his livestock. He established a **fee interest in lands of the United States** to use these lands.
Thomas Sowell probably articulated the underlying concept expressed here as well as anyone, when he wrote:

[3] appurtenance:
an incidental right (as a right-of-way) attached to a principal property right and passing in possession with it.

"Neither 'property' nor the value of property is a physical thing. Property is a set of defined options . . .It is that set of options which has economic value . . .It is the options, and not the physical things, which are the 'property' - economically as well as legally . . .But because the public tends to think of property as tangible, physical things, this opens the way politically for government confiscation of property by forcibly taking away options while leaving the physical objects untouched."

The courts have also addressed the distinction between property and the subject of property as in the *Northwestern Trust Company v Kelly, 48 NC 1267, 189* citing RCL when it states:

"The word property is not always used in its strict legal sense. It is frequently used to signify, or describe, the subject of property, such as a chattel or tract of land . . .These things, although the subject of property, are, when coupled with possession, but the indicia [4] or visible manifestations of invisible rights."

It is instructive to precisely define two key terms used by the Courts in its Findings; **"vested" and "fee."**

Vested:

- *The word "vested" has a well understood meaning. It is used to define an estate, either present or future, the title to which has become established in some person or some persons and is no longer subject to any contingency. Snortum v Snortum,* 193 NW 304, 305, 155 Minn. 230.

A "vested right" is property which the law protects. *Hoeft v Supreme Lodge Knights of Honor*, 45P. 185, 186 133 Cal 91, 33 LRA 174

A "vested right" is absolute, complete and unconditional in itself. *State ex rel Wayne County v Hackman*, 199 SW 990, 991, 272 Mo. 600

A "vested right" is a right which is fixed, unalterable and irrevocable. *Miller v Johnstown Traction Co.*, 74A 2d 508, 511, 167 PA super 22.

A vested water right can be acquired in three basic ways:

1. Proof that the water was being put to beneficial use prior to the advent of statutory water law, or

2. A determination by a court as in a water adjudication setting forth decreed rights, or

3. By issuance of a water certificate issued by the state water engineer after satisfying the requirements set forth in the permit.

[4] indicia n. (in-dish-yah) from Latin for "signs," circumstances which tend to show or indicate that something is probable. It is used in the form of "indicia of title," or "indicia of partnership," particularly when the "signs" are items like letters, certificates or other things that one would not have unless the facts were as the possessor claimed.

When a water right vests, it loses its temporary and conditional status, and now becomes permanent and inheritable. When the beneficial use of the lands for livestock grazing, (the usufruct [5]) loses its temporary and conditional status, the beneficial use becomes a fee.

More discussion on **usufructuary rights**. **Usufruct**, civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.

2. The obligation of not altering the substance of the thing, however, takes place only in the case of a complete usufruct.

3. Usufructs are of two kinds; perfect and imperfect. Perfect usufruct, which is of things which the usufructuary can enjoy without altering their substance, though their substance may be diminished or deteriorated naturally by time or by the use to which they are applied; as a house, a piece of land, animals, furniture and other movable effects. Imperfect or quasi usufruct, which is of things which would be useless to the usufructuary if be did not consume and expend them, or change the substance of them, as money, grain, liquors. Civ. Code of Louis. art. 525, et seq.; 1 Browne's Civ. Law, 184; Poth. Tr. du Douaire, n. 194; Ayl. Pand. 319; Poth. Pand. tom. 6, p. 91; Lecons El. du Dr. Civ. Rom. 414 Inst. lib. 2, t. 4; Dig. lib. 7, t. 1, 1. 1 Code, lib. 3, t. 33; 1 Bouv. Inst. Theolo. pg. 1, c. 1, art. 2, p. 76.

Also; **Usufruct**

A Civil Law *term referring to the right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered.*

For example, a ***usufructuary right*** *would be the right to use water from a stream in order to generate electrical power. Such a right is distinguishable from a claim of legal ownership of the water itself.*

By Congressional Acts, pre-existing rights and court decisions, the 4W Ranch enjoys the **usufructuary right** to graze its livestock on the federal managed lands within the grazing allotments of the 4W Ranch Unit and to utilize the available forage in a beneficial matter.

Under the prior appropriation water doctrine, the states were given lawful (ownership) control of the non-navigable waters within their exterior boundaries and complete control of the disposition of those waters into private ownership. **Prior appropriation**

[5] usufruct: The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing. Civ. Code La. art. 533. And see Mulford v. Le Franc, 26 Cal. 102; Cartwright v. Cart- wright, 18 Tex. 62S; Strausse v. Sheriff, 43 La. Ann. 501, 9 South. 102.

water law embodies the concept that a person applying for water can claim the use of all land necessary to put the water to beneficial use.

In the prior appropriation states, the status of the medieval King as underlying naked title holder of the subject matter in land is replaced by the United States exercising the underlying naked title to the land. As with the kings in medieval times, who authorized the creation of a fee interest in their lands to enhance the economic well-being of the realm by making use of the King's land inheritable, the United States has acknowledged the power of the prior appropriation states to recognize the creation of a **fee interest in lands of the United States** to enhance the efficiency of resource use and the nation's economic well-being. "... **the Court is not of the Opinion that the lack of a grazing permit that prevents access to federal lands can eliminate Plaintiff's vested water rights ... that pre-date the creation of the permit system."**[6]

In view of the above and the fact that the 4W Ranch was running close to 10,000 head of cattle [7] in 1884 that required large amounts of water and forage to sustain those numbers, **J. W. Hammond had to utilized thousands of acres of open rangeland and the surface water that was present.** The named streams were the Cheyenne River on which he Patented his first 160 acres in 1880, Keyton Creek, Frog Creek, Horse Creek, Piney Creek, Little Thunder Creek, Black Thunder Creek, Lion Creek, Turner Creek, Poddy Creek, Cottonwood Creek, and as far east as Lodge Pole Creek,[8] all being north of the Cheyenne River. South of the Cheyenne River is Wagonhound Creek, another Horse Creek, Piney Creek, Owl Creek and Snyder Creek, to mention a few. Also, on both sides of the Cheyenne River there are numerous unnamed draws and drainages that have or had springs and seeps in them that the 4W branded livestock utilized for watering purposes. This water right continues on today, when ever there is surface water in the empherial streams or draws within the 4W Ranch Unit, 4W Livestock lawfully utilize this surface water and lawfully graze the available forage in a "beneficial manner".

A 1929 ranch inventory upon the death of Len Sherwin (Jean's grandfather) records show that the 4W was running over 3,000 head of cattle in southwest Weston County, northwest Niobrara County and northeast Converse County. This is well before the "public domain lands" of the United States had been withdrawn from "Homesteading" or the purchase and acquisition of the "Sub-marginal Lands" (Homesteads) by the federal government in the mid 1930's. The fenced boundaries of the present 4W Ranch Unit were not in place as yet at this time period. Some homesteaders were fencing in parts of their homesteads. Grandfather Len Sherwin was still utilizing the public domain rangelands as well as his deeded lands for his 4W ranching operation.

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[6] Hage v U.S.

[7] The Lusk Free Lance, Lusk, Wyoming, issue of May 17, 1934 titled "The Famous OW Roundup of 1884 by A. A. Spaugh, Foreman of Roundup No. 15. This was a letter address to Mr. Arthur F. Vogel, Editor. In this letter he listed all of the ranches participating in the 1884 Roundup. In that list is the "Hammond Cattle Co., 4W, Range Cheyenne River, 9,000 cattle."

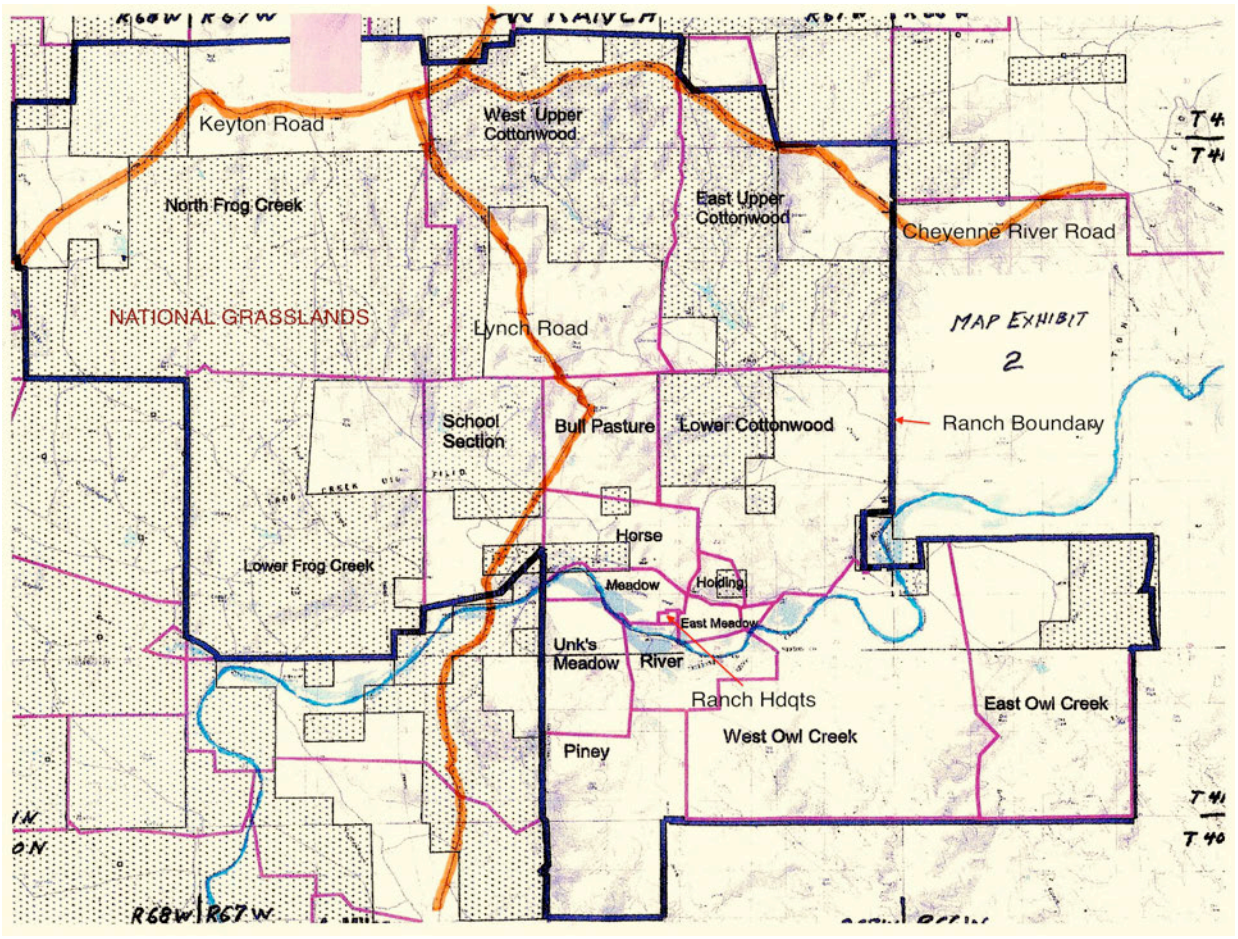
[8] Pioneering On The Cheyenne River: page 49, " In 1903, the spring roundup was camped on Lodge Pole Creek." "Several different roundup wagons were camped on Lodge Pole Creek, including the 4W, 4J, UX and the Fiddleback."

Sometime in the 1940's the present perimeter fence of the 4W Ranch Unit was built. How the boundaries were established is not clear, but the Land Utilization Project (WY - LU - 1) and the Thunder Basin Grazing Association were instrumental in determining the Grazing Allotments on the federal administered lands which are now known as the Thunder Basin National Grasslands.

What has now been established by the above documentation to this point of this position paper is the fact that the 4W Ranch Unit is a legitimate and recognized lawful business in the Sovereign State of Wyoming. That this business is property and this business is to be protected by the Constitution of the United States of America and the Constitution of the Sovereign State of Wyoming. The courts have also recognized that the grazing of livestock on federal lands is a lawful business. [9] In fact, J. W. Hammond established his lawful business in 1879 or 1880 while Wyoming was still a Territory of the United States as the above documentation has attested to. [10] **Range rights by the late 1880's were well recognized as real property according to local law and custom and court decisions.** Therefore, starting in 1880 many **"preexisting rights"** including title to fee lands were established on the now managed federal lands of the present 4W Ranch Unit, and thus these rights are to be protected by present law and the courts have so ruled.

[9] **Red Canyon Sheep Company vs Ickes:** In Red Canyon Sheep Company v. Ickes the court held that the purpose of the Taylor Grazing Act was to provide for the most beneficial use possible of the public range in the interest of graziers and the public at large, and to define grazing rights and to protect those rights by regulation against interference. **The court further held that a lawful business was property and that grazing on the federal lands is a lawful business. [Emphasis Added]**

[10] **Buford v. Houtz in 1890: Livestock grazing is a legitimate right** that existed prior to the forest preserves as attested to in the U.S. Supreme Court Opinion Buford v. Houtz in 1890. The grazing permit system developed by the Bureau of Forestry was a **tacit recognition** of the **preexisting grazing and water rights of permanent settlers,** while official Forest Service Policy was to deny that any preexisting rights existed. **[Emphasis Added]**



The 4W Ranch Unit as of 1 October 2001

The above map shows the lands and boundary of the present 4W Ranch Unit. The ranch was never part of any forest preserve in 1924 when Len Sherwin bought it. So Grandfather Sherwin was operating this ranch long before the public domain lands of the ranch unit were ever administered under the U.S. Department of Agriculture. While some parcels of lands were homesteaded doing the 1920's and 1930's within the ranch unit, the lands that were not homesteaded or patented were part of the "public domain" lands of the United States and were open to livestock grazing, as was the custom in Wyoming. Only when Congress passed laws in the very early 1930's did the submarginal homesteaded lands that were purchased by the United States were put under the administration of the U.S. Department of Agriculture for Land Utilization Projects. The project that the 4W Ranch Unit was part of was the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1 that was initiated in 1934. [11]

The primary purpose of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1, was for "grassland agriculture", which is for livestock grazing and the economic stability of the local ranches. That was the purpose of the

[11] WY - LU - 21, Douglas, Wyoming, May 25, 1943, copy located in the Douglas Ranger District office.

acquisition laws and the Presidential Executive Orders that were issued for these sub-marginal and “public domain” lands within the Thunder Basin that were acquired by acts of Congress or withdrawn from the “public domain” by Presidential Executive Orders in the 1930’s.

The 4W Ranch Unit became a member of the Thunder Basin Grazing Association (TBGA), a Wyoming Corporation, that was chartered by the Sovereign State of Wyoming in 1937 for the specific purpose “to promote, aid, and **protect the raising of livestock** within the Thunder Basin Grazing Area within the State of Wyoming,” The TBGA charter was signed before the Bankhead-Jones Farm Tenant Act was signed in September 1937, however, the TBGA was already operating under the oversight of Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1, established in 1934, which consisted of two sites. Site I, covered an area in southern Campbell, southwestern Weston and northern Converse counties and Site II, was a smaller area in northern Campbell County. In 1938, WY - LU - 21 was established in the western part of Weston County. These two formally separate projects were combine for administration and are were known as WY - LU - 21 when Inaya Kara Grazing Association was chartered in 1939. [12]

GRAZING RIGHTS AS DETERMINE BY CONGRESS AND COURT DECISIONS

Through years of research and study this author has gleaned a great deal of insight into the ‘property rights’ that the 4W Ranch Unit has in regards to its use of the federal lands for the purpose of livestock grazing within the boundary of the ranch unit.

The following is research and documentation of the laws on why we, the present owners of the 4W Ranch Unit, have ‘Private and Pre-Existing Property Rights‘ to graze our livestock on the federally managed lands within our ranch unit.

Excerpts from Karen Budd - Falen; The Right to Graze Livestock On Federal Lands. Idaho Law Review [Vol. 30

The Fifth and Fourteenth Amendments to the United States Constitution protect a property owner from depravation of property for a public purpose without due process of law and payment of just compensation. The term "property," as used by the Fifth and Fourteenth Amendments of the Constitution "embraces all valuable interests which man may possess outside of ... his life and liberty." Property includes not only all tangibles, but everything which may have an exchangeable value, such as a contract or a statutory entitlement. The Constitution also protects property which is defined and whose dimensions are created by existing rules or understandings that stem from an independent source, such as state law. [13]

[12] WY - LU - 21, Douglas, Wyoming, May 25, 1943, copy located in the Douglas Ranger District office.
[13] Karen Budd - Falen; The Right to Graze Livestock On Federal Lands. Idaho Law Review [Vol. 30

Not only does the Constitution protect "property" itself, but it also protects rights within property such as easements, mineral rights, water rights[14] *and equitable estates.* ***An equitable estate is a "right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will make notice, [and which] requires the aid of such court to make it available.*** *These estates consist of uses, trusts, and powers.,, In cases of conflict between an equitable right or estate and a legal title, the courts will "decree that it [the legal title] shall be considered as held in trust for the benefit of the one having the equitable title. If equities are made out, the court will always require them to be satisfied before the legal title will be enforced.*"

Given the above definitions and descriptions of property, the question to be answered by this article is whether a ***"grazing preference,"*** *as historically recognized by the United States Forest Service or Bureau of Land Management (BLM),* ***is a type of property or property right which is protected by the United States Constitution.*** *In recent years, according to both Forest Service and BLM policy, a grazing preference is a mere privilege*[15] *and is revokable at will. On the other hand, many ranchers consider their preference to be an equitable estate, a type of property right. This article will explore the development and legal interpretations surrounding the federal land grazing preference to determine whether a preference is a type of property right. Specifically Part I of this article defines the term federal land preference; Part II explores the modern courts' view of the preference versus the right to compensation for the taking of a BLM or Forest Service grazing permit or lease; Part III recounts the historical development and recognition of the preference in federal lands; and Part IV concludes with the authors' opinion that a preference is a type of property right, protected by the Fifth Amendment of the United States Constitution.*[16]

I. PREFERENCE ON THE FEDERAL LANDS DEFINED

The Bureau of Land Management regulations define a grazing preference as "the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee.,, In other words, the preference is the amount of forage, calculated in animal unit months (AUMs), that can be used by the permittee or lessee on the federal lands during the grazing season.

According to the regulations quoted above, in order to acquire and retain a preference, the permittee or lessee must also own or control base property. Base property is defined as: (1) [l]and that has the capability to produce crops or forage that

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[14] 7 Fallini v. Hodel, 725 F. Supp. 1113, 1123 (D. Nev. 1989) *aff'd on other grounds,* 963 F.2d 275 (9th Cir. 1992).
[15] Black's defines a "privilege" as "[a] special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability." Black's Law Dictionary 1316 (9th ed. 2009)
[16] Karen Budd - Falen; The Right to Graze Livestock On Federal Lands. Idaho Law Review [Vol. 30

can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

There are numerous other qualities about the grazing preference and base property worth noting. First, without ownership or control of base property and livestock, a grazing permittee or lessee cannot acquire a grazing preference from the BLM or Forest Service to graze livestock on the federal lands. In conjunction, a preference is not, nor can it be, "created" by the BLM or Forest Service. Rather during the grazing adjudication process,[17] *which usually occurred when the federal lands were withdrawn from settlement, preferences were awarded to those livestock operators who met certain qualifications. Should a third party wish to acquire a preference and thus a term grazing permit on the federal lands today, that party would have to purchase the preference and the livestock or base property from an existing preference owner.* ***Again, the preference on federal lands is not created by the federal government, but rather was acquired by the permittee because of, among other things, prior use of the federal lands.***

Second, once a preference and grazing permit is acquired by the grazing permittee, the BLM and Forest Service have an affirmative duty to protect the use of that permit from competing third parties. *Although there are numerous listed reasons that a valid grazing permit or preference can be reduced, cancelled or suspended by the federal agencies, those reasons can be placed in the category of either (1) the permittee's violation of the terms or conditions contained in his grazing permit, federal regulation or State or federal law or (2) damage or destruction to the forage resource. In either case, the permittee is entitled to due process through an administrative hearing before a reduction, suspension or cancellation of the preference or permit is completed.* [18]

Excerpt from: “Did Congress Intend To Recognize Grazing Rights?” by Frederick W. Obermiller

Overview: The federal government long has maintained that the language in Section 3 of the Taylor Grazing Act (TGA) of June 28, 1934 (ch 865, 43 USCS 315 et

[17] Karen Budd - Falen; The Right to Graze Livestock On Federal Lands. Idaho Law Review [Vol. 30 [The adjudication of forage on the federal lands occurred much like the adjudication of western water rights. As will be explained *infra* Part III, once the public lands were withdrawn from settlement and were declared suitable for grazing purposes, a local livestock operator could gain a preference to use those lands if he could prove (1) that he had base property located in the area and (2) that he had previously used the public lands for livestock grazing. *See* Fredrick W. Obermiller, Private Rights in Federal Grazing Permits? The Crux of the "Western Range Problem," Oregon State University (October 5, 1992).]

[18] Karen Budd - Falen; The Right to Graze Livestock On Federal Lands. Idaho Law Review [Vol. 30

seq) related to the nature of grazing privileges makes it clear that those privileges are merely revocable sufferances or licenses, not property rights or interest.

page 504;
With the passage of the Taylor Grazing Act, Congress formally adopted the Forest Service's system of allocating grazing rights through preference. [151]

[151] 43 U.S.C [section] 3151. In fact, Congress apparently considered grazing management under the Taylor Grazing Act interchangeable with that for national forests. Id. **This section of the Taylor Grazing Act gives the President power to shift Forest Service rangelands into Taylor Grazing Act grazing districts, and vice versa, for the purpose of administrative efficiency.**

The governments position is based on the following Section 3 language: "The creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands."

However Senator McCarren, Nev amended the TGA before it was passed by Congress and signed into law by President Roosevelt. ***His new language, subsequently adopted and still contained in Section 3 of the TGA states that:***

[N]o permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. [19]

Short of a Congressionally recognized "grazing right ... recognized and acknowledged [and] adequately safeguarded", one based on "local customs, laws, and decisions of the courts" as the Scrugham language would have done, Senator McCarran thus introduced intentional ambiguity in Section 3 of the TGA. McCarran's language meant that grazing preferences and authorized use levels would exist in perpetuity so long as the ranch unit as a whole was pledged security on a loan, a position seemingly inconsistent with the new language that

[19] This phrase defines the grazing unit as property consisting of two parts; fee land and the appurtenant public domain grazing allotment. **The "value of the grazing unit" therefore is the joint value of the fee land and the grazing allotment and this joint value cannot be diminished if offered for collateral security on a loan.** the term "collateral security" as defined in Black's Law Dictionary (6th ed. 1991) is "[p]roperty which has been pledged or mortgaged to secure a loan or sale" and therefore the grazing allotment is valued property. **[Emphasis Added]**

no provisions of the TGA would "...create any right, title, interest, or estate in or to the lands."[20]

Back to The Right to Graze Livestock On Federal Lands;

> 19. Specifically, Forest Service regulations at 36 C.F.R. § 222.4 state that the grazing preference and permit may be cancelled, modified or suspended, in whole or in part, if the permittee (1) refuses to accept a modification of the terms and conditions of his permit, (2) waives his permit to the United States, (3) fails to comply with the eligibility requirements for permit ownership, (4) fails to restock the allotment after the full extent of non-use has been exhausted, (5) fails to pay grazing fees within established time limits, (6) fails to comply with applicable regulations, laws and statutes, or (7) knowingly makes a false statement on his permit or grazing application. BLM regulations at 43 C.F.R. §§ 4170.1-1 and 4170.1-2 allow modification, cancellation or suspension of the term grazing permit, in whole or in part, for (1) repeated trespass of livestock or (2) failure to make substantial use of the permit for two consecutive years. BLM regulations at 36 C.F.R. § 4140.1 also prohibit (1) violation of the terms and conditions of the permit, allotment management plan or cooperative agreements, (2) placing supplemental feed on the federal lands, (3) refusing to install and maintain range improvements or (4) for certain types of subleasing. ***Again. none of these regulations allow for the reduction, cancellation or suspension of a term grazing permit in favor of a third party, regardless of whether that third party is wildlife or another permittee.*** Karen Budd-The Right to Graze Livestock On Federal Lands;

While The Supreme Court ruled against Fuller in a five (5) to four (4) decision.There are several reasons that is this case cannot be read so broadly as to eliminate the possibility that a grazing preference is not a property right. First, note the Fuller case did not address the question of whether stockmen who grazed livestock on federal lands prior to the passage of the Taylor Grazing Act had acquired a preference or property right in those lands. [27]

[27] The Taylor Grazing Act (TGA) of June 28, 1934, Pub. L. No. 482, 48 Stat. 1269 (codified as amended at 43 U.S.C. §§ 315-315r (1988)), **was passed to protect grazing rights acquired before January 1, 1934,** and to **stabilize the livestock industry.** Although **the TGA requires *existing rights* to be protected,** 43 U.S.C. § 315, section III of the Act also states that the issuance of a permit does not create a right to or title in the federal lands. 43 U.S.C. § 315b. Compare this to the language in the regulations adopted pursuant to Federal Land Policy and Management Act (FLPMA) which states that no right, title or interest in the federal lands is created by the issuance of a grazing permit or lease. Federal Land Policy & Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701-1782 (1988 & Supp. III 1991)). **However, FLPMA also states that the issuance of a**

[20] The operational word in this passage is "create" The language disavowing private property interest in federal grazing allotments was no doubt, as with other linguistic aspects of the statute, subject to debate and compromise. Black's Law Dictionary (6th ed., 1991), defines "create" as "to bring into being" or " to cause to exist." Neither definition of "create" precludes, to use Representative Scrughams language, recognition and protection of pre-existing property (grazing use or usufructuary rights based on "local customs, laws, and decisions of the courts.")

permit or lease does not modify any law, right, title or interest existing prior to the passage of the Act. 43 U.S.C. § 1752(h). FLPMA also states that nothing in this Act shall be construed to terminate any valid lease, permit, patent **or other land use existing on the date of passage of the Act.** 43 U.S.C. § 1701. The meaning of these statements are a source of debate. On one hand, some argue that 43 U.S.C. § 315b eliminates all grazing rights in federal lands. **On the other hand, stockmen argue that preferences recognize the "existing rights" described in 43 U.S.C. §§ 315, 1701 and 1752(h) since they were adjudicated to stockmen with prior grazing rights. *See* Red Sheep Canyon, Co. v. Ickes, 98 F.2d 308, 313-14 (D.C. Cir. 1938).** The argument is that the property right is not in the permit; rather, **the property right is in the preference that gives the owner exclusive right to a permit.** *[d.* at 314. For example, a permit to build a house is not a property right, but the permit is based on a property right; a permit to divert water is not a property right but the permit is based on an adjudicated water right that is a property right; **likewise, a permit to graze livestock is not a property right but, <u>the permit is based on an adjudicated preference that is a property right.</u>**

The Court of Appeals has confirmed that there is a ***property interest in a grazing permit*** sufficient to invoke the procedural due process protections of Matthews v. Eldridge, 424 U.S. 319 (1976), though it has declined to delineate the "exact nature of that property interest." See Buckingham v. Sec'y of U.S. Dep't of Agric., 603 F.3d 1073, 1081–82 (9th Cir. 2010).

Excerpts from Marc Stimpert's paper "Opportunities Lost & Opportunities Gained" further supports our position that our grazing allotments are property and have significant value.

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Thus, "the valuable nature of the ***privilege*** [21] to graze which arises in a licensee whose license will in the ordinary course of administration of the Taylor Grazing Act ripen into a permit, makes that privilege a proper subject of equitable protection . . . ."(162)

Likewise, the court in McNeil v. Seaton stated:

"Preference shall be given" to those like appellant who come within the Act. This appellant not only was engaged in stockraising when the Act was passed, but he qualified under the Range Code as and when first promulgated. ***He was entitled to rely upon the preference Congress had given him: to use the public range as dedicated to a special purpose in aid of Congressional policy.*** *We deem his rights — whatever their exact nature — to have been "protected against tortious invasion" and to have been "founded on a statute which confers a privilege." Accordingly this appellant was entitled to invest his time, effort and capital and to develop his stockraising business, all subject, of course, to similar preferences to be accorded in the affected area to others comparably situated.* ***We see no basis upon which, by a special rule adopted more than twenty years after appellant had embarked upon his venture, he may lawfully be deprived of his statutory privilege.***

[21] Black's defines a "privilege" as "[a] special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability." Black's Law Dictionary 1316 (9th ed. 2009)

A number of principles can be gleaned from these statements. First, a preference right is de facto driven by the doctrine of capture through beneficial use. The court in Red Canyon Sheep speaks of ranchers having a superior right “against others who do not possess” base property in a grazing district (capture), “who are able to make the most economic and beneficial use thereof” (through beneficial use).(164) ***The court compared the grazing right to a water right, “a category of vested interests in property.*** . . . [L]ess than the full ownership of property because it is a right not to the corpus of the water but to the use of the water,”(165) or again, capture through beneficial use. Second, regardless of whatever label it is assigned, ***a preference right is something of “real value” subject to protection in “equity.”***(166) Third, ***a preference right is an “entitlement” or “privilege” created by Congress.(***167)

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Thus, preference to graze is given to those best able to use the grazing resource, ranchers who own adjacent or interspersed private land, water, and grazing resources and who use their federal land allotments as part of their sustainable ranching unit. { Note: This is exactly the case of the 4W Ranch Unit.}

In sum, with passage of the Organic Act, Congress foreclosed the possibility that ranchers who graze on the 100 million aces of rangelands reserved as National Forest could potentially claim such land in fee simple. However, where one land ownership right was eliminated, another was born. The 100 year system of preference embodies all of the legal doctrines discussed herein. With the concepts of “base property” and “grazing allotments,” the Mexican custom of homestead ranching units utilizing adjacent or interspersed public rangeland was honored. By awarding grazing permits to those with livestock, base property, and range improvements, the doctrines of capture [22] and beneficial use were recognized.[135] In addition, awarding grazing permits eliminated the competition and trespass resulting from the open range policy, created sustainable ranching units, and rewarded and legally recognized the labor of ranchers. Finally, although Congress has never expressly sanctioned the Forest Service preference system, neither has it sought to interfere,[136] and it has, in fact, indirectly approved of the preference system by enacting the Federal Land Policy and Management Act.[137] The system of grazing preference has, in essence, become the new custom and usage of western rangelands.

[135] The Forest Service’s codification of “priority of use” based on “the Law of Occupancy and the Prior Appropriations Doctrine” was tantamount to recognizing “capture through beneficial use.” Falen & Budd-Falen, supra note 42, at 520

[136] This is an important point. In Buford v. Houtz, 133 U.S. 320, 326 (1890), the Supreme Court held that 100 years of congressional acquiescence to the open range policy effectively rendered it the law of the land. The same may be argued with respect to the 100 years of congressional acquiescence to the Forest Service system of preference. Cf. Food & Drug Admin. v. Brown & Williamson Tobacco

[22] II. OPPORTUNITIES LOST: A Historical Perspective of the Rule of Capture

Corp., 529 U.S. 120, 155-56 (2000) (finding that the Food and Drug Administration (FDA) did not have authority under its organic act to regulate cigarettes when it refused for 35 years to assert such authority and that Congress, through subsequent acquiescence and legislation, "effectively ratified the FDA's previous position that it lacks jurisdiction to regulate tobacco").

[137] See Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701–1785 (2000). For example, the Act states that “permits and leases for domestic livestock grazing . . . within National Forests . . . shall be for a term of ten years . . . .” Id. § 1752(a). Permit holders are given priority for renewal of existing permits. Id. § 1752(c). By requiring Forest Service grazing permits to be issued for a term of ten years, Congress sanctioned the grazing permit system which is based on preference. See Brown & Williamson Tobacco Corp., 529 U.S. at 155–56.

THE RIGHT VERSUS THE PERMIT

Under the Taylor Grazing Act, as under forest regulations, ***the permit acknowledged the pre-existing right*** and set a value on it measured in animal unit months (AUM’s) for the purpose of assessing a fee. ***The granting of a permit did not create any rights. It acknowledged pre-existing rights and set their value.*** The permit was created by the federal government and was revokable. ***The underlying property rights upon which the permit was based were not created by the federal government and were not revokable.*** Such is the dilemma surrounding the split estate rangelands of the western United States. Containment of the underlying property rights issue has primarily been accomplished by federal land management agencies by settling threatening disputes before they reach the federal courts. [23]

What has been established to this point in this paper is that the 4W Ranch Unit had perfected “**valid pre-existing grazing rights”** prior to the passage of the Taylor Grazing Act of 1934 or the Bankhead-Jones Farm Tenant Act of 1937. The Laws enacted by Congress since 1934 specifically protect these pre-existing rights. The fact that the lands within the Thunder Basin Area were never part of any Forest Reserves established in the early 1900’s is pertinent because they were **“public domain lands”** and open to livestock grazing under the laws of the Sovereign State of Wyoming. It was not until 1960 when the U.S. Secretary Agriculture turned the management of the lands of the Thunder Basin Area over to the U.S. Forest Service for administration as National Grasslands [24] under the National Forest System, which is different from National Forest.

Stock water rights had their origin in the prior appropriation doctrine of the states. They were pre-existing rights. Most water rights pre-dated the Taylor Grazing Act and the 1891 Forest Reserve Act. **[As is the case of the historic 4W Ranch Unit and the historic Fiddleback Ranch Unit]** Most of these stock water rights pre-dated the repeal of the preemption laws. These rights represented the “right, title, interest, or estate” that the rancher owned by virtue of the prior appropriation doctrine

[23] Storm Over Rangelands: Wayne Hage. Page 187, Prior Rights; Taylor Grazing Act
[24] Title 36----PARKS, FOREST, AND MEMORIALS; Chapter II---Forest Service, Department of Agriculture, PART 213---ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE.

These rights were not acquired through the “creation of a grazing district or issuance of a permit.” These rights had existed prior to the creation of the grazing districts. These rights had existed prior to the issuance of permits. There is a clear distinction between the underlying pre-existing right created through ***local law and custom and court decisions*** and the revokable, non-compensable permit granted by the federal government.[25]

In Osborne v. United States, 145 F.2d 892, 895 (9th Cir. 1944) (stating that, while "no specific provision is made by Congress for the issuance of permits for stock grazing in national forests [it is] assumed in the cases that the general right of grazing on public lands continues after they have been declared within a forest reserve subject to the authorization to the Secretary of Agriculture to make regulations for the preservation and care of the growth in the forests").

Would not this also apply to the National Grasslands? (“that the **general right of grazing on public lands continues** after they have been declared National Grasslands within the National Forest Management Act”)

The history of the now federal managed lands within the 4W Ranch Unit and Fiddleback Ranch Unit were never a part of any Forest Reserve, never a part of the National Forest System until 1963. They were managed prior to 1963 under the various laws of the United States Congress and the Territorial Laws of Wyoming and when Wyoming became a sovereign state, then under the laws of the State of Wyoming.

Quoting excerpts from the Ward Memo.

“The Ward Memo was in response to a May, 1907 Supreme Court opinion in the Kansas v. Colorado, 206 US 46 1906. To understand the Ward Memo it is necessary to understand the issues raised in the Kansas v. Colorado.”

“In 1907, land nationalization was dramatically affecting western states and territories. As the federal government declared itself the owner of vast tracts of land for national parks, forest preserves and national forest, there was mounting concern over the impact of these acts on state sovereignty and the property which was recognized by state law.”

“Ranchers worried about the future of their grazing rights and water rights which had been recognized under state law and were now threatened by federal action.”

“Colorado [As is Wyoming] is a "prior appropriation" water law state. Under the prior appropriation doctrine, water rights could be legally claimed without having to claim the land upon which the water arose. Under prior appropriation the test of validity was beneficial use. Simply stated: under prior appropriation water law the land goes with the water. Hence, the old saying throughout the arid west, **"Whomever owns the water owns the land."**

[25] Storm Over Rangelands: Epilogue, Page 231

“The disclaimer clause in Colorado's Articles of Statehood was cited as evidence that Colorado had willingly and forever relinquished any claim to the land in question as a condition of statehood. This disclaimer, the Forest Service argued, allowed them to ignore Colorado's sovereignty and the property which derived from state law.”

“In May, 1907 the U.S. Supreme Court replied. (Kansas vs. Colorado) In essence it said that land nationalization through the Forest Service did not extinguish state sovereignty or the property recognized by state law. ***The court had relegated the Forest Service to the status of land manager of split-estate, subject to all the sovereign laws of the state of Colorado including the prior appropriation water doctrine.”***

Reading from Kansas vs. Colorado, Justice Brewer is quite clear about the Forest Service’s authority:

As heretofore stated, the constant declaration of this court from the beginning is that this Government is one of enumerated powers. ****"The Government, then, of the United States, can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication."* **Story, J., in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 326.** *"The Government of the United States is one of delegated, limited, and enumerated powers."**** *United States* v. *Harris,* 106 U.S. 629, 635.

" The argument of counsel ignores the principal factor in this article, to wit, "the people." *Its principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it, "we the people of the United States," not the people of one State, but the people of all the States, and Article X reserves to the people of all the States the powers not delegated to the United States.* The powers affecting the internal affairs of the States not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States.”

“*This Article X is not to be shorn of its meaning by any narrow or technical construction, but is to be considered fairly and 91*91 liberally so as to give effect to its scope and meaning. As we said, construing an express limitation on the powers of Congress, in Fairbank* v. *United States,* 181 U.S. 283, 288: “

“While arid lands are to be found, mainly if not only in the Western and newer States, yet the powers of the National Government within the limits of those States are the same (no greater and no less) than those within the limits of the original thirteen,”

“***But it is useless to pursue the inquiry further in this direction. ***It is enough for the purposes of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters.**** *Martin* v. *Waddell,* 16 Pet. 367; *Pollard* v. *Hagan,* 3 How. 212; *Goodtitle* v. *Kibbe,* 9 How. 471; *Barney* v. *Keokuk,* 94 U.S. 324; *St. Louis* v. *Myers,* 113 U.S. 566; *Packer* v. *Bird,* 137 U.S. 661; *Hardin* v. *Jordan,* 140 U.S. 371; *Kaukauna Water Power Company* v. *Green Bay & Mississippi Canal Company,* 142 U.S. 254;

Shively v. *Bowlby,* 152 U.S. 1; *Water Power Company* v. *Water Commissioners,* 168 U.S. 349; *Kean* v. *Calumet Canal Company,* 190 U.S. 452. In *Barney* v. *Keokuk, supra,"*

So does Wyoming Law apply to the management of the federal lands within the 4W Ranch Unit? The 4W Ranch believes the answer is, "Yes". Court decisions have recognized our vested water rights, our grazing rights, all of our adjudicated rights. Our grazing permit is issued through the Thunder Basin Grazing Association and is a valid contract between the Grazing Association and an agent of the Federal Government, the grantor, that is not to be interfered with by the grantor or any third party, which includes wildlife.[26]

By law, we are entitled to have adequate forage available for our allotted AUM's to graze upon throughout the year. The value of our grazing permits cannot be reduced by reducing the number AUM's within our Grazing allotments as long as they are used for collateral for a bona fide loan. Allowing The Black-tailed Prairie Dog, a third party and a grazing rodent, to populate to high numbers and in turn destroy the grazing resource within any given allotment is an unlawful exercise that must be satisfactory addressed. It is not fully addressed in the 2020 DEIS. There is a definite threshold on how many of these disease carrying rodents and a Wyoming Designated Agricultural Pest can be accommodated in each grazing allotment in the Thunder Basin before the rodent reduces the amount of forage needed to support the authorize AUM's in each Grazing Allotment. Many grazing allotments in the Thunder Basin have private and State lands interspersed within the allotment and are a part of said allotment, these lands will have also have Prairie Dog infestations along with the infestation that is on the federal lands. These PD's must also be counted in the scheme of things. No one grazing allotment should be carrying more than 1.5 % PD infested acres within the total acreage of any individual allotment to meet the 10,000 acre to 15,000 acres of prairie dog colonies that are in the alternatives of the 2020 DEIS.

The Sherwin family has provided valuable stewardship to all of the lands within the 4W Ranch Unit for over 95 years. It is only in the last two decade or so that Forest Service policies have hindered the positive environmental stewardship previously provided by this family on the federal lands and thus have eroded the forage production and the value of our Sherwin and Frog Creek Grazing Allotments.

A "**grazing allotment"** is not an ownership interest in the federal land. It is an ownership interest in the "**usufructuary right"** to use the surface of the federal land for grazing purposes, which is for the **"beneficial use"** of the forage growing on these lands. The allotment consists primarily of the area historically used for grazing by the rancher prior to the time of the adjudication. The relationship of the area of prior use combined with base property constituted an economic ranch unit.

[26] **United States vs Fuller:**In United States v. Fuller, the U.S. Supreme Court held that while grazing permits on government's land are unrevoked, **neither the grantor or a third party may interfere with their exercise and that government has an affirmative obligation to safeguard them adequately.**

This concludes the discussion of Valid Existing Rights or Pre-existing Rights (one of the same) that exist on the federal lands within the 4W Ranch and Fiddleback Ranch Units. Part II of NEPA requires the protection of these “Existing Rights”. Protected Valid Existing Rights are not mentioned or discussed any where in the 2020 DEIS or in the 2001 Thunder Basin National Grasslands Land and Resource Management Plan, however they are covered in the Medicine Bow National Forest Revised Land and Resource Management Plan, December 2003. [See attached 4W Paper dated 20 November 2018] The question being, is there a difference in the planning process between the Medicine Bow Forest and the Thunder Basin Grasslands? Both plans came out of the same Forest Supervisors office in the same time frame, 2001 and 2003. The 4W Ranch will be awaiting an answer to this discrepancy.

By Congressional Mandate, Federal Statutes and Court decisions, the Forest Service shall administer the Thunder Basin National Grasslands for s sustainable agricultural economy as it was dedicated with other items being secondary.

cc: U.S. Senator Mike Enzi
U.S. Senator John Barrasso
U.S. Congresswoman Liz Cheney
U.S. Secretary of Agricultural
Wyoming Governor Mark Gordon
WY Dept of Agriculture
Dru Bower, Consultant to Weston, Campbell and Converse Counties