4W Ranch, 1162 Lynch Road
Newcastle, Wy. 82701

12 July 2020

Ref: 2020 Thunder Basin Plan Amendment Final Environmental Impact Statement and Draft Record of Decision 4W Ranch Objection #5

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

Dear Forest Supervisor Bacon, District Ranger Robertson and Objection Reviewing Officer,

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

This document is 2020 FEIS and Draft Record of Decision Objection #5

The 4W Ranch will in this document discuss the Police Powers of the State of Wyoming, Weston County and Weston County Weed and Pest District in the controlling of Prairie Dog populations on the federal lands within the Thunder Basin National Grasslands.

The Constitutions of our Sovereign States are meant to protect the individuals of their Inalienable Rights, along with the Constitution of the 50 United States. Our right to Life, our right to Liberty, our right to Happiness (Property Rights) are protected.

In order to keep this brief and to the point. The United States of America is a Republic. A Republic is a government in which the power resides in the body of its citizens entitled to vote and is exercised by elected officers and representatives responsible to them and governing according to law. Civil Laws are written only by elected legislators, not by Governors, Mayors, Presidents, Judges, Sheriffs, Police Chiefs, etc..

In *M'Culloch* v. *State of Maryland*, 4 Wheat. 316, 404, Chief Justice Marshall said:

"The government of the Union, then (whatever may be the influence of this fact on the case), is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

The following is from the Ward Memo which 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.**

A primary objective of nationalizing the lands was to extinguish Private Rights.

In May, 1907 the U.S. Supreme Court in essence said that land nationalization through the Forest Service in Kansas v. Colorado, 206 US 46 1906. **did not extinguish State Sovereignty or the property rights recognized by state law.** Justice Brewer stated the following: ***"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.

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.

As to the great body of the public domain, the unreserved public lands of the United States, no steps have as yet been taken by the Federal Government interfering with the free grazing of sheep and cattle. **Such free use for more than one hundred years has been permitted, encouraged and protected by Congress and the Federal**

courts. The Supreme Court held this year, in a case from Idaho (Bacon v. Walker, 204 WP. 311, February 4, 1907), **that police powers of the state regulating the grazing of sheep and cattle extended in full operation over the unreserved public lands.**

The Supreme Court of the United States and the lower Federal courts **declared again and again that the United States hold their lands within the state on the same footing as does a private individual.**

Mr. Justice Brewer, who understands the West, announced again that the Western States have some rights, which neither Congress nor any Forest Ranger may nullify. (Kansas v. Colorado, May 13, 1907)

The Federal Government, as a land owner within the state, has no more right to disregard state laws than a private individual.

43 U.S. Code § 315n - **State police power not abridged**

Nothing in this subchapter shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this subchapter, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and effect:

United States Code Annotated. Title 7. Agriculture. Chapter 109A. Control of Wild Animals.

Summary:
Animal Damage Control Act of March 2, 1931, (46 Stat. 1468) provided broad authority for investigation, demonstrations and control of mammalian predators, rodents and birds. Public Law 99-19, approved December 19, 1985, (99 Stat 1185) transferred administration of the Act from the Secretary of the Interior to the Secretary of Agriculture. Pub. L. 102-190(Div. A, title III, Sec. 348, Dec. 5, 1991, 105 Stat. 1348) and P.L. 102-237 (Title X, Sec. 1013(d), 105 Stat. 1901, Dec. 13, 1991) added provisions directing the Secretaries of Defense and Agriculture, respectively, to take actions to prevent the introduction of brown tree snakes into other areas of the U.S. from Guam.
§ 8351. Predatory and other wild animals
The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. The Secretary shall administer the program in a manner consistent with all of the wildlife services authorities in effect on the day before October 28, 2000.
CREDIT(S)
(Mar. 2, 1931, c. 370, § 1, 46 Stat. 1468; Pub.L. 102-237, Title X, § 1013(d), Dec. 13, 1991,

105 Stat. 1901; Pub.L. 106-387, § 1(a) [Title VII, § 767], Oct. 28, 2000, 114 Stat. 1549, 1549A-44.)

§ 8352. Authorization of expenditures for the eradication and control of predatory and other wild animals

The Secretary of Agriculture is authorized to make such expenditures for equipment, supplies, and materials, including the employment of persons and means in the District of Columbia and elsewhere, and to employ such means as may be necessary to execute the functions imposed upon him by section 8351 of this title.

CREDIT(S)

(Mar. 2, 1931, c. 370, § 3, 46 Stat. 1469.)

§ 8353. Control of nuisance mammals and birds and those constituting reservoirs of zoonotic diseases; exception

On and after December 22, 1987, the Secretary of Agriculture is authorized, except for urban rodent control, to conduct activities and to enter into agreements with States, local jurisdictions, individuals, and public and private agencies, organizations, and institutions in the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases, and to deposit any money collected under any such agreement into the appropriation accounts that incur the costs to be available immediately and to remain available until expended for Animal Damage Control activities.

CREDIT(S)

(Pub.L. 100-202, § 101(k) [Title I], Dec. 22, 1987, 101 Stat. 1329-331.)

*Now, let us look at Federal Law as it relates to the control of “Destructive Wildlife”.

Title 7 of the Laws Applicable to the United States Department of Agriculture (1931) APHIS (7 U.S.C. 426) Predatory and Other Wild Animals; **Eradication and Control**

•“...The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program ...The Secretary of Agriculture is hereby authorized and directed to conduct such investigations, experiments, and tests as he may deem necessary in order to determine, demonstrate, and promulgate the best methods of **eradication, suppression, or bringing under control** on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, coyotes, bobcats, **prairie dogs**, gophers, ground squirrels, jack rabbits, brown tree snakes, **and other animals injurious to agriculture**, horticulture, forestry, animal husbandry, wild game animals, furbearing animals, and birds, and for the protection of stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals; and to conduct campaigns for the destruction or control of such animals: Provided, That in carrying out the provisions of this Act the Secretary of Agriculture may cooperate with States, individuals and public and private agencies, organizations, and institutions."

•7 U.S.C. 426b. Authorization of expenditures for the eradication and control of predatory and other wild animals.

•7 U.S.C. 426c. Control of nuisance mammals and birds and those constituting reservoirs of zoonotic diseases;[1] exception..."

TITLE 7. AGRICULTURE CHAPTER 17. MISCELLANEOUS MATTERS 7 USCS § 426c (2003)

§ 426c. Control of nuisance mammals and birds and those constituting reservoirs of zoonotic diseases; exception

The Secretary of Agriculture is authorized, except for urban rodent control, to conduct activities and to enter into agreements with States, local jurisdictions, individuals, and public and private agencies, organizations, and institutions **in the control of nuisance mammals** and birds and those mammal and bird species that are reservoirs for zoonotic diseases,

Another act administered by the Department of Agriculture is the Granger-Thye Act of 1950. This act specifically deals with the U.S. Forest Service **in its dealings with grazing issues and elements that affect range productivity, including destructive species**. This act, under Section 12, describes how the range betterment funds(derived from fees charged to the ranchers) **are to be used for** physical improvements and **controlling species found to be destructive to ranchers' private allotments encumbered upon Federal lands.** Again, **congressional intent was to protect rural economic production**.

Granger-Thye Act of 1950
Sec. 12, Use of Grazing Receipts for Range Improvements
"...the Secretary of Agriculture may prescribe, for ... (3) control of range destroying rodents ..."[Funds protected as separate Treasury account]

A Supreme Court opinion in 1920 recognized **the states absolute right to control resident wildlife within its boundaries under the 10th Amendment.**

Missouri v. Holland , Supreme Court No. 609, 1920
"...Every State possesses the absolute right to deal as it may see fit with property held by it either as proprietor or in its sovereign capacity as a representative of the people, and this right is paramount to the federal legislative or treaty-making power..."

"...The treaty-making power of the National Government is so limited by other provisions of the Constitution, including the Tenth Amendment, that it cannot divest a State of its police power or of its ownership or control of its wild game..."

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[1] **Zoonotic Diseases (also known as zoonoses)** are caused by infections that spread between animals and people. There are over 200 'zoonotic' diseases — infections caused by **viruses**, bacteria, parasites, fungi or **prions** that are transferred directly or indirectly to humans from animals. These include diseases such as **animal influenzas**, **rabies**, **haemorrhagic fevers** such as **Ebola**, **anthrax**, **the bubonic plague**, and '**mad cow' disease**.

TITLE 16. CONSERVATION
CHAPTER 49. FISH AND WILDLIFE CONSERVATION

16 USCS § 2909 (2003) § 2909. Disclaimers

**Nothing in this Act [16 USCS §§ 2901 et seq.] shall be construed as affecting--
(1) the authority, jurisdiction, or responsibility of the States to manage, control, or regulate fish and resident wildlife under State law;**

Sec. 24.3 General jurisdictional principles.
(a) In general the **States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State**. Under the Property Clause of the Constitution, **Congress is given the power to ``make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States .''**

(b) The exercise of Congressional power through the enactment of Federal fish and wildlife conservation statutes has generally been associated with the establishment of regulations more restrictive than those of State law. The power of Congress respecting the taking of fish and wildlife has been exercised as a restrictive regulatory power, except in those situations where the taking of these resources is necessary to protect Federal property. With these exceptions, and despite the existence of constitutional power respecting fish and wildlife on Federally owned lands, **Congress has, in fact, reaffirmed the basic responsibility and authority of the States to manage fish and resident wildlife on Federal lands.**

One important Supreme Court Case confirms that the State of Wyoming and Weston County have **valid existing rights** to manage destructive wildlife such as the prairie dog. That case being Sierra Club v. Hodel, 848 F 2d.1068 (10th Circuit, 1988). Although this case deals with R.S. 2477 rights-of-way, within a county which is a valid existing right of that county, it must also apply to all valid existing rights that a particular county possesses. Excerpts from Sierra Club v. Hodel follow:

(86)....Here, BLM, in its Interim Management Policies (IMP), reconciled FLPMA's express protection of **valid existing rights** with the conservation duties under Sec. 603(c) **by analogizing the valid existing rights to the grandfathered uses and affording them the same protections.** We **uphold this interpretation** as a reasonable one. **The accommodation reached in Sec. 603(c) for grandfathered uses reflects the common law of easements and profits.** The exemption from the nonimpairment standard ensures that the federal government's new uses of its servient estate--the creation of WSAs--**do not eviscerate the County's dominant estate.** At the same time, Sec. 603(c) proscribes uses of the dominant estate that unreasonably interfere with (i.e., unnecessarily or unduly degrade) the servient estate. **Valid existing rights such as R.S. 2477 rights-of-way also constitute preexisting easements and logically should be accorded treatment similar to grandfathered uses. We uphold the IMP's exemption of valid existing rights from the nonimpairment standard.**

FLPMA Sec. 603(c) provides in relevant part:

"(c) Status of lands during period of review and determination

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, **subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: Provided, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection." 43 U.S.C. Sec. 1782(c).**

**** **Without following the district court's approach, we adopt its result. The IMP and the Revised IMP manifestly permit the impairment of Wilderness Study Areas (WSAs) through the reasonable exercise of valid existing rights. The right to make reasonable and necessary improvements within the boundaries of the right-of-way is part of the County's valid existing rights in the Burr Trail.** ****

4W Ranch note: The above spells out that the "valid existing rights" that we enjoy within our Ranch Units and within our grazing allotments are to be and will be protected. The LUPs and Executive Orders pertaining to the development of the remaining land (Public Domain Land) all acknowledged the existence of pre-existing rights of the livestock grazers in the area. **It also spells out the valid existing rights that Weston County has on the federal lands within its boundaries including the county's 'Police Powers' to protect the health and welfare of its citizens.**

Proceeding on with Sierra v. Hodel

**** **The federal regulations heavily support a state law definition. At least since 1938, the Secretary of the Interior has interpreted R.S. 2477 as effecting the grant of a right-of-way "upon the construction or establishing of highways, in accordance with State laws...." 43 C.F.R. Sec. 244.55 (1939). …. Especially when an agency has followed a notorious, consistent, and long- standing interpretation, it may be presumed that Congress' silence denotes acquiescence:** ****

Sierra Club urges finally that the analytic framework of Wilson v. Omaha Indian Tribe, 442 U.S. 653, 99 S.Ct. 2529, 61 L.Ed.2d 153 (1979), supports the use of federal law. Under this analysis, **the choice of federal or local law depends on three factors:**

The first of the Wilson factors--the need for uniformity--**-provides only minimal support for the choice of federal law. …. It is incongruous to determine the source of interpretative law for one statute based on the goals and policies of a separate statute conceived 110 years later. Rather, the need for uniformity should be assessed in terms of Congress' intent at the time**

of R.S. 2477's passage. Cf. Leo Sheep Co. v. United States, 440 U.S. 668, 681-82 & n. 18, 99 S.Ct. 1403, 1410-11 & n. 18, 59 L.Ed.2d 677 (1979).

***The second Wilson factor--**whether application of state law would frustrate federal policy or functions--**favors the continued use of state law.**

*** The third Wilson factor **strongly supports the use of state law,** ….

Having considered the arguments of all parties, we conclude that the weight of federal regulations, state court precedent, and tacit congressional acquiescence **compels the use of state law to define the scope of an R.S. 2477 right-of-way.**

The court (citing Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965), and Brennan v. Occupational Safety & Health Commission, 513 F.2d 553, 554 (10th Cir.1975)).

** Here, BLM, in its Interim Management Policies, reconciled FLPMA's express protection of valid existing rights with the conservation duties under Sec. 603(c) **by analogizing the valid existing rights to the grandfathered uses and affording them the same protections.** We uphold this interpretation as a reasonable one. **The accommodation reached in Sec. 603(c) for grandfathered uses reflects the common law of easements and profits.** The exemption from the nonimpairment standard ensures that the federal government's new uses of its servient estate--the creation of WSAs--**do not eviscerate the County's dominant estate. ….****

The "scope" of a right-of-way refers to **the bundle of property rights possessed by the holder of the right-of-way.** This bundle is defined by the physical boundaries of the right- of-way as well as the uses to which it has been put.

The construction of the language within the above documents leaves no doubt about the **'police powers'** of local governments when it comes to the protection of the health and welfare including the protection of private property and property rights of its citizens. The 4W Ranch objects to the fact that the 2020 Thunder Basin Plan Amendment ignores the 'police powers' of Weston County in the management of the MA 3.67 and elsewhere in the Thunder Basin National Grasslands. This concludes the 4W Ranch Objection #5

In addition to the 4W's objections, I concur with the Ass'n of National Grasslands - Lead objector and wish to have his objections dated 14 July 2020 a part of the 4W Ranch objections.

Respectfully submitted for your consideration and rectification as required by law.

Robert J. Harshbarger

Major Robert L. Harshbarger, USAF Retired
Thunder Basin Federal Lands Rancher