

## ATTACHMENT III

### *Violations of Law Sanctioned Within the H. Frank Robbins and Bureau of Land Management Settlement Agreement.*

- **Provisions 9 and 10 illegally cede a public easement:**

- ▶ *Violation of 43 C.F.R. § 2801.1-2; 43 U.S.C.A. §§ 1761-1771*

Provision 9 of the settlement agreement grants Mr. Robbins a right-of-way across public lands but fails to grant a reciprocal right-of-way to the BLM. Provision 9 reads, "In granting this right-of-way, BLM shall not insist on a reciprocal right-of-way or easement across Robbins' private property."

Provision 10 maintains that future BLM access will be determined "as soon as practical after the Effective Date of this Agreement" in order to arrive at a "mutually agreeable solution" between Mr. Robbins and the BLM.

These provisions violate 43 C.F.R. § 2801.1-2, which states "[the authorized officer] shall, if it is determined to be in the public interest, *require* the applicant, as a *condition* to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights" (emphasis added).

The BLM is clearly *required* to take a reciprocal grant if it is in the public interest. This matter is not discretionary. The BLM has made access to their lands dependent upon Mr. Robbins' permission at some indefinite point in the future. However, BLM access must be a *condition* before a right-of-way is granted to Mr. Robbins. If the BLM does not insist on the reciprocal grant, it needs to make a finding that it is not in the public interest.

- **Provision 11 improperly awards preferential actual use billing:**

- ▶ *Violates 43 C.F.R. §§ 4120.2(a) and 4120.2(c); 43 U.S.C.A. §§ 315 and 1752*

Mr. Robbins' allotment management plan ("AMP") for the High Island Ranch is dated March 3, 1994. He purchased this ranch in May 1994. This AMP has remained in effect. The HD Ranch and the Owl Creek Ranch public land allotments did not have an AMP at the time of the settlement agreement. Provision 11 of the agreement apparently allows Mr. Robbins to apply for actual use billing on these lands by submitting a *self-prepared* AMP to the BLM. Upon *only* BLM's approval of the AMP, Mr. Robbins receives actual use billing privileges.

Under 43 C.F.R. § 4120.2(a), an AMP *shall* be prepared "in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public."

Under 43 C.F.R. § 4120.2(c), the authorized officer *shall not* approve the proposed plan unless he or she provides the “opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and . . . give[s] public notice concerning the availability of environmental documents prepared as part of the development of such plans.”

Actual use billing may only be authorized through the foregoing procedures. The grant of such privileges on the HD Ranch or Owl Creek Ranch would be a direct violation of the C.F.R. if done according to the extended allowances in the settlement agreement. Furthermore, the AMP for High Island Ranch is more than 9 years old and needs current and proper review.

- **Provisions 4.b(1)-(3) grant Mr. Robbins unauthorized management control of federal lands:**

- ▶ *Violates 43 C.F.R. §§ 1610.2, 4120.2(a), and 4120.2(c); 43 U.S.C.A. §§ 315, 1712, and 1752.*

Provision 4.b(1) grants Mr. Robbins “additional management flexibility” over allotments with less than 50% federal ownership.

Provision 4.b(2) defines the livestock grazing management plan for allotments with more than 50% federal ownership.

Provision 4.b(3) allows Mr. Robbins to use his private land for “any livestock numbers at any time he so chooses.”

No type of analysis, environmental or otherwise, was conducted that would clarify why the 50% land ownership basis was chosen. No support for such a basis exists in any regulation, statute, policy, or legal precedent. Such an arbitrary percentage, agreed upon by *only* the BLM and Mr. Robbins and lacking a rational resource basis, violates 43 C.F.R. §§ 1610.2; 4120.2(a); and 4120.2(c).

Under 43 C.F.R. § 1610.2(a), it is *required* that “[t]he public . . . be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities.”

Both 43 C.F.R. §§ 4120.2(a) and 4120.2(c), *see supra* discussion under Provision 11, contain similar requirements pertaining to grazing allotment plans. Under 4120.2(a), the interested public, the resource advisory council, and the State are *all* required to be included in the preparation stage. Under 4120.2(c), the authorized officer is required to involve the public in the “*environmental analysis* of proposed plans” (emphasis added). The authorized officer is also required to “give *public notice* concerning the availability of *environmental documents* prepared as a part of the development of such plans” (emphasis added).

Again, the 50% land ownership basis was agreed upon by *only* Mr. Robbins and the BLM and it was arbitrarily derived. It was not based on any distinction in law or policy and it was inserted into the agreement without required input from the public, the resource advisory council, or the State.

- **Provision 3 extends illegal preferential treatment and undermines the goal of consistent enforcement:**

- ▶ *Violates 43 C.F.R. Part 4160; 43 U.S.C.A. §§ 315, 1712, and 1752*

Provision 3 establishes a novel Informal Dispute Resolution process. Under this provision, decisions regarding Mr. Robbins will be made in the Washington, D.C. office, not locally. It also requires this new appeals process to be followed before any resource management or administrative action may be pursued.

The new process in the settlement agreement violates the administrative remedies and procedures laid out in 43 C.F.R. Part 4160. These C.F.R. procedures, if followed, give rise to a consistently applied set of regulations and will promote the concept of multiple use management for all public land users. 43 C.F.R. § 1601.0-2. Disparate treatment in favor of Mr. Robbins disrupts the consistent application of the regulations as well as their objective.

- **Provisions 1 and 7 grant improper immunity for prior violations:**

- ▶ *Violates 43 C.F.R. § 4140.1(b)(1) and disrupts the purposes of 43 C.F.R. §§ 4110.1 and 4110.2-3; 43 U.S.C.A. §§ 315 and 1752*

Provision 1 is an agreement between Mr. Robbins and the BLM "to mutually stay any and all claims, causes of action, and/or disputes they now have or may have had against each other." The provision lists sixteen (16) such cases to be stayed, ten (10) of which are trespass violations.

Provision 7 states the BLM will not use these stayed cases "as evidence or support for any future repeated trespass violations."

These provisions redefine regulations of trespass, 43 C.F.R. § 4140.1(b)(1), and the various categories of trespass. A previous trespass history is direct evidence for an authorized officer to determine repeated trespass and to hand down civil and criminal penalties.

Furthermore, a previous trespass history as extensive as Mr. Robbins' displays an unsatisfactory prior record of performance for the purposes of 43 C.F.R. §§ 4110.2-3 and 4110.1, *see infra* discussion under Provision 8, and this record *must* be preserved to fulfill these purposes properly.

- **Provision 8 illegally awards a new grazing permit:**

- ▶ *Violates 43 C.F.R. §§ 4110.1 and 4110.2-3; 43 U.S.C.A. §§ 315 and 1752*

Provision 8 of the agreement states the “BLM shall *conditionally* transfer to Robbins the Owl Creek Grazing permit” (emphasis added). Robbins is required *only* to submit a grazing plan “detailing [his] contemplated uses.” First, the C.F.R. does not recognize, define, nor allow a “conditional” permit or transfer. Second, the BLM takes no account of Robbins’ prior record of performance, including the fact that Worland BLM officials had previously cancelled his HD Ranch and High Island Ranch grazing permits due to excessive violations. These oversights violate the C.F.R.

43 C.F.R. § 4110.2-3 states “the transferee [of a grazing preference] shall meet *all* qualifications and requirements of § 4110.1” (emphasis added).

According to 43 C.F.R. § 4110.1(b), it is *mandatory* that the “[a]pplicants for the renewal or issuance of new [grazing] permits . . . [are] determined by the authorized officer to have a satisfactory record of performance.”

An applicant shall be deemed *not* to have a record of satisfactory performance, under 43 C.F.R. § 4110.1(b)(2), if he or she “has had any Federal [or State] grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application.”

This matter is not discretionary. The BLM is clearly *required* to take into account Mr. Robbins’ *prior* unsatisfactory record of performance before it transfers to him the Owl Creek grazing permit. In the settlement agreement, the “conditional” transfer is based on the *future* potential of a satisfactory record of performance. To consider *only* the uses Mr. Robbins contemplates for the future is a violation of law.

- **The entire agreement was illegally drafted and approved and is inconsistent with the stated objective of resource management planning:**

- ▶ *Violates 43 C.F.R. § 1610.2 and runs contrary to 43 C.F.R. § 1601.0-2; 43 U.S.C.A. § 1712*

An “approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment.” 43 C.F.R. § 1601.0-6. Therefore, 43 C.F.R. § 1610.2(a) requires the public to be provided with an opportunity to “meaningfully participate in and comment on the preparation of [such] plans . . . and be given early notice of planning activities,” *see supra* discussion under Provisions 4.b(1)-(3).

However, the settlement agreement as a whole was drafted and considered by *only* Mr. Robbins and the BLM. in Washington, D.C. This failure to notify, or to include, other interested parties in the planning process was not only illegal but it was exacerbated when all negotiations occurred outside of Wyoming and “out of earshot” of those with personal stakes in the matter.

In 43 C.F.R. § 1601.0-2, the stated "objective of resource management planning by the [BLM] is to maximize resource values for the *public* through a rational, *consistently* applied set of regulations and procedures which . . . ensure participation by the *public, state* and *local* governments, Indian tribes and *appropriate* Federal agencies" (emphasis added).

Again, the settlement agreement between Mr. Robbins and the BLM provides disparate treatment in favor of one well-connected individual. The interests of the public have been ignored with the unilateral adoption of novel and inconsistent procedures.