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**Thunder Basin National Grasslands Position Paper on Property Rights November 2020**

This position paper is written based on information I have gleaned from the study of many documents, books, court cases, seminars and conversations I have had with individuals over the past 20 years or so. I have always believed since my childhood of the principles of liberty and freedom, and that we are endowed with our personal freedom and liberty by our creator.

A few of the books and papers and their authors that have influenced this paper and my position are the following:

Books:

Our Ageless Constitution, Edited by W. David Stedman & LaVaughn G. Lewis The Making of America by W. Cleon Skousen

Grand Theft and Petit Larceny, Property Rights In America by Mark Pollot Storm Over Rangelands by Wayne Hage

Rescuing a Broken America by Michael Coffman

Papers:

The Right To Graze Livestock On Federal Lands by Karen Budd Falen & Frank Falen; Idaho Law Review [Vol 30]

Did Congress Intend to Recognize Grazing Rights? by Frederick Obermiller

Environmental Law Paper; Clear The Air, Counterpoint by Attorney Marc Stimpert Opportunities Lost & Opportunities Gained by Attorney Marc Stimpert

Management Of The National Grasslands by Attorney Elizabeth Howard; North Dakota Law Review Citation: 78 N.D. L. Rev. 409 2002

***America’s written Constitution is to protect and secure the God-given individual rights to life, liberty and property.***

***The Framers of the United States Constitution considered the protection of property to be one of the primary purposes of government.***

***‘Property Rights’*** *are the ability of the individual to exercise control over his own property.****‘Private Property Rights’****, which are among the most* ***Basic Rights of American Culture, and they, the ‘Private Property Rights’ reign supreme.***

*I believe that the* ***‘Right to Own’,*** *enjoy and profit from ones own property is the* ***‘most basic and fundamental right’ of our society and that this ‘Right’ shall not be infringed upon****. The* ***Wyoming Constitution, Article I, Declaration of Rights, Section 7 states: “Absolute, arbitrary power over the lives, liberty and property of freeman exists nowhere in a republic, not even in the largest majority.”***

***With out question, I am a freeman and we are all free people.***

# Land Utilization Projects

Only when Congress passed laws in the very early 1930’s did the submarginal homesteaded lands that were reacquired by the United States were put under the management of the U.S. Department of Agriculture for Land Utilization Projects. The project that is now the Thunder Basin National Grasslands was the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1, which was initiated in 1934.

All of this occurred years prior to the passing of the Bankhead-Jones Farm Tenant Act of 1937. Thus qualifying by law all the ‘Valid Existing Rights’ on these lands to be recognized to the present.

The majority of federal lands within the 4W Ranch Unit were reacquired or withdrawn from the ‘public domain’ prior to the passage of the Bankhead-Jones Farm Tenant Act. These pre Bankhead-Jones lands are to be administered in accordance for the purpose that they were acquired for.

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 Ranch Units’**. That was and still is the purpose of the acquisition laws and the Presidential Executive Orders that were issued for these sub-marginal and “public domain” lands within the Thunder Basin that were reacquired by acts of Congress or withdrawn from the “public domain” by Presidential Executive Orders in the 1930’s well before the Bankhead-Jones Farm Tenant Act of 1937

The 1934 lands within the Northeastern Wyoming Land Utilization Project WY - LU - 1 are lands dedicated and prescribed for specific uses and are **to be administered and managed separably** from the National Forest or National Forest System Lands. The now referred to as National Grasslands are separate from and are a different entity from the National Forest and BLM Managed Lands and are **recognized as such by court decisions such as [Rawson vs U.S.] and others.**

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**Quoting from Attorney Elizabeth Howard’s paper, Management of the National Grasslands I wish to emphasize the following excerpts:**

IV. LEGAL MANAGEMENT OF THE NATIONAL GRASSLANDS

B. FEDERAL LAW REQUIRES THE FOREST SERVICE TO ADMINISTER THE NATIONAL GRASSLANDS FOR THE PURPOSES FOR WHICH THEY WERE ACQUIRED

When the federal government acquires land for a particular public purpose, only Congress has the power to change that purpose or dispose of the acquired land.163

[ 163. Reichelderfer v. Quinn, 287 U.S. 315, 318-20 (1932).] As a result, federal agencies must manage and administer acquired lands according to the purpose for which the federal government acquired them, unless Congress has authorized otherwise.164 [164. Id.; see also United States v. Three Parcels of Land, 224 F. Supp. 873, 876 (D. Alaska1963) (determining that the court is without authority to revest title to premises once vested in the United States, and the matter is entrusted by Congress to the discretion of the Attorney General under the Declaration of Takings Act, 40 U.S.C. § 258(t)); United States v. 10.47 Acres of Land, 218 F. Supp. 730, 733 (D.N.H. 1962) (stating that title to acquired property vested in the United States cannot be returned to original landowners without congressional authorization).] **This principle prohibits Forest Service management practices that deviate from the original purposes for acquiring the national grasslands. In *Rawson v. United States,165 [* 165. 225 F.2d 855 (9th Cir. 1955).] the Ninth Circuit recognized that the national grasslands, which were "reacquired by the United States are not by mere force of the reacquisition restored to the public domain.**

**Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like."** 166 *[166. Rawson, 225 F.2d at 858. Three of the twenty national grasslands are included within the Ninth Circuit: Oregon's Crooked River Grassland (the subject of Rawson), Idaho's Curlew National Grassland, and California's Butte Valley National Grassland. See supra note 2.]* **The Ninth Circuit also denied the President, and by implication any federal agency, the authority to impute uses to the acquired national grasslands other than those for which the federal government acquired the lands.** 167 [ 167. Rawson, 255 F.2d at 858. ]

In *United States v. Three Parcels of Land,168* [ 168. 224 F. Supp. 873 (D. Alaska 1963). ] the Ninth Circuit reaffirmed *the principle espoused in Rawson.169* [ 169. Three Parcels of Land, 224 F. Supp. at 877.] The Postmaster conveyed property acquired for postal uses to the Alaska Housing Authority for a purpose other than that anticipated by the United States when it acquired the property. 170 [170. Id. at 876.] However, the Ninth Circuit upheld the Postmaster's action because he acted pursuant to a statute that gave him express authority to dispose of real property acquired for postal purposes under such terms as he deemed in the best interest of the United States.171 [171. Id. at 876-77.]

The Sixth Circuit endorsed the same principle in *Higginson v. United States.172* [ 172. 384 F.2d 504 (6th Cir. 1967).] The court upheld the Secretary of the Army's decision to abandon property acquired for a military camp and transform it into surplus property because the Secretary acted pursuant to a law that specifically authorized him to modify the use of acquired military lands.173 [ 173. Higginson, 384 F.2d at 507.] In contrast, in *Forbes v. United States,174* [ 174. 259 F. 585 (D.C. Ala. 1919).] an Alabama federal district court overturned the Secretary of War's decision to dispose of real estate acquired by the United States for military purposes because the Secretary lacked express power to dispose of such property. 175 [ 175. Forbes, 259 F. at 592. Congress had authorized the Secretary of War to transfer property "not required by the War Department, as may be required by the public health service." Id. However, the Secretary of War did not seek to transfer the property, but to dispose of it. Id. Because the Secretary was not authorized to dispose of the land, his action was beyond the scope of his delegated authority and offended the separation of powers doctrine. Id.] In its decision, the Alabama court stated: **"It is not within the province of the court to say what shall be done with the land or to what use it shall be put. This is reserved to the Congress,** which, of course can act, or authorize the Secretary of War to act." **Altogether, these decisions affirmed the principle that federal agencies cannot act to modify the purposes for which lands were acquired without express congressional authorization to do so**. As demonstrated in the following sections, at one time Congress authorized the Secretary of Agriculture to dispose of or apply the national grasslands for purposes other than those for which they were acquired. **However, the Secretary failed to act before Congress repealed that authority and now has no authority to use the national grasslands for purposes other than those for which they were acquired. Therefore, the Forest Service must administer the national grasslands solely for the purposes for which they were acquired.** 177 [ 177. In parts of the national grasslands, the Secretary of Agriculture condemned less than a fee simple interest in the land. For example, in pursuing "friendly condemnations" against North Dakota counties, the United States agreed the counties should receive a 6.25% royalty in the minerals on the acquired federal grasslands. McKenzie County

v. Hodel, 467 N.W.2d 701, 702 (N.D. 1991); McKenzie County v. Hodel, Civil No. A4-87-211

(D.N.D. June 24, 1991). When the federal government acquires less than a fee simple interest, ***"use of the property taken must be for and in accordance with the purposes which justified its taking and which was the basis for assessing damages." United States v.***

***Burmeister, 172 F.2d 478, 480 (10th Cir. 1949). As a result, the Forest Service must administer all national grasslands, whether they were acquired as fee simple or as less than a fee simple, for the purposes they were acquired.***]

C. THE BJFTA AND NATIONAL GRASSLAND ADMINISTRATION

## The Preamble

The preamble to the Bankhead-Jones Farm Tenant Act states that Congress enacted the law to "create the Farmers' Home Corporation, to promote more secure occupancy of farms and farm homes, to correct the economic instability resulting from some present forms of farm tenancy, and other purposes."178 [ 178. BJFTA of 1937, Preamble, Pub. L. No. 75-210, § 517, 50 Stat. 522 (1937).] Although preambles are not operative

parts of statutes and do not confer or enlarge powers of administrative agencies or their officers, "**[a] preamble no doubt contributes to a general understanding of a statute."** 179 [179. Ass'n of Am. R.R.s v. Costle, 562 F.2d 1310, 1316 (D.C. Cir. 1977).] Therefore, in construing the meaning of the BJFTA, a court may look to the preamble to resolve ambiguity arising from the meaning of particular words or from the general scope of the BJFTA.180 [ 180. Coosaw Mining Co. v. South Carolina, 144 U.S. 550, 563 (1892).] Here, the preamble's directive to promote more secure farm occupancy and to correct instability confirms the general understanding set forth in the agricultural land use project documents, **namely that the Secretary of Agriculture must administer these lands in a way that promotes grassland agriculture and provides stability for communities dependent on these lands.**

## The Old and New Project Lands

Title III of the BJFTA authorized and directed the Secretary of Agriculture to develop a program of land conservation and land utilization, which was to be accomplished through the retirement of submarginal lands and correction of maladjustments in land use.181 [ 181. 7 U.S.C. § 1010 (2000). **To accomplish this program, Congress provided the Secretary with power to acquire submarginal lands and protect, improve; develop, administer, and construct structures on such lands in order to adapt them to their most beneficial use.**182 [182. 7 U.S.C. § 1011(b) (2000).] The lands acquired under these provisions became known as the **"new project lands."** The **"old project lands" acquired prior to the BJFTA**, became a part of the BJFTA's program of land conservation and land utilization pursuant to Presidential transfer eleven months after Congress enacted the BJFTA.183 [183. Exec. Order No. 7908, 3 Fed. Reg. 1389 (June 9, 1938); see also Grest, Brief History, supra note 73, at 4. This transfer was authorized by Congress in Title IV of the BJFTA. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).]

## The BJFTA Required the Secretary of Agriculture to Adapt Newly Acquired Project Lands to Their Most Beneficial Use

The land utilization and conservation program set out in the BJFTA was intended to assist in controlling soil erosion, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, and accomplishing many other objectives.184 [184. 7 U.S.C. § 1010.] Congress did not, however, expect that each project undertaken by the Secretary as part of the land utilization and conservation program would accomplish each of these environmental objectives. Rather, Congress required the Secretary to adapt land acquired under the BJFTA to its most beneficial use. 185 [185. ***Id.§*** 1011(b).] **This directive implicitly limited environmental improvements on acquired lands to those that complemented the lands' most beneficial use.**

**Once the Secretary of Agriculture acquired the new lands and adapted them to their most beneficial use, the BJFTA did not provide authority for the Secretary to modify them to another use so long as the lands remained under his control.** 190 [190. 7 U.S.C. § 1011.] For a time, the Secretary could recommend sale, lease, or

exchange of lands acquired under the BJFTA to state and federal public agencies.191 [191. 7 U.S.C. § 1011(c)] However, these actions are now precluded by laws that require the Secretary to retain the national grasslands permanently under his administration.192 [192. See NFMA of 1976, 16 U.S.C. § 1609 (2000) (preventing the Secretary of Agriculture from returning land in the National Forest System, which includes the national grasslands, to the public domain).] **As a result, the Secretary has a legal duty to ensure the national grasslands acquired under the BJFTA are permanently retained within the Department of Agriculture and managed for the purposes for which they were acquired.**

## Old Project Lands Under Title IV of the BJFTA Must Be Administered for the Purposes for Which They Were Acquired

The President transferred the old project lands to the Secretary of Agriculture so the lands could be administered under Title III and Title IV of the BJFTA. In contrast to Title III, the sole title under which the new lands were administered, Title IV authorized the Secretary to use and dispose of the old project lands in such manner as would best carry out the objectives of the BJFTA.193 [193. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).]

**These provisions could be interpreted as authorizing a change in use of the national grasslands.**194 [194. Id.] **However, at the time the Secretary transferred the old and new project lands to the Forest Service, he apparently was not aware of his authority to administer the old project lands under Title IV of the BJFTA.**195 [195. Id.; 1954 Hearing, supra note 11, at 3.] In 1954, the Forest Service, with the President's support, backed numerous proposals and made statements before Congress requesting legislative authority to dispose of all project lands, including the old project lands, to individuals and private organizations.196 [196. 1954 Hearing, supra note 11, at 3.] This request was quite surprising in light of the fact that Title IV remained good law and specifically authorized the Secretary to dispose of the old project lands in any manner the President saw fit, which ostensibly would have included disposal to private individuals. 197 [197. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).] Before the Secretary realized the scope of his authority, Congress repealed Title IV of the BJFTA in 1961, removing any opportunity for the Secretary to modify the uses or the terms and conditions of use for the old projects lands, which had become part of the national grasslands. 198 [198. Pub. L. No. 87-128, § 341, 75 Stat. 318 (1961). Arguably, the Secretary's 1960 regulations requiring the Forest Service to administer the national grasslands for outdoor recreation, range, timber, watershed, and wildlife and fish purposes ***could have modified the administration of the national grasslands.*** MUSYA, 36 C.F.R. § 213.1(c) (1960).***However, the regulations only allowed development of multiple uses on the national grasslands if those uses promoted grassland agriculture. 36 C.F.R. § 213.1(d).***

***This limiting factor suggests that the multiple uses, if developed at all, would have had to be secondary to the dominant use of grassland agriculture. More importantly, the regulations were adopted under the authority of Title III, not Title IV.***

More importantly, the regulations were adopted under the authority of Title III, not Title

IV. ***The Forest Service has no authority under Title III to modify the purposes for acquiring the old project lands. In fact, the only authority the Secretary of Agriculture has under Title III with respect to old project lands was that enumerated in Public Law Number 75-210, § 32(d):*** The Secretary may make dedications or grants of these lands for any public purpose, and may grant licenses and easements on the lands under such terms as he deems reasonable. Pub. L. No. 75-210, § 32(d), 50 Stat. 526 (1937). ***Because the Secretary did not have the authority to change the purpose of the national grasslands under Title III of the BJFTA, the 1960 regulations could not have legally modified the purposes of the national grasslands.*** The regulations also cite to the Multiple Use Sustained Yield Act (MUSYA) as authority for their promulgation. However, as discussed in Part IV.D., the MUSYA did not give the Forest Service authority to promulgate the regulations.Id. **As a result, the Secretary has no authority under the BJFTA to administer the national grasslands for purposes other than those for which they were acquired, namely to promote grassland agriculture and to stabilize local grassland-dependent communities. [Emphasis Added]**

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### The Land Utilization Projects and Executive Orders pertaining to the development of the Public Domain Land all acknowledged the existence of valid existing rights of the livestock grazers in the projects. These include: 1) water rights, 2) rights of way, 3) range improvements, 4) grazing value / forage crops and 5). Patented (base or commensurate) land.

The recognized **“grazing rights”**, permits or privileges that we have to utilize the forage of the Northeastern Wyoming Land Utilization and Land Conservation Project lands (National Grasslands) obviously enhances the value of the 4W Ranch Unit and all Ranch Units within the Thunder Basin.

***Inheritance taxes are paid to the Internal Revenue Service on the value of the entire Ranch Unit upon the death of the owner.***

By Congressional intent, federal laws were written setting aside all of the **Land**

**Utilization Projects** in the Western States (20 of Them ) for the specific purpose of

livestock grazing and economic stability of the local ranching community. The **Land Utilization Projects** are by law a separate entity from the National Forest or BLM Grazing districts and by law must be administered as such. In the 1930's large tracts of land were set aside for wildlife. The Thunder Basin was not one of these tracts and is not meant to be a 'Prairie Dog Commons' that destroys the livelihood of the hard working ranchers that lawfully graze the forage on these federally administered lands. They are not 'public domain' lands, the courts have so ruled. **Livestock Grazing** on federal lands is a lawful business and a lawful business is private property. Private Property and Private Property Rights are to be protected by all levels of government.

I will now refer to the historic 4W Ranch Unit as a typical Western ranch that utilizes federal lands as part of its operation.

*It is our position that when J. W. Hammond established the 4W Ranch Unit in 1880, he established the* ***‘Rights’*** *for the use of the surface water and the forage of the territorial lands of Wyoming for which he utilized for the grazing his livestock. He established a* ***"fee interest to the surface of the federal lands"*** *and to use these lands* ***for the lawful business of livestock grazing on federal lands. A lawful business is property that is to be protected by all levels of governments*** *as the court has ruled in Red Canyon Sheep Company v. Ickes*

*What is a Ranch Unit? A Ranch Unit consist of the deeded, i.e. private land owned by the rancher, leased state lands and leased federal lands on which the rancher has an adjudicated ‘Preference Right’ to lease as a federal grazing allotment.*

*Within the boundaries of the 4W Ranch Unit there are 3 Federal Grazing Allotments of which the 4W Ranch Family Limited Partnership are holders of and have the adjudicated* ***“Preference Right”*** *too. The 4W Ranch Unit was never part of any forest preserve in 1924 when Jean’s Grandfather Len Sherwin finalized the purchase of the 4W Ranch Unit. At that time the ‘public domain lands were under the administration of the Department of Interior. Only when Congress passed laws in the very early 1930’s did the submarginal homesteaded lands that were purchased and reacquired by the United States were then put under the administration and management of the U.S. Department of Agriculture for the Land Utilization Projects. The project that the 4W Ranch Unit is part of is the Northeastern Wyoming Land Utilization and Land Conservation Project that was initiated in 1934. This Project is now referred to by the Forest Service as the Thunder Basin National Grasslands.*

*History shows that the now federal administered lands within the 4W Ranch Unit* ***were never a part of any Forest Reserve and 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 then under the laws of the State of Wyoming.*

*The 4W Ranch Unit, as with most of the historic “Ranch Units” within the Thunder Basin along the Cheyenne River have* ***“pre-existing rights”*** *or* ***“valid existing rights”*** *dating back to 1880 , possibly before, that are to be protected by Federal and State Law. These* ***“Property Rights”*** *are to be recognized, protected and not to be tampered with according to the law and the courts. Livestock grazing on the federal lands within the Thunder Basin is essential to our economic viability and is recognized by the U.S. Supreme Court as a “Lawful Business.”*

**Quoting from Karen Budd-Falen; “***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 of the 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.*

*Not only does the Constitution protect* ***"property"*** *itself, but it also* ***protects rights within property*** *such as easements, mineral rights, water rights 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.”***

### The U.S.Constitution and our Wyoming Constitution are written to protect the individuals of their Fundamental Rights. Our right to Life, our right to Liberty, our right to Happiness (Property Rights) are thus protected.

**The United States of America is a Republic.** A Republic is a government of “We The People” in which the power resides in the body of its citizens entitled to vote. Civil Laws are written only by elected legislators.

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

***"The government of the Union, then is, emphatically, and truly, a government of the people….. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.”***

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

**“ *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”. He then cites several court cases backing up this statement.***

The Supreme Court of the United States and the lower Federal courts have **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, 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.**

# The Grazing Preference

*The question to be answered is whether a* ***"grazing preference,"*** *as historically recognized by the United States Forest Service or the 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*** *.* 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)

*However a* ***preference is a type of property right, protected by the Fifth Amendment of the United States Constitution*.**

**T*he preference right on federal lands was not created by the federal government, but rather was acquired by the preference holder because of, among other things, prior use of the federal lands. Once a preference for a grazing permit is acquired by the allotment holder, the BLM, Forest Service and Grazing Associations have an affirmative duty to protect the use of that permit from competing third parties.***

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

[151] In fact, Congress considered grazing management under the Taylor Grazing Act interchangeable with that for national forests. **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.**

**A Grazing Preference recognizes the "existing rights" described in the Taylor Grazing Act 43 U.S.C. §§ 315, and the Federal Lands Planning Management Act 1701 and 1752(h) since they were adjudicated to stockmen with prior grazing rights. The property right is in the preference that gives the preference owner exclusive right to a permit or privilege.** L**ikewise, a permit to graze livestock is not a property right but, the permit is based on an adjudicated preference that is a property right.**

# “Did Congress Intend To Recognize Grazing Rights?”

by Frederick Obermiller

“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. The Federal Lands Planning Management Act (FLPMA) also states that the issuance of a permit or lease does not modify any law, right, title or interest existing prior to the passage of the Act.** 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.** 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, the grazing permit is based on an adjudicated preference to graze, which is a property right.”**

“The federal government long has maintained that the language in Section 3 of the Taylor Grazing Act (TGA) of June 28, 1934 related to the nature of grazing privileges makes it clear that those privileges are merely revocable sufferances or licenses, not property rights or interest.“

“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 Taylor Grazing Act before it was passed by Congress and signed into law by President Roosevelt. His new language, subsequently adopted and is still contained in Section 3 of the Taylor Grazing Act 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.”***

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.

“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 no provisions of the Taylor Grazing Act would “...create any right, title, interest, or estate in or to the lands.” 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.”)

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 to have been “protected against tortious invasion” and to have been* ***“founded on a statute which confers a privilege.” 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.***

### THE RIGHT VERSUS THE PERMIT

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, or before, 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.

**Under the Taylor Grazing Act, as under forest regulations, *the permit acknowledged the pre-existing right.***. ***The granting of a permit did not create any rights. It acknowledged pre-existing rights and set their value.***

One important Supreme Court Case confirms that the State of Wyoming and Weston County also have **valid existing rights** to manage destructive wildlife such as the prairie dog. That case being Sierra Club v. Hodel, (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 also applies to all valid existing rights that a particular county possesses. Excerpts from Sierra Club v. Hodel follow:

….Here, the 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.**. **The accommodation reached in Sec. 603(c) for grandfathered uses reflects the common law of easements and profits and do not eviscerate the County's dominant estate.**

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 Land Utilization Projects and Executive Orders pertaining to the development of the **Public Domain Land** all acknowledged the existence of the **valid 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.

Quoting from **43 U.S. Code 1732 (FLPMA)** - Management of use, occupancy, and development of Public Lands.

(a) “Multiple use and sustained yield requirements applicable; **exception** , **except**

### that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.”

**Also, t**he U.S. Supreme Court declared in United States v. New Mexico, **(federal lands must be managed for the purposes for which they were originally reserved or acquired and any subsequently designated uses are secondary)**.

Furthermore the Court stated: *"The House Report accompanying the 1960 legislation, indicates that recreation, wildlife and fish purposes are* ***"to be supplemental to, but***

***not in derogation of, the purposes for which the national grasslands were established"***

Simply put and Quoting from **43 U.S. Code 1732, (FLPMA) exception** and The U.S. Supreme Court that declared in United States v. New Mexico, (1978) f**ederal lands must be managed for the purposes for which they were originally reserved or acquired and any subsequently designated uses are secondary**.

There can be no doubt about the precise and clear language in both the Federal Law and that of the U.S. Supreme Court Decision just noted. Therefore, the Forest Service shall follow and obey these two laws without exception. Livestock grazing of the forage within our grazing allotments on these federal lands within the Thunder Basin is the primary use of the surface of these lands and the raising of prairie dogs and other uses are secondary as long as they do not interfere with the primary prescribed purpose.

The Courts are very specific as to the status of **“reacquired”** lands for Land Utilization Projects by the federal government and the **withdrawal** of “Public Domain” lands for Land Utilization Projects as attested to in Rawson v. U.S. 1956.

### Quote from Rawson v. U.S. “….Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like …”

The 4W Ranch believes that the construction of this language ; “**they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like”** that **“and the like”** would include the prescribed use of lands such as the Thunder Basin Project LU - WY - 1 of 1934.

### FEDERAL LAW REQUIRES THE FOREST SERVICE TO ADMINISTER THE NATIONAL GRASSLANDS FOR THE PURPOSES FOR WHICH THEY WERE ACQUIRED

*“When the federal government acquires land for a particular public purpose, only Congress has the power to change that purpose or dispose of the acquired land. As a result,* ***federal agencies must manage and administer acquired lands according to the purpose for which the federal government acquired them,*** *unless Congress has authorized otherwise.* ***This principle prohibits Forest Service management practices that deviate from the original purposes for acquiring the national grasslands.”***

*“Over the years,* ***Congress has repeatedly recognized the unique legal status of the national grasslands*** *and excluded them from laws applicable to other National Forest System Lands.*

*“16 U.S.C. § 1609(a). The National Forest Management Act states that the "National Forest System shall include.., the national grasslands and land utilization projects* ***administered under title III of the Bankhead-Jones Farm Tenant Act.”*** *This language* ***directly contradicts*** *the Forest Service's claim that it can administer the national grasslands under a panoply of* ***laws enacted to govern the national forests.****”*

*“Although the Forest Service may espouse eloquent and lofty reasons for its management plans, the stark reality is that with the implementation of the 2001 Thunder Basin National Grasslands Land and Resource Management Plan (LRMP),* ***this plan is a clear violation of federal law.*** *The Forest Service* ***must manage*** *the Thunder Basin National Grassland for the purposes it was* ***originally acquired. The law simply allows no other alternative.”***

I believe that the above documentation speaks for itself. There is no doubt that the U.S. Forest Service has mis-managed the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1 lands, now called the Thunder Basin National Grasslands in violation of the Bankhead - Jones Farm Tenant Act, and other acts of Congress relating to livestock grazing on the federal administered lands in the Thunder Basin as documented above. This mismanagement is evident by allowing the Black Tailed Prairie Dog, a recognized agricultural pest in Wyoming, to overgraze portions of the Thunder Basin to the point where the Prairie Dog has completely denuded the soil of any vegetation on tens of thousands of acres of land, opening up the ground to wind and soil erosion and creating large areas of zero production of grazing forage for livestock. 2017 visitations by a Congressional Member of Congress and her staff, high level Forest Service personnel, State of Wyoming folks and County Commissioners, all support the fact that there is a gross mis-management by the Douglas Ranger District of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1 of 1934, whose primary purpose is for “grassland agriculture”, which is to provide adequate forage for livestock grazing and the economic stability of the local ranches.

That was the purpose of the acquisition laws of the 1930’s and Presidential Executive Orders including Executive Order 7616 dated May 13, 1937 and to this date have not been changed by the United States Congress or Presidential Executive Order.

As a matter of fact, many, if not all of the “Public Domain Lands” along with their “Valid Existing Rights” that were “withdrawn” by Executive Order 7616, dated May 13, 1937 qualify as “Old Project Lands” within the 4W Ranch Unit as discussed above. Also, many of the “Reacquired Lands” that are on file at the Douglas District Ranger Office that became part of the Thunder Basin Project (Coterminous) LU-WY-38-1 are “old project lands” and are to be administered accordingly.

Therefore, by Congressional Acts, valid existing rights and court decisions, each “Ranch Unit” within the Thunder Basin as a separate entity, enjoys the **“Usufructuary Right”** to graze its livestock on the federal managed lands within the allotments of that individual “Ranch Unit” and to utilize the available forage in a beneficial matter without

interference from government agents or third parties, such as wildlife, as long as conditions of their federal grazing agreement are being followed.

[Usufructuary Right 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. Also, 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]

In planning for the future of the Thunder Basin, the U.S. Secretary of Agriculture must instruct the Chief of the Forest Service to follow the original purposes of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1 of 1934 and to cease the current management practices initiated by and followed by the Forest Service personnel at the Douglas District Ranger office.

### Conclusion:

This position paper leaves many unanswered questions.

Why do the agencies, both federal and state, ignore the entire laws as written by the legislators and only ‘cherry pick’ the portions out of statues they like and that serve their agenda and purpose?

Why do the agencies, both federal and state, ignore the rule of law as interpreted by the courts? Rules and regulations do not always follow the intent of the legislative body that wrote the statutes and thus the rules and regulations need to be challenged at all levels of government. Rules and regulations, promulgated by the secretaries and their agencies are ‘guidance documents’ only and if they do not follow the law they are de facto in nature. It is my contention that rules and regulations are written for the guidance of wise men and the obedience of fools. I do not pretend to be a ‘fool’. I am a ‘freeman’ living in a ‘free society’, and that my ‘property and property rights’ are to be protected by all levels of government officials who have taken an ‘Oath of Office’ to protect my fundamental and God Given Rights.

Another area of concern is our 10 year grazing permits that are issued to our grazing associations. Do the association board of directors willfully or unwittifully sign away our ‘valid existing rights’, our ‘property rights’ when the board agrees to the language within the 10 year grazing permit issued by the Forest Service? If so, then the grazing association is liable to it members for not protecting its members ‘valid existing rights’ within each individual ranch unit.

The Certificate of Incorporation of the Thunder Basin Grazing Association by the State of Wyoming, dated 26 May 1937 states in paragraph 5; “ The property rights of each member in the Association shall be equal.” This is a very important statement. First the date of the document, 26 May 1937, which is prior to the signing of the Bankhead -

Jones Farm Tenant Act. Second, the Certificate of Incorporation applies to the original Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1 of 1934 that recognizes all ‘Valid Existing Rights’ of each ‘Ranch Unit’ in the Grazing Association at the time of Incorporation. Third, the certificate of Incorporation acknowledges that each member of the association do have property rights. The Thunder Basin Grazing Association Board of Directors are thus obligated to to protect its members private property and property rights. Remember the Supreme Court has ruled that livestock grazing on federal lands is a ‘lawful business’ and that a ‘lawful business’ is ‘property’ that is to be protected by levels of government. Is it possible by its charter that the Thunder Basin Grazing Association is an arm of government of the State of Wyoming?

Furthermore, the Thunder Basin Grazing Association By-Laws, as amended in 2012, Article IX - Distribution of Grazing Privileges, Section 1. recognizes ‘Preference’, which is a recognized ‘Property Right’ stating;

*“Preference in the allotting of grazing privileges to members and other qualified applicants by the Association shall be based upon the minimum base property requirements and dependency.”*

Finally as the court ruled In McNeil v. Seaton, on June 16, 1960, the Circuit Court of Appeals for the District of Columbia held that in the Taylor Grazing Act, the stockman **definitely acquired rights** whether they be **called rights, privileges or bare licenses, or by whatever name,** while they exist they are something of value **which have their source in an enactment of Congress.**

Therefore, even by being a member of the Thunder Basin Grazing Association, members did not relinguish their property or property rights to the Association. They joined the grazing association that is chartered to protect their property and property rights.

I trust that this information will enlighten all Federal Land Ranchers of their rights that are being trod upon daily or completely disregarded by the Federal Land Agencies.

Respectfully submitted for your consideration,



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