THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENTAL REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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OVERSIGHT HEARING ON: THREATS, INTIMIDATION AND BULLYING BY FEDERAL LAND MANAGING AGENCIES

Tuesday, October 29, 2013
U.S. House of Representatives
Subcommittee on Public Lands and Environmental Regulation
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Subcommittee] presiding.

Present: Representatives Bishop, Young, McClintock, Lummis, Tipton, Labrador, Amodei, Daines, LaMalfa, Grijalva, Horsford, Garcia, and Huffman.

Mr. BISHOP. The committee will come to order. The Chairman notes the presence of a quorum. And so, the Subcommittee on Public Lands and Environmental Regulation is meeting today to hear testimony on threats, intimidation, and bullying by Federal land managing agencies.

Under the Committee Rules, the opening statements are limited to the Chairman and the Ranking Member of the Subcommittee. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if they are submitted to the clerk by the close of business today.

[No response.]

Mr. BISHOP. And hearing no objections, that is so ordered.

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. BISHOP. Let me begin, if I could, by saying how happy I am to have the witnesses here who will be speaking to us. Today we are going to hear about a number of troubling cases in which Federal land managing agencies have employed abusive tactics to extort rural families into giving up property rights, or to bully farmers and ranchers into making concessions to which the Federal agency had no legal right.

It is not an easy thing for someone to stand up to the government. In fact, in most of the world, that is impossible. But America is different, and it should be different. We should not be afraid to take on the Federal Government when it trespasses on our rights. And the witnesses before us today are doing just that. I am grateful for their courage. In many respects, the word "heroes" or "great Americans" is too overused; but you, indeed, are.

The Supreme Court has called on Congress to fashion a legal remedy, a cause of action, through which the victims of abuse can have the opportunity to seek redress in the courts. This hearing, I hope, is going to be the first step in getting Congress to protect

and strengthen civil rights—and property rights are civil rights—of people whose property the government wants to take without compensation.

Legal scholars tell us that property rights are actually a bundle, and that bundle includes water rights and grazing rights and mineral rights and access to recreation rights. And with one-third of America being owned by the Federal Government, and it being predominantly in the West, it is no coincidence that most of the problems that we have in dealing with those rights and the Federal Government are situated in States found in the West, the so-called "public land States."

I realize that there are going to be a lot of people that are going to try to make this into a conservative-versus-liberal framework. But that is simply not the case. If you read the two justices who put an opinion on one of these cases before us, you will find it is the so-called "justices from the left," who are most emphatic about the rights being abused by the Federal Government.

If I could quote Justice Ginsberg from a case that involved Mr. Robbins, who will testify shortly, "The BLM officials mounted a 7-year campaign of relentless harassment and intimidation to force Robbins to give in. They refused to maintain the road providing access to the ranch, trespassed on Robbins' property, brought unfounded criminal charges against him, canceled his special recreation use permits and grazing privileges, interfered with his business operations, and invaded the privacy of his ranch guests on cattle drives."

She went on to write, "The case presents this question: Does the Fifth Amendment provide an effective check on Federal officers who abuse their regulatory powers by harassing and punishing property owners who refuse to surrender their property to the United States without fair compensation? The answer should be a resounding Yes."

Unfortunately, the answer in reality is no, unless we in Congress do something to rectify the situation.

I want to also admit that even though this is happening with this particular administration, it is not limited to this administration. These same type of actions done by land managers in the Forest Service, the BLM, Fish and Wildlife, those same actions took place not only today, in this administration, but they took place under both the Bush administrations, the Clinton administration, and the Reagan administration. Unfortunately, it is a pattern of habit, and a pattern of activity that is far too common and must stop in some way.

Some will say this is simply a carry-on, or a second part to the hearing we had over the barricades being put up during the shutdown. This is more than just Barricade Part II. In fact, it is the reverse. Putting up the barricades in the shut-down was an example of the attitude that has always been used, especially in the West, in making public land decisions that have harmed individuals. So that is what we are trying to go for, the longer picture in some way.

There are three factors that have always been used that are misconceptions from the very beginning of public land management by the Federal Government.

One is some people truly think that only Washington has the common—the overall view to make large decisions for the entire Nation. That is wrong.

Second is, if there is ever a conflict between Washington and local government, Washington should automatically have jurisdiction and sway. That is wrong.

And the third is this constant idea that the West has to be protected from itself by the Federal Government. That is incredibly wrong. Sometimes I think our constituents are justified in viewing the Federal Government as something like a hotel thief who walks down the hallway, checking every doorknob, hoping to find someone or find one of them that is unlocked.

I am eager to hear this panel of witnesses today. I hope Members on both sides of the aisle will listen to their accounts of what happened to them, a consistent pattern of what is happening to them, and that we can work together to fashion a remedy in a bipartisan way of these abuses.

With that, I will yield to the Ranking Member for any opening statement he may have.

STATEMENT OF THE HON. RAÚL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Chairman Bishop, and thank you for holding this hearing, and for the subtlety of its title.

First, I would like to start by saying that all Federal employees, regardless of rank and position, should uphold the highest standard of professionalism, and to provide the best possible service to the public. And I think that we can all agree that the vast majority do so. Unfortunately, like any company, organization, or government, there will be instances where employees do not live up to that standard, and they must be held accountable.

Today's hearing will be an opportunity to hear from individuals who have had grievances with the Federal land managers in the past. Many of these grievances have been dealt with through litigation. This is a great testament to our American judicial system, which allows these matters to be dealt with accordingly. And I look forward to hearing from our witnesses on the progress and outcome of the litigation.

But as we hear from today's witnesses, I think it is important to remember that these incidents should not be seen as a reflection of all public land management agencies or their employees. Today's witnesses will describe disputes they have had with BLM and the Forest Service over grazing permits and water rights, among other issues. But keep in mind, BLM administers 18,000 grazing permits and leases 155 million acres. And the Forest Service administers nearly 8,000 grazing permits on roughly 90 million acres. The vast majority of these are managed without any complaints.

It is the responsibility of Federal land managing agencies and their employees to protect the land that is property of the American people. With such a broad directive, the opinions on how to do this are endless. In some of these cases, disagreement on policy is perceived as overreach by the authority, and land managers who, under law, carry out these policies are considered threatening and bullying. It is important to see these examples for what they are,

a matter of difference in policy opinion. And we must not lose sight of that.

And I want to say thank you, to the witnesses. With that, I yield the balance of my time to Mr. Horsford, who would like to introduce a witness.

Sir.

Mr. HORSFORD. With your permission, Mr. Chairman, thank you to the Ranking Member, Mr. Grijalva, for yielding time, and for you, Mr. Chairman, for having this morning's hearing.

I want to welcome Wayne Hage, Jr., who is here today from Tonopah, which is a part of my district in Nevada. Mr. Hage and his family have been actively engaged for decades in a quintessential part of life in rural Nevada: ranching. And we really appreciate him traveling all this way to share his story.

I wanted to let him know personally, unfortunately, I am going to have to leave this hearing. I also serve on the Oversight and Government Reform and the Homeland Security Committees, and they are all meeting this morning, and there are votes in those committees, unfortunately. But I want to thank you, sir, for traveling all this way to share your story. And I have read your testimony, and I have asked this committee and our staff to work with you on the issues that you raise. And I look forward to following up with you, as I understand these are issues which have been—your family has been facing in the courts for some 23 years now. So it clearly is not just this administration, but a systemic problem that needs to be addressed.

And again, I thank you very much for coming here, and for the legacy that you and your family make to the great State of Nevada. So thank you very much.

Mr. HAGE. Thank you, sir.

Mr. BISHOP. Thank you. I appreciate that introduction.

This is the point where I now ask the panel to come to the table, but you are already there. So let me just introduce who will be our panel, the single panel of witnesses.

Starting on my left is Karen Budd-Falen from Cheyenne, Wyoming; Frank Robbins, from Thermopolis, Wyoming; Tim Lowry, from Jordan Valley, Oregon; Brenda Richards, from Murphy, Idaho; and then Lorenzo Valdez from Fairview, New Mexico; and, finally, Wayne Hage, Jr., from Tonopah, Nevada. We welcome all of you.

All our witnesses have had experience dealing with the Federal land managers, which I think will establish a pattern that has, unfortunately, been all too common.

For the witnesses, your written testimony is already in the record. Your oral testimony, for those who have not been here before, is limited to 5 minutes. You will see the clock in front of you. When the light is green on that clock, you are free to go, and your time is ticking down. When it goes yellow, you have 1 minute to finish up, and I would appreciate it if you would actually finish up before it hits the red button, which means your time has expired.

So, with that, Ms. Budd-Falen, welcome back to this committee. It is good to see you again. We are going to start with you, and then we will just work down the table.

STATEMENT OF KAREN BUDD-FALEN, CHEYENNE, WYOMING

Ms. BUDD-FALEN. Thank you, Chairman Bishop and members of the committee.

Over 200 years ago, America's founding fathers rejected the notion that all power in this Nation should come from a king, and that the citizens were servants, or subjects of the king's rule. Rather, this Nation was founded on the principle that each of the three branches of government was to be a check on the other.

Under this carefully crafted and carefully compromised system, this body of elected legislators is to represent the citizens who send them to these hallowed halls. The executive branch is to implement the laws that you pass, and the individual citizen is protected from the abuse of the majority, as well as abuse from other individuals by the courts.

The Bill of Rights was not written and adopted to give the Federal Government power. Rather, the Bill of Rights is a document that guarantees that the inalienable rights of the citizens are protected from the abuse of the Federal Government's power. But this system, where power is to be based in the people, is broken. And so, the checks and balances so carefully and skillfully compromised in the Constitution are broken.

What we have now is a system that bars citizens from litigating against individual Federal employees in court for abuses of power. And what we really turned into is that all-powerful, unelected, and unaccountable bureaucracy has set up a dictatorship over some of the private citizens who actually employ them. This bureaucratic power is wielded simply by some bureaucrats who use the power of Federal regulations and the "color of their office" to take private property and private property rights. And because private citizens are barred from bringing their claims in the courts, we are powerless to stop this.

Now, I am not here to tell you that every Federal bureaucrat—or actually, even a majority of the Federal bureaucrats are tyrants who seek to use the power of their offices to take private property or to eliminate free-market enterprise from rural economies who depend on ranching small businesses. Nor am I here to tell you that the abuses of bureaucratic power are assigned or reserved to a particular political party. But what I am here to tell you today is that, in some cases, the Federal bureaucracy is so big and so far removed from its elected leaders in Washington, DC on both sides of the political aisle, that there are cases of abuse.

Today, if the American citizen believes that an employee of the bureaucracy is abusing his regulatory power given to him simply because of his employment, that citizen has no redress in the courts. And in the Frank Robbins case, although the Wyoming Federal District Court agreed that Frank Robbins should be able to bring his claims in court, and the Tenth Circuit Court of Appeals, in a unanimous panel that refused an en banc review agreed that Mr. Robbins should be able to bring his claims in the Federal court, unfortunately, the Supreme Court, based on a split decision, ruled that only Congress could create a cause of action to allow individual citizens to sue individual employees for abuses of their office.

Justice Ruth Bader Ginsberg, writing for the dissent in that case, offered that there are cases in which bureaucrats go too far, and use the power of their office to harass and take private property rights. But, in the end, the court's majority held that it was up to Congress to create a path to court. And that is why we are here today.

Members of this committee, the ownership and use of private property is the economic backbone of this Nation. The citizens here before you today are the backbones of their rural communities, and these small businesses provide jobs, wages, taxes, and spend their earning to keep their economic communities alive. I am the fifth generation rancher on a family owned ranch in Wyoming. And my ranch is just as important to my town of 570 people as are car-makers in Detroit. We are not asking for a bail-out; we are asking for a path into court.

American citizens have access to the courts when State or local bureaucrats take their constitutionally guaranteed or civil rights, and Federal bureaucrats should be subjected to the same rules. Thank you.

[The prepared statement of Ms. Budd-Falen follows:]

PREPARED STATEMENT OF KAREN BUDD-FALEN, CHEYENNE, WYOMING

My name is Karen Budd Falen. I am attorney and a fifth generation rancher from a family owned ranch, west of Big Piney, Wyoming. I grew up in the same house as my father and we still own the ranch, surviving generations of bad winters, drought, tough cattle markets, devastating wildfires and now wolves. My father, like everyone testifying today, is tough, independent, smart and the proud owner of a small business that is fueling the economy in our town and feeding the Nation.

And while my father, as well as the other ranchers and private property owners, can survive droughts, fires, and low market prices, we cannot survive the heavy hand of the Federal bureaucracy—particularly those within the bureaucracy who use the power of the Federal Government to violate our Constitutionally guaranteed rights. While some may claim that we are here to ask Congress to eliminate the Federal bureaucracy or the Federal agencies, we are not. What we are asking for you to do is open the court house door to individuals who believe that their civil and Constitutional rights are being violated by individual Federal employees, using the power of their offices. While I would absolutely agree that most Federal employees are hard working individuals dedicated to trying to do their jobs to the best of their abilities, that is not always the case. But unlike the case with State and local governmental employees who can be sued under the Civil Rights Act when they use the power of their governmental offices to deprive an individual of his Constitutionally guaranteed rights, there is not a similar option against federally employed individuals. All we want is the chance to go to court to present our facts; Articles I, II, and III of the U.S. Constitution set forth three branches of government and every American citizen should be allowed to access all three branches to redress their grievances, particularly those grievances alleging an abuse of power.

I. BACKGROUND OF *BIVENS* AS APPLIED TO THE PROTECTION OF PRIVATE PROPERTY

In 2007, the United States Supreme Court reversed decisions by the Wyoming Federal District Court and Tenth Circuit Court of Appeals by holding that a private property owner could not avail himself of a *Bivens* common law cause of action to protect his private property rights from "taking" by intimidation and harassment from Federal officials. Neither the Justices voting to affirm nor reverse the lower courts' decisions seemed to question that there had been a degree of harassment and intimidation against private property owner Frank Robbins because Mr. Robbins would not surrender an easement across his private property to the Federal Government, without due process and just compensation. However, the Justices writing for the Court's majority, as well as the two concurring Justices, did not believe that the Court should expand its 40-plus year old precedent in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), to the Fifth Amendment property protec-

tions. However, the Justices for the Supreme Court suggested that the U.S. Congress could create a *Bivens* "cause of action" to protect private property and property rights from actions outside the mandates of the Fifth Amendment. This testimony urges Congress' consideration for adopting that type of protection for America's property owners, and treating the Fifth Amendment private property protections with the "comparative importance of [other Constitutionally guaranteed] classes of legally protected interests." *Wilkie v. Robbins*, 551 U.S. 537, 577 (2007).

At its simplest, the Supreme Court in *Bivens* allowed a type of Civil Rights Act "Section 1983" claim to lie against Federal officials. The Civil Rights Act of 1871 prohibits governmental employees, "acting under the color of state law," from proximately causing the depravation of certain Constitutionally guaranteed rights. The Civil Rights Act however only applies to State officials. In *Bivens*, a private individual (Petitioner) complained that agents of the Federal Bureau of Narcotics, acting under claim of Federal authority, entered his apartment and arrested him for alleged narcotics violations. The agents manacled Petitioner in front of his wife and children, threatened to arrest the entire family, and searched the apartment. Petitioner also alleged that the arrest was conducted with unreasonable force and without probable cause. Petitioner sought monetary damages against the Federal officials. The issue before the Supreme Court was whether "a Federal agent acting under color of his authority" gives rise to a "common law" cause of action for damages based upon his unconstitutional conduct. In *Bivens*, the Supreme Court agreed that it would recognize this type of common law cause of action for this unreasonable action in violation of the U.S. Constitution's Fourth Amendment protection of an individual from an unreasonable search and seizure. As stated by the Court, it was damages or nothing against the Federal officials causing this harassment. After *Bivens*, the Supreme Court recognized this same cause of action to protect against harassment and intimidation when dealing with Fourteenth Amendment protection of the "due process" of law and the Eighth Amendment's protection against cruel and unusual punishment.

In its opinion, the Supreme Court held that Robbins had to pass a two-part test for his case to continue. First, the Justices considered whether they believed that Robbins had any alternative remedies for his harassment. Although the Court seemed to recognize that Robbins was suffering "death by a thousand cuts" because of the 6-year span and dozens of administrative charges filed against him, false criminal complaints against which Robbins had to defend, trespass on his private land by Federal officials and other forms of harassment, the Court's majority opinion believed that Robbins should have administratively challenged or otherwise fought these dozens of actions individually. While the majority opinion seemed to recognize that Congress had never created a "step by step" remedial scheme to remedy this array of harm, the majority believe that each alleged form of harassment had to be considered individually, despite the recognition that:

> It is one thing to be threatened with the loss of grazing rights, or to be prosecuted, or to have one's lodge broken into, but something else to be subjected to this in combination over a period of 6 years by a series of public officials bent on making life difficult. Agency appeals, lawsuits and criminal defense take money, and endless battling depleted the spirit along with the purse. The whole here is greater than the sum of its parts.

551 U.S. at 555.

The next step, which the Court's majority also found against Robbins, was whether there 'special circumstances counseling hesitation" against allowing Robbins to enforce a *Bivens* cause of action. With regard to this element, the majority was concerned that allowing a common law cause of action to protect private property owners from Federal officials' harassment and intimidation would "open the floodgates of ligation" against Federal officials. The majority also determined that "legitimate zeal of [Federal officials] on the public's behalf in situations where hard bargaining is to be expected," was not harassment.

Despite these findings, the Court's Justices recognized that Congress could correct this deficiency. In this regard, the majority opinion, written by Justice Souter, with Justice Roberts and Justice Kennedy, stated:

> We think accordingly that any damages remedy for actions by Government employees who push too hard for the Government's benefit may come better, if at all, through legislation. "Congress is in a far better position than a court to evaluate the impact of a new species of litigation" against those who act on the public's behalf. And Congress can tailor the remedy to the problem perceived, thus lessening the risk of a rising tide of suits threatening legitimate initiative on the part of Government's employees.

551 U.S. at 562. Citations omitted.

The concurring opinion of Justices Thomas and Scalia opined that a *Bivens* common law cause of action should not be extended in any circumstances "by the Court." 551 U.S. at 568.

Finally, the dissenting opinion, written by Justice Ginsberg with Justice Stevens would have extended a *Bivens* common law cause of action to Robbins. They perceived the question in the Robbins case to be "Does the Fifth Amendment provide an effective check on Federal officers who abuse their regulatory powers by harassing and punishing property owners who refuse to surrender their property to the United States without fair compensation? The answer should be a resounding 'Yes.'" 551 U.S. at 569.

In addition to placing the creation of a cause of action in the hands of Congress, the Court's dissenting opinion also suggested a similar statute containing enough checks to bar every complaint of wrong from reaching the courts. As stated by Justice Ginsberg, "Sexual harassment jurisprudence is a helpful guide. Title VII, the Court has held, does not provide a remedy for every epithet or offensive remark." After citing several cases limiting the situations in which a suit for sexual harassment could be brought, she concluded:

> Adopting a similar standard to Fifth Amendment retaliation claims would "lesse[n] the risk of raising a tide of suits threatening initiative on the part of Government's employees." Discrete episodes of hard bargaining that might be viewed as oppressive would not entitle a litigant to relief. But where a plaintiff could prove a pattern of severe and pervasive harassment in duration and degree well beyond the ordinary rough-and-tumble one expects in strenuous negotiations, a Bivens suits would provide a remedy. Robbins would have no trouble meeting that standard.

551 U.S. at 582. Internal citations omitted.

Based upon this Supreme Court opinion, other private property owners who believe that they are being harassed and intimidated because they refuse to turn over their private property outside the mandates of the Fifth Amendment have no forum in which they can vindicate their claims. The Robbins case now acts as a complete bar to the judicial branch of the government, regardless of the extreme nature of the Federal officials' actions. That is not to say that every action or decision by a Federal employee should give rise to a judicial cause of action, but there are cases where the harassment and intimidation is so severe that, in the words of the U.S. Supreme Court, "it is damages, or nothing." However, without the intervention of Congress, now it is "nothing."

II. TITLE VII OF THE CIVIL RIGHTS ACT

As stated above, one of the stark inequities in current statutes is that while State and local governmental employees can be held personally liable for the violation of an individual's Constitutional or civil rights, Federal employees acting with the same intention and animus cannot. This contrast is based upon Congress' adoption of the Civil Rights Act, which does not extend its protections to individuals dealing with the Federal Government. At its core, the Civil Rights Act of 1964 "outlawed discrimination based on race, color, religion, sex, or national origin." Although originally the Act focused on protection of the rights of black males, the bill was amended to protect the civil rights of all individuals in the United States from abuses of those State and local governmental employees "acting under color of law."

Title VII of the Civil Rights Act states:

> It is unlawful to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of an individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000(e)–2(a)(1). The regulations implementing this statute provide:

> Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11(a).

"For sexual harassment to be actionable, it must be sufficiently severe or persuasive to alter the conditions of the victim's employment and create an abusive working environment." *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986), citation and quotation omitted. "A hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice." *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101, 115–117 (2002); 42 U.S.C. § 2000e–5(e)(1), quotations omitted. "In determining whether an actionable hostile work environment claim exists, we look to all the circumstances, including 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" 536 U.S. at 115–117 (2002). Citations and quotations omitted.

Using this type of analysis, I believe that a statute could be enacted to protect private property owners from intimidation and harassment from Federal employees acting under color of law. Such statutory language could include the following:

> *The attempted taking of private property or private property rights by means of governmental employee harassment or intimidation, under color of law, is hereby declared to be a violation of Civil Rights Act. Harassment or intimidation against the owners of private property or private property rights constitutes such violation when (1) a property owner's relinquishment of his property or property rights is made explicitly or implicitly a term or condition of receipt of a permit or license from a governmental agency, (2) submission to or rejection of such conduct by a property owner is used as the basis for the grant of or conditions included in a permit or license, or (3) the conduct of the governmental employee has the purpose or effect of unreasonably interfering with an individual's private property or private property rights. An attempted taking of private property or property rights under this section can be composed of a series of separate acts that collectively constitutes a significant deprivation of the ownership or use of private property or property rights. In determining whether the activities of a governmental employee are actionable under this section, consideration can be given to the frequency of the discriminatory conduct, harassment or intimidation, its severity, and whether such governmental action interferes with the ownership, use or legitimate investment backed expectations of the property owner.*

III. THE WITNESSES TODAY ARE NOT THE END OF THE STORY

Today, you are going to hear compelling and heartfelt stories of individual families and businesses who are only asking to be able to walk in the doors of the Federal courts to plead their cases. But these are not the only stories in existence. To prepare for this hearing, my office talked to over a dozen other individuals and their representatives who are also willing to tell you their stories and ask your help in getting to the courts for justice. The Constitution created three equal branches of government to provide a system of checks and balances over the actions of each other. Yet today, there is no adequate check over the actions of the Federal governmental individuals who abuse their power against the American property owner. We are not asking to win every case, but simply to be able to make our case. We respectfully request that Congress make the same avenue available to us as it does to other Americans.

Mr. BISHOP. Thank you.

Mr. Robbins. I give you 5 minutes now to go through your story.

STATEMENT OF FRANK ROBBINS, THERMOPOLIS, WYOMING

Mr. ROBBINS. I appreciate the opportunity to be here this morning. I bought a ranch in 1994. And between the time of the signing of the contract and the closing of the ranch, the BLM acquired from the previous owner an easement, or a right of way, through a strategic portion of my ranch. I was unaware of that. After closing, they did not record their easement. The government failed to do that.

A week after our closing, I got a call from Joe Vessels at the BLM office, stating that a mistake had been made and he needed to send me some papers to sign, and so forth. I said, "What is it?" And the more questions I asked, the more irritated he got. But the end result was I said, "I will be glad to look at your easement when I get to Wyoming." And he said, "Well, if you don't mind, I am going to go ahead and survey the right-of-way on this easement." I said, "No, no, I don't want you to do any surveying until we decide whether we are going to allow this easement to take place." And he continued to insist that he was going to. And I told him no, absolutely not. And he actually made me very irritated.

So, anyway, when I returned to Wyoming, I had a meeting with him. As I walked into the office, he was coming down the hall and he smiled and his buddies were there, and he said, "Oh, yes, Mr. Robbins, I went ahead and surveyed that right-of-way in," and walked off.

We ended up, before that day was out, at a meeting about this easement, and he explained it to me this way. And I will repeat it to you the best I can, and you decide if you would like to take this deal or not. He wanted a easement across 8 miles of my private property for a half-mile across public lands. He wanted to restrict my access to my personal use. He wanted his access to be public. And he wanted me to pay for this easement.

And I said, "Based on what you are describing to me, I will turn this down." And I said, "I will be glad to negotiate with you." He said, "No, the Federal Government doesn't negotiate." I said, "OK. It is what it is."

And on July 16, 1995 that right-of-way that I had into my property was taken away. And then, on September 1, 1995—I am kind of giving you a 5-minute synopsis of my situation—Gene Leone, which was a part of the RUP, he decided to take it away—and this is his statement made to Ed Parodi, who was a BLM employee who testified on my behalf—he said, "I think I finally got a way to get his permits and get him out of business." And on October 5, 1995, the SRUP was removed, which my guest ranch business depended on.

In May 1996, Parodi came to my house—and this is sworn testimony—and he said that, "They are out to get you from day one," that it was a shame, the petitioner's treatment of Robbins, that he was sick and tired of doing the dirty work of the petitioners, and that he had had enough of it, he must find a way out if he could. Parodi later testified, "I didn't think I could do the job any longer. It is one thing to go after someone that is willfully busting the regulations and going out of their way to get something from the government. I only saw Mr. Robbins as a man standing up for the rights of his property."

I think that you are crossing a very gray area in the area of trespass. I made these comments when they trespassed me on my own private property. I said, "Nowhere in the AMP am I required to give up property rights."

There is—I see that I am running out of time, and I am not even going to get close to covering this. I would like to make a statement of what a judge said, and I think this kind of gives you—or should

give you—an idea of what the attitude of these people was. It is toward the end, here.

The district court dismissed the case as moot, because they did provide the information to me the day of court. But he said, "I did not condone the Barnes conduct"—Darrell Barnes was the head of the BLM—"This result should not be interpreted as a condoning of the BLM's conduct in this matter. Arrogance of authority and indifference to citizens' legitimate interests, even the appearance of such vices, should be avoided by public servants. The BLM's conduct in this matter is troubling to this court, and will not soon be forgotten. A matter of this nature that involves this agency—should not appear on my desk again."

One year later I was back in front of the same judge for the same things, and eventually they did settle and pay me in that particular case.

[The prepared statement of Mr. Robbins follows:]

PREPARED STATEMENT OF FRANK ROBBINS, THERMOPOLIS, WYOMING

My name is Frank Robbins and I am the owner of a ranch that includes private land and Bureau of Land Management ("BLM") and Forest Service livestock grazing permits and preference rights, known as the High Island Ranch, in Hot Springs County, Wyoming. I purchased the High Island Ranch from George Nelson on May 31, 1994 as a cattle ranching and a guest ranch operation. Although I had owned another ranch in Montana prior to purchasing the High Island Ranch, my goal was to move my wife and two children to Thermopolis and make that my home—then pass the ranch on to my children and grandchildren.

Just prior to the sale of the ranch, Mr. Nelson granted a non-exclusive easement to the BLM across the High Island Ranch, on a private road known as the Rock Creek Road. The BLM failed to properly record this easement so when I purchased the ranch, I was unaware of the BLM easement and when I recorded my title to the ranch, the BLM easement was extinguished.

Upon realizing the easement Mr. Nelson had granted to the BLM was no longer valid, BLM employee Assistant Area Manager Joe Vessels contacted me to demand that I sign a new easement across my private lands to the BLM, and to warn me that if I did not give the easement to the BLM, the BLM would deny me access to my private property. Vessels stated to me that there would be no negotiation regarding this easement. Because the BLM would not negotiate to pay compensation or provide due process for the taking of my private property, I declined to just give the BLM one of my property rights. In response to my decision, Vessels told me that the BLM would get the easement "one way or another."

From that point on, the BLM began engaging in a pattern of intentionally abusive conduct to coerce me to grant my property rights to BLM and to punish me for not immediately capitulating to the BLM's demands. For example:

Ed Parodi, a BLM employee, was sent to my home to explain what the BLM would do to me if I did not acquiesce to the BLM demands. At that meeting, Parodi stated, "if you keep butting heads, things are going to get pretty ugly" and "[t]hey [the BLM] have more resources, more time and money than you." "If you keep butting heads with them, it will come to war." Parodi also stated that the BLM was out to give me a "hardball education."

In June of 1994, Vessels twice wrote to me requesting permission to survey for the BLM's desired easement across the private lands of the High Island Ranch. I unequivocally declined to allow the survey. However, Vessels disregarded my clear instructions and orchestrated a survey anyway without my permission, then later bragged to me that I could not stop the BLM.

A policy was also developed by the BLM whereby the terms and conditions of the High Island Ranch Allotment Management Plan ("AMP") were not followed in good faith. Although the High Island Ranch AMP, signed by both the BLM and my predecessor-in-interest, included significant opportunities for flexibility for my cattle operation, the BLM refused numerous requests for flexibility. Additionally, a BLM employee, Teryl Shryack, made handwritten changes to the AMP without my knowledge and then tried to apply those changes to me.

The BLM also prohibited me from maintaining a portion of the Rock Creek Road, located on BLM land, that was necessary for me to access parts of the Ranch's pri-

vate property. Eventually the BLM ultimately canceled my access rights across BLM land to my private property.

Under Vessels' direction, the BLM also made trouble for me with my neighbors. In one instance, a BLM officer urged neighbor Pennoyer to file a criminal complaint with the Sheriff against me (although the Sheriff did not follow up on the neighbor's claims.) In another instance, BLM employee Leone provoked an incident between Mrs. Pennoyer and I, whereby Mrs. Pennoyer drove a motor vehicle into and struck me and the horse on which I was riding.

Vessels also charged me with repeated livestock trespass prosecutions, 27 in all. In these prosecutions, the BLM asserted that my cattle were in trespass, even though the livestock were located on my unfenced *private* property. These prosecutions were brought under the theory that the High Island Ranch cattle allegedly could "access" the adjoining and unfenced public lands. This legal theory has been rejected by the court however, I had to appeal each and every one of the decisions individually to try to keep my grazing permit.

Although I was willing to grant to the BLM the right to cross my private land to get to BLM land for lawful purposes, the BLM wanted the complete and unconstrained right to trespass on my private property. Because BLM wanted this complete access, they took an easement which only allowed the BLM to maintain a 276-foot strip of fencing on a remote corner of a parcel owned by me and tried to argue it gave the agency complete and unrestrained access. Using this Fence Easement, BLM employees Shryack and Merrill went onto my private property. When I encountered the BLM trespassing and stopped them to ask what they were doing, Shryack and Merrill showed me the Fence Easement, claiming it allowed them to drive on my private property. In frustration, I tore up the copy of the Fence Easement and told Merrill and Shryack to turn around and leave, which, without any protest, they did. Several days later, after lying to me to get me to come to the BLM office, the BLM, through its law enforcement officers, notified me that I was being criminally charged with "intentional interference with a BLM officer" for telling Shryack and Merrill to leave my private property. Based upon this criminal charge, a lengthy and expensive criminal jury trial was held in the Federal District Court for the District of Wyoming. However, after only 25 minutes of deliberation, the jury acquitted me of all charges, commenting that I could not have been railroaded any more unless I worked for the Union Pacific Railroad.

Due to the BLM employees egregious conduct, I have suffered significant economic injury to my business (both in terms of direct lost revenues for loss of my grazing use and my outfitting business) and personal reputation. I am only running one-half on my cattle numbers I once did and I cannot operate any of my guest ranching business on the Federal lands. I also spent a significant amount of money on legal fees, individually appealing all of the decisions as well as defending myself at a 3-day criminal jury trial. The economic damage to both me and my family—as well as to the local community—are still present today.

Some BLM employees, and based upon the press coverage, some of the public, believe that I deserved to lose much of my ranch, simply because I would not give my private property to the Federal Government. However I have never had the chance to argue my case before a judge and jury. Administratively appealing dozens of trespass decisions before an administrative law judge does not even begin to address the allegations that have been leveled against me. My Supreme Court case was not based upon the facts of the case—rather the question before the Court was simply whether I could even get to court. That is the question before this Congressional Committee. Win or lose, should private individuals and businesses have the chance to prove that they have been harassed, punished and bullied by Federal bureaucrats. There needs to be more accountability of Federal employees and opening the courthouse door is one way to provide for that accountability.

Mr. BISHOP. Thank you, sir.

Mr. ROBBINS. Thank you.

Mr. BISHOP. I appreciate your story. And, obviously, everything that is written there will be part of the record. If you have anything more you want to add to what you submitted to us as the written record, please feel free to do that, as well.

Mr. Lowry, if we can go through your situation in Oregon.

STATEMENT OF TIM LOWRY, JORDAN VALLEY, OREGON

Mr. LOWRY. Chairman Bishop and members of the committee, I ranch in the Pleasant Valley community of Owyhee County, Idaho, with my wife, Rosa, and parents, Bill and Nita. And we want to thank you for the opportunity to describe how the use of threats, intimidation, and bullying are used by Federal land management agencies to take, without just compensation, private property. In this case, namely, privately held water rights.

When the Snake River Basin Adjudication, or SRBA, began, we filed our water rights claims for irrigation, domestic use, and stock watering with documentation of the historic beneficial use by our predecessors in interest. The United States, through the Department of the Interior, filed competing stock water claims to the same water, and objected to ours. This put the issue into the SRBA court.

The SRBA judge ordered a settlement meeting between the United States and us in an attempt to settle the case without a trial. This meeting was held at the Owyhee County courthouse in Murphy, Idaho, and was attended by Justice Department attorneys, BLM personnel, and myself.

The United States insisted that only the United States could hold a water right on Federal land, and that we must withdraw our claims. Knowing that the United States' position was contrary to the Idaho constitution, Idaho and Federal statutes, and Supreme Court decisions, I refused to abandon our vested rights.

When I did not acquiesce to their convoluted legal theories, as they were aptly described by the judge in one decision, the United States changed tactics. I was pointedly told that, to proceed, we would need an attorney. I was also pointedly told that the United States would pursue this case to the Supreme Court, if necessary, that it would be extremely expensive for us, and that we should consider the cost. This began a 10-year litigation battle.

This tactic of a veiled threat of financial ruin must have been effective. Of all the ranchers who filed their vested stock water rights claims, only one other, Paul Nettleton of Joyce Livestock, continued through to the end. The others felt constrained to give up their claims, rather than incurring a debt that could cost them their ranch.

After 10 long years of appeals and delays by the United States, and over $800,000 of attorney fee debt for us, and a similar amount for Paul Nettleton, the Idaho Supreme Court completely vindicated our position, and utterly rejected that of the United States. The court ruled that the United States cannot hold a stock water right, because it does not put it to beneficial use. The stock water rights belong to the stockmen who do put the water to beneficial use, and that the stock water rights are an appurtenance to the base property of the rancher.

Unfortunately, despite ruling in our favor on every point of law, we were denied being awarded attorney fees under the Equal Access to Justice Act. What is most discouraging to me is that the United States knew that their position was contrary to Western water law and court decisions. This was simply a continued deliberate attempt to overthrow Western water law and to send a message to other private claimants to water on Federal lands.

Sadly, the United States, through its land management agencies, continues to ignore the clear policy regarding water set by Congress. This disdain of Congress is further evidenced by the United States Forest Service's recent actions disregarding State law and attempting to take private water rights, prompting Representatives Mark Amodei and Scott Tipton to introduce the Water Rights Protection Act in order to protect privately held water rights from Federal takings, and uphold long-standing State water law.

The question I would have, however, is that even if the Water Rights Protection Act becomes law, what will prevent these same agencies from ignoring it, as well?

Again, I want to thank you, Mr. Chairman, and the committee, for holding this hearing. I feel it is imperative that Congress rein in these out-of-control Federal agencies.

[The prepared statement of Mr. Lowry follows:]

PREPARED STATEMENT OF TIM LOWRY, JORDAN VALLEY, OREGON

I am Tim Lowry and with my wife, Rosa, and parents, Bill and Nita Lowry, ranch in the Pleasant Valley community of Owyhee County, Idaho. The future of this rural, family ranching community is in jeopardy due to Federal Government actions, policies, and direction.

On June 6, 1994 a public hearing was held in Boise, Idaho on Secretary of the Interior Bruce Babbitt's proposed Rangeland Reform '94 regulations. In preparation for the hearing, the Natural Resources Committee of Owyhee County carefully studied the proposed regulations and identified the areas that were problematic. In order to get all the points into the hearing record given the short amount of time allowed for testimony, the testimony was divided between over 30 individuals. This strategy worked well except for the fact that three of those testifying were World War II veterans, brothers Don and Gene Davis and my father, who were struck by the sad irony that the hearing on regulations that would undermine their rights was being held on the fiftieth anniversary of D-Day.

These veterans used their allotted time to very movingly explain how 50 years ago from that date they never dreamt a time would come when the greatest threat to their rights would be coming from their own government. I will never forget Gene Davis of Bruneau, Idaho who, with tears running down his face, recounted the names of his Army friends who had died around him on the beach that morning to preserve our rights and liberties.

It is with that thought in mind that I would like to thank the Committee for holding this hearing. I appreciate the fact that you, who represent us, are concerned with abuse of power. The issue of preserving and protecting the individual rights and freedoms of the citizens of the United States is not a partisan issue, but one that is vitally important to us all.

There are several examples of abuse by the BLM that could be the topic of my testimony. I shall relate one of them before detailing my main topic of the attempt of the Federal Government to usurp State law and steal a private property right—namely, stockwater rights.

In 1984, our family purchased a ranch with a grazing preference right that lay partially within the newly designated North Fork Wilderness Study Area. This allotment is a common use allotment shared with two other permittees—the Stanfords and the Andersons. Approximately 1 month after purchasing the ranch, a BLM employee told me, off the record, that he wished he had known we were purchasing the ranch so that he could have warned us not to because the grazing allotment in the WSA was targeted in the Boise District BLM Office to "have its head cutoff". I assured him that I was confident that working together we could solve any issues relating to grazing in the WSA.

I was wrong. When some resource concerns were identified by the BLM, we worked with a range consultant to devise a grazing rotation system that would address the resource concerns and also be economically feasible. In order to implement the system, approximately 3 miles of fence needed to be constructed with a little more than a mile of it in the WSA.

The BLM refused to agree to the fence, citing the WSA as the reason, despite the fact that the Interim Management Policy for the WSA and the Wilderness Act al-

lowed for such improvements. The BLM's solution for the perceived resource issues was to drastically reduce grazing.

After a couple of years of meetings and on-the-ground tours with the permittees, range management experts, Congressional staff personnel, and conservation group representatives, the BLM issued a decision to build the fence. However, the decision to allow us to build the fence contained provisions designed to ensure that the fence would never happen.

The national BLM director had issued a directive that any range improvements in a WSA had to be completed by September 30, 1992 when Congress was expected to act on designating wilderness. The Idaho State Director issued an order that improvements in WSA's in Idaho must be completed by September 30, 1991 in order to ensure that the national directive be met. We received word of the decision allowing us to build the fence the afternoon of September 26, 1991. We were told that the fence had to be completely finished by midnight September 30, 1991—including the portion not in the WSA. We were also emphatically informed that if the fence was not completely finished, then the entire fence had to be removed. For three men and their wives to build approximately 3 miles of fence in 3 days was an impossible task in such rough country, and not being able to use motorized vehicles in the WSA portion made it even more impossible. However, neighbors heard of our plight and came from miles away to assist. With the generous help of 32 caring neighbors, the fence was completed by 4:00 p.m., Sunday, September 30, 1991.

On Monday morning, October 1, 1991, a BLM employee called Jeannie Stanford and told her to tell her husband, Mike, and me that we had to stop working on the fence. Jeannie informed him that the fence was completed and that Mike and I were simply gathering up the excess material from the fence line. Jeannie recounted to us that there was a long pause and then he told her to tell us that we could not install the cattle guard because it was considered part of the fence. When Jeannie explained to him again that the fence was done, including the cattle guard, another long pause ensued and then he said he had to tell his supervisor and hung up.

The rotational grazing system was utilized during the 1992 grazing season and monitoring indicated that it was working to meet the resource objectives. However, in 1992 the BLM settled an environmental group's appeal of the fencing decision by agreeing to remove the fence. The fence was removed by the BLM in the fall of 1992 after only one season's use. Incidentally, Jeannie took pictures of the tire tracks the BLM made in the WSA and of materials they left scattered in it after the fence was removed; illustrating that two sets of rules must apply regarding what is allowable in a WSA. Our grazing season was subsequently reduced from 3½ months to 1 month and our AUMs from 666 to 244. The Stanfords and Andersons suffered AUM reductions of the same ratio. Because sound scientifically recognized management tools were denied us, our ranch is greatly devalued and our ability to make a living is a huge challenge.

It was only a few years after receiving this body blow, that the Federal Government forced us into court and massive debt in an attempt to steal our stockwater rights. The United States objected to our stockwater rights claims that were filed pursuant to the Snake River Basin Adjudication and filed its own stockwater rights claims to the same water.

Before this case was to be heard, the Judge scheduled a settlement meeting between the United States and us to see if the case could be settled without a trial. At that meeting, which was attended by Justice Department attorneys, BLM personnel, and me, the United States insisted that only the United States could hold a water right on Federal land and that we must withdraw our claim. I knew that the United States' position was contrary to the Idaho Constitution, Idaho Law, Federal Law, and court decisions, and refused to abandon our vested rights.

When the United States became convinced that we were not going to capitulate, I was told by the United States that we would need to retain an attorney. I was further informed that the United States would pursue the case to the Supreme Court if necessary, that it would become extremely expensive for us, and that we would be wise to consider if the cost would be worth the effort. Knowing that the United States' arguments lacked any basis in law and not willing to give in to the veiled threat of financial ruin, we embarked on a litigation journey that spanned 10 years. Of all the ranchers who filed for their stockwater rights when the adjudication began, only one other rancher, Paul Nettleton of Joyce Livestock, continued through to the end. The others settled with the United States rather than risk incurring a huge debt and losing their ranch.

Despite the fact that the legal theories raised by the United States were contrary to the established law and were rejected by the courts at each step, the United States continued to appeal each loss all the way to the Idaho Supreme Court. The Supreme Court upheld the District Court and ruled that the United States could

not hold a stockwater right because it was not the entity putting the water to beneficial use. It further ruled that stockwater rights belonged to the grazers who put the water to beneficial use and that the water rights were an appurtenance of the permittee's base property. All of the assertations of riparian rights and other contentions of the United States were utterly dismissed by the Court.

With the appeals and delays obtained by the United States, they managed to extend the litigation 10 years and saddle us with attorney fees in excess of $800,000. Paul Nettleton owes a similar amount. I am convinced that those responsible for pursuing the position that the United States took were intelligent people who were not simply mistaken, but were deliberately attempting to overturn western water law and were sending a message to other claimants that challenging the United States is a costly endeavor. They had to know that water rights are created under State law and confirmed by Federal law, including the Mining Act of 1866, Act of 1870, Desert Land Act of 1877, Taylor Grazing Act, and the Federal Land Policy Management Act. They also had to be aware that courts have consistently held that water rights may be appropriated on Federal lands by private parties and that these rights, once acquired, will be afforded all protection. In spite of the clear and unambiguous policies enacted by Congress and the consistent recognition of those policies by the courts, they pursued their illegitimate theories ignoring Congressional policy and Supreme Court decisions.

During the 10-year litigation ordeal we were worried about the escalating attorney fees that we could not afford, but we were certain that at a successful conclusion, attorney fees would be awarded under the Equal Access to Justice Act. Unfortunately, the Idaho Supreme Court determined that as a State court, it lacked jurisdiction to apply the EAJA to this case and rejected our EAJA claims. They reached this decision despite the fact that the Nevada Supreme Court, in a similar type of case, awarded attorney fees to the prevailing private party litigant, holding that "it would be an injustice to deprive a prevailing party of attorney fees and costs merely because that party chose to litigate in a State court, as specifically authorized by Federal statute."

The EAJA clearly provides at 28 U.S.C. § 2412(b) that "any court having jurisdiction of such action" may award attorney fees and expenses to the prevailing party against the United States. The McCarran Amendment gave jurisdiction to State courts over the United States in water rights adjudications. Therefore, State courts are the "any court having jurisdiction" and thereby should have authorization to award attorney fees under the EAJA.

Because we believed that the Idaho Supreme Court erred in its decision regarding awarding attorney fees, we filed an appeal of that portion of the Supreme Court of Idaho's decision with the Supreme Court of the United States. We had hoped that the United States Supreme Court would take the case in order resolve the conflicting opinions of the Idaho Supreme Court and the Nevada Supreme Court. Unfortunately, they did not take the case, leaving the conflicting opinions intact.

Congress needs to amend the EAJA to clarify that State courts having jurisdiction over the United States in an action are included in the definition of courts in the EAJA. Failure to do so will act as a deterrent to private parties trying to protect their rights against unwarranted and unjustifiable litigation and actions initiated by the Federal Government. The EAJA was designed to protect the rights of individuals and small businesses in litigation against the United States by leveling the playing field given the extreme disproportionate resources at the disposal of the United States.

Many other instances of abuse could be cited which have led to the present time where a scenario is unfolding in the Owyhee Resource Area of the Boise BLM District that threatens the viability of the family ranches, the economy of Owyhee County, and circumvents provisions of the Owyhee Initiative Agreement which led to designation of wilderness and wild and scenic rivers in Owyhee County. The BLM is under a court order to complete the Environmental Impact Statements on a large number of allotments for the permit renewals by the end of 2013. Although the BLM has known this for several years, they are now at this late date rushing through the process.

This does not allow time for meaningful consultation, cooperation, and coordination with the affected permittees as required. With time rapidly running out, it is questionable if the majority of the decisions will be issued in time for comments, protests, and appeals before the end of 2013. Permittees are wondering how their due process rights are going to be affected. By bunching up all these decisions and issuing them at the last minute, the BLM will effectively negate the science review process of the Owyhee Initiative Agreement which was the foundation for an agreement to designate wilderness and wild and scenic rivers in Owyhee County. There

will simply not be enough time or personnel available to perform a science review of all the decisions.

I want to again thank the Committee for holding this hearing. If family ranches are to remain intact, a functioning un-fragmented landscape maintained, the economy of Owyhee County protected, and access for recreationalists preserved, then this broken, dysfunctional land management must be fixed. More importantly, we all have a sacred obligation to not let the sacrifices of Gene Davis' fallen friends be in vain. We must not allow the rights and freedoms they died for to be lost through bureaucratic tyranny.

Mr. BISHOP. Thank you. I appreciate your testimony. I appreciate your shout out to Tipton and Amodei. It is going to be much more difficult to work with them now in the future. I apologize for that.

[Laughter.]

Mr. BISHOP. Ms. Richards.

STATEMENT OF BRENDA RICHARDS, MURPHY, IDAHO

Ms. RICHARDS. Chairman Bishop and members of the subcommittee, I am here today in my capacity as the Owyhee County Treasurer and tax collector representing Owyhee County, Idaho. I have served in this capacity for the past 8½ years. And, in addition to serving as treasurer, my husband Tony and I ranch in Owyhee County, where our sons are carrying on this business into a fifth generation. I have extensive experience in natural resource issues, and, along with my accounting background, this lends well to my position as treasurer in a county that largely depends on public lands and the ranching communities for its economic backbone.

Owyhee County is comprised of 4.9 million acres, with a population of only about 11,000. The county is 77 percent Federal land, 6 percent State land, leaving only 17 percent privately owned, which comprises the tax base of our county. The communities in the county are rural and small, and the decisions that are made on public lands have direct impacts and effects on these communities, thus affecting the county and the businesses within. Our beef industry in the county produces over 19.76 million pounds of edible meat per year, which is enough to feed 300,000 people, which is the entire population of the city of Boise and our county.

It has become apparent over the past 20 years in our county that threats, intimidation, and bullying do not always present themselves in obvious ways or methods, but that does not make them any less damaging, any less wrong. Nor does it lessen their impact. These quieter, behind-the-scene forms often have more significant impacts and damages over a longer period of time. It would take me several hours to go over the numerous ways the county has been affected over the past years of actions and non-actions by the BLM, but today I will give you several recent examples.

The Gateway West Power Transmission Line is an example of the BLM bullying their way to push through the system to get their end result. After hundreds of hours of meetings involving elected officials, the residents, environmental groups, the power company, and other interested parties, an agreed-upon route was chosen, with everyone signing off on it, and presented. Soon after that was presented, a representative from the BLM in Washington, DC flew out, and that one person was able to negate this entire process, and put the lines back over private land, much to the dis-

tress of the county and those land owners, as it affects the value of the property, and thus, the tax base.

Grazing permit renewal is another challenge we constantly face in our county. Lack of action by the agency in the early 1990s continues to this day to have direct effects on the county, with legal counsel and consulting fees spent protecting their property rights and grazing rights. Both the county and the individuals have spent hundreds of thousands of dollars to protect these rights, and the costs are still accruing.

However, the cost of losing would be even higher, as it changes the entire dynamic not only of the communities within our county, the county's economic base, but it also eliminates some of the prime wildlife habitat and water resources in the West.

The county also has a county land use plan and a signed coordination agreement between the county commissioners and the Bureau of Land Management outlining protocol and expectations for monthly coordination meetings. Yet, over the past 3 years, our commissioners have had to send over 25 letters to the BLM, asking them why they were not coordinated or communicated with on different issues.

The Owyhee Initiative was developed and designated wilderness and wild and scenic rivers, first in an agreement signed off by all the collaborative groups, and then in legislation. During the past year, we had many meetings where we were working on the wilderness management plan, only to find out that, internally, the BLM was also working on guidelines that negated one of the main principles we had brought forward with the initiative agreement. And, ironically, that factor that is not allowed in the new guidelines is one that the BLM had awarded the permittee an environmental stewardship award on a national level for that practice.

Each of these examples holds either direct or indirect impacts to our county. As treasurer, the economic stability of the county is first and foremost in my mind, as it is of our county commissioners. We still continue to stand up to the threats and intimidation, because we believe in the property rights and doing what is right, and hope that justice will prevail.

We hope that by presenting this information, it may help you to see the need for changes in the law to protect these rights, and not to allow actions by our government to be taken in the matter of threats, intimidation, or bullying, whether first and foremost, or a quieter action, but to be done in the ways that were intended, and in ways that you can hold your head up, be proud of the results, and find success in supporting them.

Thank you for this opportunity.

[The prepared statement of Ms. Richards follows:]

PREPARED STATEMENT OF BRENDA RICHARDS, MURPHY, IDAHO

I am Brenda Richards, and I am here today in my capacity as the Owyhee County Treasurer, representing Owyhee County, Idaho. I have served in this elected position for the past 8½ years. In addition to serving as the Owyhee County Treasurer, my husband, Tony and I ranch in Owyhee County. My extensive experience in natural resource issues, along with my accounting background lend well to my position as treasurer in a county that largely depends on the ranching community for its economic backbone.

Owyhee County is Idaho's oldest county and was established and settled, as many places in the western United States were, around its natural resources. In our coun-

ty those two draws were mining of gold and silver and grass for cattle and sheep grazing. The gold and silver are not nearly as abundant as they once were; the renewable natural resource of grass continues to help sustain the county. Owyhee County is Idaho's oldest county and is the second largest county in the State of Idaho covering 7,639 square miles—or 4.9 million acres. Yet the population of approximately 11,000 in the entire county averages out to 1.2 people per square mile. Owyhee County is 77 percent public lands; 6 percent State land; leaving a mere 17 percent privately owned land. That 17 percent is the tax base of the entire county. Owyhee County does receive PILT (Payment in Lieu of Taxes) for the public lands in our county, but every year the county has to wait and see what will actually be allowed for that payment though we certainly feel this is the Federal Government's duty of paying the property tax owed to the county as those acres cannot be developed or taxed in any other way.

Of the 4.9 million acres in the county, approximately 191,700, or about 4 percent, are agriculture with just a bit over 4.5 million acres in rangeland, and of that approximately 3.7 million of those rangeland acres are Federal lands. With the numbers just given, you can see that a very small amount of the land in our vast county serves as the private, taxable base, yet this privately owned tax base is largely dependent upon the Federal lands for rangeland grazing accompanying their private lands through their BLM permits. In addition, the communities in this county are rural and small, and whatever decisions are made for the public lands have effects on those communities.

Over the past 20 years in this county there is one thing that has become very apparent. Threats, bullying, and intimidation do not always present themselves in obvious ways or methods, but that does not make them any less damaging, any less wrong, nor does it have any less impact. As a matter of fact, these quieter, "behind the scenes" forms of threatening, bullying or intimidating often have huge impacts and significant damages over a longer period of time. I would like to share with you a few examples of the Bureau of Land Management actions that can certainly be seen as threats and intimidation to Owyhee County and the residents that live here.

No matter that the tax base in the county may only be 17 percent, those taxpayers and the county are responsible for providing services within the county, some are mandated by either Federal or State laws, and some are elected county services. Many of those services, such as roads maintenance, law enforcement, safety matters, and search and rescue are provided to all—whether you live in the county, visiting the county's vast area, just passing through. With Owyhee County's close proximity of being not much more than an hour away from the Treasure Valley with its larger urban population, there are many visitors each day that come across the Snake River to enjoy its vast expanses that surround our rural, and some very remote, communities. Owyhee County offers diverse recreational experiences both motorized to non-motorized, hunting, fishing, and sight-seeing, wilderness experiences, white water rafting at the right time of the year, and a host of other activities. Many of these activities are on the public lands, but much of it is either accessed by going through, around, or across the small amounts of private ground. Almost any BLM decision that is made has an effect in some fashion on the county's well-being and that of its rural communities due to the large amount of Federal land around each of these communities. Often the costs of these decisions, both financially, and also to the health of the natural resource are not fully vetted, leaving that expense on the local taxpayer's budget.

One such decision we have recently been dealing with in Owyhee County is the Gateway West transmission line. The county residents, and those of us serving as their elected officials have attended hundreds of hours of public meetings, written pages and pages of comments, and found ways we thought could be used to compromise to and solution. The player in this game that we have found to be playing by their own set of rules—and truly that is a form of bullying when you are aware you can get away with it—is the Bureau of Land Management. Early on in this process the lines were to come across the public land, leaving as much private ground as possible (remember the ratio of private acres to public in Owyhee County) alone as the necessary power lines were to be brought in. This was agreed to by the power company, the diverse interest groups attending these meetings such as conservation and recreational groups, the county elected officials, and the residents. After all this was agreed to over months and months of meetings—some of them even held in Ontario, Oregon that people attended—and all of them documented with minutes, the Washington BLM office, in one person's decision, negated all that time, money, and effort by putting it right across much of the limited private ground in our county. This is one example of costs to the county in attending and participating in the government's dog and pony shows of public meetings for months and months; resources and time spent to have maps made of the outcome of those meet-

ings proposed routes; legal advice on the matter; time invested, only to have that thrown back in the face and put where they wanted it any way. This cost comes down to the county and the taxpayers here in more than one way. The initial investments of time, money, and sincere participation in a process to come up with a viable solution with the other "players" in this process, most who do not even live in the county, but have conservation, recreational, or special interests in the area is the first cost; the second is the cost to the county and the land owners as their property is devalued due to huge transmission lines being placed across their land; and last, this cost goes out to those land owners who have not had the decision directly affect them, but will feel the indirect impact of tax increases as the same services are still required to be met within the county, but the tax base of some property has decreased leaving that hole to be filled by those properties whose value held to absorb the increase that will be required in the county tax levy rate. Does this not pose a direct threat to the county, through a process that surely can be viewed as intimidating?

Ranching has long played a role in Owyhee County and continues to do so today. Since the early 1990s, the challenges from the Bureau of Land Management and their decisions, or lack thereof have had significant impact on the county government and the residents within the county. These impacts have been financially, emotionally, and on the ground. Probably the longest running threat and intimidation within Owyhee County has been that which has come from the BLM neglecting to fulfill their obligations of renewing permits; neglecting to gather necessary information in a consistent, accurate, timely manner lined out in their own guides; not involving the permittees as is required by those same rules and regulations; and the results of all of this is the permittees and the county then end up in court battling on the same side as the BLM to defend their rights, permits, and livelihood. This is at the expense of the county and the permittee as the BLM has the Federal Government to cover their attorney costs and time, which means it costs all taxpayers and those in our county twice.

Prior to 1997 the BLM failed to complete the permit renewal work that necessary to keep 10-year grazing permits current, and as stated before, public lands ranching is the backbone of this vast county that is 77 percent Federal land. Grazing continued for over half the permits by annual authorizations since the permits had been allowed to expire by the BLM. The 1995 changes to the BLM grazing regulations required a valid grazing permit in lack of action by the agency have direct effects on the economic base and also on costs of litigation to challenge these decisions order to graze on public lands, so this immediately put the permittees out of compliance due to BLM lack of doing their job, and brought radical environmental groups to file suit. The lack of action by the agency had, and is still having direct effects on the economic base of the county and the land owners here as the costs of litigation to challenge these decisions continue to be paid. The threat to the economic viability of the county, and the threat to the land owner and permit owner cannot be ignored as this is the backbone of the county. Legal counsel and consulting to protect themselves and their interests can cost an individual hundreds of thousands of dollars, but the cost of losing that is even higher to them and the county, not to mention it is a property right. Costs to defend several of these cases already have come in, with $100,000 for one allotment to reach a permit renewal; and two others at $55,000 currently where they are not even half way through defending themselves to get to the end result of the permit being renewed.

As I have mentioned several times, the economic backbone of Owyhee County and the rural communities is largely dependent on the ranching industry and grazing on public lands. The beef industry in Owyhee County accounts for approximately 19,760,000 pounds of edible meat per year—which is enough to feed 300,000 people or the entire population of our county plus the population in the State capitol city of Boise. The total number of acres these ranches occupy is at just over 435,000, and the approximate assessed value for the county is $28,815,299. Please realize this is the assessed value for county tax purposes, not what the land could be sold for if it was to be parceled out and developed, yet much of this private land is remote, and assures unfragmented habitat and water sources for many forms of wildlife. Many of these ranches are located in small, very rural communities throughout the county that have schools and smaller businesses depending on their success to keep those communities healthy and vibrant. Because of that, and because of the continued unpredictability and up and down relationship the county has had with the Bureau of Land Management, the county developed a county land use plan in the early 1990s in an effort to address matters relating to State and Federal lands and to help protect their interests and assure input in decisions. The plan is reviewed regularly and updated, with most recent update to this plan being 2009, and reviews are more regular.

The county also has a signed Coordination Agreement with the Bureau of Land Management that dates back more than 15 years. This agreement was also established to help assure the county—which in turn represents the residents—is included and involved in decisions the agency makes. As the largest land owner in Owyhee County, these decisions often have significant impacts or effects on or within the county, which in turn can also affect the economic stability and well-being of the county, and have effect on the livelihood of the residents. Over the years the Coordination Agreement has been in effect, the Owyhee County Commissioners spend a tremendous amount of time reminding the BLM of their obligation to coordinate; reinforced by the signed coordination agreement. In the past 3 years over 25 letters have been addressed to the BLM by the commissioners on matters and decisions that have direct effect on the county. Many of letters have been written when the BLM either intentionally, or due to lack of management's attention or new management, ignores the coordination process. The number of times this happens could certainly be seen, not only as a veiled threat to the county in that the BLM does not feel they have to comply, but it also comes across as a form of intimidation trying to get the county to back off of expecting them to follow the law and requirements of including them in decisions and planning processes.

Both of these have taken much time, resource and dedication by the elected officials, those participating in the public meetings to develop these and then keep them updated and reviewed, and the different groups, agencies, and others that use these in their decisionmaking process within Owyhee County. The one agency that has given the county the most problem with these aspects is again, the BLM.

Every one of these examples given have either direct or indirect impact to the county financially. The cost to our county residents on grazing decisions is astronomical, and the county has often weighed in over the years with their own financial contribution to the litigation because it is a vital component of the economic stability within the county. The economic stability of the county is first and foremost in my mind and duty as county treasurer, as it is with the commissioners. The costs to both the individuals and the county have effects on those communities as to dollars that could be spent in schools, business, or other areas having to go to threats and litigation caused by BLM decisions or lack thereof. The permit renewal process continues here in the county under a court ordered mandate now. That mandate came down in 2008, yet the BLM did not start on the 125 out of 150 permits included in that order until 2012 and the deadline is December 31, 2013. If that deadline is not met, the court stated the BLM will be held in contempt. Even though the process was not started in a timely matter, the ones paying the ultimate price, both financially and in emotional duress are the taxpayers. The documents the BLM is putting out to be reviewed and commented on, and ultimately end up having to be challenged are over 500 pages long, and some of them are over 1,000. If that is not intimidating to a common person, I do not know what is. Yet, the county and our land owners will not take it lying down. We will stand up to intimidation and threats and bullying because we believe in our property rights, in doing what is right, and have hope that justice for what is right will prevail. The cost to the county in tax dollars, time, and stress is substantial, but the people of Owyhee County prove to be resourceful, resilient, and show the American grit that settled the West in the first place and continues to capture the trust and wonder of many people not only in the United States but across the world. We only hope that by presenting some of these aspects we have had to fight for years to continue to remain viable, productive and responsible citizens in our county that we love, that the very laws and Federal agencies threatening our existence may be changed to protect those rights and to not allow things to be done in bullying or threatening or intimidating ways, but in ways that you can hold your head up and be proud and successful in supporting.

Thank you for the opportunity to share this testimony with your subcommittee, and I would stand for any questions.

Mr. BISHOP. Thank you, Ms. Richards. So we have heard of problems in Wyoming and Idaho. Now let's go down to Northern New Mexico and see the same situation appearing.

Mr. Valdez.

STATEMENT OF LORENZO VALDEZ, FAIRVIEW, NEW MEXICO

Mr. VALDEZ. Honorable Chairman Bishop and members of the committee, with all due respect, and with your permission, I am a resident of Rio Arriba County, New Mexico, in the north-central part of the State, valleys and pastures that have been used by——

Mr. BISHOP. Mr. Valdez, could I just ask you to move the mic closer to you? I don't know if you can move it physically there, as well. Thank you.

Mr. VALDEZ. I am a descendent of Native American tribal peoples and colonial settlers that came up with the first herd to come into the United States proper, 7,000 head driven by native peoples and families out of Chihuahua Santa Barbara region, 1590. That was the first cattle herd that was brought to the United States, and it actually was brought primarily by Native Americans, including Mexico as America. They settled themselves in the New Mexico mountains, where pastures were cycled in the way that wildlife uses them, upland, lowland cycling, the natural way of using the environment for the purposes of producing beef.

I am here on behalf of two allotments, Jarita Mesa and Alamosa Grazing on the Carson National Forest. I, myself, graze on the Santa Fe National Forest, just across the Chama River from my friends. They were uncomfortable in coming here, because—I believe, because they have suffered so much retaliation from the district ranger, Diana Trujillo.

The Jarita Mesa and Alamosa Grazing Association members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District on the Carson National Forest. The two allotments are all part of the Vallecitos Sustained Yield Unit, an area of the Carson National Forest designated by an Act of Congress for special treatment, because of the mix of intermingled private land and Federal lands, and its particularized uses. Dating back to before the Treaty of Guadalupe-Hidalgo between Mexico and the United States, the ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Association have been grazing livestock on these lands for generations. And, in fact, most of these families were grazing livestock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating into the 1940s, the Forest Service instituted management practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock, and were dependent on the availability of their former common lands that were within their land grants for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa allotments have repeatedly exercised their First Amendment rights to petition their congressional delegation. For this activity, Diana Trujillo, the district ranger, retaliated and desired to punish them for engaging in

speech critical of Forest Service policies. They filed suit eventually, because she refused to reduce the wild horse herd which was 12 to 14 head, and currently runs at about 150 head, severely impairing the ability to provide fodder for the livestock.

They filed suit. And despite adequate proof that retaliation had occurred, the Federal District Court, in a 115-page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive, but citing *Wilkie v. Robbins*, they could not sustain a *Bivens* cause of action, even though there was ample evidence that the judge saw regarding bad behavior.

And we are seeking remedy from Congress, which is the only body able to give it to us. Thank you.

[The prepared statement of Mr. Valdez follows:]

PREPARED STATEMENT OF LORENZO VALDEZ, FAIRVIEW, NEW MEXICO

Honorable Committee Chair Representative Hastings, Subcommittee Chair Bishop and all the Members of this Committee. I want to thank the Committee for this opportunity to present testimony on a very serious matter that will take Congressional and Presidential action to remedy. The management of the National Forests and Grasslands falls on shoulders of the staff of the United States Forest Service, who have the very important charge of keeping our public lands productive. The ecosystem services produced by those lands meet the needs of life in a concentric circle, or connectivity, the closer you are to the land, the more dependent you are on the land. Human needs or services are generally grouped into three categories economic, social and cultural. We all understand that the ability of the ecosystem to deliver services depends on the well-being of the whole, including all dependent species, humans included. There is no time in human existence when we have not managed the landscape to serve our needs; some critters do that also to a lesser extent. It has evolved into a very complex management task worldwide with important decisions to be made. Regardless of what stressors you believe or agree with, there is no doubt that to have those services in the future, we have to protect them now. And there lies the dilemma; power dictates management, and the constructs that emerge in the discourse affiliate closely with power emerge as specific actions on the ground. Power differentials in the United States are supposed to be tempered by Justice, a responsibility borne by all branches of our government.

I was asked to come here today to tell a story of how unjust acts in managing Forest lands push people closest to the landscape off of it and create scenarios that are replete with what the esteemed Economist and Nobel Laureate, Dr. Ronald Coase termed "negative externalities." "Mr. Coase's revolutionary insight was that you and I have a shared interest in minimizing the total harm suffered." "*The Problem of Social Cost," Ronald Coase, a Pragmatic Voice for Government's Role; Robert H. Frank*. Victimizing folks or creating unmanaged casualties is not an efficient option. That process is inefficient. The Government has a responsibility to mitigate the "negative externalities" to a Federal action. On the ethical or moral plane, I turn to Pope John XXIII's Encyclical for Pacem in Terris, Establishing Universal Peace in Truth, Justice, Charity and Liberty; "when one reflects that it is quite impossible for political leaders to lay aside their natural dignity while acting in their country's name and in its interests they are still bound by the natural law, which is the rule that governs all moral conduct, and they have no authority to depart from its slightest precepts."

My livestock graze on lands in the Santa Fe National Forest, Coyote Ranger District which was titled originally as a Spanish Land Grant to Juan Bautista Valdez in 1807. I do not like the term "Permittee" when referring to indigenous Northern New Mexico Forest users. We were denied U.S. title by the Court of Private Land Claims. My family has been in the Jemez Mountains for thousands of years; I am descended from southwest tribal ancestors as are most Northern New Mexico Villager commonly called Hispanic but most scholars refer to the group as indiohispano. On the colonial side we have been grazing cattle since 1590; we are the first herders on U.S. soil. We brought 3,000 year old grazing culture to the new world. I run 20 pair and a bull, on an allotment that includes 15 relatives; some of them are near full blood Native American. Together we run 750 pair and 20 bulls. These historical and social elements also apply to the folks that are the focus of this tragic narrative. I agreed to bring their message to you because they couldn't be

here. It is however my story as well, I was intimately involved with these folks as Rio Arriba County Manager. The message is that the "government" has a duty to hold its managers accountable, just like I was as County Manager. All the constitutional protections should be available to those on public lands including the courts as appropriate. There are many good managers in the Forest Service ranks, we have such managers "this year" on the district I'm in; they carried us through to rainfall this year, and they could have done what was done in this story. I have supplied for the record a research document by Dr. David Correa that provides a more painful look at the history of the Vallecitos lands that are at the basis of this story.

Jarita Mesa and Alamosa Grazing Association Ranchers

The Jarita Mesa and Alamosa Grazing Associations' members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District of the Carson National Forest. The two allotments also are part of the Vallecitos Federal Sustained Yield Unit ("Unit"), an area of the Carson National Forest designated by an act of Congress for special treatment because of its mix of intermingled private and Federal lands and its particularized use, dating back to before the Guadalupe-Hidalgo Treaty between Mexico and the United States. The ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Associations have been grazing livestock on these lands for generations, and, in fact, most of these families were grazing stock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating in the 1940s, the Forest Service instituted "management" practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock and were dependent on the availability of their former common lands (common lands designated by the King of Spain or Mexico prior to the creation of the National Forest) for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa Allotments have repeatedly exercised their First Amendment rights to petition their Congressional delegation and other elected officials for the purpose of protesting what they believe have been unlawful actions by Forest Service officials that have served to destabilize and degrade the private property rights and cultural/social fabric of the communities where these ranchers reside. The lawful conduct of the ranchers has been met by punitive acts by Forest Service officials, particularly Forest Service District Ranger Diana Trujillo, including the reduction of their grazing permits. These ranchers believe that they can prove that many of the decisions by the Forest Service District Ranger were motivated by a desire to punish them for engaging in speech critical of Forest Service practices and by racial animus and a bias against traditional Hispanic culture and its traditional agro-pastoral way of life.[1] Based upon such animus, the Forest Service has made it nearly impossible for these ranchers to sustain their grazing permits which results not only in a loss of their private property but in the slow destruction of their cultural fabric.

For example, the Forest Service understands that wild horses are eliminating forage and damaging the soil, and that any significant increase in the size of the wild horse herds in this area could significantly impact the local Hispanic communities in an adverse manner because it eliminates forage needed for the permitted cattle. Despite this knowledge and the existence of the Forest Service Region 3 Policy, the District Ranger decided to increase the wild horse herd beyond the numbers authorized in its 1982 Management Plan from the 12–14 head to between 20 and 70 head. However, the Forest Service 2002 Decision Notice expressly provided for measures to be taken to reduce the herd if it ever exceeded that number, recognizing that allowing the wild horse herd to increase to even 120 head "may cause some permittees to be forced out of the livestock business by competition for forage from the wild horses." However, in disregard for the needs of these local ranchers who live within

[1] This bias has subtly existed against this land use and the relationship of these ranchers to the land for many years. For example, in 1935, Roger Morris, a Forest Service grazing assistant, issued a report concerning grazing issues entitled "A Dependency Study of Northern New Mexico," wherein it was stated that "[Hispanos] are sedentary in character living in the present and with no thought for the future. They accept conditions as they are and make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extinction by starvation and disease before they would migrate."

the Vallecitos Federal Sustained Yield Unit, the Forest Service has now allowed the wild horse herd to increase far beyond the number permitted by the Forest Service's 2002 decision. In fact, Forest Ranger Trujillo has chosen to allow the wild horse herd to grow to over 150 head, rather than attempt to alleviate this problem so as to be responsive to the needs of the Hispanic people in the area.

To deal with these problems, the ranchers sought the assistance of then-U.S. Senator Pete Dominici in May 2006. Senator Dominici took up the issue with one of Ranger Trujillo's supervisor. Upset with ranchers for their having exercised their right to petition the government for redress of grievances, on July 5, 2006, Ranger Trujillo issued a decision ordering all cattle removed from the Jarita Mesa Allotment by July 31, 2006. Her decision was purportedly based on a reported June 22, 2006 inspection of range conditions that found the ocular estimate of forage stubble height was less than 1–2 inches at each of the key areas visited by Forest Service. On July 20, 2006, ranchers Sebedeo Chacon, Gabriel Aldaz, and others appealed Ranger Trujillo's decision based upon the significant rains since June 22, 2006 which greatly improved conditions on the range. In light of these changed circumstances, the ranchers implored the Forest Service to recognize that there was no justification for forcing them to go through the significant economic harm that would accrue as a result of having to remove all their cattle prior to the end of the permitted grazing season in October, 2006. Ranger Trujillo refused but, after Congressional inquiry, was forced to reverse her position.

Ranger Trujillo then tried to force an end to the grazing season in September 2006, instead of on October 31, 2006, based on an allegation that the permittees had failed to meet certain conditions she had imposed. At the end of the grazing season, rancher Chacon was having difficulty locating a small number of cattle that had strayed in the forest. This is a common problem and is due, in part, to the number of hunters and wood haulers who come onto the allotments and leave gates open and the fact that these allotments cover thousands of acres in the mountains. According to Ranger Trujillo, on October 5, Mr. Chacon had 17 cows that needed to be located and removed. On October 6, 2006, only 4 days after her arbitrarily imposed removal "deadline," Ranger Trujillo issued a decision suspending 20 percent of Mr. Chacon's authorized grazing for 2 years, a decision which had a profound economic impact on Mr. Chacon and his family, costing him tens of thousands of dollars. Mr. Chacon believes that he was singled out for disparately harsh punishment by Ranger Trujillo because she perceived him, correctly, as a leader of the permittees in the area due to the letters he had written to government officials protesting Ranger Trujillo's conduct.

On June 1, 2009, Mr. Chacon and Thomas Griego responded to Ranger Trujillo with a letter signed by 26 permittees which criticized her poor management style and her mismanagement of the two allotments. The letter was also sent to the New Mexico Congressional Delegation, Governor Richardson, and Ranger Trujillo's immediate supervisor, Kendall Clark. In the letter, the ranchers' stated that they were insulted by Ranger Trujillo's past letters and accused her of attempting to intimidate them. The ranchers pointed to Ranger Trujillo's unsuccessful effort to force them to remove their cattle from the allotments during July 2006. The ranchers also alleged that Ranger Trujillo and her staff had continually failed to install needed cattle guards or to fix plugged ones, and that Ranger Trujillo then used the fact that cattle would drift from one allotment to another, as a basis to threaten and/or sanction the permittees.

According to the ranchers, in retaliation for these letters, in 2010, District Ranger Trujillo made a decision to reduce the ranchers' use of their allotments by 18 percent—a decision that ignored the scientific analysis in a Forest Service environmental assessment ("EA") that such a reduction was not necessary. Despite the fact that it was a well-established practice and policy of the District Rangers in the different ranger districts within the Carson and Santa Fe National Forests (as well as in other Forests) to adopt the Proposed Action in the EA (the proposed action would have maintained the status quo with regard to permitted use), Ranger Trujillo disregarded the analysis contained in the EA and, making good on her predetermined decision to punish the ranchers by selecting an alternative calling for a substantial reduction in grazing. The decision of the Forest Service's Interdisciplinary Team contained in the EA did not support the action of Ranger Trujillo. However, Ranger Trujillo was angry with and determined to retaliate against Plaintiffs

for having the temerity to point out her errors and criticize her mismanagement of the two allotments and the entire Sustained Yield Unit.[2]

Although the ranchers had availed themselves of all known administrative and other remedies, on January 20, 2012, they filed a case in the Federal District Court for the District of New Mexico alleging, among other things, that they were being singled out through harassment and intimidation by Ranger Trujillo under color of law in retaliation for the ranchers' exercise of their First Amendment right of free speech and the right to petition the government for a redress of grievance. The Federal District Court, in a 115-page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive against them. However, citing to *Wilkie v. Robbins*, 551 U.S. 537, 550, the court held that the ranchers could not sustain a *Bivens* cause of action against Ranger Trujillo personally for damages sustained due to her acts of intimidation and harassment allegedly undertaken in retaliation for the ranchers exercise of rights guaranteed to them by the First and Fifth Amendment guaranteed rights. *See Jarita Mesa Livestock Grazing Association, et al. v. United States Forest Service, et al.*, Civ. No. 12–69–JB (Memorandum Opinion and Order, Docket 49, filed January 24, 2013). In essence, this meant that the district ranger remains free to engage in further acts of retaliation and the ranchers have no way of deterring her unconstitutional conduct.

Mr. BISHOP. Thank you, I appreciate that. Once again, your full testimony is part of the record. If there is anything additional you have, we will be happy to have that.

OK, Mr. Hage, we will come to you and show that this goes through several generations.

STATEMENT OF WAYNE HAGE, JR., TONOPAH, NEVADA

Mr. HAGE. Chairman Bishop and members of the committee, thank you for having me here today.

Yes, it does go several generations. In fact, my father and my mother were first involved, filed the first action in the court against the Federal Government for takings. We have buried both of them. The case outlasted them. My dad then—before my dad died, he had remarried to Congresswoman Helen Chenoweth of Idaho. We lost her, as well, and buried her, as well. And the second executor of my mother's estate—or, sorry, the first executor of my mother's estate, we also lost him, as well. So we have gone through quite a few people here, and now it fell on my shoulders.

Talking about governmental abuses, for the most part it is all a matter of record in three courts. The takings court, Federal takings court, court of claims, the ninth circuit, and the Federal District Court of the State of Nevada. Most of it is on record. I can highlight some of the abuses that have taken place.

One thing I will say, though, is what Judge Jones talked about in the Federal district court case that is still pending on appeal to

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[2] In order to create the appearance that her decision was based on science rather than an arbitrary determination to punish Plaintiffs for having engaged in conduct protected by the First Amendment, Ranger Trujillo falsely stated that the Forest Service had determined the current level of permitted livestock to be "unsustainable." In fact, the EA had not concluded that the current level of livestock grazing was unsustainable but had proposed that grazing continue at current numbers under Alternative 2. Furthermore, despite the fact that the 2002 Decision Notice on the wild horse herd required the Ranger to attempt to reduce the wild horse herd by taking certain measures set forth in that decision, Ranger Trujillo failed even to consider any alternative that would achieve the required reduction in the wild horse herd prior to reducing the number of Plaintiffs' livestock permits. Instead, Ranger Trujillo claimed the herd contained only 67 horses when 2010 Forest Service documents showed the herd was over estimated the herd was over 100 and, as a 2011 Forest Service survey showed, was close to 150. Ranger Trujillo had to know that the herd had grown well beyond 67, figure from a 2008 estimate, because almost no horses had been removed in the 2½ years since the study. In sum, although the EA proposed action was Alternative 2 (status quo) Ranger Trujillo selected Alternative 3.

the ninth circuit, what he talked about in those few instances—and the record is rich with his language—is very, very few of the instances that actually took place. Because when we went to that court, we were not—we were just trying to defeat the claim that we were trespassing, and we were trying to prove that, no, we were exercising our property rights, and just trying to make an honest assertion of those rights.

The actual abuses that were highlighted was evidence that was presented by the Department of Justice, through their own witnesses, trying to show that I was a bad guy. And it backfired on them, instead. So, I mean, the record is just a small record in front of that court. But in actuality, the abuses were so great I can tell you stories that would make the hair stand on the back of your neck.

But the main thing—and I don't want to say too much here today, because we always get retribution from the Federal employees, and they are never held accountable. Now, in our case, they were supposed to be held accountable. Two of the employees were sent to the U.S. Attorney for prosecution of conspiracy, because the judge found conspiracy between—by the BLM and by the United States Forest Service against our family to deprive us of our water rights and our grazing rights.

Now, nothing has happened so far. The judge even told the U.S. Attorney, he said, "I think you have a problem with this. I think there is a conflict of interest, and I think you need to find a U.S. Attorney from a different district, because your office is involved." So it goes higher up.

During the contempt hearing, the judge found two of the Federal employees—a Mr. Tom Seley and Mr. Steve Williams—in contempt of court for trying to pursue their own action and their own remedy outside the courtroom, even after, as he explained, they brought the case against me, they chose the jurisdiction.

So, when they were held in contempt—and this was, I thought, very revealing—they flew—in the contempt hearing they flew a lot of the Department heads from Washington, DC and the regional office to testify on behalf of the Federal employees, which was very kind of them to make that trip out there. However, the thing that became very apparent, when on the stand and being asked the questions, they said, "We expected this behavior out of the employees." Now, keep in mind, that was the behavior that the court found contemptuous and that the court was outraged with. They said they expected that behavior out of them.

So, this is not just—I mean it is isolated employees, yes. It is not, by any means, every single employee. But these guys were getting their direction, evidently, from the top. Now, I am probably going to get retribution for just being here and talking to you about this. I will take it. I hope they don't—well, I will take it. I am still in court.

But anyway, I do feel that we have a good system of law in the United States. Our court systems are still very good. And there is a reason for all these court rules and the court process. And I have found it to be, actually, very just in many cases.

What I would like to see is a remedy, a remedy to where they would be held accountable to the law, just the same as we are. I

mean we are darn sure held accountable. And thank you very much.

[The prepared statement of Mr. Hage follows:]

PREPARED STATEMENT OF WAYNE N. HAGE, TONOPAH, NEVADA

Since 1978 the employs of these agencies have demonstrated a disregard for my families' property rights and have punished us for making an honest use and assertion of these rights. The reason I accepted the invitation to testify here today is that I believe that it is so important for Congress to be aware of the atrocities that are being committed against my family and countless other ranchers. It is worth the risk or retribution from the agency employees. I would not be surprised if the BLM, USFS, and DOJ try to make my life difficult because I am testifying before this committee.

Many ranchers have a problem with the BLM and USFS. They have conducted themselves in a criminal manner and destroyed many ranchers. I personally have been at the receiving end of this criminal conduct. This problem however does not stop with the Hage family. The number of other ranchers that have suffered like my family is too numerous to count. I know many. In fact you can talk to almost any rancher who has to deal with the BLM and USFS and hear about another incident where a Federal employ has broke the law and was never held accountable. You will only once in a great while hear of minor punishment.

My family has spent over 23 years in the court protecting our property and liberties from these Federal employs. During these 23 years we have had eight published decisions and findings of Takings of our property by the Federal agencies, and findings of Conspiracy by the Federal employs.

Three courts have been witness to and addressed the government threats, intimidation and bullying. The Ninth Circuit Court of Appeals overturned a criminal conviction obtained by the USFS against my father for cleaning out brush from a ditch with hand tools.

The Federal Court of Claims trial Judge realized and found that it would have been futile for the Hage family to comply with all of the demands of the BLM and USFS employs. He thus ruled the Federal Government had taken our water rights. As potential cost to the taxpayer of $14,000,000 for the criminal acts of employs of the BLM and USFS.

The Chief Judge of the Federal District Court of the District of Nevada was so shocked by their behavior that he had found and ruled that the Federal Government employs engaged in a conspiracy against the Hage family. He also was convinced that the employs of the BLM and USFS would not stop and therefore gave my family a permanent Injunction against the Federal Government. (I pray that the Ninth Circuit Court of Appeals does not overturn the injunction, it is our only protection.)

The employs of the agencies, namely Tom Seley of the BLM and Steve Williams of the USFS were also held in contempt of court for trying to seek their own remedy after they realized the court process was not going their way.

The bosses (agency heads some from Washington DC) of Tom Seley of the BLM, and Steve Williams of the USFS, testified in a show cause hearing for their contempt that they expected Seley and Williams to conduct themselves in this manner that the court found contemptuous and which shocked the conscious of the court. This tells me the problem goes to the agency heads. The conduct, which the court saw as unlawful and vindictive was actually expected out of the Federal employs by the Agency heads.

The Federal District Court of the District of Nevada has referred the Tonopah BLM Field Manager and the Austin Forest Ranger to the U.S. Attorneys office for the District of Nevada, for prosecution of the conspiracy against my family, but then explained that there is a possible conflict of interest. The Court then suggested that a U.S. Attorney from another district handle the case. To this date I am not aware that anything will be done to hold these employs accountable for this conspiracy. I also do not expect that the U.S. attorney will ever hold these employs accountable for their actions. Thus they know they have enough protection from prosecution that they will not be deterred from acting this way in the future. It is for this reason and others that I believe I will be punished by employs of the BLM, USFS and DOJ for testifying before this committee. The dangerous part of this is that now the Federal employs will be braver than ever.

One of the main problems is that the employs of the USFS and BLM have the protection of the DOJ lawyers. They will go to great lengths to protect the employs of the USFS and BLM even to the extent of violating their ethics rules. One exam-

ple; The USFS claimed that we needed a 'special use permit' to maintain a July 6, 1866 Act ditch right of way with heavy equipment. The July 6, 1866 Act ditch right of way is a Congressionally granted and recognized right of way that preexisted the USFS and did not have any requirements or limitations for obtaining any permission for its maintenance and use. The USFS however claimed we could not maintain our July 6, 1866 Act ditch right of way without first obtaining a 'special use permit' from them, or we could only use hand tools. Even though we believe the USFS is incorrect in requiring us to obtain a 'special use permit,' (which supposedly they can deny) for any maintenance, we chose to only use hand tools to remove 'brush' that was obstructing water flow in the ditch. Nonetheless, the USFS prosecuted my father for cleaning this ditch. The prosecution was overturned by the Ninth Circuit court of appeals. However the DOJ lawyer, Elizabeth Ann Peterson, in clear violation of the ethics rules and with no support of the record, represented to the Federal Circuit Court in the case *Hage v. U.S.* that my father was using 'heavy equipment' and a dozer to clean this ditch. She argued that since we did not first seek a 'special use permit' from the USFS and were not denied this permit that our case was not ripe. The Federal Circuit Court based its ruling on these misrepresentations of the facts and partially overturned the decision in *Hage v. U.S.* on the grounds that the case was not ripe because we did not first seek and get denied a 'special use permit' from the USFS. Again the USFS even argued that we did not need this 'special use permit' if we only used hand tools, and the facts are only hand tools were used. Thus one intentional lie from a DOJ lawyer cost my family immeasurable hardship.

I have included some excerpts from the case *U.S. v. Wayne N. Hage, Executor of the Estate of E. Wayne Hage, and Wayne N Hage, Individually*. Case No. 2:07-cv-01154-RCJ-VCF. I find it best to read the Judges own words on this matter.

In the present case, the Government's actions over the past two decades shocks the conscience of the Court, and the burden on the Government of taking a few minutes to realize that the reference to the UCC on the Estate's application was nonsensical and would not affect the terms of the permit was minuscule compared to the private interest affected. The risk of erroneous deprivation is great in such a case, because unless the Government analyzes such a note in the margin, it cannot know if the note would affect the terms of the permit such that the acceptance is in fact a counteroffer.

The Government revoked E. Wayne Hage's grazing permit, despite his signature on a renewal application form, because he had added a reference to the UCC to his signature indicating that he was not waiving any rights thereby. Based upon E. Wayne Hage's declaration that he refused to waive his rights—a declaration that did not purport to change the substance of the grazing permit renewal for which he was applying, and which had no plausible legal effect other than to superfluously assert non-waiver of rights—the Government denied him a renewal grazing permit based upon its frankly nonsensical position that such an assertion of rights meant that the application had not been properly completed. After the BLM denied his renewal grazing permit for this reason by letter, the Hages indicated that they would take the issue to court, and they sued the Government in the CFC. The Government, having already denied the renewal grazing permit arbitrarily, then chose to interpret the initiation of the CFC Case as a refusal to appeal its administrative decision, despite the issuance of further protests by the Estate's attorneys. The Government refuses to consider any applications from Hage at this point. The entire chain of events is the result of the Government's arbitrary denial of E. Wayne Hage's renewal permit for 1993–2003, and the effects of this due process violation are continuing.

In 2007, unsatisfied with the outcome thus far in the CFC, the Government brought the present civil trespass action against Hage and the Estate. The Government did not bring criminal misdemeanor trespass claims, perhaps because it believed it could not satisfy the burden of proof in a criminal trespass action, as a previous criminal action against E. Wayne Hage had been reversed by the Court of Appeals. During the course of the present trial, the Government has: (1) invited others, including Mr. Gary Snow, to apply for grazing permits on allotments where the Hages previously had permits, indicating that Mr. Snow could use water sources on such land in which Hage had water rights, or at least knowing that he would use such sources; (2) applied with the Nevada State Engineer for its own stock watering rights in waters on the land despite that fact that the Government owns no cattle nearby and has never intended to obtain any, but rather for the purpose of obtaining rights for third parties other than Hage in order to interfere with Hage's rights; and (3) issued trespass notices and demands for payment against persons who had cattle pastured with Hage, despite having been notified by these persons and Hage himself that Hage was responsible for these cattle and even issuing such demands for payment to witnesses soon after they testified in this case.

By filing for a public water reserve, the Government in this case sought specifically to transfer to others water rights belonging to the Hages. The Government also explicitly solicited and granted temporary grazing rights to parties who had no preferences under the TGA, such as Mr. Snow, in areas where the Hages had preferences under the TGA. After the filing of this action, the Government sent trespass notices to people who leased or sold cattle to the Hages, notwithstanding the Hages' admitted and known control over that cattle, in order to pressure other parties not to do business with the Hages, and even to discourage or punish testimony in the present case. For this reason, the Court has held certain government officials in contempt and referred the matter to the U.S. Attorney's Office. In summary, government officials, and perhaps also Mr. Snow, entered into a literal, intentional conspiracy to deprive the Hages not only of their permits but also of their vested water rights. This behavior shocks the conscience of the Court and provides a sufficient basis for a finding of irreparable harm to support the injunction described at the end of this Order.

The Court will not award punitive damages under State law, because there is not "clear and convincing" evidence of "oppression, fraud, or malice, express or implied" on behalf of Defendants. See Nev. Rev. Stat. § 42.005(1). Defendants clearly had a good faith belief in their right to use the land as they did and had no intention to disregard the right of others. This does not prevent a trespass claim, but it does prevent punitive damages.

Defendants are also entitled to an injunction, as outlined, infra. There is a great probability that the Government will continue to cite Defendants and potentially impound Defendants' cattle in the future in derogation of their water rights and those statutory privileges of which the Government has arbitrarily and vindictively stripped them.

IT IS FURTHER ORDERED that to the extent not inconsistent with this Order, the Court adopts Defendants' Proposed Findings of Fact and Conclusions of Law (ECF No. 392).

The conspiracy ruling was much more limited than what it could have been. Had we presented all of our evidence the court would still be trying to write its decision.

It is warming to know that with regard to the Courts that we still have the Rule of Law. Although as I have found out it is nearly impossible to defend a persons property and rights in the courts due to the financial burdens and the length of time involved. (My Mother and Father filed the original case and were not able to live long enough to see the end of the litigation. My stepmother died before there was an end to the litigation and it is looking like my siblings and I may be in old age before this is concluded.) However, there it is becoming very apparent that there is no rule of law with regard to the employs of the BLM, USFS and perhaps the DOJ, there we have the rule of man. I remind Congress that Aristotle explained that the difference between a correct form of government and perverse form of government is that the former is the Rule of Law and the latter is the rule of man.

What solution may I offer?

The Citizens of this great country need to have the means to hold the employs of these agencies accountable for their actions. I believe that only if they are held accountable will they stop the Threats, Intimidation and Bullying. To accomplish this we need at least two things from Congress:

1. We need harsh penalties to be placed upon the employs who break the law and violate a persons rights. They are using the color of law in the performance of their actions, and they have the force of the Federal Government to protect them.
2. There must be an easier way to be able to hold them accountable. One of the biggest problems is that they claim their actions are actions of the Federal Government and thus they claim sovereign immunity. The individual is then forced to go up against the full force and might of the Federal Government and prove that it was not an action of the government in order to proceed. This is a very difficult to do. We need to take the sovereign immunity away from Federal employs who break the Law.

Thank you for allowing me to testify before this committee

Mr. BISHOP. Thank you. I appreciate your testimony. You could have gone on to the hair-raising stories; I had my hair cut specifically for this.

[Laughter.]

Mr. BISHOP. Representative Grijalva hasn't done that, but I did.

For a questioning period, we will turn to the members of the committee. You have 5 minutes, again, for questioning.

I am going to yield my time originally to Mr. Tipton—I think you were here first—if you have questions for this panel.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to thank all the panel for taking the time to be able to be here.

Mr. Chairman, you are probably like me. I am a little disturbed when I am hearing Mr. Lowry talk about intimidation when it comes to being able to protect those private property rights, when I hear Mr. Hage talk about being worried about retribution for simply coming here to be able to tell your story about being able to protect a private property right.

Mr. Hage, could you maybe expand just a little bit more for us? Your family spent 23 years, you have gone through both your folks passing away, 8 different court cases, in terms of trying to be able to protect your private property rights. And that is part of the reason we appreciate Mr. Lowry pointing out, as well, the water rights protection bill that Mr. Amodei and I have introduced.

Do you believe it is important that the Federal Government—that Congress, specifically—finally address this, and tell those agencies that it is your water, and it needs to be protected as a private property right?

Mr. HAGE. Oh, for sure, it is very important. I mean, even Aristotle will tell us, you know, the difference between the correct form of government and a perverse form of government is whether we have the rule of law or the rule of man. And we don't have the rule of law with some of these agencies, with some of the individuals in some of the agencies. I am not going to just say agency only. I am going to say, you know, certain individuals in some of these agencies. And when that rule of law breaks down, well, then there is nothing protecting us.

Now, you can tell the agency to stop doing what you are doing, but unless you give the actual people the power to hold them accountable, they are not going to hold each other accountable. In other words, the bosses are not going to hold them accountable. I am convinced of that. I have seen that in the past.

So, it is a matter of great importance, in my opinion. We have got some great decisions out of the courts. But still, there is no remedy for us, no guarantee that our property rights are going to be held sacred or valid.

Mr. TIPTON. Under Equal Access to Justice have you ever been reimbursed for your financial costs?

Mr. HAGE. No, no, I have not. Now, there is a reason for that, too. It is still on appeal, so the time has not told. So in the court process that has not completely gone through. When the appeal is over, there is a certain time period afterwards that we get to submit our bill. And, supposedly, under the Equal Access to Justice Act, we will get reimbursed for the cost.

However, myself personally, I won't. I represented myself pro se in the court. And the Equal Access to Justice Act does not apply to me. The lawyer that I hired to represent my father's estate, that will get reimbursed. But myself, personally, I devoted 3 years and studied the law myself to try to defend myself in these courts. We got a really great decision, but I am out every penny of it.

Mr. TIPTON. Yes. Mr. Valdez, your family has been here since the 1500s. Did you put that water to beneficial use when you described bringing in those first cattle herds, before the Forest Service even existed? Did your family feel that they were putting that water to good beneficial use?

Mr. VALDEZ. Absolutely. In fact, we engaged with the people that were already there in expanding on irrigation infrastructure to enhance production of fodder for winter use, and we improved springs, and continued to improve water supply sources on Federal public lands.

Mr. TIPTON. Would you concur that it is important at this time that we do pass that message, we do pass through Congress the—what is just your right, to be able to hang on to that private property water right that is so dear to the West?

Mr. VALDEZ. Absolutely. Water is everything,

Mr. TIPTON. Great. Mr. Lowry, you talked about compiling better than $800,000, I believe it was, in terms of costs, just to be able to protect your private property rights. How is your family going to be able to sustain that? You had mentioned about intimidation, and many people just dropping out and giving up under the threat of Federal intimidation. How is your family dealing with that?

Mr. LOWRY. Well, we are surviving. I would say one thing, that I do want to give compliments to our attorneys who fought that case. They have not been pressuring us to get that paid. They are giving us a very generous amount of leeway on that. Otherwise, we would be out of business right now. And not to put too fine a point on it, $888,440.07 was the last bill.

And, if I could address the question you posted to the other two gentlemen on the importance of passing the Water Rights Protection Act, I would concur with that. And I think, in addition to that, I do not believe that the agencies are going to give up, because it has been an ongoing policy for decades to obtain the water.

I read a transcript of a speech that Secretary——

Mr. BISHOP. We are out of time, I am sorry. We will come back to those questions again, as well. And I will ask how you came up with $.07, too.

But, Mr. Grijalva, do you have questions?

Mr. GRIJALVA. Yes. Thank you, Mr. Chairman. A long question, and hopefully some—for the panelists, all of them.

The Federal Land Policy and Management Act of 1976 requires that BLM manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values that, where appropriate, will preserve and protect certain public lands in their natural condition that will provide food and habitat for fish and wildlife and domestic animals, and that will provide for outdoor recreation and human occupancy land use."

I understand, from all the testimony of the witnesses, that there are grievances with Federal land management agencies over specific cases. But, correct me if I am wrong, and from what I understand you are not saying that BLM or the Forest Service never has a legitimate reason to restrict grazing and other uses to protect land that is the property of the entire American people. Am I correct in that assumption, from the witnesses, that there is a—just go down——

Ms. BUDD-FALEN. Yes, you are correct.

Mr. GRIJALVA. Sir? Do you feel——

Mr. ROBBINS. I would say that they do have a management right. And I don't think any of us would disagree with that.

Mr. GRIJALVA. OK, thank you. Sir?

Mr. LOWRY. Yes, Congressman, I agree with that. They have the right and a duty and the responsibility to manage, and manage according to the law and to the Constitution, sir.

Mr. GRIJALVA. And the law we are referencing is the 1976 law that I am referencing.

Mr. LOWRY. Yes, and I believe not only FLPMA, but all laws pertaining——

Mr. GRIJALVA. Ms. Richards?

Ms. RICHARDS. I would also agree that the land management agencies have the charge to manage correctly.

I would also add to what you have stated with the laws. They also require that economic analysis is done on their decisions, allow for multiple use and——

Mr. GRIJALVA. OK.

Ms. RICHARDS [continuing]. That sound science is used to make those decisions.

Mr. GRIJALVA. Sir?

Mr. VALDEZ. I agree that FLPMA generally outlines the responsibilities of land management. In our particular area, we dispute that the government legitimately acquired the lands that they are managing; that is a separate issue. And I think they have to manage in the——

Mr. GRIJALVA. That is the land grant issue that——

Mr. VALDEZ. Yes.

Mr. GRIJALVA. Historic—yes. Sir?

Mr. HAGE. Yes, sir. Thank you. I do agree with your statement about FLPMA concerning public lands. The one thing that I will highlight, though, is they can manage those lands, but even with the savings clauses in FLPMA, they cannot do so with—and destroy property——

Mr. GRIJALVA. OK.

Mr. HAGE [continuing]. Private property in that respect.

Mr. GRIJALVA. One more follow-up question for all the witnesses. In 2000, the *Public Lands Council v. Babbitt*, the Supreme Court looked at the language in the Taylor Grazing Act of 1934, which was intended to address the deterioration of Western range lands due to over-grazing them. Ranchers argued that new regulations infringed on their rights to graze. The Supreme Court unanimously ruled that there was no right to graze. Land management decisions should be guided by broader public interests.

I would like our witnesses' view on this case. Do you believe it was correctly decided? Do you believe the Federal Government has a duty to protect those grasslands, forests, and wildlife for future generations? And, when ranching activities threaten these natural resources, that these activities should be regulated? And I will just go down.

Counsel.

Ms. BUDD-FALEN. Your Honor, actually, what the United States Supreme Court said is that a challenge to the Bruce Babbitt regulations as a whole was incorrect. But if you read the concurring opinions, particularly that of Justice O'Connor, she said that, absolutely, individual instances of abuse, or individual instances of challenge to the grazing regulations based on——

Mr. GRIJALVA. But the fundamental issue of no absolute right to graze, and the land management decisions must be guided by a broader public interest, that is the crux of that decision.

Ms. BUDD-FALEN. But she didn't—they didn't say that, blanket, there was no absolute right to graze. What they said was that the Taylor Grazing Act was in full force and effect, and they upheld the tenth circuit's ban on saving the land or creating the land for——

Mr. GRIJALVA. Yes, but——

Ms. BUDD-FALEN [continuing]. Use.

Mr. GRIJALVA. You have me at an advantage or disadvantage, depending on your point of—on your frame of reference. I didn't go to law school, but that is kind of the text that I looked at.

Sir.

Mr. ROBBINS. Well, when we bought these ranches, we bought a preference right and we paid for a permit. And these go back before there was even a State. My ranch goes back to 1871, before the State of Wyoming was even incorporated. And those rights have been with the ranch since then. I lost——

Mr. GRIJALVA. Yes, you don't agree with the decision.

Mr. ROBBINS. I don't agree with it, and I say that since 2004 I have not had those grazing privileges. OK?

Mr. GRIJALVA. Thank you.

Mr. BISHOP. Mr. Daines, do you have questions?

Mr. DAINES. Thank you, Mr. Chairman. I represent the State of Montana, so we are very familiar with the issue of public lands, Federal lands, and private property rights.

I have to tell you that the title of this hearing is "Threats, Intimidation, and Bullying by Federal Land Managing Agencies." Boy, the last few weeks out in Montana we have had hunters trying to walk across public lands to be shut out, trying to access State lands to be shut out and closed to the public. And I have had many, many hunters come to me and say, "Steve, for the first time we realized these aren't public lands, they are government lands." And the government is shutting out these lands to their own people, and it is outrageous.

Well, let me pivot back over to the panelists here, and thanks for the testimony. Some of my constituents have had similar experiences with the Federal Government operating near public lands in Montana. I will tell you the Federal Government must be a better steward of public resources, and must become a better neighbor of the private landholders.

It is interesting to hear many of you talk about the cost of litigation you have had to endure with the Federal Government. In Montana we witnessed that firsthand with these fringe extreme groups that fight our Forest Service in court, holding up and stopping important timber sales. In fact, I think region one has one of the worst trends, worst records of habitual litigants of any region. And to make this situation worse, adding insult to injury is when these groups receive compensation from the Federal taxpayers when they prevail for the Equal Access to Justice Act.

Now, it is my understanding that EAJA was intended to help citizens who are directly harmed by the Federal Government. That is the small business owner, the private rancher, many of you who have testified here today. However, I also understand you are having a hard time maybe getting compensated for your—for the work that you have done fighting on behalf of your rights.

First of all, Mr. Lowry, do you think we should have some reforms to the Equal Access to Justice Act that might facilitate helping the people it was originally intended to help, which was the little guy, not the habitual litigant?

Mr. LOWRY. Yes, Congressman. Thank you. In our particular case—you have probably seen in the written testimony—the Idaho Supreme Court denied awarding EAJA claims on their belief that it was—State court did not fall under the jurisdiction of that. And there is a Nevada Supreme Court that takes a different view. And I think that could be resolved by amending EAJA. And I would suggest, in the definition section on "court," that it would state that court includes State courts having jurisdiction over the subject matter.

They had to do that with veterans' courts. I read the Congressional Record on why veterans' courts is listed under "court," and it was because veterans' courts were not awarding EAJA fees. And so it was amended to redress that problem. So I think it could be handled the same way.

Mr. DAINES. I appreciate that input. And I am a cosponsor of Representative Lummis of Wyoming's—her Government Litigation Savings Act, which is going to help improve this law. And I look forward to working with her and the team here to that end.

Perhaps—could you also expand—we talked a bit about looking out for the little guy, which was the intent of EAJA in the first place, the private land owner, the little guy who was taking on the Federal Government? Could you also maybe expand on the needs for Equal Access to Justice Act reforms that might address the habitual obstructionist lawsuits that are a big problem in many of the Western States? Yes, please.

Ms. BUDD-FALEN. Thank you. That is actually one of the problems that the Governmental Litigation Savings Act is supposed to take care of, are these habitual litigants.

One of the problems that you have under the Equal Access to Justice Act is that the statutory cap on your net worth only applies to businesses and individuals, because the Act was truly meant to help protect small businesses and individuals. So there is a $7 million net worth cap. But that doesn't apply to litigant environmental groups, such as the Sierra Club, whose net worth is $56 million. They can get attorney's fees. Center for Biological Diversity's net

worth is $10 million. But because they are "non-profit public interest," they can be awarded attorney's fees.

And so, often what you have is not just awards, but simply the Justice Department willing to settle these cases with these groups, some of which, for undefined amounts that are not noticed to the public, and so at this point, without any transparency, this Congress and members of the public have—absolutely have no idea how much in attorneys' fees are going to groups that are worth $56 million, and could certainly afford their attorney, whereas these individuals who are fighting for their livelihoods cannot get that same money, because they own land.

Mr. BISHOP. Thank you. I am sorry, I am going to have to cut you off there. I appreciate it.

Mr. Huffman, do you have questions?

Mr. HUFFMAN. Thank you, Mr. Chair, and thanks very much for the witnesses.

You know, I think our Federal Government, our Federal land managers, should always be good neighbors. They should always comply with the law. And so, I am always concerned when I hear where a court has actually found wrongful conduct. I appreciate your testimony, Mr. Hage.

But I do think it is important also to acknowledge that BLM administers 18,000 grazing permits in this country, that the U.S. Forest Service administers 8,000 such permits. And if we could stipulate that we should be concerned when there is a violation of law and when there is bad conduct, and if it were approached in that manner there would be a spirit of great bipartisanship in trying to make sure there is accountability and lessons learned and better conduct from that.

But when we title hearings with loaded terms, such as today, when we bring forward not only cases that have been validated by courts, but cases that are unsubstantiated hearsay, all manner of allegations, when we characterize the Federal Government as a hotel thief, going room to room, trying to find who they can fleece, things quickly rise to the level of caricature. And, unfortunately, that is what I am afraid we are talking about here today.

So, I just want to express my dismay that, instead of what could be a bipartisan serious oversight approach to incidents that I don't think anyone on this panel would tolerate, regardless of their party, that we are once again trying to stage a whole bunch of mini-sagebrush rebellions because we don't like the Federal Government. And that is just not a constructive place to be.

If we want to look at habitual litigation and that problem, I sure hope that scrutiny includes groups like the Pacific Legal Foundation, Cause of Action, the Competitive Enterprise Institute, who I see ever-present in these proceedings, who simply troll around, looking for opportunities to bring property rights cases against the government, often unsuccessfully. And we could certainly take a good, hard look at some of the frivolous litigation that is constantly being asserted in the name of property rights. But, again, we don't see that kind of balanced approach. And I just want to express my concern.

With that, I will yield the balance of my time to the Ranking Member, Mr. Grijalva.

Mr. GRIJALVA. I appreciate it. Ms. Richards, the Gateway West Transmission Line, a route that you suggest would go through the heart of the specially designated public land, the Birds of Prey National Conservation Area, which Congress established 20 years ago. And last year, on behalf of the county initiative, you wrote to Secretary Salazar saying, "Let's pause the permitting process, convene a collaborative effort to address that." Obviously, more local work needed to be done on the route.

When the BLM released their final Environmental Impact Statement for public comment in April, the Agency said it might delay making a decision on parts of the line in your area in order to continue to work with local stakeholders. Do you support that BLM decision?

Ms. RICHARDS. The BLM decision that we have right now we currently do not support. There was a totally collaborative effort that took part, including former BLM employees that worked at the Birds of Prey that have the history and the scientific background to—for the county on this matter.

Mr. GRIJALVA. So the decision to hold in abeyance any final decision on the route in those areas that you raised as concerns in your letter, you don't agree with that decision by the BLM?

Ms. RICHARDS. I am sorry. I am not understanding what you are asking.

Mr. GRIJALVA. When the BLM released that final Environmental Impact Statement in April, the Agency said it might delay making a decision on parts of the line in your area that were raised to Secretary Salazar in order to continue to work collaboratively with local stakeholders to find the best solution. My question is, do you support that decision by the——

Ms. RICHARDS. I support the decision to delay that, but I would also, with due respect, say that we have gotten a letter since, in September, that shows the lines still coming across our private ground. That came from the BLM, from the Washington, DC level.

Mr. GRIJALVA. So, in response to the request for collaboration, there is a pause in the permitting process. The statement itself says, "We are not going to go forward with that route until we have more involvement." You support at least that part of the involvement. It kind of seems opposite of bullying and threatening at this point, doesn't it?

Ms. RICHARDS. I do support that part of the involvement, as long as it is upheld by both parties, the agencies and those that are in the county.

Mr. GRIJALVA. OK, thank you.

Mr. BISHOP. Thank you. You all should have seen what I wanted to call this hearing. This is a soft version of it.

[Laughter.]

Mr. BISHOP. Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman.

You have been an excellent panel. I represent northeast California, the top of the State where it borders Nevada and Oregon. So we feel a great kinship to you folks from the other Western States. Indeed, we feel like all of us in the West are targeted by urban areas, the East Coast, people that—understand what we do

or seem to have an appreciation for it in agriculture, in ranching, in resource management and extraction.

And to the idea that somehow farming and ranching are harmful to the Federal lands, the public lands, I have never seen any really good evidence of normal practices, good, sound stewardship, having it be harmful. It seems to be a shift in opinion by those that govern or regulate us, a different type of people in government these days than what maybe previous generations—that look at it not as just public lands, but their lands, or government lands, as was asserted a while ago.

So, to hear that—what you all go through, it really breaks my heart, what you have to do to defend things that have been practices of your families or your neighbors or your neighborhoods for decades or, in the case of Mr. Valdez, even centuries of what you have done in good faith as good stewards.

And so, I appreciate greatly your willingness to fight back. Because, again, like in the area where I represent, the area of Siskiyou County, places like that, they do feel like they are being abused and that people show up with more ideas or more visions for how they should manage their land, or a reintroduction of the gray wolf to their area. Now, if you have ever seen what those creatures do to livestock, to game, they are not happy with more government intervention thinking that, oh, wouldn't it be nice to introduce these species, et cetera.

So, to get to Mr. Lowry there, you talked about a $888,000 bill so far that maybe your legal team is working with you on that. If you have already been rejected—well, is that the final answer under Equal Access to Justice there, or do you have any other recourse, as that was, again, brought on by a Federal action that you were even in that court?

Mr. LOWRY. No, we have no other recourse. We applied to the U.S. Supreme Court concerning the Idaho Supreme Court's decision on that issue, on the awarding of attorney fees. And we were hoping that perhaps, with the differing opinions between the Idaho and the Nevada Supreme Courts, that they would take that case, but they did not. So, as I understand it, we have exhausted our abilities in that arena.

Mr. LAMALFA. So, to a farmer or rancher at my level, our level, that is real money. How does a person come up with that at the end of the day?

You know, Mr. Hage, you have been through—I have known your family name for many years before I have been in this role here, and I don't want to ask you personally what your numbers are, but I imagine they are pretty extensive, as well.

And one more side question, too. Did you grow up with the idea that you were going to become—you are an attorney, correct?

Mr. HAGE. I am not a licensed attorney; I am a pro se litigant.

Mr. LAMALFA. OK.

Mr. HAGE. Yes.

Mr. LAMALFA. But you have done much—is that what you grew up to do?

Mr. HAGE. No, sir, your Honor. I grew up on the back of a horse in the middle of the sagebrush. But it is what I had to do in order to protect our rights.

Talking about numbers, I mean, our number is just about as—well, it is outrageous. It is about—4.3 million is what I currently owe on one attorney bill, and quite a bit on another attorney bill. How do we get compensation? We are hoping that the court will give us compensation in the court of claims. And the trial court certainly awarded it to us, but the appeals process has been years and years. And——

Mr. LAMALFA. Does anybody on this panel feel like—that your access to justice, when you have to bring lawsuits to defend yourself, that these are frivolous?

Mr. ROBBINS. I have spent around a million dollars myself, and it is absolutely not frivolous. And I would be glad to meet with Mr. Huffman and discuss what he considers frivolous.

And when they try to put you in jail for 2 years, when they audit you within 3 weeks of winning that decision, and all the economic losses from the guest ranch business to running 50 percent for the last 10 or 12 years, it is $20 or $30 million worth of losses to us and to that community, 15 jobs, just in the guest ranch business, that went away. It is huge for a small community of 4,000 in the whole county. We are the largest ranch there, the largest agricultural enterprise there, even at 50 percent. So, it is huge for us, and we would like some relief.

Mr. LAMALFA. Thank you all for coming the distance you have come here today, and for fighting back, and for not just taking it sitting down. So we all appreciate it, and we will be with you.

I yield back.

Mr. BISHOP. Thank you. Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. You have all told heartrending stories of threats by your own government, of everything from jail time to financial ruin. My colleague from California says that this is caricature. Caricature is defined as exaggerations by means of often ludicrous distortion. Do any of you—would any of you want to make a reply to that charge?

Mr. ROBBINS. I will make a reply. I had a meeting in—with the Department of the Interior and the BLM in Washington, DC. I brought to that meeting—there were 12 people in the room. I was sitting at the end of this table with Department of Justice microphones here, Department of Justice lady here, on the right. I brought the transcript from the trials. I proved perjury against the number two man in the organization. I read the transcripts, turned to the Department of Justice lady and said, "What are you going to do?"

She said "Oh, well"—I said, "Let me tell you, folks. If they had just proved perjury on me, they would be hauling me out of here right now." And everybody in that room didn't say a word. You could have dropped a pin in that room. Every one of them in that room went just like this. They know the power of the Federal Government. And that has been back in 2004. Nothing has been done to any of them for perjury.

The reason I didn't get to go to court is because I had so much perjury involved in the case that they were going to lose, and that is why it went to the Supreme Court. It is ridiculous that somebody that is abused the way I have been abused cannot get his day in court. That is all I wanted, give me my day in court.

Mr. MCCLINTOCK. Anyone else want to respond?

Ms. RICHARDS. If I could respond on behalf of our county and the county residents, we are plagued right now with a permit renewal process that is 150 out of—or 125 out of 150 allotments in our county, which, as I stated, is 77 percent Federal land.

It is not caricature when those small rural communities are affected. We have schools, we have small businesses that are dependent upon that. And when we have agency people that are making decisions that are not coordinating as they are charged with on the county level, and those citizens do not have any recourse, it is time for a change in the law.

So, I would say that when you go out to these small rural communities and see these people and how it affects their lives—Tim Lowry is from Owyhee County. We know how that has affected him. We have many others in there. We have got current cases right now where one is only a third of the way into the process, and they are at $55,000.

And so, I would say that it definitely has effect, and we definitely need a change, and it is definitely something that needs to be heard, because it is out there.

Ms. BUDD-FALEN. Your Honor, the other thing that I would say is that we are only asking to be able to go to court. I am not telling you that all these people would win, I am not telling you that every Federal employee is bad, that every employee has an agenda. But each of these people here have suffered through individual employees.

When we were called for this hearing, I personally just did some research, because I don't represent a group. We found 12 additional stories of people that have these kind of stories, but we don't have a recourse. We don't have a way to go to court and plead our facts.

Mr. MCCLINTOCK. Well, let me ask you this.

Ms. BUDD-FALEN. That is what this is.

Mr. MCCLINTOCK. What would you have Congress do? How much of this requires changes in law, and how much of it extends to the attitude of public officials?

Ms. BUDD-FALEN. You can't legislate the attitude of public officials any more than you can legislate the attitude of the citizens here. But right now it is up to Congress to waive the sovereign immunity of individuals, so that we have a cause of action in court. If we bring a frivolous case, a Federal judge has all the power under the Federal rules of civil procedure to dismiss the case. You can bring sanctions against the attorney.

We are not asking to be able to bring all sorts of frivolous cases against general policy. We need Congress to waive the immunity of Federal officials, just like Congress did with State officials and local officials under the Federal Civil Rights Act, so that we can bring our individual cases to a Federal court and have a Federal judge look at the rule of law and make a determination.

Mr. MCCLINTOCK. Sovereign immunity, I think, is itself a puzzling concept in a republic like America. In the European countries, sovereignty flows from the government. America has a very different foundation, and that is its sovereignty flows from the people. The people are sovereign, the government is their servant. And it seems to me that we are moving more and more toward a Euro-

pean model vision of sovereignty, where your rights are derived not from what the founders call the laws of nature and of nature's God, but rather, from the government, itself.

And, as the French discovered when they tried to mimic the American Revolution, if you place that source of rights within the government, you have a very, very unstable situation. And maybe that is something we need to consider.

Mr. BISHOP. Thank you. Mr. Amodei? Happy to have you come back. Do you have questions for this panel?

Mr. AMODEI. Just briefly. Mr. Hage, thank you for your testimony. You used to be in my district, but obviously you didn't like the representation. So you fixed that.

[Laughter.]

Mr. AMODEI. Can you tell me if the folks in your statement that are with the Federal land management agencies in Nevada—does Mr. Seley still work for BLM in Nevada?

Mr. HAGE. He retired—talking about Mr. Seley, Congressman. Mr. Seley retired, I believe it was, right at the end of May. And I think it was right about the time the decision in my case came down.

Mr. AMODEI. OK.

Mr. HAGE. He retired at the same time——

Mr. AMODEI. Was he headquartered out of the Ely office, the Tonopah District?

Mr. HAGE. No, he was——

Mr. AMODEI. Where was he?

Mr. HAGE. He was right there in the Town of Tonopah. He was in the Tonopah field office, as they call it, in the Battle Mountain Grazing District.

Mr. AMODEI. The Battle Mountain District, OK. And what about Mr. Williams? Still employed by the Forest Service?

Mr. HAGE. I assume he is. I have no idea. Now, my correspondence with the Federal agency no longer has Mr. Williams's signature on it. It was another individual. I do believe he is still there. I haven't heard that he is retired. I believe I would have heard that——

Mr. AMODEI. But he is out of the Austin Ranger District?

Mr. HAGE. Austin Ranger District in the Toiyabe National Forest, yes.

Mr. AMODEI. Thank you. Thank you, Mr. Chairman, I yield back.

Mr. BISHOP. Thank you. Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. I have a quick question for Ms. Budd. You got into a little exchange about a Supreme Court decision with the Ranking Member, and you seemed to have a different interpretation. The Ranking Member seemed to be interpreting the Supreme Court decision as there is no right to grazing. And I kind of heard you going back and forth.

Can you explain that decision, in your opinion, what you think it means? It seems like it was being mischaracterized a little bit by the Ranking Member, so I just want to make sure that we understand that Supreme Court decision better.

Ms. BUDD-FALEN. Certainly, sir. The case is *Public Lands Council v. Babbitt*. It was a case that was brought as a general challenge to the regulations that Bruce Babbitt put into place when he

was Secretary of the Interior that, in the Public Lands Council's view, actually changed the focus of grazing under the Taylor Grazing Act.

If you look at the Federal Land Policy and Management Act, it does not repeal the Taylor Grazing Act. It adds additional things to be considered, but it never repealed that Act. The case was brought in the Federal District Court in Wyoming. It went to the Tenth Circuit Court of Appeals. The Tenth Circuit Court of Appeals actually rejected some of the range land reform regulations and accepted others, but it did so only on the basis that, because the regulations were changed as a whole, and not considering specific fact situations, that certain portions of those regulations could go forward.

The Supreme Court, and particularly the concurring opinions, said that, "When we view these regulations as a whole, they may or may not be valid. But you are free to bring individual factual situations challenging these regulations in individual places." And that concurring opinion was by Sandra O'Connor.

Mr. LABRADOR. All right, thank you. Ms. Richards, welcome. It is good to have you here again.

How has the BLM's management of the Gateway West project negatively impacted Owyhee County, which is in my district, by the way?

Ms. RICHARDS. Yes. I guess—and thank you for allowing us to be here today—some of the negative impacts have been, as I indicate in my testimony, there have been hundreds of hours that have been spent not only from residents of the county, but we have environmental groups, many of the environmental groups that are participants on the Owyhee Initiative. And, as Mr. Grijalva alluded to, we also—the initiative wrote a letter of concern about the steps that were being taken.

The county has produced numerous maps to help in this coordination. They have gone out and ground-truthed a lot of the paths. And we have actually hired people to look at the Birds of Prey aspect and make sound, science-based resolutions about the project that we could have, going forward.

Mr. LABRADOR. And I think you testified that the Birds of Prey experts are actually disagreeing with the Federal authorities over here. Isn't that correct?

Ms. RICHARDS. Actually, on the local level they are, and we have former employees that are retired now that are in consulting that have also wrote opinions of that.

Mr. LABRADOR. OK. And I think you were just recently quoting the Idaho statesman speaking favorably about the collaborative process. Isn't that correct?

Ms. RICHARDS. You are correct. Rocky Barker did come out to an event that was held in the Owyhee. And yes, we are still in favor of collaborative processes, inviting all——

Mr. LABRADOR. So you are not here testifying against the collaborative process.

Ms. RICHARDS. Absolutely not.

Mr. LABRADOR. Which—it seems like that was what was trying to be implied by Mr. Grijalva.

Ms. RICHARDS. Correct.

Mr. LABRADOR. So, tell me why you think the collaborative process works, and why you think, in this case, the Federal agencies are actually not complying with the collaborative process?

Ms. RICHARDS. I am going to make a clarifying statement there. The collaborative processes work, as I indicated in response to Mr. Grijalva's question, when both sides are playing by the same rules. What we see as veiled threats or possibly, I would say, intimidation is when the Federal agency goes along, leads everybody to believe that they are playing by the same rules, and then oversteps their boundaries by changing the rules in the middle as, I would say, of a card game.

Mr. LABRADOR. Can you give an example of how that happened in Owyhee County?

Ms. RICHARDS. Actually, there have been two of them. One of them was in a wilderness management plan, where the BLM wrote new guidelines after legislation was passed on something they already agreed on.

The other would be in the Gateway West Transmission and what came forward from a collaborative effort, and then what came down as the preferred alternative.

Mr. LABRADOR. Thank you. And I want to welcome Mr. Robbins and Mr. Hage, Jr. Mr. Hage, Jr. was actually the stepson of my predecessor, who was a very fine congresswoman from the State of Idaho. So thank you very much for all of you being here, and thank you for your service. And I think it is a shame that anybody would imply that anything that you do is a caricature. And I think it is a pretty shameful statement, and I hope someone can retract that.

Thank you very much, and I yield back my time.

Mr. BISHOP. Thank you. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I want to thank all of our witnesses for being here, especially our witnesses from my home State of Wyoming. And I want to thank Mr. Robbins and Karen Budd-Falen for making this long trip.

Now, let me get this straight, Mr. Robbins. I just came out of a different hearing, so I want to make sure I understand the facts. You own a ranch in Hot Springs County. The BLM reduced your grazing allotment, canceled your right of access across BLM land to your own property, charged you with 27 livestock trespasses on to BLM, brought criminal charges against you which were dismissed by a jury after only 25 minutes of deliberation. Is my memo correct? Is that what happened to you?

Mr. ROBBINS. You left—well, they did reduce, but they have eliminated—I haven't had a grazing permit since 2004. So——

Mrs. LUMMIS. And most of these actions stemmed, as I understand it, from your refusal to grant the BLM an easement across your own property. Is that true?

Mr. ROBBINS. I discussed that in the beginning. And they—I know it is hard for a lot of people to believe, that they would be so intent on doing something like this. But it really comes down to an attitude that you have to understand, that is when they ask you something they expect you to say yes.

Mrs. LUMMIS. Yes.

Mr. ROBBINS. And when you say no, then it creates an atmosphere that led to the intimidation that has been 19 years and

going. And that intimidation included trying to put me in jail for 2 years, and also, you know, within 3 weeks I got an IRS audit, and it was a direct tie between the——

Mrs. LUMMIS. Did you ever meet a woman by the name of Lois Lerner?

[Laughter.]

Mr. ROBBINS. No, but——

Mrs. LUMMIS. I digress.

Mr. ROBBINS [continuing]. She is probably calling right now.

Mrs. LUMMIS. I apologize for that. Hey, Mr. Robbins, were you aware of the BLM's expired easement when you bought the property?

Mr. ROBBINS. No, I was not. It was a conspiracy of sorts. And, really, what I would have to say to you is that the previous owner was under the threat of blackmail. He was in a very bad financial position. He could not resist this, because they would not have transferred the permits, and it would have killed the deal. He kept it quiet until after—and I wouldn't have known about it until after the event, unless they called and didn't have their recorded easement. That is the only way——

Mrs. LUMMIS. Yes, because, as I understand it, they failed to record it under Wyoming law when the ranch was sold to you, so you had no knowledge of this easement. Am I correct about that understanding?

Mr. ROBBINS. That is right, yes.

Mrs. LUMMIS. OK. Did the BLM ever give you any consideration to your offers to sell them an easement?

Mr. ROBBINS. Well, you know, I explained that earlier. The 8 miles to their half-mile, and public versus private, and then I get to pay them for that privilege, I told them then that I would have been willing to negotiate something. But under the circumstances, I was not willing to do that. And they said——

Mrs. LUMMIS. Ms. Budd-Falen——

Mr. ROBBINS. They said to me that the Federal Government does not negotiate.

Mrs. LUMMIS. Only with terrorists, apparently. OK.

Ms. Budd-Falen, did the BLM have any other options at their disposal to get the easement that they didn't pursue?

Ms. BUDD-FALEN. Absolutely. The Fifth Amendment provides that the Federal Government can take private property, but it has to be for a public purpose with due process and just compensation. But, rather than going through those requirements, the BLM—specific employees, in this instance—simply believed that they could harass and blackmail Mr. Robbins into just giving up an easement outside of the Fifth Amendment protections.

Mrs. LUMMIS. Mr. Robbins, these dozens of legal actions against you, you won a few of those on the merits. Isn't that correct?

Mr. ROBBINS. I did. Actually, I began a process—I actually believed that the system was not broken at the time, and I began to fight these trespasses. I fought three of them, $111 worth of trespass fees. I spent $250,000 to defend myself there. I proved in that hearing perjury was—the second guy in there was impeached by the court, and I still lost. OK? I lost.

Mrs. LUMMIS. At any point during this nearly decades-long harassment campaign against you, did you ever consider just giving in to the BLM, just to make it go away?

Mr. ROBBINS. I wish I could say yes to that, but I just—you know, what is right is right, and what is wrong and wrong.

Mrs. LUMMIS. Yes.

Mr. ROBBINS. And if I had to give up everything, I was willing.

Mrs. LUMMIS. Ms. Budd-Falen, back to the legal side. While a majority of the Supreme Court declined to recognize that Mr. Robbins had a claim against the BLM for the entire course of conduct, they did, nonetheless, recognize the need for an effective remedy for people in Mr. Robbins' situation. Is that correct?

Ms. BUDD-FALEN. Yes, both the majority opinion written by Justice Roberts, as well as a very strong dissent written by Justice Ginsberg, both recognize that Congress should give us a path to the Federal court.

Mrs. LUMMIS. I want to apologize to you for what you have been through, and thank you for your tenacity in upholding the constitutional rights of Americans.

Mr. Chairman, I yield back.

Mr. ROBBINS. Thank you.

Mr. BISHOP. Thank you. Allow me to ask a couple of questions. Let me follow up on where Mrs. Lummis was, originally.

Ms. Budd-Falen, if Congress fails in some way to take up the court's challenge to find a legislative remedy, is there any way that a poor rancher—which is our ranchers here, land rich and money poor—or a modest means rancher, could they ever survive the kind of assaults we have heard about today?

Ms. BUDD-FALEN. Mr. Chairman, I honestly do not believe that is possible. I represent ranchers all over the West. And when you go against the Federal Government, represented by the Justice Department that has all of the money and resources in the world, it is very difficult, if not impossible, to be able to win these cases.

Mr. BISHOP. All right.

Ms. BUDD-FALEN. Additionally, because we are not as easily accessed—Equal Access to Justice Act for judgment fund monies, we don't even have the chance to get our money back. None of these people have received payment for their work.

Mr. BISHOP. For all of you, keep in touch with Mrs. Lummis. We will be talking about EAJA later on, as well.

Let me—Mr. Robbins, let me follow up with the kind of approach that Mr. Amodei was starting with Mr. Hage. The ones—the BLM people that were egregious in their conduct, were they ever punished administratively by the agency, to your knowledge?

Mr. ROBBINS. No, there wasn't ever any—some of them got promotions, OK? And a few retired. And I don't know the——

Mr. BISHOP. But none were demoted or fired.

Mr. ROBBINS. No, nobody was fired.

Mr. BISHOP. What about the one guy who basically came to your aid and would not push the attack, admitted some of his colleagues were out to get you? What did his honesty get him with the agency?

Mr. ROBBINS. He had to—he retired and left the agency and moved completely out of the area to protect himself, basically,

from—there was a lot of animosity. I have to admit, though, that there were a lot of people within that organization down there that were actually on my side.

When I rode a mule around that office for 21 days in the middle of the winter, I created a lot of friends inside the organization. And they would feed me lunch and different things and say, "Don't tell anyone what is going on here." But there were a lot of people inside the organization that were not agreeing with what was going on besides Ed Parodi.

Mr. BISHOP. I appreciate that. And telling me about riding a mule is too much of a straight line, but I am going to resist it.

Let me ask two other questions of you. Justice Ginsberg said that the BLM officials invaded the privacy of your ranch guests during a cattle drive. To what was she referring?

Mr. ROBBINS. They followed our guests and videotaped us. And this particular time, they were on a hill and the ladies that were on the drive with us only had sagebrush to do their—to go to the bathroom. And the positioning of the BLM, they were videotaped in that process of going to the restroom. And it created such a hostility, you know, that our guests, you know, "We get this kind of treatment back in New York City; we don't need to come to Wyoming to have to go through this," so it really put us out of business, was a part of putting us out of business, because of that, those threats.

It was every day. Every day they were there, videotaping us, sitting there watching, creating all sorts of hindrances——

Mr. BISHOP. I hope they got copyrights on it. Listen, I have one last question for you. How, in heaven's name, did you come up with $.07 that you owed? Was there a tax added to it or something?

Mr. LOWRY. I would have to defer that to the billing department of the attorneys.

Mr. BISHOP. All right. Thank you, Mr. Lowry.

Mr. Valdez, do you think that the problems you faced were directed at you personally in New Mexico, or other Hispanic ranchers who were similarly situated by the people who were in authority and showed some hostility? Was this personal?

Mr. VALDEZ. This one individual who was dealing with the folks on Jarita Mesa and Alamosa definitely made it personal, and it was personal attacks. And it is a lot of people, it is not a few. I, myself, am not on those allotments, but I work closely with them.

Mr. BISHOP. Then if, indeed, you face something that is—what you think is vindictive and retaliatory, what response do you have? What options do you have in that situation?

Mr. VALDEZ. Well, there is a case filed in Federal District Court, the first case filed by traditional villagers in Northern New Mexico, by the way, against the Forest Service in this type of environment.

Mr. BISHOP. So, court access, going back to what Ms. Budd-Falen said, is really the only thing we have to deal with, and we have to make sure that that has a fair access, which is what the Supreme Court told Congress it needed to do. Not going through the court system, but that Congress had to make sure there was a judicial remedy for that.

I have a couple other questions, but my time is almost up here. Let me——

Mr. VALDEZ. May I just say that is what the judge in this case recommended. That was the only remedy.

Mr. BISHOP. OK, thank you. I appreciate that. Mr. Grijalva, do you have other questions?

Mr. GRIJALVA. Yes, a couple. In the Babbitt opinion, I think it is stated pretty clearly, just for the record, so that it is not misconstrued, what I was trying to say, it says that there is no absolute security for grazing permits. And I think it is—I think that sets the tone of that decision, and that is why I was following up with other questions.

Also, the—again, to set the record a little bit straight, when I was commenting on the Gateway, the reason I asked the questions about the collaborative effort, and the fact that there was a positive response on behalf of BLM and the Secretary to allow more time for route examination which—that was being opposed by the area, I wanted to make sure that we understood that, in some instances—because today we are hearing a lot of individual issues, and rightfully so—that that was an effort to kind of avoid litigation, avoid a lawsuit, avoid bringing that whole project to a halt. And so, I think that has to also be noted, to try to come to consensus and avoid a lawsuit.

The other point is that even though this hearing is entitled, "Threats, Intimidation, and Bullying by the Federal Land Management Agencies," and we have had some instances, this hearing is not about policy disputes, but it is about those kinds of actions that my colleague, Mr. Huffman, pointed out that should not be tolerated at a professional level at any place. And I appreciate people bringing that to light.

Because we are not having policy disputes, Ms. Richards, have there been any instances in which a BLM employee has personally threatened, intimidated you, bullied you? And, if so, can you identify that BLM employee involved, and describe how he or she threatened, intimidated, or bullied you?

Ms. RICHARDS. Mr. Grijalva, I am here on behalf of Owyhee County, and we do have situations like that. We do have incidents that are on the record, they are in the court case in the grazing permit renewal process. In respect to those individuals and possible retaliation for the names, I am choosing not to bring that forward, because I do not want to put those individuals into that capacity.

However, I am going to ask to clarify two things here. The Gateway West may very well end up in litigation, not from the predatory environmental groups, possibly, but from our county aspect, due to the county is the only one—the individuals cannot file a lawsuit, but the county government can file for the economic aspect.

Second, in the *PLC v. Babbitt*, one of the things that the county advocates for is that it did affirm the property right interest of preference as a grazing right in there.

So, again, I am not going to go into—we do have specifics, there have been employees. That started clear back in the 1990s. Those employees, a couple of them, now work in the Oregon BLM offices. They are in court records back in Idaho. And just to protect those interests that are still in litigation, I am not going to bring that forward at this time.

Mr. GRIJALVA. I appreciate that. And I think there is a balance to be sought here that—I am not going to sit here and say that what you provided to us under oath is not the truth, but I think there are other stories dealing with collaboration, communities working together, solving problems before they become bigger problems that I think also is part of a fair hearing.

And thank you for the hearing, Mr. Chairman.

With Mr. Valdez, I kind of—you know, I think we could solve a lot of the problems, sir—and being a student of all that stuff—that we just implement the Treaty of Guadalupe-Hidalgo, and we wouldn't be having this hearing, and some of us would be better off, and some wouldn't. But that is a whole other story.

[Laughter.]

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. BISHOP. I am assuming that was a yield back, then, right?

Mr. GRIJALVA. I yield back, sir.

Mr. BISHOP. Fine, good, good. Do you have other questions? Mr. Tipton.

Mr. TIPTON. I just have, really, one more, Mr. Chairman. And I would like to follow up, really, on my good friend, the Ranking Member's question, in regards to feeling threatened, intimidated, and bullied.

Mr. Lowry, when the BLM came to you and said that only the United States can hold a water right on Federal land, and that you must withdraw your claim, did you feel a little bullied, intimidated, and threatened?

Mr. LOWRY. I felt intimidated walking into that room, a room full of Justice Department attorneys, BLM personnel, who had been dedicated to the—trying to obtain those water rights in the adjudication, and being told that we had no position, no legal position to hold a water right, that we were mere permittees there at the permission of the U.S. Government, and had no rights.

The only thing is I didn't feel too intimidated, because I knew what my rights were, I knew what the congressional policy had been since the mid-1860s, and I knew what the court decisions, including the *U.S. v. New Mexico*, had said. So, I knew going in what my rights were. But the pressure was applied.

Mr. TIPTON. That is the good part about being a Westerner, a little harder to be able to intimidate. I saw Mr. Valdez nodding his head up and down, as well.

Just for clarification, private property rights, water rights in the Western United States, you own them. How much was the Federal Government willing to compensate you for those water rights?

Mr. LOWRY. They were not willing to compensate anything.

Mr. TIPTON. So the Federal Government can just jump in, take your private property rights, take your water rights that you paid for, you have developed, with no compensation. That is their opinion?

Mr. LOWRY. That was the course they were taking, and what was being attempted, yes.

Mr. TIPTON. OK. Mr. Robbins, how intimidated, bullied—well, you aren't intimidated, I can tell—but bullied and threatened have you felt?

Mr. ROBBINS. Well, actually, I came from Alabama, originally, and I really thought that the government—I had worked with the farmer services. I thought they were looking out for my best interest. I learned differently, when I got to Wyoming, that that was not the case.

Let me just say as far as intimidation, I have got the actual quotes from sworn testimony from two employees: Leone, saying, "I think I finally got a way to get this permit, get his permits and get him out of business"; and Parodi, which testified on my behalf, states that—he was a BLM employee, also—states that this statement became a daily admission of Leone, and an attitude shared by the other defendants in the case.

So they—when they make their mind up to go after someone, they can certainly intimidate you, and it comes from every area and every power within government.

Mr. TIPTON. Well, thank you. And, Mr. Chairman, again, thank you for holding this hearing. I think that, from the testimony that we have heard today—yes, sir, Mr. Lowry, do you have one more comment?

Mr. LOWRY. If I could, Congressman, I would like to add seriously that it was quite intimidating, and that is evidenced by the fact that, of all the ranchers that filed for their stock water rights in the Snake River Basin adjudication, as I mentioned in my testimony, only two of us went through to the end. The rest could not, or felt they could not, because of the overwhelming disparity in the resources between themselves and the U.S. Government to defend their rights. And they have lost their rights in the Snake River Basin adjudication because they could not and would not—and I understand their position.

Mr. TIPTON. Mr. Lowry, I think that is ultimately very important to be able to note, because this is just not a Forest Service water grab, it is a BLM water grab in the West. That is the lifeblood of the Western United States. And I will certainly take issue with anyone who feels that—our ranchers who have those BLM permits on Forest Service lands, they are some of the best custodians, actually, of our public lands, going in and supporting those who value the environment. Nobody but our farmers and ranchers value it more.

So I thank you again for holding this hearing, and I thank all of you for taking the time to be able to be here. I yield back.

Mr. BISHOP. Thank you. Mr. Huffman, do you have other questions?

Mr. HUFFMAN. Just very quickly, Mr. Chair. I appreciate the witnesses, once again. I will just close with what I said at the outset in my remarks. Our Federal Government should always be a good neighbor, should always comply with the law, and all of us should be concerned when there are incidents that suggest misconduct by Federal employees.

So, I appreciate the testimony. I am sorry that some of those experiences occurred in this—in the situation of these witnesses. And there is a way of having the conversation about holding our government to high standards and making sure there is accountability that could be constructive. And I hope that we can perhaps, at an-

other time, have that more constructive conversation about how to do that. Thank you for your testimony.

Mr. BISHOP. Mr. Amodei, do you have other questions?

Mr. AMODEI. Just briefly, Mr. Chairman. Ms. Budd-Falen, are you aware of any draft legislation to kind of deal with—I mean in Mr. Hage's testimony he says, "Hey, we need to do a couple things." Is there any—and I am sorry if there was testimony to that while I was gone, but is there anything out there that has been drafted in terms of speaking about governmental immunity or things like that in extraordinary cases where, in sum, where a judge finds people in contempt, and finds that they have perjured themselves? Are you aware of anything?

Ms. BUDD-FALEN. No, I have never seen any draft legislation. But I can tell you that we would be happy to work with both sides of the aisle to come up with a solution.

Mr. AMODEI. And then, just finally—and this may be something for staff—but have any of you or the organizations you are affiliated with done a litigation study to say, you know, of all these times, like the Hage deal, and whoever else's, when these go to court, how often does the Department of Justice prevail, versus the permittee? I know it doesn't go very often. It is phenomenally expensive, and that.

But have we done anything to kind of say, hey, when people finally get to the point where they are saying, "You know what, I am tossing it all in and I am going to court, even though that is expensive and time consuming," what the likelihood is that they prevail, or if they come out in some sort of a stipulated agreement? Is there any track record of that?

Ms. BUDD-FALEN. The problem is, Mr. Amodei, that we can't affirmatively bring those kind of cases. Frank Robbins tried to affirmatively bring a case. The Jarita Mesa permittee is trying to affirmatively bring a case, and they lost those cases.

Mr. AMODEI. Well, I am talking about the permitting cases, not the——

Ms. BUDD-FALEN. Oh, the grazing cases?

Mr. AMODEI. So it is like when you say, "Hey, I am suing you because you don't have an easement across my land." I am talking about the substance, not the abuse of discretion.

Ms. BUDD-FALEN. Actually, your Honor, the problem is that the Federal Government, because the Administrative Procedures Act requires only an administrative record review, the only thing the Court ever sees is the record that the agency creates and the agency wants the Court to see. So, while there are cases where we are successful, we are starting so far behind the Federal agency in terms of litigation strategy and information, we can't depose Federal witnesses, we can't get in our own information.

And so, I would tell you that the court system right now is stacked against us, and that we do not prevail near as much as the Federal Government prevails.

Mr. AMODEI. OK. Finally, if you went to one area first, would you go to the Administrative Procedures Act first and make changes in that that are specific to land use things, or would you try to go in an overall global thing for all Federal employees?

Ms. BUDD-FALEN. I think that they are apples and oranges. The Administrative Procedures Act only applies to Federal agency decisions and policies made based on an administrative record, and that is not what we are talking about. Those are the tools that are brought against these individuals to force them into compliance.

Mr. AMODEI. Well, but I am thinking, if I may, that if the Administrative Procedures Act was made to allow you the ability to depose and create more due process and change that administrative procedure, that it may be more fruitful, in terms of providing a quicker, cheaper, rather than marching to Federal court to make the administrative processes more user-friendly.

And you don't have to answer that today, but you can get back to me and say, you know——

Ms. BUDD-FALEN. I would be happy to do that. My initial thought, quite honestly, is what we need to do is to actually tie this to the Civil Rights Act, because that Act already waives sovereign immunity for State employees and local employees. And if you read Justice Ginsberg's dissent, that is actually where she believed that a cause of action should be placed, as part of the Civil Rights Act.

Mr. AMODEI. OK, thank you. Thank you, Mr. Chair. I yield back.

Mr. BISHOP. Thank you. Or just empowering States.

Mr. LaMalfa, do you have other questions?

Mr. LAMALFA. Oh, just a quick follow-up. You know, the idea that this isn't threatening or bullying, I mean, just ask an elderly ranching lady up in my area what it feels like to have two agents show up with badges and a gun on the hip and wearing the boss, shiny sunglasses, like that, saying, "You need to sign this form that has to do with your water rights, or you could be subject to arrest and have your rights read to you," you know, when her husband is not home. And so—no, that is not threatening or bullying in any way.

So, when you have abuse after abuse, and people that are normally just productive people that are good citizens, that are paying their taxes and part of the community having to get wrenched out of the farms and ranches and homes to go to Sacramento in California, or come back here to Washington, DC, this is really not what you prefer to be doing. And so, for anybody who had the notion that it is anything different than that, then they are way out of touch, because your traditions—our traditions, I am a farmer, too—go back hundreds of years, thousands of years, even.

And for us to not take action here with, you know, Mrs. Lummis's bill or other efforts that are—we want to be effective in letting you feel like you don't need to use legal remedies to just do what you do. If we do anything short of that, then I think we are falling down on our jobs. And so, that is what I am back here to try and do and trying to help you with. So I really, really want to encourage you to keep fighting the battle with your neighbors.

And I am sorry, sir, for your neighbors that couldn't do the battle, because I don't know how you afford $800,000 or millions of dollars to do this, knowing how it is for many ranchers and farmers and timber operators. Maybe you should all apply for non-profit status, too, and then you will be eligible, like those $56 million organizations, to get compensated for something you didn't bring upon yourself.

So, I greatly appreciate, and God bless all of you. So, thank you.

Ms. BUDD-FALEN. Thank you.

Mr. BISHOP. Mrs. Lummis, do you have more questions?

Mrs. LUMMIS. I do, Mr. Chairman. I would like to follow up a little bit with Ms. Budd-Falen about the line of questioning Mr. Amodei was pursuing about a congressional remedy. Certainly the Supreme Court declined to recognize Mr. Robbins' claim against the BLM for the entire course of conduct, but they did recognize the need for an effective remedy. They just thought it should come from Congress, and not be fashioned by the court. So, that is what I want to pursue, Ms. Budd-Falen.

You took a cue from Justice Ginsberg's dissent, which would have expanded the Bivens Doctrine, as I understand it. So that would suggest a remedy similar to that for sexual harassment. I would like you to expound on, if you were crafting some legislation, taking a cue from Justice Ginsberg, what kind of parameters would you put around this to make sure that there is not a flood of challenges to any and all Federal decisions a property owner might not like, but is narrowly targeted to the type of egregious conduct that we have seen here, as was applied to Mr. Robbins?

Ms. BUDD-FALEN. I think that the first thing that I would do is look at the pattern or practice of the individuals. I think one bad agency decision is something that we can remedy, or at least we can challenge under the Administrative Procedures Act. But these people didn't suffer just one bad decision; it was truly an animus by the Federal individuals, that they can name, against their rights.

One of the things that Justice Ginsberg also talked about was that the Fifth Amendment protections for private property were not receiving equal consideration under the laws, as were the Eighth Amendment protection against cruel and unusual punishment, or Fourth Amendment protection against unwanted search and seizure. And she argued that we need to raise the Fifth Amendment's protections for property rights to the same level as the other constitutional guarantees.

Mrs. LUMMIS. Does that include access to the courts that right now is not as—Federal courts?

Ms. BUDD-FALEN. Yes, that includes that. Because, right now, the only way you can get a "Bivens cause of action" is if you bring a cruel and unusual punishment case or an unwanted search and seizure case, and it has to be a physical search, not the kind that Frank Robbins had to endure, where Federal officials actually broke into his private guest lodge on his private land to search through things.

Mrs. LUMMIS. Mr. Chairman, if I might ask, I know that Ms. Budd-Falen, based on her representation of clients with regard to these specific types of cases, has a unique area of expertise. I wonder if I might ask that you give us some suggested language that you think could be narrowly tailored to address these "death by 1,000 cuts" situations that amount to a course of conduct that constitutes harassment that could be narrowly construed by the court to prevent a bevy of litigation, but nevertheless protects American citizens' Fifth Amendment rights appropriately, and provides them, at times when appropriate, access to the Federal courts.

Obviously, I am asking you to do something pro bono from Congress——

Ms. BUDD-FALEN. I would be pleased to help you. These citizens need a path to court. They need some relief. Other Fifth Amendment—and American citizens don't have the push and the backbone, because they are afraid and because they have permits that, if the Federal Government decides they don't like you, they can punish you. And I would be happy to work on legislation to try to protect these citizens and their neighbors from this abuse.

Mrs. LUMMIS. I would be most grateful for that help, because I do think that we need the assistance of someone who can help narrowly construe such a cause of action that will address these types of really egregious courses of conduct by Federal agencies that even, you know, our colleagues in the Minority recognize are entirely inappropriate, given our constitutional rights and Fifth Amendment rights.

So, thank you all, once again. Mr. Chairman, I yield back.

Mr. BISHOP. Thank you. Ms. Budd-Falen, would you take Representative Lummis' request, verbal request, as an actual question that would ask for a written response to come back to the committee?

Ms. BUDD-FALEN. Yes. Yes, I would.

Mr. BISHOP. Thank you. I appreciate that.

We have had four people here talking to us about—these are questions—four people talking to us about situations that have happened to them. These are not isolated situations, unfortunately. I think these are simply the tip of the iceberg that is going down there. And I appreciate your willingness to come and share, even though all of you have mentioned that there is some trepidation in doing so, because you still actually have fear of retribution, intimidation, just by being here at this particular time. It also does go to some kind of policy issue. It is not just access, it is policy.

Ms. Richards, you mentioned, in talking about the collaboration process that was done in Idaho, that you had made a decision that was supposedly done on your wilderness areas, and then the wilderness management plan was changed that contradicted the collaboration that had been agreed, and also had been passed in legislation. Is that accurate, then?

Ms. RICHARDS. Correct, Mr. Chairman.

Mr. BISHOP. What recourse did you have for that?

Ms. RICHARDS. Right now, the recourse that we have, the Owyhee Initiative concept started in 2000. In 2009 we signed an agreement with the Tribes, the county, and diverse collaborative groups. And that agreement is quite extensive, and I will ask to send that within this time period so you have that for the record. Within that, the wilderness management took a lot of time on designating the boundaries, and also activities that would be grandfathered in. Those are in recorded minutes that are signed off by the committee.

After the legislation was passed in 2009, about 2011 we started working, we were brought into the process of making comments on the draft wilderness management plan for the Owyhee Wilderness Area. BLM has been at the table, we are actually assigned a BLM person that participates in all of our meetings, is supposed to bring

information, help us in making our decisions, and the collaborative effort came forward on that.

And just earlier this year, we were to the process where we thought we were done with our comments to go forward. And, lo and behold, we found out that, at the same time we were working on this, the BLM had issued new guidelines that were internally drafted for internal guidelines on wilderness management, and those were issued in July of 2013. And, as I stated in my testimony, they go contrary to one of our permittees who had won a national award, and that was supposed to be taken care of in that wilderness policy as an allowed practice.

Mr. BISHOP. So what your testimony is telling us is also a deeper systemic problem, that issues may be settled, but then within the agencies they are making internal regulations that change what had been settled, that even change what had been legislatively decided at the same time.

Ms. RICHARDS. Correct. And the effects upon this permittee, again, he has no initial recourse to come back and challenge it. On the county level, though, we are challenging, because it was an agreement that we went into. The goal of the Owyhee Initiative is the economic stability of our county livestock grazing system.

Mr. BISHOP. All right.

Ms. RICHARDS. So I would agree with your statement.

Mr. BISHOP. That is one of the things extremely troubling for us.

Mr. Hage, I think I will—let me end with you, if we could. You mentioned that what treatment you received was supposedly—the local officials were supposed to expect that behavior. What, in reality, is at stake in this issue in your case, beyond the effect on you, personally?

Mr. HAGE. What is at stake is my family's property, our water rights, range rights, whatever you want to call them. But more than that, I mean, it is other people. If they can get away with what they have done to us, then hold on. They will go after other people, as well.

Mr. BISHOP. And so we are really talking about what we deal with—private property rights, what we deal with——

Mr. HAGE. Yes, our whole issue is private property rights.

Mr. BISHOP [continuing]. The entire bundle, for everyone.

Mr. HAGE. Yes. And to make something clear, I mean, I don't know—myself, as the judge explained it, and as I understand it, he said, "Look, the Federal Government cannot break the law. The Constitution does not allow for it. If there is any law-breaking going on, it has to be done by the individual in the agency, not the agency itself, not the Federal Government, but the individual."

So, what we are talking about is law-breaking, not something in general that would be just bad government or bad agency. We have got to get down to the heart of the matter and only punish that which was done wrong.

Mr. BISHOP. Thank you, I appreciate that.

Are there any other questions we have?

[No response.]

Mr. BISHOP. If not, I want to thank the witnesses for your testimony, for you coming here today. As I said, unfortunately, these are not the only isolated examples we can find. I think your exam-

ples show a deeper problem, and truly a systemic problem that we need to address as best we can, not only in access, but in how policies are originated.

Members of the subcommittee may have additional questions for the witnesses, including the verbal one, and we would ask that you would be able to respond to those in writing. The hearing record is going to be open for 10 days to receive responses.

If there is no further business, without objection, we stand adjourned.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF GEORGE MATELICH, SWEET GRASS COUNTY, MONTANA

THE SAGA OF THE CHERRY CREEK "ROAD"

The Black Butte Ranch was purchased by George Matelich and Michael Goldberg (the "Owners") in May of 1997. The ranch is located in Sweet Grass County, Montana, adjacent to property owned by descendants of the original homesteaders. Prior to purchasing the property, the Owners did "due diligence" in examining the title, and checking on what appeared to be an old jeep trail on the property. After finding no easements recorded, and no documentation suggesting that the jeep trail was a public road, they closed on the purchase and took possession of the property. Upon taking possession of the land the Owners closed a gate through which people had reportedly occasionally used the jeep trail to access the Gallatin National Forest. This trail extends from the Boulder Road through the adjacent property and the Black Butte Ranch to the National Forest boundary. In January of 1999 the Owners were sued by the Public Lands Access Association, Inc. ("PLAAI") who claimed that Cherry Creek "Road" was a public road, notwithstanding the fact that the County did not claim the road, and refused to claim it under R.S. 2477. In defense of the suit, the Owners filed a quiet title action, naming the PLAAI, the United States Forest Service ("USFS") and the public at large as defendants. A FOIA request disclosed that the USFS was engaged with PLAAI in planning the litigation and strategic options for opening the road, including condemnation. Nevertheless, rather than litigate the issue on its merits, the USFS filed a Disclaimer of Interest, disclaiming any interest in Cherry Creek "Road".

The PLAAI litigation was resolved by a settlement agreement in which the Owners agreed to allow limited public access on the Cherry Creek "Road" for a period of 10 years, after which the parties all agreed the owners could shut the gate and permanently discontinue the access. The quiet title action proceeded to judgment, which was entered in favor of the Owners. The decree included a finding that the use of the Cherry Creek "Road" for the past 60 years had been permissive, no prescriptive easement existed, R.S. 2477 did not provide for access under the circumstances and that Congress did not envision rights of way for hunting, fishing, snowmobiling and similar activities when enacting R.S. 2477. Additionally, the easement granted to the public for a 10-year period could be extinguished after August 3, 2009, and the Owners' interest in the property was free and clear of any and all estate, right, title, lien, encumbrance, interest or claim by any third-party defendants. No appeal was filed after judgment was entered. Following the conclusion of the litigation, and after the court had entered the judgment in the quiet title case, the USFS revised its Travel Management Plan for Gallatin Forest. As part of that process, the USFS closed other existing roads and area access into the forest, and labeled all but the pipestem of land through the Owners' property for the Cherry Creek "Road" as "roadless." The USFS essentially limited the travel access alternatives to the one that had been litigated, and in which they had disclaimed all interest.

Pursuant to the settlement agreement, after the 10-year period had run in 2009, the Owners exercised their rights as contained in the agreement and closed the gate to the jeep trail (Cherry Creek "Road") traversing their property.

Shortly before the end of the 10-year period, the USFS made an attempt to reach an agreement with the Owners for access to this area, including a potential land

exchange, as well as pursuing the purchase of an easement over the Owners property. The Owners declined to sell an easement to the USFS which would have had the effect of splitting their property, but did offer to engage in a land exchange, even offering at their own expense to build the new road on USFS administered lands. The USFS rejected all offers for limited access, and in a Letter to the Editor published on June 17, 2010 in the Big Timber Pioneer, made it clear that the only alternative the USFS was willing to consider was a road with unlimited vehicular access across the Owner's property.

Sometime in 2010 the USFS notified Congress of their intent to pursue acquisition of the Cherry Creek "Road" through eminent domain. The Owners followed, bringing their story before the Montana Congressional Delegation and other relevant Federal parties. After the expenditure of countless hours and hundreds of thousands of dollars over the course of 3+ years, the matter was finally settled; the Owners are building a road at their own expense on their own land and will be granting a perpetual easement to the public as the settlement required.

The Owners were fortunate in that they had the resources to fight the USFS and ultimately build a road at their own expense that did not result in the splitting of their property. That they had to do this at all is a matter of public policy which cries out for a systemic remedy. The Owners were forced into this situation only through the USFS wielding the cudgel of eminent domain authority. The USFS did not pursue this road access because they needed to, rather the USFS did so because they wanted to, and because by their own actions in closing all other access and designating the entire area as "roadless" they created a lack of public access. The record is clear that numerous other access points to this area of the Gallatin existed. The record is equally clear that in the ensuing decade following the litigation in which they professed no interest, the USFS took actions which had the obvious impact of vitiating the court decision. In all likelihood they behaved in such a fashion because they were confident that they had the unfettered power to simply take property they wanted, regardless of need. This crude and purposeful abuse of the Federal Government's power of eminent domain must be remedied.

The Government's power of eminent domain has always been viewed as one that should be used sparingly and with great restraint. Preservation of private property rights is a fundamental right of our constitution, subject to taking only when there is a public need that has been proven and when appropriate compensation is provided.

However, there is no sufficient compensation to assuage disingenuous behavior of the Government in purposefully turning a want into a need to justify condemnation.

Thank you for this opportunity to tell our story and express our opinions.