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AFFIDAVIT OF BERT N. SMITH

STATE OF NEVADA     )  
                          )    SS:  
COUNTY OF ELKO     )

I, BERT N. SMITH, being duly sworn on oath and under penalty of perjury, do hereby swear or affirm that the assertions of this affidavit are true.

1.    Affiant is over the age of eighteen years, makes this affidavit on his own personal knowledge, and is otherwise competent to testify as to the truth of the matters set forth herein.

2.    Affiant was born April 29, 1920 in Holbrook, Idaho, but has since the age of sixteen made his residence in Ogden, Utah and Ruby Valley, Nevada, alternately.

3.    In his professional capacity Affiant is a rancher, but has business interest in the wholesale, retail business, with headquarters in Ogden Utah.

4.    Affiant, with his brother Paul and their families, are the owners of the OX Ranch located on the Eastern slope of the Ruby Mountains, which operation includes grazing rights on lands managed both by the Bureau of Land Management and Forest Service.

5.    That the original permitted number of cattle run on the Myers Allotment was for 270 cattle season long, but has been reduced by the Forest Service at various times, with all but ten percent of that reduction occurring prior to our purchase of the ranch in 1947.

6.    That for more than ten years, Forest Service employees have been pressuring Affiant and his brother Paul for grazing

reductions.

7. That the OX Ranch was established in 1863. That the OX permit for the Myers Allotment, as it has been used for the past 48 years, is for 157 head of livestock from May 16 through September 15.

8. That the Myers Allotment comprises two pastures, one low elevation pasture which we normally enter on May 16, and one high elevation pasture, (the Battle Creek Pasture) which we enter anytime after June 20, depending on the year and feed conditions.

9. That on or around July 1st, Affiant rode the Battle Creek pasture with range conservationist Keven Atchley of the Forest Service. That Keven Atchley informed Affiant on that day that all OX cattle must be removed from the allotment as soon as possible.

10. That the reason given for early removal was overuse of bitterbrush. Keven Atchley stating that over 50 percent of current growth had been taken, even though cattle had only been in the Battle Creek pasture for approximately 25 days.

11. That the allotment immediately to the North of the Myers Allotment belonging to our neighbor, Ken Jones, was not grazed in 1995 for reasons of Forest Service permittee conflict.

12. That for all of Affiant's life, it has been customary for ranchers to allow their cattle to remove the majority of the grass component from the range, thus in effect reducing potential runaway wildfire.

13. That by forcing us to remove our cattle from our allotment early, and by not providing for effective grazing of Ken Jones's allotment, Forest officials in effect set the stage for a

ruinous fire situation, which did occur on August 6 and 7, 1995.

14. That at approximately 4:00 P.M. lightning struck the top of the ridge which divides our allotment from Ken Jones's allotment then quickly burned to the foothills, where it rapidly burned both North and South, consuming in the next 28 hours approximately 11,000 acres.

15. That it is my determination and conviction that the fire should have never happened, at least not in the magnitude it did. In all of my lifetime, when cattle were allowed to use the range in a traditional manner, fires rarely got out of hand. Until the 1960's, all we ever had for fighting fire were shovels. Only rarely did a wildfire become so bad that crawlers were brought on sight. But now, even though we have access to a multitude of sophisticated fire fighting equipment it is not uncommon for fires to rage out of control. The reason being, there is simply too much fuel being left on the ground.

16. Ironically, the bitterbrush that Mr. Atchley professed he was obligated to protect is now gone. Not because of livestock or livestock use, for the bitterbrush was alive and well after over one hundred and thirty years of continues grazing, but rather because of mismanagement on the part of government employees. If they had been encouraging us to make use of the excess feed instead of doing everything they could to get us off the range the fire would not have burned out of control as it did.

17. Bitterbrush is not the only component of a plant community that is destroyed when hot summer fires burn Western rangelands. Most generally a whole array of plants are destroyed,

including the majority of perennial grasses, and when that happens it can take years for a plant community to recover, if it does at all.

18. That in the last 16 years there have been three major fires in South Ruby Valley, the Shanty Town fire, the Dawley Creek fire and the Dry Hill fire. Even before the Battle Creek fire we had lost nearly half our foothill range to wildfire. That is why Keven Atchley was noticing that the bitterbrush was being overutilized. Each time there is a wildfire there is less winter feed for mule deer. And now that we have lost an additional 11,000 acres to wildfire we can not afford to lose more.

19. It is known fact that bitterbrush stays more productive and is healthier when grazed by livestock. In a study completed by the Dr. Paul Tueller of the University of Nevada it was found that range plants, primarily bitterbrush when grazed by livestock can produce up to 80 percent more plant material than those protected from livestock grazing. Gus Harmey, has also been an advocate of using cattle grazing as a tool to improve bitterbrush productivity.

20. That the greatest atrocity in our estimation was the near loss of life that occurred. On the evening of the 7th when working desperately to save his home my brother Paul nearly lost his life. While operating a dozer behind his home he was overtaken by flames in a firestorm. Paul received third degree burns on his left arm and second degree burns on his face, ear, and nose. He will have scarring on his face and arm. I too, might have lost my life if it were not for neighbors who risk their lives by driving their pickup through four foot sagebrush at a reckless speed in order to reach

me before I was overtaken by the fire as it raced out of control.

21. That the fire jumped the county road both North and South of our ranch headquarters and burned over 200 tons of our hay North of the houses. And if the fire had not been put out just South of our ranch headquarters it would have easily burned the remainder of our hay crop.

22. That before the fire was stopped, twelve homes were threatened, four buildings were burned to the ground, many miles of fence were lost and many lives were endangered, all in the name of protecting wildlife habitat, when in fact wildlife were being hurt as much as any other value.

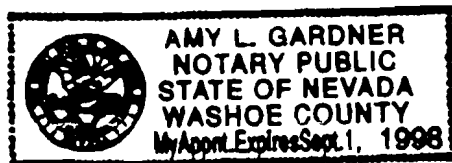
23. That the only people that came out ahead were the bureaucrats. Because of the Battle Creek fire, budgets were increased, an exciting time was had, and over four hundred people received much sought after financial bonuses in the form of hazardous pay.

FURTHER AFFIANT SAYETH NAUGHT.

Bert N. Smith  
BERT N. SMITH

Subscribed and sworn  
before me this 30th  
day of August, 1995.

Amy L Gardner  
Notary Public





United States  
Department of  
Agriculture

Forest  
Service

HUMBOLDT N.F. - TOIYABE N.F.  
2035 Last Chance Road  
Elko, NV 89801 (702) 738-5171

FILE CODE: 2230

Date: July 14, 1995

CERTIFIED - RETURN RECEIPT REQUESTED  
# P 220 738 242

Smith Bros. OX Ranch  
c/o Paul Smith  
HCR 60 Box 645  
Ruby Valley, NV 89833-0645

Dear Paul:

On June 27, 1995, we conducted a forage utilization inspection on the Myers Creek C&H Allotment. The results of this inspection showed that use on bitterbrush had exceeded your permitted use level of 40%. Another inspection of the allotment was scheduled with Bert Smith on July 5, 1995. Again, the results of this inspection showed that your permitted utilization level for bitterbrush has been exceeded on this allotment. I am enclosing copies of the reports from these two inspections with this letter.

As you know, utilization on antelope bitterbrush has been a major concern on this allotment for some time. The 40% maximum level of use on bitterbrush is a Term and Condition of your Permit. This level has been met and, in fact, exceeded over most of the allotment. During their July 5 inspection, Bert assured Kevin Atchley (Rangeland Management Specialist) that your livestock would be moved out of the Indian Graveyard Basin Unit immediately. In addition, Kevin and Bert agreed livestock in the Battle Creek/Myers unit would be moved out of the bitterbrush areas and onto other forage in the unit. Based on Kevin's inspection with Bert, use on other forage within the allotment will reach the maximum permitted level by July 20, 1995.

Based on these inspections, I am directing you to remove all your livestock from the Myers Creek C&H Allotment by July 20, 1995. My direction for you to remove your livestock is an implementation of the Standards and Guidelines of the Forest Plan that are incorporated into your Term Grazing Permit as Terms and Conditions. Exceeding the maximum forage utilization levels is a violation of those Terms and Conditions and is subject to permit action (suspension/cancellation).

For your information, we will conduct a followup inspection of the Myers Creek C&H Allotment on July 24. If you wish to be part of the inspection, please contact Kevin Atchley at (702)763-6691 or Chrys Olson at (702)738-5171. Thank you for your cooperation in this matter.

Sincerely,

D. WAIVE STAGER  
District Ranger

Enclosures: K. Atchley's report, C. Olson's report

cc: Ruby Mountains District



SPECIAL COMMITTEE  
Report  
Humboldt National Forest  
Grazing Association

In the Summer of 1988, Bert and Paul Smith of Ruby Valley, asked the Association to review their concerns over proposed cuts in grazing in their Forest Service Allotment. And also their concern over the Forest Supervisor's decision to reintroduce Bighorn Sheep in the Ruby Mountains.

Association Chairman, Kent Howard asked Les Sharp to chair a special committee to look into the matter. Les then asked Cliff Gardner of Ruby Valley and Ken Johns of Clover Valley to serve with him. On August 27th Les and Cliff accompanied Bert Smith on a tour of Myers Creek Allotment. Afterwards concerns were outlined.

First of all, We on the Committee are as concerned as the Smith Families are, over the decision to plant Bighorn Sheep in the Rubys. Five years ago, or even three years ago for that matter, if such a proposal had been made, we don't believe ranchers would have objected. In fact, we believe most would have welcomed Bighorn Sheep, as they welcomed the Mountain Goats into the Rubys just a few short years ago. But today, things are different.

Three years ago we didn't know that the Federal Land Management Agencies along with their local support group, The Department of Wildlife, would be working unceasingly to remove livestock from the Federal Lands.

Its not the animals that we ranchers fear but the regulations we know will follow. Here in Nevada, in Idaho, and all over the

west, people are being hurt and even put out of business in the name of protecting Bighorn Sheep.

In the Forest's Decision Notice pertaining to the planting of Bighorn Sheep in the Rubys signed by Supervisor B.J. Graves, they indicate their findings show no significant impact to existing livestock operations. We disagree, not only do we believe there will be an adverse impact, but that it will be brought on intentionally. From 1984 to 1987 Forest Service Personnel were extensively involved in putting together an action plan called, Changin Times, Changing values ...New Directions. The plan makes no bones about their intentions to take "Adverse Actions" as they call them.

In their final report they write, "Recognize at all levels that changes in management emphasis, Forest plans, and other decisions can result in appeals, litigation, and Congressional inquiries. And that these are a natural, appropriate refinement process....". In other words most of the grief and heartache that so many Families are now going through not only over Big Game but riparian issues and other conflicts as well, were not brought on unintentionally but are actually planned and encouraged.

They also write "Encourage taking reasonable risk by adding the requirement as a performance element and through further delegation of authority." In other words if personnel do their job and bring about adverse action, they're going to be awarded with a promotion.

They even go on to talk of the importance of training their people so they can better handle appeals and litigation. So when these people say there will be no impact, they are lying. They know

there will be impact and they are planning for it. It's part of their agenda.

As for grazing cuts, a letter dated March 14, 1988 from Mont Lewis, Wells District Ranger, to Paul Smith does in fact reference a Range analysis completed in 1961 indicating a 50% reduction.

It is our opinion that there would be no benefit to reducing Livestock use on the allotment. Its a well known fact that there were few deer before livestock grazing became prevalent in the West. Livestock and deer use complement each other. Just because plant communities often shift from predominantly woody species to predominantly grass species or vice versa does not necessarily mean that the range is either improving or deteriorating.

The Myers Creek Allotment is very important not only to the Smith's ranching operation but also as some of the best summer and winter range for Mule Deer in the State. Its important that no drastic changes be made that could possibly jeopardize the good thats there now. In fact Bitter Brush production appears to be very good in both Myers Creek and Battle Creek.

The only change we think might be worth consideration would be to move the grazing season in Graveyard Basin forward by 10 days. That is from May 5th to June 20th rather than May 15 to June 30th. Its our experience that Bitter Brush growth does not ordinarily begin until around the 15th of June. And if livestock are removed by that time there will be little impact on new growth.

We are also taking into consideration the fact that on the steep granite foothills of the Rubys the bulk of early feed is Cheatgrass, and if a rancher doesn't get his cattle turned out by

May 5th to May 10th on most years the feed dries before sufficient use can be made.

A June 20th removal date will also allow for sufficient regrowth on riparian areas. And of course meadow regrowth can be of great benefit to many wildlife species. We suggest also, that when livestock are removed from Indian Graveyard every effort be made by the permittee to see that no strays be allowed to remain, for even one or two cows can concentrate on riparian areas and jeopardize the benefit of early livestock removal.

The only riparian damage we saw on the entire allotment was on a spring in Indian Graveyard basin. The Forest Service has built a Barbed wire enclosure around the spring there. The enclosure is approximately 30' wide and 60' long. A small reservoir approximately 10' in diameter dug just below the enclosure.

The idea we suppose was to protect the riparian area and catch the small amount of water coming from the spring for livestock use. It was obvious that cattle were coming to the spring and rather than drinking out of the new "mud hole" that had been created, they would stand in the reservoir and put their head through the barbed wire to drink.

I suppose that if you haven't watched the habits of cattle for many years it's hard to visualize such problems, but to us the problems caused are obvious. The worst thing we saw occurring was a head cut that was beginning to work its way back toward the spring from the reservoir. And it was obvious that the head cut would not have occurred if the area had been left alone.

The whole project was a mistake in our opinion. The cattle will use the corners of the fence to stand and rub on during the

heat of the day, killing the grass around the base of the post. The wind will then blow the soil away and there will be four abuse areas, one at each corner of the enclosure that will get larger each year. The cattle will not drink out of the small pond for it will be made muddy by everything standing in the pond trying to get a clean drink through the fence. Then as the wires loosen, cattle will crowd through and the first may die not knowing how to get back out.

We strongly recommend this structure be removed and the reservoir filled back in before the 1989 grazing season.

Our last concern pertains to a written comment made by NDDW in their input paper concerning the Myers Creek Allotment. They write: "Unfortunately much of the deer winter range is on private land and has been subject to varying degrees of abuse." This is typical of NDDW promoting the idea that Private Land Owners will rape and waste the land and only through more government control, will our lands and wildlife be saved. Nothing could be further from the truth.

Anyone driving through our Valley will notice that there are many pastures above the road that are much darker in appearance than others. They are darker because these pastures generally have a high percentage of Bitter Brush in them and if you inquire further, you'll find that these same pastures are Private land. The best wildlife habitat, the best managed range as a whole is always on private lands and its time we started seeing the truth is known.

We recommend that the board support the Smith's in their appeal.