

Mr. Earl E. Devaney
Inspector General
Department of Interior
1849 C Street, NW
Washington, DC 20240

August 28, 2003

Dear Mr. Devaney:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to request that your office conduct an investigation into irregularities in rangeland regulatory enforcement by the Bureau of Land Management (BLM) Wyoming State Office and Washington Office Headquarters. Specifically, PEER is asking the Department of Interior Office of Inspector General to determine —

1. The reason that BLM Director Kathleen Clarke, or her designee, the BLM Wyoming State Director, has refused for a period of months to pursue or seek enforcement action for a number of grazing-related violations reported to it by its Worland Field Office concerning a permittee named Frank Robbins;
2. Why the BLM Washington Office did not act on or acknowledge reports from the Worland Field Office and the U.S. Attorney of ongoing grazing violations by Frank Robbins even as it negotiated an agreement conditionally dismissing prior violations contingent on no further violations during a two-year period; and
3. The rationale for the BLM Washington Office and the Office of the Solicitor executing an agreement with Mr. Robbins in the face of warnings from the U.S. Attorney that such an agreement would compromise the ability of the Department of Justice to represent BLM on matters of civil or criminal enforcement of BLM grazing regulations.

PEER believes the BLM Director, her designees and the responsible officials within the Office of the Solicitor for the Department of Interior have acted in violation of Executive Order 12674 of April 12, 1989 (as modified by E.O. 12731) in this matter. That Executive Order commands that all executive branch employees “shall act impartially and not give preferential treatment to any private organization or individual.” The Executive Order further directs that “Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.”

In addition, PEER believes that these officials have undermined the purpose of the Federal Land Management Policy Act as articulated in 43 CFR 1601.0-2 to “maximize

resource values for the public through a *rational, consistently applied* set of regulations and procedures...” (Emphasis added).

In an agreement dated November 27, 2002 executed between the BLM and Mr. Robbins, the agency conditionally stayed 16 adjudications involving citations for grazing violations (unauthorized grazing, overgrazing and grazing trespass) against Mr. Robbins. The agreement would be voided if, within 24 months of the agreement, BLM begins administrative enforcement or adjudication “alleging willful trespass, the violation of any regulation, law or BLM decision where range or resource degradation is at issue.” The agreement also specified a “dispute resolution” mechanism whereby only the BLM Director “or any designee she chooses” may make decisions concerning issues encompassed by the agreement.

In addition, this remarkably one-sided agreement granted Mr. Robbins additional flexibility for grazing practices in allotments with less than 50 % federal ownership, conditional transfer of the Owl Creek permit, a right-of-way without reciprocal easement for BLM, consideration for preferential actual use billing for permitted grazing, a promise to facilitate a land exchange and a Special Recreation permit.

As the agreement was being finalized, Thomas Roberts, the Assistant U.S. Attorney for the District of Wyoming, wrote to John Kunz, Assistant Regional Solicitor, that the “agreement will clearly have an effect on the [sic] our ability to represent BLM in either criminal or civil matters” due to the unequal favorable treatment extended solely to Mr. Robbins [See Exhibit I, attached]. This letter was also circulated through the BLM chain-of command.

In a March 23, 2003 “Analysis of Billing History” for permits owned by Mr. Robbins, the BLM Worland Office found violations involving unauthorized grazing, inaccurate use reports and unpaid permit fees by Mr. Robbins [See Exhibit II, attached]. This Analysis also includes this notation:

“The WFO was instructed by WO in May 2002 that WO was working on a Settlement Agreement and that the WFO was to not respond to any unauthorized livestock use.”

As seen from the following exhibits, that no-enforcement order with respect to Mr. Robbins by the BLM Wyoming Office appears to remain in effect until today.

In an April 14, 2003 memorandum to Assistant Regional Solicitor John Kunz, and forwarded to the BLM Wyoming State Office, the Worland Field Office supervisory rangeland specialist elaborated on a string of alleged ongoing violations by Mr. Robbins and concludes “a reasonable person would conclude that the above facts are inconsistent with the grazing permits and the Settlement Agreement.” [See Exhibit III, attached]

In an August 4, 2003 memorandum to BLM Wyoming Associate State Director Alan Kesterke, the Worland Field Office supervisory rangeland specialist updated unresolved

compliance issues concerning Mr. Robbins and appended a monitoring report on two of the Robbins allotments. [See Exhibit IV, attached] Summarizing condition on one of those allotments, the memo concludes:

“ Difficult to find any residual grass with stubble height being less than 1 inch. Unable in some areas and difficult in other areas to find ungrazed grass plants and unable to identify grass due to level of grazing in many areas of the allotment...Utilization on public land is estimated at heavy to severe.”

These documents and other records that are on file with the U.S. Attorney for the Wyoming District appear to demonstrate a pervasive and repeated posture reaching to the highest levels of BLM of refusing to enforce regulations and rules designed to protect federal rangelands from degradation against one individual. BLM negotiated and keeps in force an agreement granting various considerations to Mr. Robbins despite persistent reports from BLM staff of violations by Mr. Robbins before, during and after negotiation of the settlement agreement.

Not unexpectedly, this concerted conferral of preferential treatment on one permit holder has encouraged other permittees in Wyoming to also seek dispensation from regulatory requirements. As a result the actions of senior BLM and Solicitor officials has undermined rational and consistent management of federal rangelands to the detriment of the public interest.

If you have questions or need any additional information in order to evaluate the merits of this request for investigation, please do not hesitate to contact me.

Cordially,

Jeff Ruch
Executive Director

Cc. Kathleen Clarke, BLM Director
Robert Bennett, BLM Wyoming State Director
William Myers, Solicitor, Department of Interior