

Darrell Barnes

Being the edited transcript of an interview by Mike Hudak

Issued as an extracanonial book of
Western Turf Wars: The Politics of Public Lands Ranching

Upon graduating from Humboldt State University in 1974, Darrel Barnes began a career with the Bureau of Land Management that would continue for thirty years. Starting out as a seasonal range technician, he soon moved on to a permanent position as a natural resource specialist in Riverside, California. After attending the BLM's Land and Minerals training school, Barnes was assigned as a resource area realty specialist in Montrose, Colorado. In 1978 he became the district realty specialist at the Salt Lake District Office (Utah), then moved to the Utah State Office in 1980, serving first as acting supervisor for the Land section, and then as chief of the Branch of Lands and Minerals Operations. From 1984 until 1987 he was chief of the Branch of Rights of Way Development in Washington, DC. He became the district manager, Worland District, Wyoming, in 1988, remaining in that position until his retirement in January 2004. As district manager, Barnes was brought into the center of a controversy with rancher permittee Harvey Frank Robbins Jr.—a controversy holding the potential to further erode the environmental protection of our public lands.

Darrell Barnes made his remarks on the 8th of September 2004 in Worland, Wyoming.

Chapters

1. Barnes's early life, formal education, and employment at BLM
2. Beginning of the conflict between BLM and rancher permittee Harvey Frank Robbins Jr. (1994)
3. Robbins's Bivens/RICO lawsuit against BLM employees (1998)
4. Disposition of trespass notices under the Robbins settlement agreement of January 2003
5. Alleged violations of federal law in BLM's settlement with Robbins
6. Environmental concerns with the Robbins settlement agreement
7. The federal government voids the Robbins settlement agreement (28 January 2004)

CHAPTER 1

Barnes's early life, formal education, and employment at BLM

I was born in Sacramento. Raised on a ranch near Orangevale, California. Spent my childhood there. After going to the military for four years I came out and went to school at Humboldt State University where, in 1974, I got a bachelor of science degree in wildlife management with a minor in range management and recreation. I was always interested in outdoors and resources, having come from that background as a child.

Shortly after that I went to work for the BLM—spent my whole career with the agency from 1974 until I retired in 2004. During that period of time I worked in the states of Nevada, California, Arizona, Colorado, and Utah. I went to Washington, DC, for a four-year term, and then ended up my career in Wyoming.

CHAPTER 2

Beginning of the conflict between BLM and rancher permittee Harvey Frank Robbins Jr. (1994)

I came here in 1988. Mr. Robbins moved into this part of the country in 1994 when he bought the High Island Ranch located near Thermopolis, Wyoming. Prior to his acquiring the ranch it was run as a cattle operation, and on the side it was a dude ranch. So there was a public lands recreation lease for the dude ranching operation along with the cattle grazing permit.

Shortly after Mr. Robbins moved here, over the next couple of years, there were a number of violations of the allotment management plans for the use of grazing. Also, there were violations of the recreation permit for the dude ranching operation.

BLM had been talking to Mr. Robbins about correcting these deficiencies, and they never seemed to get corrected. So after several years, we issued the first formal grazing trespass.¹ Later on, because of violations on the recreation permit, it was reduced from a five-year term to an annual permit term. It was later not renewed due to further violations. This decision was appealed, and the BLM decision was upheld by the IBLA.²

The grazing trespasses just continued over the years. And the BLM began getting calls from permittees complaining about Mr. Robbins's cattle trespassing—actually reporting trespasses of his cattle on their neighboring allotments! So it just continued to escalate.

Then, after a number of the grazing trespasses had been issued by BLM, there became an issue of Mr. Robbins attempting to deny BLM personnel access to administer the grazing permits. This subsequently resulted in a decision to cancel his High Island permit.

Later Mr. Robbins bought another private ranch, called the HD Ranch, located up in that

1. Darrell Barnes speaks about “grazing trespass” in two ways throughout his interview. In the present context he refers to a citation issued by the BLM in response to alleged trespass committed by cattle owned by Harvey Frank Robbins Jr. In other contexts Barnes refers to the actual trespass by cattle.

2. IBLA: Interior Board of Land Appeals—an administrative review board in the Department of the Interior which renders decisions relating to public lands and mineral resources including decisions of the Bureau of Land Management, the Minerals Management Service, and the Office of Surface Mining.

same vicinity. The HD private lands abut BLM lands and are intermingled with them. There are also other private lands and BLM allotments in the vicinity. The only way to make good sense of this land pattern is with a map.

BLM put in a written stipulation on the permits for the HD Ranch requiring administrative access, which under the regulations we can do. This was an attempt to get a handle on this issue that was impeding BLM's ability to go out and actually manage the public lands and keep track of what was going on with the resources.

Later on Mr. Robbins bought a third ranch up there, called the Owl Creek Ranch, which had a few allotments associated with it. BLM issued a decision at that time to not transfer the BLM grazing permits for that property, based on the unsatisfactory performance record of Mr. Robbins. He appealed that decision, as he appealed many of the grazing decisions, to the IBLA. All of those cases currently are still in the IBLA. At one point we had a hearing³ and had an administrative hearing where each side told their story and presented documentation and testimony. However, those cases have never been ruled on by IBLA.

Late in the '90s—oh, '99 into 2000, 2001 and continuing to this day, we got into a drought here in the Bighorn Basin. The effect of the drought, coupled with the unauthorized grazing use, was having a severe effect on the public land resources. And because of a high level of trespass and overuse during the 2001 and 2002 period, the BLM issued a decision to cancel the HD permit.

There were a lot of difficulties during the drought. During that timeframe, we were talking to all the permittees that we have here, which is several hundred, because all the permits were affected by drought. We'd put out newsletters and we had meetings and actually sat down with all the permittees and talked about their individual allotments. And our people were out looking at all the allotments.

The drought wasn't uniform across the board. Some of the allotments have better rainfall because they're higher elevation. Things like that. So we would be looking at the allotments and adjust. We would close the allotments if it was required. We would reduce stocking levels if that was the right fit. And we had real good cooperation. But Mr. Robbins wouldn't go out and meet with the range people to look at his allotments. And if you sent him a letter or talked with him, he would basically say he didn't have a drought.

And the fact of the matter is that some of the hardest hit country that we had during the whole drought was right in the vicinity of his allotments—the divide where Meeteetse is. And then running south to Thermopolis—that country was some of the hardest hit. It seemed like the storms would come in, and if they dropped something over farther to the east here, they wouldn't drop any rain over in that country. It was really in bad shape.

A lot of the permittees, Mr. Robbins's neighbors, were taking 50 percent, 80 percent reductions in stocking levels voluntarily. And during the same period there was a real problem with his livestock. In some cases gates were left open. So his livestock would be showing up on these other permittees' allotments, which were not in very good shape, and actually further degrading these allotments to a significant extent.

3. Darrell Barnes notes that the hearing began the week of 14 May 2001 and was continued during the weeks of 24 September 2001 and 23 April 2002.

Usually cattle won't wander if they've got something to eat. When they're forced to find something to eat and drink, and it looks a little better on the other side, because the people are taking better care of it, they're gonna go. At least in some cases that was a real issue.

We were seeing use levels up there of 80, 90 percent. It looked about like bare dirt. There were multi-disciplinary teams that went up and did assessments on soils, hydrology, and vegetation. It was a pretty bleak picture—a degrading situation.

That period of time, with all the heavy unauthorized use that was going on with his livestock on his own permits, as well as on adjacent allotments, is the reason we cancelled the HD permit.

With the change from the Clinton to the Bush administration,⁴ we out here in the field started hearing rumors that there was some kind of a deal being brokered back East. And we had been talking with our state office, state director, and associate state director, as well as with the Department of Justice and US Attorney's Office, and our solicitor's office to see whether or not they'd heard anything. The feedback we were getting was that they hadn't heard anything at all.

It was interesting that, oh, about six or seven months later, one of the attorneys in our solicitor's office in Denver talked to me and Alan Kesterke, who's the BLM's Wyoming associate state director, on the phone and apologized to him and me for having lied to us for months about this agreement. He said that he had been pressured by a political appointee of the Bush administration out of Washington, who was at that time rumored to be the next head solicitor in Denver. In fact, that person later on did get that job.⁵ And there was an inspector general investigation of the agreement that got underway, I think, as a result of PEER⁶ writing to the Inspector General's Office.

CHAPTER 3

Robbins's Bivens/RICO lawsuit against BLM employees (1998)

Mr. Robbins had also filed a lawsuit against the Worland Field Office, BLM personnel, myself and seven others—managers and staff—in Cheyenne, saying that he was being treated unfairly—claiming that the BLM had improperly not issued the authorizations for the Owl Creek Ranch.

4. George W. Bush became president of the United States in January 2001.

5. This event is described on page 14 of the inspector general's report of 13 October 2004: "The BLM WFO [Worland Field Office] Manager [Darrell Barnes] stated he had participated in a telephone conference call on July 16, 2002, with the SOL [Department of Interior's Office of the Solicitor] staff attorney and [Alan] Kesterke during which the SOL staff attorney said he wanted to 'fess up' because he had been 'lying to us' for months claiming no knowledge of a settlement agreement which the SOL staff attorney claimed Comer [Robert Comer, who held the position of associate solicitor, Division of Land and Water] directed him to draft sometime before Memorial Day. The BLM WFO Manager stated that the SOL staff attorney told him and Kesterke that he had been directed by Comer not to share the agreement draft with anyone and that Comer had derided the SOL staff attorney and directed him not to even share information found in the agreement with his direct supervisor. According to the BLM WFO Manager, the SOL staff attorney told him and Kesterke that the inspector general had made contact with his supervisor, raising questions about the agreement, and the SOL staff attorney said he would probably be the 'scape goat' in the affair and that his relationship with Comer was shot." The entire inspector general's report is available on the Internet at <http://www.doi.gov/upload/BLM-Robbins%20Report%20REDACTED1.pdf> (last visited 4 May 2008).

6. PEER: Public Employees for Environmental Responsibility (<http://www.peer.org>).

Later, after several modifications of that lawsuit, it finally boiled down to him pushing a case for a RICO (racketeering) and a Bivens lawsuit.⁷

The basis for the lawsuit was he didn't believe that the grazing trespass charges and things like that were proper—that he was being treated differently—that BLM was picking on him. And it's simply not true. We actively pursued grazing trespass wherever it was. We didn't treat him any different.⁸

I've looked at the records a lot, and I thought BLM had really been very lenient with Mr. Robbins. There were a number of years—three or four years—if you look at the case records, where there were little trespass violations. There were things like he turned out cattle early. Numerous issues like that, that BLM didn't do a thing about.

We looked at it as kind of a learning process—somebody new coming into the area, who really didn't come out of any kind of a ranching background, and trying to educate him: “This is what the AMP (Allotment Management Plan) means. This is how it needs to be run.” These kinds of things. We thought it would change, but it just never did.

Then, at some point, we said we're going to issue the first trespass. It really never stopped. It just escalated.

CHAPTER 4

Disposition of trespass notices under the Robbins settlement agreement of January 2003

There's a large number of trespasses [by Robbins's cattle]. There's probably close to thirty that were actually pursued as significant violations. Under BLM regulations you start out with a

7. In August 1998, Harvey Frank Robbins Jr. filed a civil complaint in Federal District Court, Cheyenne, Wyoming, that named several BLM employees (including Darrell Barnes) in their individual and professional capacities as defendants in a civil Bivens and Racketeer Influenced and Corrupt Organizations Act (RICO) claim. When the federal statutes do not give an injured party the right to sue the federal government for a wrong done to them, the law sometimes allows a suit against an individual federal employee who committed the injury. If the plaintiff wins the lawsuit, he collects damages from the perpetrator's personal assets. The US Supreme Court created this constitutional tort, called a Bivens suit, in the early 1970s.
8. On 11 January 2006, the Tenth US Circuit Court of Appeals ruled that Darrell Barnes and five other BLM employees should be tried for allegedly retaliating against Harvey Frank Robbins Jr, for not allowing the government access across his private land. The alleged retaliation included canceling Robbins's grazing privileges, canceling a right-of-way to his property, canceling a special recreation use permit, and threatening to “bury” him. The federal government then appealed to the US Supreme Court, which agreed to hear the case (*Charles Wilkie, et al. v. Harvey Frank Robbins*, No. 06-219) on 19 March 2007. On 25 June 2007, the US Supreme Court ruled against Robbins. In a 7–2 ruling, the court said that Robbins could not sue under the Fifth Amendment. Relying on a 1971 Supreme Court decision allowing damage remedies for constitutional violations by federal agents, Robbins had alleged the federal employees violated a Fifth Amendment right to exclude others from his property. Bringing such an action “would invite claims in every sphere of legitimate governmental action affecting property interests, from negotiating tax claim settlements to enforcing Occupational Safety and Health Administration regulations,” wrote Justice David Souter for the court's majority. Robbins also sued under the Racketeer Influenced and Corrupt Organizations Act (RICO), accusing the government employees of trying to extort an easement from him. The vote on that portion of the case was 9–0 against Robbins. The court asserted that the conduct alleged by Robbins did not fit the traditional definition of extortion, so his complaint under the racketeering law could not survive. Acting on the Supreme Court's decision, US District Court Judge Clarence Brimmer of Cheyenne on 5 October 2007 dismissed with prejudice Robbins's lawsuit against the BLM employees.

“trespass.” Then you have a “repeated trespass.” Then you have a “repeated willful trespass.” It’s based on just continuing, re-occurring incidents—it goes up a notch. “Repeated willful” requires the BLM to take some action on the permit, like a reduction in numbers and such as that. We at the BLM issued numerous decisions that actually had reduction of livestock on different permits because of repeated willful trespass. But all of those cases are still under appeal in IBLA.

The situation got stickier when the special deal was cut in Washington, because it basically suspended all action on IBLA cases.

I said earlier that we had a hearing here about some trespasses shortly prior to the agreement coming out in January 2003. So no decision was ever issued, and those cases are actually still not being acted on. It’s kind of a limbo situation.⁹

When this agreement got going, we were basically told to back off. That was in 2002. And that whole grazing season BLM didn’t issue any trespasses. Although, we were aware of trespasses and documented ’em to the records and made the people in Washington, through our state office and the solicitor’s office, also aware of ’em. But there was one entire grazing season when we didn’t issue any trespasses because we were told not to while this agreement was cooking.

It took about a year before that agreement was finalized. And under the agreement, Mr. Robbins had a period of time during which, if he had new violations, everything would be forgiven. During the first year of the agreement there were at least fifteen documented violations, many of them grazing trespass issues.¹⁰

CHAPTER 5

Alleged violations of federal law in BLM’s settlement with Robbins

It definitely was a top-down sort of a thing trying to manage resources at the local level. And the folks at our level were under a lot of political pressures to cave in—not to be looking for trespass actions and things like this.

Under the BLM regulations there’s a requirement that a rancher have a satisfactory record of performance. But under the January 2003 settlement agreement, the BLM is required to issue the Owl Creek permit. It’s crazy. If you were leasing any kind of property, and you had a renter who wouldn’t take care of your building or your property that he was leasing, you’d cancel it. I think that’s a solid provision of the regulations, but we were required under that agreement to issue that permit.

We were also required to re-issue the recreation permit. And likewise he had a bad performance record for that.

There were also provisions in the agreement that he could pretty much have a free reign on any grazing allotment that was 50 percent or greater private land. There were allotments that were 48 percent public—he could do whatever he wanted on those allotments, whereas the Taylor Grazing Act requires that grazing time and livestock numbers be set for all allotments.

9. Subsequent to my interview with Barnes, the BLM’s Solicitors Office (due to the cancellation of the government’s agreement with Frank Robbins in January 2004) has asked IBLA to reinstate action on all of the Robbins suspended cases.

10. The settlement agreement was voided by the government after a little more than a year on 28 January 2004.

There was also a requirement in that agreement requiring that the BLM do a land exchange with Mr. Robbins at some point. The authority for the land exchange actually would be at the assistant secretarial level, circumventing local planning and local input.

So there were a number of items in that agreement that were shaky. And prior to that agreement being finalized, the Department of Justice out of Cheyenne had commented with a couple of letters to the directorate in Washington that the agreement was illegal.¹¹

CHAPTER 6

Environmental concerns with the Robbins settlement agreement

There's a concern because that country is grizzly bear and wolf habitat. And the public agencies involved with its management need to have administrative access into that kind of country. There's also a wilderness study area up there abutting Mr. Robbins's allotments. And there's an area of critical environmental concern that runs along the border of some of those allotments. There's definitely problems with monitoring those because of ongoing conflict with administrative access.

Then there's an issue with the Endangered Species Act in that there wasn't any NEPA analysis¹² done on this agreement. There wasn't any NEPA done for the Owl Creek transfer and things like that. That's a NEPA violation. They should have been analyzed because it's the law. But the bottom line is that there are resource concerns that need to be addressed.

CHAPTER 7

The federal government voids the Robbins settlement agreement (28 January 2004)

Under the settlement, we had no authority at this level. Initially, authority resided with a deputy director in Washington. Later on it was transferred to the state director. Our instructions were, "If you've got problems, let us know." So our way of letting them know at this level was to send notification up the chain of command. And we notified them of every violation that we became aware of. It's extremely difficult 'cause a number of these were trespasses on other permittees. And other permittees were complaining to us here. Then we would formally notify the state office, and they then would allegedly notify the Washington office. But there was absolutely no action taken on any of those cases until Western Watersheds Project filed its lawsuit challenging

11. Comments on the BLM's January 2003 settlement with Frank Robbins from the Department of Justice to the directorate in Washington, DC, date to the summer of 2002. Darrell Barnes, e-mail message to author, 30 March 2006.

12. NEPA: National Environmental Policy Act.

the legality of the agreement in Washington, DC.¹³ And it's my opinion that as a result of that lawsuit the Washington office cancelled the agreement.¹⁴

I've dealt with a lot of permittees over the years and Mr. Robbins is different from all of those. I've never seen a situation, personally, with this much trespass and lack of control of the livestock. BLM will have trespasses here and there, but normally once we sit down and talk to the people that have a trespass, they keep better watch on their livestock. It doesn't seem to be a re-occurring problem in most cases. But this situation here, from '94 to the present, is really hard to understand.

13. On 7 July 2003, Advocates for the West on behalf of Western Watersheds Project in conjunction with American Lands Alliance filed a sixty day "Notice of Intent to Sue" the BLM in regard to the settlement agreement of 15 January 2003 with Harvey Frank Robbins Jr. A lawsuit was filed on 25 September 2003 alleging violations of the Federal Land Policy and Management Act, Taylor Grazing Act, Endangered Species Act, and the Code of Federal Regulations. The text of this "Intent to Sue" notice can be read on the Internet at <http://www.advocateswest.org/docs/library/robbinsnotice.pdf> (last visited 5 May 2008).
14. The US government voided its settlement agreement with Harvey Frank Robbins Jr. of 15 January 2003 on 28 January 2004, reportedly because of willful trespass violations. Further details can be found in Jeff Gearino, "BLM Voids Robbins' Grazing Deal," *Casper Star Tribune*, 7 February 2004.