

# Testimony of Kirk R. Harrison before the House Subcommittee on Forests and Forest Health

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## Committee on Resources

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Mr. Chairman, thank you for conducting this hearing today and I thank all of the Members for their time and interest. My name is Kirk Harrison and I own property in Pinto Valley, Utah. I want to thank Chairman Hansen for sponsoring the legislation before the Subcommittee today. This legislation will solve a dispute involving my family's property that my family settled in 1860 – more than 140 years ago. This legislation calls for the directed sale of approximately 560 acres of land to me for fair market value. The proceeds of this sale would then be utilized by the Forest Service to acquire truly valuable in holdings where public values are much greater. Mr. Chairman, this legislation is critical to restoring my family property and unfortunately is the only mechanism available to me to solve this age old dispute.

### **I. History and Use of the Property**

#### **A. Historical Use**

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My great great grandparents, Richard Harrison and Mary Ann Whitaker Harrison, <sup>[1]</sup> settled in the Pinto Valley in 1860. The Pinto Valley is located in the high desert region of Southwestern Utah. They constructed and lived in the log cabin situated in the area of my property known as the Spring Field.

They cleared the fields that exist today by chopping down and removing the cedar trees so they could plant and grow their crops. From those cedar trees came the cedar posts that they utilized to construct the rip gut fences <sup>[2]</sup> that defined the boundaries of their property. Anyone that has ever chopped a cedar fence post with an ax can appreciate the tremendous effort and amount of time it took to construct these fences. In light of the dramatic difference in the effort necessary to construct a rip gut fence as opposed to a barbed wire fence, if barbed wire was available, it surely

would have been utilized. However, the first patent on barbed wire was not filed until 1873 and barbed wire was not available in Southern Utah for many years thereafter. <sup>[3]</sup>

In order to appreciate the priority of use and superior claim of ownership to this property by my family, it is helpful to place it into a chronological context. My family had settled, homesteaded, owned, worked, tilled the soil, planted and harvested crops, raised, fed and watered livestock, maintained the boundary fences, raised their children and lived upon their property for five (5) years before the outbreak of the Civil War.

Evidence of my family's early use of the property is indisputable. As of 1870 there were only 105 people living in the Pinto Valley. <sup>[4]</sup> In 1873, the people of Pinto produced 1,614 bushels of wheat, 160 bushels of oats, 1,693 bushels of barley, 210 bushels of corn, 6 bushels of beans, 7,195 bushels of potatoes, 287 bushels of vegetables, and 120 tons of hay. *Id at 200.* Consistent with the foregoing, LDS Church Pinto Ward records between 1867 and 1876 prove that both my great great grandfather, Richard Harrison, and my great grandfather, John Heber Harrison, were growing crops and raising livestock on this property. These records show contributions from both men of wheat, barley, hay, potatoes, corn, vegetables, fruit, butter, cheese, eggs, pork, chickens, mutton, and wool. Copies of these records between 1867 and 1876 are attached hereto as Exhibit "2."

The State of Utah, which was made a state on January 4, 1896, did not exist for the first thirty-six (36) years that my family settled, homesteaded, owned, worked, tilled the soil, planted and harvested crops, raised, fed and watered livestock, maintained the boundary fences, raised their children and lived upon their property. Our family had done all of this for over forty-five (45) years before the Dixie National Forest was created in 1905.

There is further evidence of my family's use and ownership of the property since 1860. The priority date of the springs situated upon our property is 1860. Since that time those springs have been utilized to irrigate pastures, crops and orchards; water livestock; and for culinary purposes.

My great great grandfather, Richard Harrison, who was born on April 30, 1807, passed away while living in Pinto on March 4, 1882 and is buried at the Pinto Cemetery. My great great grandmother, Mary Ann Whitaker Harrison, who was born on August 10, 1811, passed away while living in Pinto on September 4, 1889 and is also buried at the Pinto Cemetery.

My great grandfather, John Heber Harrison, died while still living at Pinto on July 1, 1923 and is buried at the Pinto Cemetery. My great grandmother, Ellen Eliza Eldridge Harrison, who was born on July 28, 1850, died on October 10, 1937 and is also buried in the Pinto Cemetery.

My grandfather, Heber Eldridge Harrison, was born in Pinto on May 12, 1874.

My father, Joseph Ross Harrison, was born on May 18, 1915 and died in Pinto on October 30, 1990.

#### B. Federal Government Surveys In The Pinto Valley And Discrepancies Among Them

The first government survey of the area, which was conducted by the U. S. Surveyor General's Office, was not made until 1881. This effort consisted of crews, utilizing a rod and chain, merely establishing section corners and the like. Undoubtedly, these crews, given the miles upon miles they were surveying, of which the Pinto Valley was only a very small part, did not take the time to follow existing fence lines and boundaries that had existed for over twenty (20) years. Similarly, a second government survey of the area was not made until the creation of the Dixie National Forest in 1905. Like the survey crews before them, these crews, understandably, did not take the time to follow, with their rod and chain, the existing fence lines and boundaries that had existed for over forty-five (45) years. My family had no reason to believe there existed any discrepancy between these surveys and their fenced property lines.

My family had no reason to believe there was any discrepancy in the boundaries between their property and the Forest Service until 1984, when the Forest Service retained an outside firm to perform surveys in the area and orange

boundary markers were set, which were inconsistent with the historic use and occupancy of the lands that had been cleared, cultivated, irrigated, grazed, and fenced for over one hundred twenty-four (124) years.

There are numerous discrepancies in the surveys in the Pinto Valley. A prime example is the location of the southwest corner of Section 2 of Township 38 south -- Range 15 West. The 1881 rock monument is thirty-seven (37) feet away from the 1905 rock monument. For reasons unknown, neither of these rock monuments could be found, and therefore, utilized by the surveyors that performed the survey for the Forest Service in 1984. The Forest Service surveyors did not accept an historic "rock mound" monument, in spite of the fact that other surveyors had accepted it, including the surveyors for Washington County. There should be only one survey monument at each corner location. However, because of the survey discrepancies in the area, there are several corners that have at least two different survey monuments.

There are five areas where there are disputed lands with the Forest Service. Those five areas are: (1) the Spring Field; (2) the Southwest Field; (3) the Platt Field; (4) the Corn Field, and; (5) the Reservoir Field.

### The Spring Field

My great great grandparents' log cabin is situated but a few feet from the supposed "boundary line" resulting from the 1984 survey for the Forest Service. Beyond this "boundary line" to the west is a field and stream that has been fenced in by my family since 1860. Substantial portions of the original rip gut fence still exist on the northern boundary of this field. A barbed wire fence is located just a few feet north of and parallel to this rip gut fence. This barbed wire fence continues west and turns in a southerly direction enclosing this field and stream.

There has been grass in this field for as long as I can remember. I have aerial photographs dating back to August 26, 1949 that were taken by the Aerial Photography Field Office of the U.S. Department of Agriculture that clearly depict the grass condition of the field. I have also confirmed with my "Harrison" aunts and uncles, who are in their eighties, that there has been grass in these fields for as long as they can remember as well. I have been told that my grandfather grazed his cattle upon this property. I know of my own knowledge that my father, many times with my help, re-seeded this field, railed the field <sup>[5]</sup> every spring, mowed the hay in some years, grazed horses and/or cattle every year in the field, watered the field utilizing sprinklers and a pump from the reservoir located just east of the field in some years, utilized a portion of the field to store farm equipment, and maintained the fences on an annual basis. My father did all this from the time he acquired the property in 1950 from his grandfather's estate, John Heber Harrison, until I acquired the property from my father in 1988.

Since my acquisition of the property, I have railed the field every spring, grazed horses and/or cattle every year within the fenced area, grubbed the sage brush and rabbit brush, utilized a portion of the field to store farm equipment, and maintained the fences on an annual basis.

Attached as Exhibit "3" are photographs depicting my great great grandparents log cabin in the Spring Field as well as the disputed part of the Spring Field and the rip gut fences around that disputed area.

### The Southwest Field

The Southwest Field is located to the southwest of the Spring Field. To the best of my knowledge the only rip gut fences remaining in the Pinto Valley are those rip gut fences that marked the boundaries of my family's property. The rip gut fences built by my family when they cleared the Southwest Field are still in existence on the southern and northern sides of this field. The topography of the area is such that the only access by wagon to the Southwest Field was through the Spring Field.

Attached as Exhibit "4" are relevant portions of aerial photographs taken by the Aerial Photography Field Office of the U. S. Department of Agriculture. These photographs are dated August 26, 1949, June 12, 1960, and August 30, 1977. These photographs confirm that the Southwest Field was only accessible by wagon through the Spring Field. These photographs also show how the Southwest Field is far from other fields in the valley, except the

Spring Field.

The name of the mountain above and to the southwest of the Southwest Field is named Harrison Peak after my great grandfather. The location of the Southwest Field relative to the other fields in the valley, other than the Spring Field, is such that it is unreasonable to conclude that anyone other than my great great grandfather and then my great grandfather owned the Southwest Field. It is my good faith belief that my great grandfather rented this pasture to Oscar Westover during the early 1800s.

### The Platt Field

The origin of the private ownership of the Platt Field is the same as other property I own in the Pinto Valley in that it was first settled prior to the Civil War. The first owner of the Platt Field was Benjamin Platt. The Pinto Cemetery provides indisputable corroborative evidence of Benjamin Platt's presence in Pinto in the 1860s. Josephus Platt is buried in the Pinto Cemetery. He was born in Pinto on June 9, 1867 and died in Pinto on August 8, 1867. His father was Benjamin Platt.

Just as my great great grandfather had done when he first moved to the Pinto Valley, Benjamin Platt “lived up in the field in a little log house at first.”<sup>[6]</sup> Benjamin Platt was the seventh man to take water from the Pinto Creek. *Id.*

Although he settled the property and worked the property beginning sometime prior to 1867, Benjamin Platt did not obtain a patent to the property from the United States of America until 1890. Our family acquired title to the property when it was conveyed to our Great Aunt Geneva H. Gillies and her husband R. Moroni Gillies in 1916.

The "boundary line" posted by the survey crew for the Forest Service in 1984 cuts off approximately eleven and eight-tenths (11.8) acres of our ground, including all access to the creek. One must seriously question the implied assertion of the location of the "boundary line", namely that when this property was initially settled in about 1860 that the settlers were so inept as to settle upon and homestead property that just bordered, but did not include Pinto Creek, which runs through the property. Luckily, there is clear indisputable evidence that such is not the case. Just within and parallel to the existing barbed wire fence on the eastern boundary of my property, which encompasses all of Pinto Creek that runs through the property is a rip gut fence. I have confirmed with my "Harrison" aunts and uncles that this rip gut fence, and the barbed wire fence parallel to it, have been in existence for as long as they can remember. Likewise, cattle have grazed and watered in this area every year for as long as I can remember and for so long as the "Harrison" aunts and uncles can remember as well. This fence was maintained by my father and then by me every year thereafter.

Attached as Exhibit “6” are photographs of the disputed area of the Platt Field and the rip gut fences on the eastern side of the Pinto Creek which enclose the disputed area.

### The Corn Field

In 1860 my great great grandparents cleared the land and constructed the rip gut fences that created the boundaries of the Corn Field that still exist today.

As with the “boundary line” on the eastern side of the Platt Field, the “boundary line” posted by the 1984 Forest Service survey crew on the eastern side of the Corn Field cuts off all access to the creek. Contrary to what this asserted “boundary line” implies, my ancestors had sufficient intelligence to fence the creek within the location where their livestock were located. In addition to the dated barbed wire fence on the eastern boundary of my property, which encompasses all of Pinto Creek that runs through the property, are also remnants of the rip gut fence. I have confirmed with my "Harrison" aunts and uncles, that this fence has been in existence for as long as they can remember. Likewise, cattle have grazed and watered in this area every year for as long as I can remember and for so long as the "Harrison" aunts and uncles can remember as well. This fence was maintained by my father and then by me every year thereafter.

It is my understanding that at the time of the Forest Service survey in 1984, the State of Utah was the legal title owner of Sectional Lot 6. For that reason the survey map prepared by the Forest Service surveyor did not show any discrepancy in the boundary on the east side of the Corn Field. However, since that time the Forest Service has obtained the legal title from the State of Utah and this area is now in dispute. It is my understanding that legal title was obtained by the Forest Service on January 8, 1999 pursuant to the Utah Schools and Lands Exchange Act of 1999, Pub. L. 105-335.

### The Reservoir Field

The origin of the private ownership of the Reservoir Field is the same as other property we own in the Pinto Valley in that it was first settled prior to the Civil War. There is a rock memorial in Pinto of the first church constructed in Pinto. The memorial identifies the very first settlers of Pinto, who arrived in 1856. One of the nine names on this memorial is David W. Tullis. It is believed that David W. Tullis settled what is now known as the Reservoir Field in 1856. The Pinto Cemetery provides further indisputable corroborative evidence of David W. Tullis's presence in Pinto in the middle 1800s. David W. Tullis, who is buried in the Pinto Cemetery, was born in England on June 3, 1833 and died in Pinto on November 26, 1902. Euphemia Tullis, the daughter of David W. Tullis, was born in Pinto on February 11, 1866. Other children of David W. Tullis were born in Pinto in 1872, 1875, 1878 and 1885. The Tullis family worked and owned this property until my family acquired the property.

My father acquired this property, the Reservoir Field, in 1960. The "boundary line" posted by the survey crew for the Forest Service in 1984 cuts through the southwestern portion of our property. Appurtenant to this property is the best water spring that I own. The priority date of this spring is 1860. If a new fence were constructed on the "boundary line" and my family's old fences torn down, it would be catastrophic. The headwaters of my best spring could then be interfered with and placed at considerable risk by access from third parties and their livestock.

The fence line that the Forest Service now claims encroaches upon the Forest Service has been in existence for as long as I can remember. Moreover, I have confirmed with my older siblings and my "Harrison" aunts and uncles that the fence line has been in that location for as long as they can remember as well.

Every year when my father owned the property and every year that I have owned the property, which is since 1975, I have maintained the fence, grazed and watered livestock on the property, shoveled and hoed the weeds, and sprayed the thistle. In addition, every year when my mother was alive my family would pick the berries from the elderberry and currant bushes on the property that my mother would then make into jam. My family used to have picnics in the grassy meadow area of this property as well. One year our father and we railed a portion of this ground and planted seed.

Attached as Exhibit "7" are photographs of the disputed area of the Reservoir Field and the old fences which enclose the disputed area.

## **II. Legal Title History**

### **A. Conditions Between 1860 and 1890**

During this time period the only mode of transportation was by horse, wagon or foot. Pinto was an extremely remote location. "The people of Pinto were isolated as to transportation and had few cultural contacts from the outside . . . ." [7] The Pinto Valley is over 6000 feet in elevation. The winters were extremely harsh. It was noted that, "One year it snowed quite a lot and it covered all the fences with snow twelve to fifteen feet deep so they traveled over fences and all." *Id.* at 6. Many days were spent simply trying to survive.

As noted previously, my great great grandparents were part of a settlement party that was the first settlers south of Provo, Utah. It took those settlers from December 16, 1850 until January 13, 1951 to travel from Provo, Utah to

Parowan, Utah – a distance of about 200 miles. The settlement party averaged less than 7 miles a day.

Presumably because of the lack of any section corners, there were no deeds to any lands in the Pinto Valley until 1890. The first government survey of the area, which was conducted by the U. S. Surveyor General's Office, was not made until 1881. Shortly thereafter, my great grandfather and Benjamin Platt made the first patent applications in the Pinto Valley. Both men received the first land patents in the valley on July 3, 1890.

Both the law and reality of their circumstances dictated that the applications had to be by aliquot part. A metes and bounds survey simply was not an option. Presumably, both men had to travel 300 miles to Salt Lake City, Utah to find an attorney and/or a surveyor to prepare their respective applications for patent. The Pinto Valley is about 300 miles from Salt Lake City, Utah. Even if these two men could travel on horseback or wagon an average of 15 miles per day (more than twice as fast as the 1850 settlement party), it would have taken them 40 days to travel to Salt Lake City and back for this purpose. The point is that under these circumstances there was no way to compare the land to be patented against the existing rip gut fence lines whose location had been determined by the topography, terrain, and location of water.

The only plausible explanation as to why my great grandfather was unable to obtain a patent to the Southwest Field, is that the federal government had the same policy during the late 1800s as the Cedar City Office of the Forest Service has had during the 1990s through the present – the local office arbitrarily does not want any private ownership in Section 3, Township 38 south – Range 15 west, regardless of the equities involved. This is despite the same office of the Forest Service recently, in response to FOIA requests, conceding that there are no significant public values on the lands to be acquired and that there are no identifiable resources to be protected in this area. This also is despite there being private ownership both north and south of this Section 3.

B. Abstracts of Title Depicting Legal Ownership from 1890 to the Present

Attached as exhibits hereto are abstracts of title for the Spring Field & Corn Field (Exhibit “8”, Platt Field (Exhibit “9”), and the Reservoir Field (Exhibit “10”). Each abstract of title confirms that I am the legal owner of each of these properties.

**III. Dealings With The Forest Service Since 1991**

A. Forest Service Unlawfully Gives Permittee Permission To Trespass Upon The Platt Field With Small Tract Act Application Pending

During the evening of July 1, 1991, I learned that the grazing permittee with the allotment located on the east side of the Pinto Creek had started to build a fence in the Platt Field. I telephoned the permittee the following day. He said that he needed to move the fence because his access to water somewhere else had been cut off. I told him that I was aware of discrepancies in the surveys of the area and to cease immediately. He acknowledged that he too was aware there were discrepancies in surveys in the valley and that he would stop.

My sister met with the Forest Service soon thereafter and was advised to file a Small Tract Act application for the disputed area, which she did in 1991. She was told that once the Small Tract Act application was filed, the permittee would not be allowed on our property, including the disputed area, until the matter was resolved.

As of 1994, our Small Tract Act application was still pending as it had not been acted upon by the Cedar City Office of the Forest Service.

On Saturday afternoon, May 28, 1994, I went for a walk with one of my children to the Platt Field. I soon discovered that a fence had recently been constructed on the east side of the Platt Field and to the west of the Pinto Creek. This fence cut off all access to the Pinto Creek. I discovered that our fence located on the east side of Pinto Creek had been torn down in five different locations. The only access to the location of the new fence was through the west side of the Platt Field that was prominently posted with “**NO TRESPASSING**” signs. I learned later that weekend that one of the other landowners had witnessed the permittee’s trespass upon our property through the west

side.

I spoke with two other property owners in the Pinto Valley and learned that Forest Service grazing permittee that had the allotment on the east side of the Pinto Creek had very recently constructed the fence. This is the same permittee that had started to build the fence in early July of 1991. He had been bragging to land owners in the valley that the Forest Service had given him permission to trespass upon our property and build the fence. This was in spite of the pending Small Tract Act application for this very area!

One of the people I spoke with that day was the President of the Pinto Irrigation Company who told me that every member of the irrigation company was against this action. He said that they were appalled and outraged by the permittee's conduct. In addition, as the irrigation company controlled and managed the Pinto Creek through the Pinto Valley, they were concerned the permittee, who owns no land in the Pinto Valley, would interfere with that management and control.

I spent all day Sunday, May 29, 1994, and Memorial Day, May 30, 1994, rebuilding our fence where the permittee had torn it down and tearing down and removing the entire fence the permittee had unlawfully constructed on our property.

At 8:00 a.m. on Tuesday, May 31, 1994, I was at the Cedar City Office of the Dixie National Forest when it opened. I immediately met with the Forest Supervisor. I explained what had happened in 1991. More specifically, that my sister had met with the Forest Service in Cedar City was advised to file a Small Tract Act application, which we did, and was assured that the filing of the application would preserve the status quo and that we did not need to worry about the permittee attempting to construct a fence on our property. In addition to the Forest Supervisor, I met with the Lands Staff Officer and the Realty Specialist. I requested they meet me at the ranch later that day so I could show them what had occurred, as well as the locations in the Spring Field and the Reservoir Field where there was also a conflict between the fence lines and the 1984 Forest Service Survey.

Later that morning, at 10:15 a.m., I met with the Forest Service representatives at the ranch. There on behalf of the Forest Service was the Land Staff Officer and the Realty Specialist I had met earlier that morning, as well as the District Ranger and his assistant, who were based in St. George, Utah.

The next day, June 1, 1994, in response to my request, the District Ranger sent a letter assuring me that no fences would be removed or cut and no new fences would be constructed until the matter was resolved. A copy of this letter is attached as Exhibit "11."

I later learned that the Forest Service employee in the Cedar City Office in charge of grazing permits and allotments had given permission to the permittee to construct the fence. The Forest Service did this with our Small Tract Act application pending and knowing the permittee would have to trespass upon our property, where "NO TRESPASSING" signs were prominently posted, from the west side of the valley to do so!

B. Forest Service Representatives Indicated That Disputed Areas Qualified Under The Small Tracts Act And Advised The Applications Be Filed

As set forth above, on Tuesday, May 31, 1994, at 10:15 a.m. I met the Land Staff Officer and Realty Specialist from the Cedar City Office and the District Ranger and his Assistant from the St. George Office at the ranch in Pinto.

We first drove onto the Platt Field just west of the Pinto Creek. The Land Staff Officer had a copy of the November 12, 1984 map entitled, "Dixie National Forest – South Pinto Boundary Survey" and placed it on the hood of his truck for all of us to review. A copy is attached hereto as Exhibit "12." This showed the area in dispute at that location to be 11.8 acres. We discussed the fact that the pending Small Tract Act application was for less acreage, but that the Small Tract Act limitation was 10 acres. We then walked the area of dispute in the Platt Field following the rip gut fences on the east side of the Pinto Creek. As we walked the Land Staff Officer and I talked. He noted the relatively good condition of the rip gut fence given its obvious age. I confirmed to him that cattle feed in the disputed area every year and had done so for as long as I could remember. There were forty pair of cattle in the Platt Field at



the time. I confirmed that we maintained the fence all the time I was growing up. We spoke at length about the fact the rip gut fence had been there since about 1860 when the property was originally settled by Benjamin Platt. We spoke of how the property had been improved by the removal of all of the trees, the clearing of the ground, and the construction of the rip gut fence. We discussed the fact that the rip gut fence had been there since before the Civil War. We also discussed the fact that the surveys of 1881 and 1905 would not have put the property owners on notice of any discrepancies. The Land Staff Officer agreed that the location of the rip gut fence clearly showed the intent of the original settlers to include the Pinto Creek within their property.

The Land Staff Officer told me that for purposes of the Small Tract Act it was very important that we had always maintained the fence and had always used the disputed acreage every year to graze livestock. At that point in the discussion the Small Tract Act Specialist noted that two other small tract applications in the Pinto Valley had each taken three years to complete. I knew that the latter application was for an area of about five acres with modern fencing and a shed that had been there for less than 15 years and cost less than \$500.00. It is my understanding that the basis for the granting of that application was the discrepancies in the surveys in the Pinto Valley.

The Forest Service representatives and I then went to the Spring Field. I first showed them my great great grandparent's log cabin and how the logs were connected using wooden pegs rather than nails. I showed them how the Forest Service 1984 survey was just a couple of feet from the northwest corner of the cabin. We then walked the rip gut fence line located on the northern boundary of the field next to the log cabin. I told them how there used to be small ponds on the south side of the field with good fishing, as my Dad had planted rainbow trout. However, I explained to them that we had a horrific flood during the early 1960s that had destroyed the reservoir next to the log cabin and had filled those ponds with silt.

The Land Staff Officer asked me who had planted the field with crested wheat. I told him that my Dad had planted crested wheat many years ago and that we would over seed the field periodically. I told him how each spring we would "rail" the field which would spread the manure and level the ground. The Land Staff Officer asked if we had cattle on the area each year. I replied that we either had cattle or horses on the area each year. I told him that I recalled my Dad mowing and bailing hay from this area as I would chase cotton tails in the tall grass during the mowing. Because the grass in this field came in at a different time of year than the other fields my Dad would rotate livestock into this area earlier in the year. The Land Staff Officer asked if we ever watered the field. I told him how before the ponds were filled with silt we would pump out of those ponds.

We then went to the disputed area in the Reservoir Field. The District Ranger and I both recalled that we had met each other previously when a fire on a neighbor's field had gotten away from them and had burned the southern portion of my property, including the fence line. As we walked the fence line I pointed out that I had left the old wire at the outside base of the fence and had placed the metal posts next to the stumps of the old fence. The Land Staff Officer and I discussed the uses of the acreage. I said that every year livestock, primarily cattle, but horses as well, grazed on this area. We also discussed the fact that we maintained the fence each year and that we would spray the Canadian Thistle each year.

Every question the Land Staff Officer asked me about the historical use of each of the three areas I was able to answer in the affirmative. After we finished walking all of the areas the Land Staff Officer said that he had to get to a 1:00 p.m. meeting. Before he left he most definitely led me to believe that in light of the historical use of the properties that we had just discussed and reviewed, we qualified under the Small Tract Act and advised me to make an application. I naturally responded that I wished to make application under the Small Tract Act for these areas. Consistent with the foregoing, I received a letter, dated August 12, 1994, from the District Ranger, providing in part, "During our visit to your property in Pinto, you indicated that you would like to make application under the Small Tracts Act. Since the ownership is not the same on all parcels, please submit a separate application for each." A copy of this letter is attached as Exhibit "13." At no time during the discussions with the Land Staff Officer on May 31, 1994 did any of the other three Forest Service representatives state any disagreement with what I was being told or question the relevance of any of the questions being posed to me.

C. During The Small Tract Act Application Process I Was Lead To Believe That The Only Issue Remaining Was When The Applications Would Be Approved



After the meeting at the ranch on May 31, 1994 I had several telephone calls with the Cedar City Office Realty Specialist. I was told that the office was “backed-up” and it was going to take several years to process the Small Tract Act applications. I asked if there was anything I could do to expedite the process. I was told that abstracts of title had to be prepared, the historical use of the property had to be researched, and any surveying discrepancies confirmed. I asked if I spent the money and time to do those things up front would it shorten the time to process the applications. I was told that it would.

I spent countless hours researching title records, locating and reviewing personal histories, and locating and reviewing histories of Pinto. I retained a surveyor to note all of the surveying discrepancies in the valley. I spent days in the Archives Division of the Historical Department in the LDS Church Office Building in Salt Lake City, Utah. I spent many hours in university libraries attempting to locate histories of the area. I corresponded with the National Archives in the same effort. I photographed and cataloged the rip gut fences. I even researched the history of barbed wire to reconfirm that the rip gut fences had been there since the 1860s. I researched Pinto Cemetery records to confirm the time when my predecessors-in-interest were in the remote Pinto Valley. As seen from above, I found annals from 1870 proving all of the crops that were being grown and the livestock that was being grazed on the properties. I put all of this together and had the Realty Specialist review each of the applications before they were finalized. I was told these were the most thorough and complete Small Tract Act application she had seen. She told me this would significantly expedite the time for approval. All three applications were filed on July 1, 1996.

I telephoned the Realty Specialist during the spring of 1997 to inquire when approval could be expected. She responded that there was a possibility that it would be sometime in 1997, but that it was more likely that it would take until the spring of 1998.

D. Forest Service Reverses Position After Three Years And Denies All Small Tract Act Applications

During the first few weeks of August of 1997 I placed several telephone calls to the Realty Specialist that went unanswered. I was finally able to get her on the telephone on Wednesday, August 20, 1997. I asked her the status of the approvals. She responded that after looking at the applications (which she reviewed in detail before they were filed) and the file, at that point there was not sufficient proof to meet the Small Tract Act requirements. I then reviewed with her what had been said during the review of the areas at my ranch. She responded that although she understood what I was saying, no one made any guarantees and that we may not meet the technical requirements of the Small Tract Act.

On October 23, 1997 I had a meeting at the ranch with the new District Ranger, the Regional Land Surveyor-Title Claims Officer, the Forest Land Surveyor, the Realty Specialist, and my cousin. We discussed my view that clearing the land, building the rip gut fences, cultivating the soil, planting and harvesting crops, planting grass and grazing livestock and doing all of this for 137 years was a very real, legitimate, and significant improvement to the property. I contrasted that with one of the other Small Tract Act applications the Cedar City Office had approved in the Pinto Valley just a few years before. In that case the owner had constructed a barbed wire fence within the last 15 years that added about 5 acres to his property. He had constructed and had built a shed at a cost of less than \$500.00. A shed that could have been moved with a backhoe at the time. This area is located but a few thousand feet from the disputed area in the Platt Field. The reason for the encroachment in that instance, which had been accepted by the Cedar City Office, was the same survey discrepancies that I had noted. I questioned them how the latter could be determined to be an “improvement” under the Act by the same office that was now opining that the improvements over 137 years on my property were not “improvements” under the Act. No one could answer the question.

During this meeting on October 23, 1997, I also had a discussion with the Forest Land Surveyor concerning my family’s property in Section 3 of T38s - R15w – which includes part of the Spring Field, as well as the Southwest Field. I stated that it made no sense as to why my great grandfather would apply for patent for property that included the mountainous terrain to the south of the cabin and the dry fields east of Pinto Creek in the southern part of the valley, if he had been allowed to apply for those lands west of and adjacent to the log cabin. There were no rip gut fences enclosing or even adjacent to the mountainous terrain and the dry fields east of Pinto Creek. In contrast, there were rip gut fences enclosing the west end of the Spring Field and there were rip gut fences enclosing the Southwest

Field. Secondly, common sense cannot be ignored. The mode of transportation was still horseback, wagon or by foot. Unless you were told that the land was not open for patent, you would make application for that land that is outside your door – land that you had cleared, cultivated, developed, worked, and used since 1860. You would apply for that land as opposed to dry land on the other side of the mountain, the other side of the valley, further south, and on the other side of the Pinto Creek.

On December 1, 1997, I received a letter, dated November 24, 1997, providing, “Since there were no improvements located on any of the three parcels for which you applied., we have determined that your applications for the Platt Field, Spring Field, and Reservoir Field do not meet the criteria of the Small Tracts Act and are hereby denied.” After receipt of this letter I had several telephone calls with the District Ranger about possible alternatives to obtain title to my family’s lands. He scheduled a meeting in Salt Lake City, Utah on July 14, 1998.

E. Forest Service Takes Adamant Position That Under No Circumstances Will It Sell Or Convey Only The Disputed Areas, But That I Must Agree To Buy Or Exchange Lands Whereby I Must Acquire Significantly More Acreage Than The Disputed Lands

In attendance at the July 14, 1998 meeting in Salt Lake City, Utah were the District Ranger, the Regional Land Surveyor-Title Claims Officer, the Realty Specialist, an attorney for the Forest Service, and myself. The purpose of the meeting was to explore viable alternatives for my acquisition of the legal title to the disputed lands.

After listening to the statements of the Regional Land Surveyor-Title Claims Officer (“Claims Officer”) during this meeting, it was painfully obvious why the Forest Service had changed its position on my Small Tract Act applications. It was not because the Forest Service felt there were significant public values on the lands to be acquired or there were identifiable resources to be protected – the Forest Service has conceded there are none. It was because my family’s fence lines followed the natural terrain and jogged this way and that depending upon the topography. According to the Claims Officer, and he was emphatic in his position, the fence lines were contrary to and interfered with the Forest Service’s “management” of the public lands because the fence lines were not straight and the property consisted of irregular shaped parcels of less than 40 acres.

In response, I stated that my great great grandparents and Benjamin Platt had constructed the fences in a way that made sense – enclosing the creek and other water sources, and following the natural topography of the land. I said that I should not be penalized for these pioneers not building straight fence lines that created blocked up ownership with right angles. At that point the Claims Officer stated, “Your family may be a long term squatter, but as far as we are concerned that is all you are – a squatter.”

This meeting ended with me stating that I wanted to pursue a land exchange, as soon as possible, and perhaps simultaneously with other avenues, to expedite the transfer of title to the property.

Subsequent to this meeting I had several telephone calls with the District Ranger and the Claims Officer reaffirming my desire to pursue the option of acquiring legal title to my family’s property through a land exchange.

During a telephone call on May 26, 1999, the District Ranger stated that the Realty Specialist recently requested that I put in writing my prior oral request for me to obtain title to my family’s lands. The District Ranger, consistent with what the lecture I had received from the Claims Officer during the Salt Lake City meeting, asked me if I was willing to pay more money to acquire more acreage than what was within the existing fence lines so that the boundaries would have square corners and straight lines. I responded that I would. The District Ranger asked me to confirm that willingness in my letter request.

On May 27, 1999 I faxed my letter request to the District Ranger. In compliance with the District Ranger’s request, I wrote the following in that letter:

In the event that it is more amenable to the Forest Service that I acquire more acreage so

that the boundaries have square corners and straight lines (rather than follow fence lines that have been in existence since the 1860s) I am willing to do so with the full understanding that I would pay additional money necessary to acquire more property for exchange.

(Emphasis added).

In that letter I went on to describe my frustration in dealing with the Forest Service since 1994, detailing the basis for that frustration. A copy of this letter is attached here to as Exhibit "14."

The Forest Service sent me a letter, dated July 13, 1999, consistent with what the Claims Officer had emphatically told me during the Salt Lake City meeting and the telephone call I had with the District Ranger on May 26, 1999. Although the letter was signed by the District Ranger, it was prepared by the Realty Specialist. The letter provided in this regard, "Please keep in mind that the objective is to create manageable boundaries and blockup ownership for the National Forest." (Emphasis added). The attachment to the letter is a map of the area that highlights in red the area the Forest Service was willing to exchange. It is Sectional Lots 6, 11, and 14, which total 120 acres. Upon reviewing this map, which is in color, you can see how the transfer of what has been highlighted in red would create straight fence lines, square corners, and blockup ownership that would create more manageable boundaries for the Forest Service.

As noted previously, the total acreage in dispute in Sectional Lot 11 (part of the Platt Field) was 11.8 acres. The area in dispute of the Corn Field, which is in Sectional Lot 6, is less than 10 acres. Neither my family nor I have claimed any interest in Sectional Lot 14. The only reason for the proposed conveyance of Lot 14 is the creation of a big rectangle of private land so the Forest Service would have straight fence lines, square corners, and more manageable boundaries. A copy of this July 13, 1999 letter including the attachment (in color) is attached hereto as Exhibit "15."

This letter also provides, "I do not wish to exchange out of Federal ownership in Section 3, 38 S., R. 15 W." This position is arbitrary, as the Forest Service has subsequently confirmed that there are no significant public values on the lands to be acquired in Section 3 and that there are no identifiable resources to be protected in this area. Two fields with rip gut fences, one of which is two feet from my great great grandparent's log cabin, are in Section 3. In light of the equities involved, there is simply no justification for this arbitrary position.

In light of the objectives emphatically explained to me by the Claims Officer, my telephone conversation with the District Ranger wherein I was asked to request, in writing, the transfer of additional acreage so that the boundaries have square corners and straight lines, and the letter of July 13, 1999, I recently requested the Forest Service to set forth the basis for those objectives. The Forest Service has subsequently confirmed in writing the basis for its objectives: (1) to blockup ownership; (2) to have straight boundaries between Forest Service property and privately owned property; (3) to create more manageable boundaries for the Forest Service, based on the belief that straight boundaries are more manageable than boundaries that are not straight; (4) to exchange lands to private ownership by sectional lot or lots in order to create blockup ownership, straight boundaries between Forest Service property and privately owned property, and to create more manageable boundaries with the Forest Service. Attached hereto as Exhibit "16" is a letter from the Forest Service, dated July 1, 2002, referencing the regulations, the Act, the Manual, and the Resource Management Plan upon which they rely.

E. Proposed Acquisition of 560 Acres At Fair Market Value Does Not Require The Transfer of One Square Inch of Land More Than Necessary To Satisfy The Emphatically Stated Forest Service Requirements For the Last Four Years

Pursuant to the proposed acquisition at fair market value of 560 acres I will acquire legal title to the disputed areas in the Spring Field, the Southwest Field, the Platt Field, the Corn Field, and the Reservoir Field. Importantly, it will also satisfy each and every one of the Forest Service objectives: 1) to blockup ownership; (2) to have straight boundaries between Forest Service property and privately owned property; (3) to create more manageable boundaries for the Forest Service, based on the belief that straight boundaries are more manageable than boundaries that are not

straight; (4) to convey lands to private ownership by sectional lot or lots in order to create blockup ownership, straight boundaries between Forest Service property and privately owned property, and to create more manageable boundaries with the Forest Service. In fact, the conveyance of the 560 acres does not include any land whatsoever other than the absolute minimum necessary to satisfy the Forest Service stated requirements. A copy of the legal description for the 560 acres is attached hereto as Exhibit "17." It should be noted that it does not include Sectional Lot 14, which was proposed to be conveyed by the Forest Service.

The Forest Service has confirmed that none of the land to be conveyed has any significant public values and that there are no identifiable resources to be protected.

On the other hand, the loss of the disputed areas would be devastating to my family's property. Among other things, all access to the Pinto Creek would be lost in two major fields where I graze cattle. The permittee, his cattle, and other parties would have unfettered access to the headwaters of my best water spring which would compromise and place that spring in jeopardy. The permittee, his cattle, and other parties would have unfettered access to an area but a few feet from the source of another of my best springs. I would have the permittee's cattle and others within two feet of my great great grand parent's cabin.

Finally, the District Ranger has confirmed that the circumstances of the history and use of these lands are unique and there are no similarly situated lands in the Dixie National Forest.

F. In Response To The Possible Legislation In Recent Weeks The Forest Service Cedar City Office Has Changed Its Position Yet Again – Metes and Bounds Are Acceptable – Straight And Manageable Lines Not Important

On Friday, July 12, 2002, I telephoned the District Ranger and learned that the Cedar City Office of the Forest Service is now changing its position regarding its objectives for the conveyance of properties. I then telephoned the new acting Forest Supervisor in the Cedar City Office. He told me that metes and bounds conveyances of property are totally acceptable. I related to him the position articulated to me by the Claims Officer four years before – a position the Forest Service has continued to maintain with me during the last four years. He responded that he had recently spoken with the Claims Officer and he had no problem with conveying land on a metes and bounds description (with fence lines that go this way and that) either.

This very recent change in position is totally inconsistent with the position of the Claims Officer and this Local Office for the past four years. Suffice it to say that it is extremely frustrating to be trying to solve a problem in an environment where the rules keep changing after you have expended tremendous amounts of time, money and effort.

Mr. Chairman, I believe the evidence and the equities are overwhelming. I am not asking the Congress to give me anything. I am asking the Congress to authorize the sale of my family property back to me for fair market value and to establish straight and manageable boundaries for the Forest Service. Mr. Chairman, I respectfully request the favorable consideration of this legislation and I am prepared to answer any questions you might have or provide any further information that the Subcommittee desires. Thank you Mr. Chairman for your time.

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Kirk R. Harrison

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[1] Prior to settling in Pinto in 1860, Richard and Mary Ann Harrison had immigrated from Liverpool, England to Nauvoo, Illinois. They left Liverpool on September 17, 1842 and arrived in Nauvoo on April 13, 1843. My great grandfather John Heber Harrison was born in Nauvoo on June 24, 1846. A mob burned their home in Nauvoo and they fled, arriving in Salt Lake City on October 28, 1849. In October of 1850, Richard Harrison was one of one hundred men that made the journey to Southern Utah for the purpose of establishing a settlement for the making of

iron. Richard Harrison, Mary Ann Whitaker Harrison and their family left Salt Lake City on December 7, 1850. On January 13, 1851, they reached the location where they and the others with them built the first settlement in Southern Utah (south of Provo) and named it Parowan. In November of 1851, the family of Richard and Mary Ann Harrison (one of eleven families with thirty-five men) moved south to build a town at Coal Creek, which is known today as Cedar City.

[2] These fences, comprised solely of crisscrossing cedar posts, were aptly, though brutally, named because any cattle that tried to cross over the top of them would have their guts ripped out.

[3] John C. Fountain, *A Short History of Barbed Wire*; Thomas Edward Turner, *The Story of Barbed Wire*, (1969).

[4] James G. Bleak, *1870 Annals*, p. 83. Pages 82, 83, 199,200, 435, & 435a of the *1870 Annals* are collectively attached hereto as Exhibit "1."

[5] Railing the field is done by slowly pulling a railroad rail 20 to 25 feet in length by steel cables with either a power wagon or a tractor, which spreads the manure and levels the ground.

[6] Annie I. Matheson, *Early Days In Pinto*, (1959) p. 3. A copy of *Early Days In Pinto* is attached hereto as Exhibit "5."

[7] Annie I. Matheson, *Early Days In Pinto*, (1959) p. 9.

[8] Janet Burton Seegmiller, *A History of Iron County*, Utah State Historical Society (1998) p. 46-48; Luella Adams Dalton, *History of Iron County Mission*, p. 16-23.