

DISTRICT COURT, COUNTY OF COSTILLA, STATE OF COLORADO 304 Main Street San Luis, CO 81152	
Plaintiffs: EUGENE LOBATO, et al. v. Defendants: ZACHARY TAYLOR, as executor of the estate of Jack Taylor, deceased, et al.	
Attorneys for Defendant Cielo Vista Ranch I, LLC: Jamie N. Cotter, No. 40309 Jacob F. Hollars, No 50352 SPENCER FANE LLP 1700 Lincoln Street, Suite 2000 Denver, Colorado 80203 Telephone: 303-839-3800 Fax: 303-839-3838 Email: jcotter@spencerfane.com ; jhollars@spencerfane.com	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 81CV100005 Ctrm: A
RANCH OWNER’S AUTHORITY AND ARGUMENTS RE: NON-STIPULATED RULES AND REGULATIONS	

Pursuant to the Court’s Order of September 28, 2021, Defendant Cielo Vista Ranch I, LLC (“Ranch Owner” or “CVR”) submits its authority and arguments concerning why the Court should adopt its Non-Stipulated Principles, Definitions and Regulations and reject Plaintiffs’. This pleading starts off by setting forth authority and arguments for each of the Ranch Owners’ proposed Non-Stipulated Principles, Definitions and Regulations. Then, the Ranch Owner presents arguments against certain of Plaintiffs’ proposed rules and regulations to which the Ranch Owner has not proposed a competing rule and regulation.

I. CVR’S NON-STIPULATED PRINCIPLES, DEFINITIONS AND REGULATIONS

OVERARCHING PRINCIPLES:

Ambiguity leads to hostility.

Authority – As the Court is well-aware, the vast majority of the disputes between the parties come from ambiguity with respect to what Access Rights Holders and the Ranch can and can’t do on the Ranch. In proposing its regulations, CVR is attempting to remove ambiguity so that

there will be very few disputes regarding the respective parties' rights and obligations to the land. Many of Plaintiffs' proposed regulations contain language such as "so long as x does not interfere with the Access Rights Holders rights," or using the word "reasonable" with respect to certain conduct. If those regulations are accepted, which party gets to determine what interferes and what doesn't? Whose definition of "reasonable" is going to be used? Instead of leaving these determinations up to the subjective opinions of two sets of people who share very different opinions, CVR contends that these regulations must be specific and un-ambiguous.

DEFINITIONS:

Access Rights Holders – Access Rights Holders are those people whom the Court has determined have access rights.

Agent – Is one of the two people in any given year that an Access Rights Holder has authorized to exercise his or her rights by listing their name on an Amended Notice of Use Form.

Authority – Plaintiffs and CVR do not dispute that an Access Rights Holder can designate "agents" to either exercise their rights for them or to accompany them as they exercise their rights. However, the parties cannot agree with respect to how many agents are allowable and whether Access Rights Holders must give notice of their agent designation before accessing the Ranch.

With respect to the number of agents, Plaintiffs have proposed an unlimited number of agents and family members who can access the Ranch. Currently, approximately 6,400 individuals have access to the Ranch, and 977 keys have been issued to date. If Access Rights Holders are permitted to bring unlimited "helpers", agents or family members on the Ranch, there is essentially no limit to the number of people who can access the Ranch. CVR contends that only Access Rights Holders can access the Ranch under the clear direction from the Supreme Court. The Supreme Court has already held that "**landowners** who are able to trace the settlement of **their property** to at least the time of William Gilpin's ownership of the Taylor Ranch shall be deemed successors in title to the original settlers of Beaubien's grant." *Lobato v. Taylor*, 70 P.3d 1152, 1156 (Colo. 2003) (emphasis added). The rights are not available to landowners and helpers, agents or family members. *Id.* However, and as a means of compromise, CVR has agreed that each Access Rights Holder can designate two additional people to either help them exercise their rights or to go by themselves to exercise the Access Rights Holder's Rights.

The second issue relates to the notice required to designate agents. CVR contends that if an Access Rights Holder anticipates needing to bring people with them to help exercise their rights or sending people to exercise their rights, that they must give advanced notice of that decision. That way, the Ranch Employees will know the identity of the agents and there will be no need for Ranch Employees to approach someone they don't recognize as an Access Rights Holder.

CVR PROPOSED REGULATIONS WITH AUTHORITY:

Monitoring Regulations

CVR #1 - The Ranch Owner can place cameras on the Ranch.

Authority - Plaintiffs' proposed regulation requires notice of the cameras and that they not "interfere with the ability of the Access Rights Holders to exercise their rights". First, the standard is that the Ranch Owners use cannot "unreasonably interfere" with the dominant estate owners' use. *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924). Second, as established at the hearing, the Access Rights Holders believe that the cameras themselves interfere with their ability access the Ranch. Transcript Day 1, p. 53, ll. 5-10, excerpts of which are attached as **Exhibit 2**. Therefore, under Plaintiffs' proposed regulation, an Access Rights Holder would only have to declare that a camera interfered with their use of the Ranch and it would have to be taken down. The cameras protect everyone who is lawfully on the Ranch and there should be no limitations with respect to cameras. In addition, the Court has already stated that it will not limit the use of cameras and indeed will allow them. Transcript, Day 2, excerpts of which are attached as **Exhibit 1**, p. 185, ll. 8-18 ("...I don't and will not find that there is anything improper or wrong with the use of cameras all over the land, with the use of drones, with the use of body cameras, or even the use of electric fence...those are reasonable uses for the ranch owner or reasonable tools for the ranch owner to patrol the property to know who's on the property.")

CVR #2 – The Ranch Owner can use drones for the purpose of ensuring that Access Rights Holders are on the Ranch for legitimate purposes. Drones may not follow Access Rights Holders who are on the Ranch for legitimate purposes after they leave the Ranch.

Authority – Exhibit 1, p. 185, ll. 8-18 ("...I don't and will not find that there is anything improper or wrong with the use of cameras all over the land, with the use of **drones**, with the use of body cameras, or even the use of electric fence...**those are reasonable uses for the ranch owner or reasonable tools for the ranch owner to patrol the property to know who's on the property.**") (emphasis added). The only distinction between Plaintiffs' proposed regulation regarding drones and CVR's is that CVR believes it is entitled to have a drone follow someone who is on the Ranch for an illegal reason after they leave. For example, if someone comes onto the Ranch and shoots an elk, and such illegal behavior is captured via one of the cameras on the Ranch, Ranch Employees should be permitted to follow that person with a drone so as to determine where the elk carcass is taken. In addition, neighboring property owners routinely fly drones on the Ranch. If drones are not entitled to leave the Ranch then CVR is going to be subject to a complaint every time a non-CVR drone accesses and leaves the property. This will create further ambiguity.

Access Regulations

CVR #3 – Access Rights Holders with property that directly abuts the Ranch may access the Ranch directly from their property by installing and maintaining a new gate which matches the quality and strength of the existing fence. An abutting property owner can install one gate for each mile of abutting fence line. Such gates must remain closed and locked at all times when not in active use for the purpose of ingress or egress. Access Rights Holders who construct gates are responsible for ensuring that the gate remains closed such that no livestock can exit the Ranch through the gate inadvertently.

Authority - This regulation is necessary for at least two reasons: (1) to ensure that pure trespassers (i.e., individuals without adjudicated access rights) do not illegally enter the Ranch through a gate created by an Access Rights Holder; and (2) to ensure that livestock, whether it be livestock that belongs to an Access Rights Holder or the Ranch Owner, do not escape.

As to the first reason—preventing trespassers from accessing the Ranch—as Mr. DeLeon testified, individuals use websites to publish ways to trespass onto the Ranch in a manner meant to evade detection. See Exhibit 2, p. 310, ll. 13 to p. 311, ll. 1.

Regarding the second reason—preventing livestock from escaping—all parties should be interested in making sure that their livestock do not escape from the Ranch or that their respective herds do not intermingle.

The only difference between Plaintiffs’ regulation regarding neighboring gates and CVR’s is the number of gates and whether the gate has to match the quality and strength of the existing fence. If someone puts gates in the fence more than one every mile, that will undermine the strength of the fence. Second, if the gates are not of sufficient strength to match the existing fence, that will undermine the integrity of the fence.

CVR #4 – Subject to the 9 gates and any additional gates from neighboring properties, there shall be no limitation on the Ranch Owner’s ability to fence the perimeter of the Ranch.

Authority – In *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924) the Supreme Court addressed whether the servient estate owner could construct a toll booth over a right of way that the dominant estate owners had access to. In finding that the servient owner could maintain the gate (through which the dominant estate owners could pass), the Court held:

Even if the plaintiffs have the right of ingress and egress over the reserved streets of Eldorado Springs as private ways, including this disputed strip,..., it is permissible for the defendants, in order to protect and safeguard their own business, to erect the tollgate where they did. In 19 C. J. pp. 986, 987, it is stated as a general rule that, even though a grant of a private way without any reservations is made, the owner of the land on which it runs may, to protect his own rights, erect and maintain a gate thereon, if it does not unreasonably interfere with the right of passage, where such gate is necessary for the protection and efficient use of the lands constituting the servient estate. An expression often quoted gives the reasons for the rule: ‘The great preponderance of convenience to the landowner, over the slight inconvenience to the wayowner, seems to make it reasonable in the eye of the law that such should be the rule.’”

Certain Access Rights’ Holders have requested that the Costilla County Board of County Commissioners pass an amendment to the County’s 1040 regulations so as to prevent CVR from installing additional fences on the Ranch. The Costilla County BOCC has not yet adopted any such amendment and has clearly stated that there is no county regulation that prevents the Ranch Owner from fencing the Ranch. Plaintiffs are now attempting to limit CVR’s private property

right to fence the Ranch through this proceeding. There is simply no support for such position. First, much of the Ranch is already fenced and the parties have both agreed to 9 gates and that neighboring property owners can have gates. Because this has been agreed to, there is absolutely no evidence that erecting additional fence line around the Ranch will have any impact on the Access Rights Holders' ability to exercise their rights. Similarly, the fences are needed to keep livestock in the Ranch.

Plaintiffs' proposed regulation effectively gives the LRC, which entity has no access rights, veto power over the construction of any fence. That is, if the LRC determines that a new fence will "interfere" with any Access Rights Holder's exercise of their rights, then the LRC can prevent fencing of the Ranch. First, the proposed regulation is completely ambiguous with respect to what the LRC can do if it, in its sole discretion, finds an "interference." Second, as stated above, the standard must be "unreasonable interference" not "interference." The parties have already agreed to nine gates and gates on neighboring property so based on that agreement, there can be no "unreasonable interference" through the construction of any new fence.

CVR #5 – The Ranch Owner may block access to the Ranch in the case of an emergency, including but not limited to a fire or active investigation by law enforcement. In such event, the Ranch Owner may block access to the Ranch and provide notice to the LRC of such action at the address above within 8 hours of blocking such access. If the LRC objects to such access being blocked, the LRC may file a motion for contempt with the District Court for Costilla County and request an expedited hearing to determine whether or not such access should have been blocked.

Authority - With respect to active law enforcement investigations, a law enforcement agency may order that the Ranch, or areas thereof, be blocked so as not to disturb the investigation and/or crime scene. As to a fire, the parties previously worked cooperatively to close the Ranch in such an instance and admitted it is necessary to protect the Ranch and the safety of individuals. See Exhibit 2, p. 54, ll 14 to p. 57, ll. 17. There is no support in the record to give the LRC veto rights. There was simply no evidence whatsoever that CVR has ever attempted to block access to the Ranch unless there was a fire or they were told to do so by law enforcement.

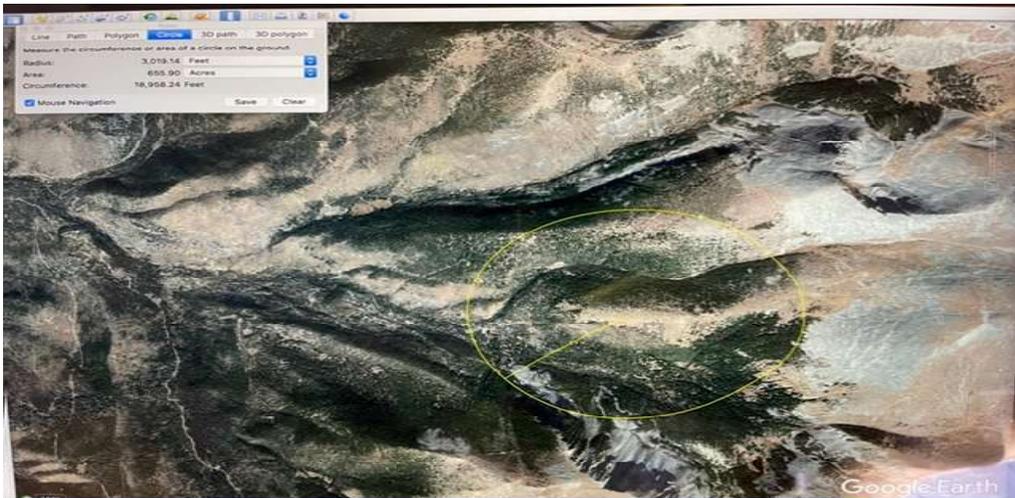
CVR #6 – Access Rights Holders can designate up to two agents, whether those people are family members or not, per year to exercise their rights. The Access Rights Holders must give notice of such designation to the Ranch Owner by identifying the designated agents in an Amended Notice of Use Form which must be submitted by the Access Rights Holder prior to their agents entering the Ranch. Agents accessing the Ranch either with or without the Access Rights Holder are limited to one vehicle. There must be at least one Access Rights Holder in every vehicle that accesses the Ranch unless the Access Rights Holder sends one of their two agents to exercise their rights. To the extent such agents are listed on the Amended Notice of Use Form, such listing has no impact on the legal issue of whether such agents are Access Rights Holders in their own right. Agents must only access the Ranch for the purposes of exercising the Access Rights Holder's access rights for which they are an agent, and all regulations pertaining to "Access Rights Holders" pertain equally to agents.

Authority – See Authority for definition of "Agent" above.

CVR #7 – Access Rights Holders cannot exercise any access rights within 1,000 ft of any building or structure located on the Ranch.

Authority - A servient estate owner, “to protect his own rights,” may use his property in any way that “does not **unreasonably interfere** with the right of passage,” of the dominant estate owners if such use is “necessary for the protection and efficient use of the lands constituting the servient estate.” *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924). In addition, it is well-settled Colorado law that “the servient estate may make all uses of the property consistent with the burden of the easement,” and the dominant estate holder may not cause unreasonable damage to the servient estate or unreasonably interfere with its enjoyment.” *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1241 (Colo. 1998). The Ranch encompasses more than 80,000 acres. The Ranch Owner intends to build a home as set forth in the regulation below. Currently, the North Headquarters have been constructed and the Ranch Owner may construct a barn or other structure. These limited structures and buildings on the 80,000 acre Ranch do not “unreasonably interfere” with the Access Rights Holder’s rights to gather firewood, harvest timber and graze livestock on the remaining areas of the Ranch.

CVR #8 - The Ranch Owner intends to construct a home at the following location:



Access Rights Holders cannot exercise any access rights within 3,000 ft of Ranch Owner’s home in this location.

Authority – See Authority with respect to CVR #7.

CVR #9 – The Ranch Owner has the option, at its sole discretion, to pay to install facial recognition cameras or other technology at each gate. For any Access Rights Holder who has submitted a Notice of Use Form, the gate will automatically open. Anyone entering the property for the first time or whom the camera does not recognize will press a call button that will send live video to a Ranch Employee. The person must identify themselves, and state their name so they can be searched and added to the database.

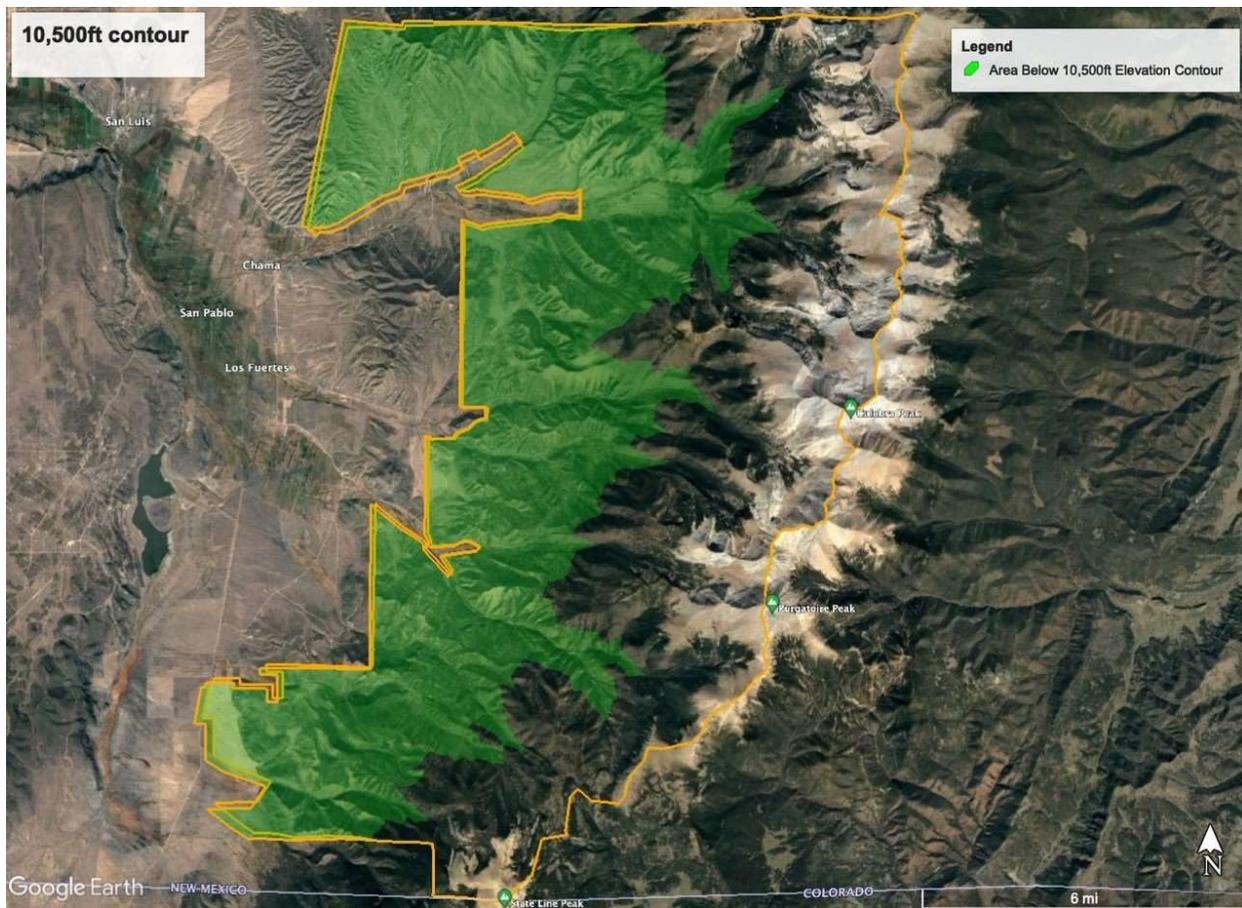
Authority – Allowing the Ranch Owner to use technology, like facial recognition software, to open gates, will reduce the number of interactions between Ranch employees and Access Rights Holders. Reduction in interactions will correspondingly reduce the potential for conflict.

Specific Timber and Firewood Regulations

CVR #10 – Live wood cannot be taken above 10,500 ft elevation.

Authority - This elevation is near the tree line. Trees grow much more slowly and are much smaller above this elevation. In fact, very few native trees can grow at this elevation. See Fact Sheets from the Colorado State University attached as **Exhibit 3**. Therefore, trees at that elevation are much harder to grow and replace. *See, e.g., Summit Daily, Get Wild: What Determines Tree Lines, available at <https://www.summitdaily.com/opinion/columns/get-wild-what-determines-tree-line/> (“In Colorado, tree line is around 11,500 feet.”); see also National Park Service, *Subalpine Ecosystem, available at https://www.nps.gov/romo/learn/nature/subalpine_ecosystem.htm* (indicating that in the Rocky Mountain region it is much more difficult for trees to grow at elevations between 9,000 and 11,000 feet). Adequate amounts of trees exist below this elevation. This regulation is thus necessary to ensure responsible stewardship of the natural resources on the Ranch, which benefits everyone.*

The map below shows in green the area of the Ranch that is below 10,500 feet of elevation:



As can be seen, a substantial portion of the Ranch is below 10,500 feet of elevation and thus adequate amounts of firewood, timber, and grazing land exists below that elevation. Further, at the time of Beaubien, settlers would not have traveled to high elevation to gather firewood or timber as they would have been on foot or horseback. Rather, they simply would have gone to the elevation nearest their land to gather.

CVR #11 – Access Rights Holders cannot use ATVs or equipment larger than 6,000 lbs to gather for any purpose on the Ranch.

Authority - Equipment over 6,000 lbs can cause significant damage to the vegetation on the Ranch. Equipment of this size also indicates a commercial purpose, which is improper, rather than a domestic purpose. Further, ATVs are not large enough to carry timber or firewood and thus cannot reasonably be said to be in aid of exercising access rights.

CVR #12 – The Ranch Owner may not restrict the size of tree, species of tree, or types of wood (dry wood, green wood, etc.) that Access Rights Holders can gather for firewood or timber with the exception of pinion. Access Rights Holders cannot remove pinion from the Ranch.

Authority - Pinon trees, more so than other species of trees, are important and necessary to maintain healthy soil. See Barth, R.C., *Influence of Pinyon Pine Trees on Soil Chemical and*

Physical Properties, 44 Soil Science Society of Am. J. 112-14, available at <https://access.onlinelibrary.wiley.com/doi/abs/10.2136/sssaj1980.03615995004400010023x>. In addition, adequate amounts of non-pinon trees exist on the Ranch such that prohibiting harvesting of pinon trees will not unduly burden the rights of Access Rights Holders.

Specific Grazing Regulations

CVR #13 – Access Rights Holders may graze all domestic livestock that were grazed at the time of Beaubien. This includes, but is not limited to, cattle, horses, sheep, goats and mules.

Authority – The types of livestock that may be grazed on the Ranch must necessarily be limited by what Beaubien, the grantor of the access rights, intended. So, the types of livestock should be limited to those livestock that were grazed in the San Luis Valley at the time of Beaubien and the drafting of the Beaubien document. Beaubien could not reasonably have intended to permit grazing of exotic animals, for instance, or animals that would not be used for the domestic purpose of subsistence.

CVR #14 – Access Rights Holders and up to one additional designated agent can camp with sheep and use working dogs. In order to camp on the Ranch, an Access Rights Holder must have 10 or more sheep and must camp within 200 yards of such sheep.

Authority - This regulation ensures that no individual uses oversight of a herd of sheep as a pretext to recreate on the Ranch. While CVR does not believe that Access Rights Holders have the ability to camp under the Supreme Court's *Lobato* decisions, in order to compromise CVR has proposed that Access Rights Holders can camp with sheep along with one additional person. Plaintiffs' want the ability for Access Rights Holders to bring unlimited "helpers" and to permit them to camp on the Ranch without the Access Rights Holder. The only evidence at the hearing of grazing of any sheep was that related to Mr. Richard Kuhn. Mr. Kuhn wanted the ability to camp with his herd on the Ranch. Exhibit 2, pp. 115-116. This regulation would permit Mr. Kuhn to do so. Plaintiffs are not entitled to expand the scope of their rights by allowing unlimited numbers of people who do not themselves own sheep to camp with sheep on the Ranch. Simply, there was no evidence at the hearing that would support that regulation.

General Regulations

CVR #15 –Ranch Employees are entitled to wear body cameras that can record interactions with all people on the Ranch. In the event of an allegation of violation of these Rules and Regulations by the Ranch Owner, an Access Rights Holder can request access to any video footage related to the particular interaction. The Ranch Owner will produce such video evidence within 30 days of any such request. The Ranch Owner shall preserve any video footage for three years.

Authority – Plaintiffs and CVR agree with the above regulation. The only disagreement between the parties consists of how the regulation is to be carried out. Plaintiffs want the Court to require CVR to establish a very specific labeling system that, if not followed for any reason, would entitle Plaintiffs to bring a claim against CVR. The evidence at the hearing established that Ranch Employees wear body cameras and then upload that footage to a personal laptop. CVR

does intend to develop a better system such that all video is uploaded to a single place and labeled at least by day. However, any system will be imperfect. Therefore, CVR cannot agree to Plaintiffs' specific and onerous demands with respect to labelling. CVR has already agreed that an Access Rights Holder can request access to video footage and that CVR must produce that specific footage in 30 days. How CVR labels the footage internally is irrelevant and does not affect the Access Rights Holders' access to the information they seek.

CVR #16 - Access Rights Holders have the right to graze livestock for personal use, gather firewood to heat their homes, and harvest timber for use on their property that has access rights to the Ranch. The Access Rights Holders are prohibited from hunting (including but not limited to acting in manner evident of intent to hunt), fishing (including but not limited to acting in a manner evident of intent to fish) and recreating on the Ranch. In order to exercise their rights, Access Rights Holders can do the following:

(a) Livestock - Access Rights Holders cannot access the Ranch to graze their livestock unless they are actively locating their livestock on the Ranch or monitoring their livestock on the Ranch. Access Rights Holders cannot "scout" for livestock purposes.

a. The Ranch Owner has the option to require all Access Rights Holders to put electronic tracking tags/collars on all animals on the Ranch. The Ranch Owner will pay for these tags/collars. This will send live location data showing exactly where each animal is in real time to the owner of those cattle as well as to the Ranch.

(b) Firewood – Access Rights Holders who intend to gather firewood must access the Ranch with the intent and ability to gather at least one pickup truck bed full or 1 cord of wood on that trip, whichever is less. Access Rights Holders cannot access the Ranch on an ATV. Access Rights Holders cannot "scout" for purposes of gathering firewood.

(c) Timber – Access Rights Holders can access the Ranch for purposes of determining which timber they intend to harvest. In such event, they must notify the Ranch Owner that they will be accessing the Ranch for purposes of scouting for Timber. Every Access Rights Holder accessing the Ranch for purposes of scouting for Timber must be able to subsequently harvest the timber they are scouting for within one week. Access Rights Holders can harvest timber using rubber-wheeled equipment up to 6,000 lbs.

Authority – The Supreme Court expressly "reject[ed] the landowner's claims for hunting, fishing, and recreation." *Lobato v. Taylor*, 71 P.3d 938, 957 (Colo. 2002). In his dissent, Justice Martinez described the type of recreation she believed the Access Rights Holders were entitled to engage in: "use [of] the land for hiking, horseback riding, just exploring," and "picnics." *Id.* at 961. The majority rejected this recreation as an access right.

In addition, the Supreme Court has held that easement holders "may not use the easement to benefit property other than the dominant estate." *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1241 (Colo. 1998). Here, the dominant estate is the land that was settled by the time of the creation of the Beaubien document. *Lobato v. Taylor*, 70 P.3d 1152, 1158–59 (Colo. 2003). Access Rights Holders cannot exercise their access rights to benefit other property through commercial means.

With respect to tracking tags/collars, these items will also save time and work for Access Rights Holders in that they will not need to spend time locating their herd. Rather, they will have access to the tracking data and can use that to pinpoint their livestock prior to entering the Ranch.

One of the biggest issues in this case is what constitutes “scouting” versus “recreation.” The evidence at the hearing was that certain Access Rights Holders will drive on to the Ranch to scout for firewood and timber. CVR contends that this has been an exception that has effectively permitted recreation so long as someone declares that they are looking for firewood or timber. CVR contends that Plaintiffs’ predecessors did not “scout” for wood as they did not have trucks or ATVs. Indeed, the word “scout” does not appear in any decision in the long line of cases that make up the procedural posture of this case.

Recognizing that Access Rights Holders may need to determine how big and where timber is located, CVR has compromised and suggested that scouting for timber is permissible on the terms set forth above. However, firewood is a different matter. There are copious amounts of firewood on the Ranch. There was no evidence at the hearing that an Access Rights Holder accessed the Ranch for firewood but couldn’t locate any. Therefore, if an Access Rights Holder is going to gather firewood they should be required to be ready and able to take more than a stick or two of firewood that one might pick up off the ground. Allowing Access Rights Holders to access the Ranch on ATVs to “scout” for firewood or to pick up a single piece of firewood and drive all around the Ranch creates the continued chance of further ambiguity and need for contact between Ranch Employees and Access Rights Holders.

CVR #17 – Access Rights Holders cannot use the Ranch for commercial purposes. For purposes of determining what constitutes “commercial use” the following regulations apply:

- All firewood gathered from the Ranch must be used to heat property that has access rights to the Ranch.
- All timber harvested from the Ranch must be used to construct buildings, fences or any other structures on property that has access rights to the Ranch, but in no event shall any timber harvested from the Ranch be used to construct any building, fences or other structures that are used for, or to support, any commercial purpose.
- The following limits apply to non-commercial grazing:
 - o Each Access Rights Holder can graze the following number of livestock in any given year on the Ranch:
 - 20 head of cattle
 - 100 head of sheep
 - 10 horses
 - 10 mules
 - 30 goats

Authority - The Supreme Court has already concluded that the access rights are limited as follows: “These easements should be limited to reasonable use—the grazing access is limited to a reasonable number of livestock given the size of the vara strips; the firewood limited to that needed for each residence; and the timber limited to that needed to construct and maintain residence and farm buildings located on the vara strips.” *Lobato v. Taylor*, 71 P.3d 938, 956 (Colo. 2002). Further, the Court explained that the Ranch was used as follows: “The pattern of

land tenure and use was the foundation for these tightly knit communities. Produce from their small irrigated plots supplemented by the use of common lands for gathering firewood and for grazing a few head of livestock furnished the bare necessities for the village families, a lifestyle to which they were accustomed.” *Lobato v. Taylor*, 71 P.3d 938, 949 (Colo. 2002). The evidence at the hearing was that certain Access Rights Holders are grazing hundreds of head of cattle and sheep. This is simply not consistent with the rights granted by the Supreme Court.

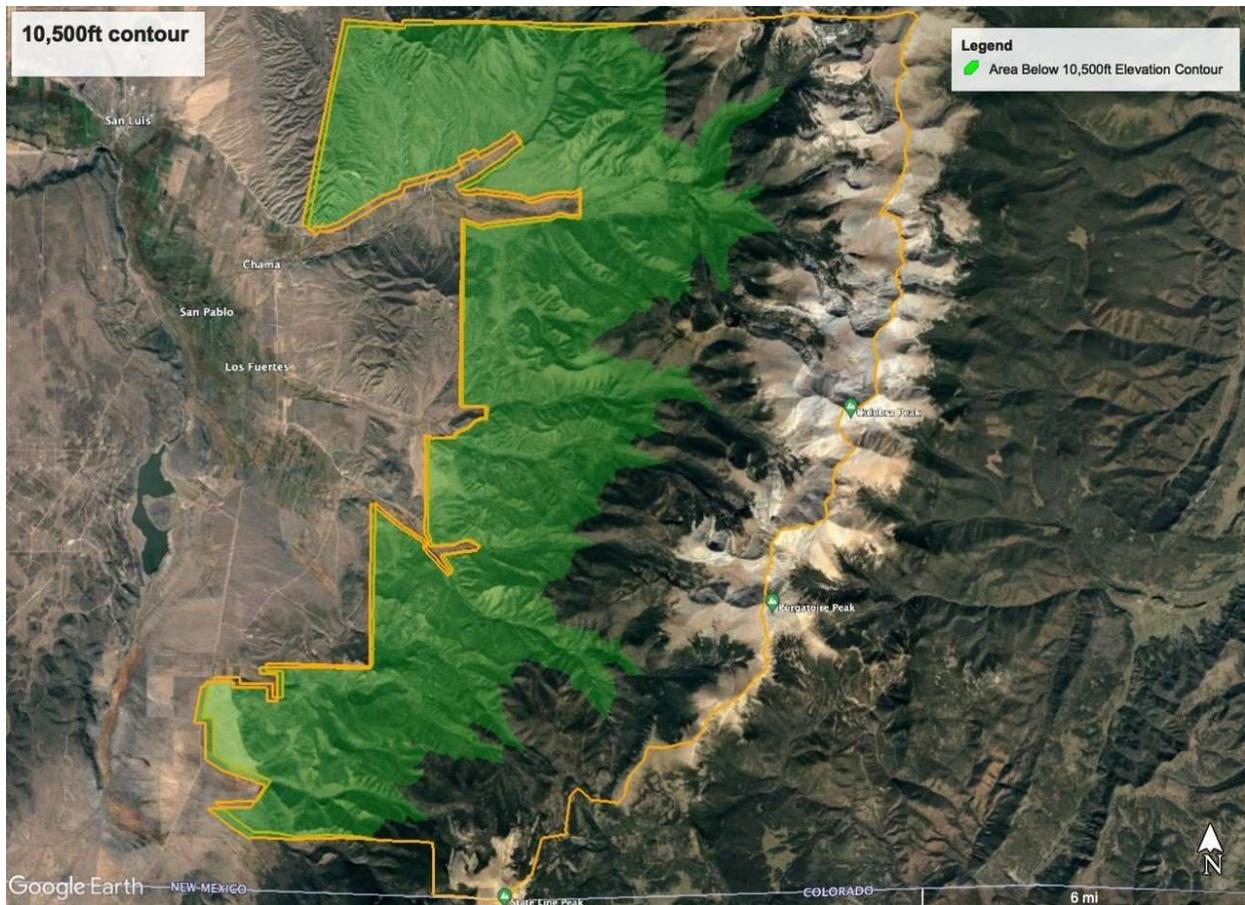
Limits on the amount of livestock that may be grazed on the Ranch are also necessary to ensure responsible stewardship of the Ranch’s natural resources and prevent erosion on the Ranch. See *Determining Carrying Capacity and Stocking Rates for Range and Pasture in North Dakota*, available at <https://www.ag.ndsu.edu/publications/livestock/determining-carrying-capacity-and-stocking-rates-for-range-and-pasture-in-north-dakota>; see also Colorado State University, *Stocking Rate & Carrying Capacity*, available at <https://rangemanagement.extension.colostate.edu/stocking-rate/>; Pratt & Rasmussen, *Determining Your Stocking Rate*, available at https://extension.usu.edu/rangelands/ou-files/Determine_Stocking_rate.pdf; and Ogle and Brazee, *Estimating Initial Stocking Rates*, available at https://www.nrcs.usda.gov/Internet/FSE_PLANTMATERIALS/publications/idpmstn9390.pdf

The grazing limitations set forth above and in CVR #18 are designed to prevent overgrazing and bring all use in line with the limitations set by the Supreme Court.

CVR #18 – The Ranch Owner and the LRC will work together to ensure that the Ranch is not overgrazed and that timber is not over-harvested. The Ranch Owner and the LRC will employ the following process to ensure responsible grazing on the Ranch:

- Between January and March, the Ranch Owner and the LRC will meet to discuss grazing regulations.
- At that meeting, a specific grazing plan will be determined based on information including but not limited to expert evidence regarding the carrying capacity of the Ranch, details about grazing from the prior season, etc. The parties will agree on a grazing plan that will then be published by the LRC and by the Ranch Owner on its website. If the parties cannot come to an agreement in any given year, the following restrictions will apply:
 - o No more than 400 head of cattle on the Ranch in any year.
 - o No more than 300 sheep on the Ranch in any year.
 - o No livestock will graze above 10,500 ft. elevation.
 - o No livestock can access the Ranch before grasses have grown to at least 6 inches. This date will be determined by the Ranch Owner and communicated to the LRC. The date will be published by the LRC and by the Ranch Owner on its website.
 - o No livestock can graze within 1,000 ft. of any home or stable on the Ranch.
 - o If the LRC and the Ranch Owner identify areas of the Ranch that have been overgrazed, said areas will be determined to be exclusions areas for grazing for that year.
 - o If the LRC and the Ranch Owner identify areas of the Ranch that have been overharvested for timber, said areas will be determined to be exclusionary areas for timber harvesting for that year.

Authority – See CVR #17. In addition, the below map shows in green the area of the Ranch that is below 10,500 feet of elevation:



Further, at the time of Beaubien, settlers would not have traveled to high elevation to gather firewood or timber as they would have been on foot or horseback. Rather, they simply would have gone to the elevation nearest their land to gather. As to livestock, livestock do not naturally graze at such high elevation but would need to be driven to high elevation. Those elevations are instead habit for elk and big horn sheep.

CVR #19 – The Ranch Owner may have bison on the Ranch.

Authority - There was no evidence that the bison on the Ranch interfere in any way with the Access Rights Holders' rights. It cannot be disputed that bison roamed the Ranch when the Plaintiffs' predecessors first acquired their rights. Therefore, there can be no limits on the Ranch Owner's ability to introduce a native species to the Ranch. Because the Plaintiffs' predecessors were able to harvest timber, graze and gather firewood in the 1800s and 1900s without interference from the native bison, there can be no limits on the Ranch Owner's ability to have bison on the Ranch now.

Process Regulation:

CVR #20 – Upon entry of these Rules and Regulations, Case No. 1981cv100005 will close. In the event that a dispute arises regarding compliance with these Rules and Regulations, the following provisions will apply:

(a) Any party who believes that another party has failed to comply with these Rules and Regulations can file a motion to reopen Case No. 1981cv100005 and seek expedited relief. Such motion will be assigned to an active judge in Costilla County just as any motion to reopen would be. The assigned judge will then hear the dispute and enter any necessary orders to ensure compliance with these Rules and Regulations.

(b) The prevailing party shall be entitled to their attorney fees.

(c) If either party believes that a violation has occurred, they shall contact the other party through counsel to meet and confer in an attempt to resolve the dispute.

(d) The following penalties shall apply to any order determining that non-compliance has occurred:

Access Rights Holders:

a. Illegal hunting or fishing (including but not limited to acting in manner evident of intent to hunt and/or fish):

i. First offense - 10 year loss of access rights.

ii. Second offense – Such individual loses access rights to the Ranch.

b. Gathering firewood or timber for commercial purposes:

i. First offense - 5 year loss of access rights.

ii. Second offense – Such individual loses access rights to the Ranch.

c. Grazing in violation of these Rules and Regulations or any grazing plan enacted pursuant to these Rules and Regulations:

i. First offense – warning

ii. Second offense - 3 year loss of access rights.

iii. Third offense – Such individual loses access rights to the Ranch.

d. Gathering sheds on the Ranch –

i. First offense - 2 year loss of access rights.

ii. Second offense – Such individual loses access rights to the Ranch.

e. Bringing non-Access Rights Holders who are not agents on to the Ranch.

i. First offense – warning

ii. Second offense – 3 year loss of access rights.

iii. Third offense – Such individual loses access rights to the Ranch.

f. Accessing the Ranch in any other way not permitted by these Rules and Regulations:

i. First offense – warning

ii. Second offense – 1 year loss of access rights

iii. Third offense – Such individual loses access rights to the Ranch.

g. Any Access Rights Holder who abuts the Ranch and maintains a gate on their property who misuses their access rights in any way:

i. First offense – warning

ii. Second offense – Lose the right to maintain any gate on their

property.

Ranch Owner

h. Violation of these Rules and Regulations by the Ranch Owner:

i. \$500 fine payable to each such Access Rights Holder who establishes a violation.

i. If any agent of an Access Rights Holder violates any of these rules and regulations, both the Access Rights Holder and the agent shall be subject to these penalties.

j. During any period of which an Access Rights Holder has lost his or her access rights, that Access Rights Holder may not appoint any agents or family members to exercise his or her access rights on his or her behalf.

Authority – This Court has already held that “cases have to end.” Exhibit 1, p. 188, ll. 1. Plaintiffs have not proposed any regulation that addresses this case head on. CVR understands that the Court is not inclined to require Access Rights Holders to file a new lawsuit when they think there has been a breach of these regulations. While CVR vehemently believes that Colorado law supports this requirement, in order to compromise it has proposed the above regulation. The effect of this regulation is that any new issues would be assigned to a Costilla County judge just as any motion to reopen a case would be. Plaintiffs, and CVR, would only have to file a motion detailing the problem rather than filing a new lawsuit and incurring costs for filing fees, service, etc. If the Costilla County Court determines that a violation has occurred, the above consequences will be imposed. That is, if either party can convince the Costilla County judge that the other violated the regulations, there will be no question about the consequence and no need for a hearing as to the damages associated with any breach.

Courts in Colorado have considered whether misuse of an easement can result in forfeiture of easement rights. *See e.g. Clinger v. Hartshorn*, 89 P.3d 462, 467 (Colo. App. 2003)(ultimately finding that “we are not persuaded that the increased burden to the servient estate from the change in degree of use is so substantial as to require limiting the extent of the easement.”); citing *Westland Nursing Home, Inc. v. Benson*, 33 Colo. App. 245, 252–53, 517 P.2d 862, 867 (1974)(increased volume of traffic from increased use was not enough to forfeit a prescriptive easement where increased use was not unreasonable); *City & Cty. of Denver v. Denver Tramway Corp.*, 23 F.2d 287, 300 (8th Cir. 1927)(applying Colorado law and recognizing that perpetual easements can “be revoked for nonuse or misuse”). That is, these cases seem to stand for the proposition that a dominant easement holder can forfeit their rights to a prescriptive easement where their use was “unreasonable.” Courts in other states have held that forfeiture of easement rights is appropriate when a dominant estate owner’s use is “willful and substantial and not merely minor or technical.” *Stephens v. Lavitt*, 2010 WY 129, ¶ 20, 239 P.3d 634, 640 (Wyo. 2010) (“there is authority that forfeiture of an easement may be ordered in the face of significant misuse”); *Sluyter v. Hale Fireworks Partnership*, 370 Ark. 511, 262 S.W.3d 154 (2007); *Crimmins v. Gould*, 149 Cal. App. 2d 383, 308 P.2d 786 (1st Dist. 1957); 25 Am. Jur. 2d Easements and Licenses § 86.

The consequences for various violations are commensurate with the misuse. It is undisputed that hunting and fishing is not permitted on the Ranch and that such use would be a direct violation of the mandates in the *Lobato* decisions. Therefore, it is reasonable to impose a 10 year loss of rights and a forfeiture of rights in the event of a second offense. The *Lobato* decisions are also clear that gathering firewood or timber for commercial purposes is not permitted. Therefore, a

first offense of a 5 year loss of access rights and forfeiture in the case of a second offense is reasonable and commensurate with the misuse. The parties have stipulated that it shall be illegal to gather sheds on the Ranch. If a person is found to have gathered sheds twice, it is reasonable that they should forfeit their rights to access the Ranch. If an individual grazes in violation of the regulations or any applicable grazing plan, brings non-agents on the Ranch, or violates the rules and regulations three times, that person should lose their access rights to the Ranch. One instance of misuse results in a warning. There is no reason why a person should be permitted to misuse the Ranch twice after receiving a warning and be able to continue that behavior through ongoing use of the Ranch. Lastly, CVR has compromised and agreed to allow abutting land owners maintain gates on their property. If they do so in a way that results in a misuse of the Ranch, they should lose the right to maintain any gates on their property. Their rights are not forfeited – they will simply have to use one of the 9 gates like everyone else.

It bears repeating again – No Access Rights Holder will lose their access rights unless the Costilla County Court finds that CVR met its burden to prove the misuse, and the misuse occurred at least twice. CVR cannot merely declare misuse and take someone’s rights away. But if someone misuses their access rights on multiple occasions, forfeiture is appropriate in accordance with the case law set forth above.

II. Ranch Owner’s arguments against selected of Plaintiffs’ proposed rules and regulations.

Disputed Definitions

Access Rights Holders – Anyone who owns or leases a parcel of property that has adjudicated rights and anyone who lives on a parcel of property that has adjudicated rights.

Agent is a person that an Access Rights Holder has authorized to exercise his or her rights by listing their name on the Notice of Use form or by providing a note authorizing that person to exercise his or her rights.

Disputed Rules and Regulations

MONITORING

1. The Ranch Owner can place cameras in La Sierra so long as they do not interfere with the ability of the Access Rights Holders to exercise their rights. The Ranch Owner must notify Landowners where any cameras are located so Landowners can take reasonable steps to protect their privacy.

CVR’s argument: The Access Rights Holders have no reasonable expectation of privacy while on the Ranch and Colorado law does not prohibit video recording any person, except in situations where the person has a reasonable expectation of privacy, and even then it prohibits only the recording “of another person’s intimate parts, as defined in section 18-3-401(2)...” C.R.S. § 18-47-801. The Court has already stated that it will not limit the use of cameras. Transcript, Day 2, p. 185, ll 8-18 (“...I don’t and will not find that there is anything improper or wrong with the use of cameras all over the land, with the use of drones, with the use of body

cameras, or even the use of electric fence...those are reasonable uses for the ranch owner or reasonable tools for the ranch owner to patrol the property to know who's on the property.”).

2. The Ranch Owner can use drones for the limited purpose of ensuring that Access Rights Holders are on La Sierra for a legitimate purpose. Once that has been confirmed, drones may not continue to monitor Access Rights Holders. Drones may not follow Access Rights Holders after they leave La Sierra.

3. **CVR's argument:** The Court has already stated that it will not limit the use of drones. Transcript, Day 2, p. 185, ll 8-18 (“...I don't and will not find that there is anything improper or wrong with the use of cameras all over the land, with the use of drones, with the use of body cameras, or even the use of electric fence...those are reasonable uses for the ranch owner or reasonable tools for the ranch owner to patrol the property to know who's on the property.”).

4. All drone use must comply with the 14 CFR Part 107.

5. **CVR's argument:** CVR will acknowledge that if regulations with respect to drones apply to it, it will comply with those regulations but disputes that they create any private right of action for any Plaintiff in this case.

6. The Ranch Owner can only observe Access Rights Holders from a distance of at least 100 feet.

7. **CVR's argument:** The term “observe” is ambiguous. Does that term mean that remote cameras cannot be close than 100 feet to an Access Rights Holder? If so, this regulation is unworkable. Further, given that there is substantial vegetation on some areas of the Ranch, it may not be possible to observe any individual from 100 feet or more and determine whether they are an Access Rights Holder or a trespasser, or if an Access Rights Holder is abusing his or her access rights.

8. Ranch Employees are entitled to wear body cameras that can record interactions with all people on the Ranch. In the event of an allegation of violation of these Rules and Regulations by the Ranch Owner, an Access Rights Holder can request access to any video footage related to the particular interaction. The Ranch Owner will produce such video evidence within 7 days of any such request. The Ranch Owner shall preserve any video footage indefinitely and will utilize a labeling system by which it identifies the persons included in the interaction, the date of the interaction, and the general location on the Ranch.

ACCESS

9. Access Rights Holders cannot give their keys to any other person, other than agents or family member who are listed on the Amended Notice of Use Form.

10. Access Rights Holders may scout for wood, timber or grazing areas. There is no requirement to carry specific tools or limitations **on the mode of transportation used to scout.**

11. Access Rights Holders can bring as many helpers with them as they deem appropriate while exercising their rights. These helpers may be family members or agents but they do not need to be.

12. The Ranch Owner and Access Rights Holders agree that Access Rights Holders have the right to graze livestock, gather firewood, and harvest timber for use on their property. The Access Rights Holders are prohibited from hunting and fishing on the Ranch.

13. Access Rights Holders may designate family members and/or up to a maximum of four agents to exercise their rights at any given time. The Access Rights Holders must give notice of such designation to the Ranch Owner by identifying the agents and/or family members in the Amended Notice of Use Form or by providing the agents and/or family members with a signed note stating the agent or family members are authorized to exercise their rights. Such agents and/or family members need not be included on the Amended Notice of Use Form or given a note if the Access Rights Holders are present while they are exercising their rights. To the extent such agents and/or family members are listed on the Amended Notice of Use Form, such listing has no impact on the legal issue of whether such agents or family members are Access Rights Holders in their own right.

14. Access Rights Holders and their family members, agents, or helpers can take breaks and enjoy a picnic or drinks while exercising their rights.

15. Access Rights Holders with property that directly abuts the Ranch may access the Ranch directly from their property by installing new gates and maintaining existing gates. Such gates must be locked if the gates are along a public road, but no lock is required if such gates have no public access.

16. The Ranch Owner cannot block access to La Sierra. If the Ranch Owner determines in good faith and based on a diligent review of the existing facts (such as an active fire) that it must prevent some access to La Sierra, Ranch Owner shall as soon as practicable but no later than 48-hours after blocking access:

- File a notice with the Court, describing the emergency, the duration of blocking access, the steps being taken to remediate the emergency, and the efforts made to contact the Land Rights Council;

or

- Seek written approval from the Land Rights Council;

17. In no instance can Ranch Owner restrict access for more than 72-hours absent a written Court order or written approval from the Land Rights Council.

FIREWOOD AND TIMBER

18. Access Rights Holders can use whatever equipment they deem necessary to gather firewood and cut down timber.

19. Ranch Owner may not restrict the size of tree, species of tree, or types of wood (dry wood, green wood, etc.) that Access Rights Holders can gather for firewood or timber.

20. Ranch Owner will not take any action with respect to timber or firewood without providing the Access Rights Holders, the LRC, and Plaintiffs' counsel with 90-day advance notice describing the Ranch Owner's action and why it will not interfere with the Access Rights Holders rights. Examples of "action" would be harvesting, replanting or selling timber or firewood on a commercial basis.

ROADS

21. Access Rights Holders can bring appropriate equipment, machinery and personnel to repair or clear washed out or obstructed roads.

22. **CVR's argument:** This goes beyond the scope of the limited access rights granted in this case. Nowhere do any of the Supreme Court's, or any other courts', opinions grant the Access Rights Holders such broad rights to alter private property owned by the Ranch.

23. Access Rights Holders can extend or create new roads to access large patches of timber and firewood so long as they follow all permit protocols necessary for new road construction and give the Ranch Owner advanced notice. To the extent that Ranch Owner's consent is necessary to obtain permits, the Ranch Owner will not unreasonably withhold consent.

24. **CVR's argument:** This goes beyond the scope of the limits access rights granted in this case. Nowhere do any of the Supreme Court's, or any other courts', opinions grant the Access Rights Holders such broad rights to alter private property owned by the Ranch.

GRAZING

25. Access Rights Holders may graze all domestic livestock. This includes but is not limited to: horses, mules, cows, sheep and goats.

26. Ranch Owner will not fly—or permit—helicopters to fly low in the vicinity of livestock.

27. **CVR's argument:** First, Plaintiff's proposal is vague as to "permit". CVR cannot reasonably prevent all helicopters from flying low "in the vicinity of livestock". A helicopter about which CVR has no knowledge or control, and which is owned and operated by someone else out of land wholly unconnected to the Ranch, may do so and CVR should not be responsible for anything done by it. This regulation also presents an impermissible intrusion upon the Ranch Owner's property rights as the use of helicopters does not unreasonably interfere with the Access Rights Holders' exercise of their access rights. *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924); *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1241 (Colo. 1998). Further, the evidence at the hearing did not show that any helicopter operated by the Ranch Owner, or at the direction of the Ranch Owner, caused any harm to any Access Rights Holders' livestock or caused them to scatter.

28. Access Rights Holders and up to two designated agents or family members can camp with sheep. In order to camp on the Ranch, an Access Rights Holder must have more than 10 or more sheep and must camp within a reasonable distance of such sheep. Working dogs are permitted.

INTERACTIONS

29. Ranch Employees will wear visible Ranch identification.

30. **CVR's argument:** Ranch Employees are readily identifiable as it is and do not attempt to hide the fact that they are Ranch Employees. Also, Plaintiffs presented no evidence that Ranch Employees ever attempted to conceal their affiliation with the Ranch; to the contrary, the evidence was that Ranch Employees readily identified themselves truthfully and many, if not most, Access Rights Holders know Ranch Employees by sight. This regulation is simply unnecessary.

31. The Ranch Owner shall train Ranch Employees on these Rules and Regulations on an annual basis. Ranch Owner will videotape the training so that Access Rights Holders can confirm the content of the training.

32. **CVR's argument:** As to regulations 24 and 25, the Ranch Owner will be bound by any final determination as to what rules and regulations will apply and as such already has every incentive to ensure its employees comply with the Court's orders. These regulations are unnecessary and simply try to micromanage the day-to-day operations of the Ranch.

33. Ranch Employees will sign an affirmation that they will abide by the Rules and Regulations.

34. Ranch Employees may only carry guns with Ranch Owner's explicit permission.

35. **CVR's argument:** There is no basis in law for this requirement. Plaintiffs presented no evidence that the Ranch Employees' carrying of guns was against the Ranch Owner's permission or without the Ranch Owner's knowledge.

36. If the Ranch Owner permits Ranch Employees to carry guns, then the Ranch Employees will need to obtain a security guard license through <http://www.secguard.net/security-guard-training-licensing-colorado/> or a similar program which licensing must be renewed annually.

37. **CVR's argument:** There is no basis in law to require security guard licensing and the undisputed testimony at the hearing was that the guns are carried not for security purposes, but in the event a Ranch Employee encounters an aggressive wild animal or becomes stranded.

38. Ranch Owner will advise attorneys of record of any Ranch Employee to whom it has provided permission to carry a gun with proof of said licensing.

39. **CVR's argument:** See argument to regulations 24 and 25 above. In addition, the Access Rights Holders are simply attempting to micromanage the day-to-day operations of the Ranch.

40. To the extent any Colorado laws are instituted regulating security guards, the Ranch will abide by such laws and consider its employees as security guards.

41. **CVR's argument:** This Court lacks the authority to prospectively declare that a future law that has not even been enacted, much less even proposed, applies to the Ranch and/or Ranch Owner. If any future law, as written, applies to the Ranch and/or Ranch Owner, such laws will be complied with but it is wholly improper to compel compliance with a law that has not even been written and may not be written, if ever, to apply here.

42. The Ranch Employees may only initiate an interaction if the Access Rights Holder appears to be on the Ranch for an improper purpose or if it legitimately does not recognize the Access Rights Holder. (This would be based on camera footage, drones or viewing from a distance).

43. When there is an interaction between Ranch Employees and Access Rights Holders:

(a) firearms must remain in the vehicle;

(b) if the Ranch Employees are not traveling in a vehicle, then the Ranch Employees may not brandish a firearm absent a threat of imminent harm;

(c) dogs must remain secured in vehicles when near Access Rights Holders

(d) Ranch Employees may not physically block Access Rights Holders;

(e) Ranch Employees may not restrain Access Rights Holders; and

(f) Ranch Employees may not escort Access Rights Holders off the Ranch.

44. **CVR's argument:** The Ranch Owner and the Ranch Employees have constitutional rights to carry firearms in a lawful manner when on Ranch lands. No evidence was presented that any Ranch Employee ever "brandished" a firearm, or even moved to unholster a firearm, when interacting with any Access Rights Holder. Moreover, at least one Access Rights Holder threatened, and made motions to, attempt to kill at least one Ranch Employee. Further, the prohibitions against restraining or escorting off the Ranch run counter to Colorado law, which permits a landowner to restrain a person who has committed a crime on its property to restrain such person until law enforcement arrives.

45. If a Ranch Employee stops and confronts known Access Rights Holders, without evidence that the Access Rights Holder is hunting, fishing or collecting Antler sheds, there will be a presumption of harassment. This will result in a \$500 penalty payable to the Access Rights Holder per interaction. In addition, any employee who stops known Access Rights Holders more than three times will no longer be allowed to interact with Access Rights Holders.

46. If the alleged wrongdoing has been adjudicated as a violation of the Access Rights or prohibited by these Rules and Regulations, the Ranch Owner may call the police or other law enforcement who can address the violation with the Access Rights Holders. Calling the Police or other law enforcement for something that has not been adjudicated as a violation of the Access Rights or a violation of these Rules and Regulations will be considered harassment and result in the Ranch Employee no longer being allowed to interact with Access Rights Holders. It will also result in a \$1,000 fine payable to the Access Rights Holder.

PROCESS

47. The Ranch Owner may not impose its own interpretation of the Access Rights that are not specifically outlined in this set of Rules and Regulations. If the Ranch believes that rules above and beyond those imposed as part of this Order are necessary, then the Ranch, after meeting and conferring with Access Rights Holders, needs to move the Court for additional Rules and Regulations. If Access Rights Holders prevail, they shall be entitled to an award of reasonable attorneys' fees and costs.

48. If the Access Rights Holders believe that the Ranch Owner is acting in a way inconsistent with these Rules and Regulations or doing something that harms their dominant rights, they may seek prompt relief from the Court by filing a motion with the Court. If Access Rights Holders prevail, they shall be entitled to an award of reasonable attorneys' fees and costs.

49. If Ranch Owner determines that an Access Rights Holder is violating or abusing his or her rights, Ranch Owner will first contact counsel for Access Rights Holders to confer on the alleged violation or requested relief. If such conferral is unsuccessful, Ranch Owner may separately bring a trespass action, but must notify Access Rights Holder's counsel of such a filing. Any such action will be heard by this Court. If Access Rights Holders prevail, they shall be entitled to an award of reasonable attorneys' fees and costs.

NOTICE

50. The Ranch Owner cannot subdivide the Ranch absent a Court Order without providing the Access Rights Holders, the LRC, and Plaintiffs' counsel with 90-day advance notice describing the proposed subdivision and why it will not interfere with the Access Rights Holders rights.

51. **CVR's argument:** A servient estate owner, "to protect his own rights," may use his property in any way that "does not **unreasonably interfere** with the right of passage," of the dominant estate owners if such use is "necessary for the protection and efficient use of the lands constituting the servient estate." *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924). In addition, it is well-settled Colorado law that "the servient estate may make all uses of the property consistent with the burden of the easement," and the dominant estate holder may not cause unreasonable damage to the servient estate or unreasonably interfere with its enjoyment." *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1241 (Colo. 1998). The Access Rights Holders, LRC, and Plaintiffs simply have no basis in law to effectively have veto power over the Ranch Owner's land use decisions and this Court has no authority to sit effectively as a land use department. Further, subdivision of the Ranch will not unreasonably interfere with the

Access Rights Holders' rights as the access rights run with the land and subdivision will not change that.

52. The Ranch Owner cannot construct new internal or external fencing without providing the Access Rights Holders, the LRC, and Plaintiffs' counsel with 90-day advance notice describing the proposed new fence and why it will not interfere with the Access Rights Holders rights.

53. **CVR's argument:** In *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924) the Supreme Court addressed whether the servient estate owner could construct a toll booth over a right of way that the dominant estate owners had access to. In finding that the servient owner could maintain the gate (through which the dominant estate owners could pass), the Court held:

54. Even if the plaintiffs have the right of ingress and egress over the reserved streets of Eldorado Springs as private ways, including this disputed strip,..., it is permissible for the defendants, in order to protect and safeguard their own business, to erect the tollgate where they did. In 19 C. J. pp. 986, 987, it is stated as a general rule that, even though a grant of a private way without any reservations is made, the owner of the land on which it runs may, to protect his own rights, erect and maintain a gate thereon, if it does not unreasonably interfere with the right of passage, where such gate is necessary for the protection and efficient use of the lands constituting the servient estate. An expression often quoted gives the reasons for the rule: 'The great preponderance of convenience to the landowner, over the slight inconvenience to the wayowner, seems to make it reasonable in the eye of the law that such should be the rule.'"

55.

56. Certain Access Rights' Holders have requested that the Costilla County Board of County Commissioners pass an amendment to the County's 1040 regulations so as to prevent CVR from installing additional fences on the Ranch. The Costilla County BOCC has not yet adopted any such amendment and has clearly stated that there is no county regulation that prevents the Ranch Owner from fencing the Ranch. Plaintiffs are now attempting to limit CVR's private property right to fence the Ranch through this proceeding. There is simply no support for such position. First, much of the Ranch is already fenced and the parties have both agreed to 9 gates and that neighboring property owners can have gates. Because this has been agreed to, there is absolutely no evidence that erecting additional fence line around the Ranch will have any impact on the Access Rights Holders' ability to exercise their rights. Similarly, the fences are needed to keep livestock in the Ranch.

57. Plaintiffs' proposed regulation effectively gives the LRC, which entity has no access rights, veto power over the construction of any fence. That is, if the LRC determines that a new fence will "interfere" with any Access Rights Holder's exercise of their rights, then the LRC can prevent fencing of the Ranch. First, the proposed regulation is completely ambiguous with respect to what the LRC can do if it, in its sole discretion, finds an "interference." Second, as stated above, the standard must be "unreasonable interference" not "interference." The parties

have already agreed to nine gates and gates on neighboring property so based on that agreement, there can be no “unreasonable interference” through the construction of any new fence.

58. The Ranch Owner cannot construct a new structure without providing the Access Rights Holders, the LRC, and Plaintiffs’ counsel with 90-day advance notice describing the proposed new structure and why it will not interfere with the Access Rights Holders rights.

CVR’s argument: A servient estate owner, “to protect his own rights,” may use his property in any way that “does not unreasonably interfere with the right of passage,” of the dominant estate owners if such use is “necessary for the protection and efficient use of the lands constituting the servient estate.” *Fortner v. Eldorado Springs Resort Co.*, 76 Colo. 106, 118 (1924). In addition, it is well-settled Colorado law that “the servient estate may make all uses of the property consistent with the burden of the easement,” and the dominant estate holder may not cause unreasonable damage to the servient estate or unreasonably interfere with its enjoyment.” *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1241 (Colo. 1998). The Ranch encompasses more than 80,000 acres. The Ranch Owner intends to build a home as set forth in the regulation below. Currently, the North Headquarters have been constructed and the Ranch Owner may construct a barn or other structure. These limited structures and buildings on the 80,000 acre Ranch do not “unreasonably interfere” with the Access Rights Holder’s rights to gather firewood, harvest timber and graze livestock on the remaining areas of the Ranch.

Respectfully submitted this 28th day of January, 2022.

SPENCER FANE LLP

s/Jacob F. Hollars
Jacob F. Hollars
Jamie N. Cotter
ATTORNYNS FOR CVR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of January 2022, the foregoing **RANCH OWNER'S AUTHORITY AND ARGUMENTS RE: NON-STIPULATED RULES AND REGULATIONS** was filed and served via ICCES upon all counsel of record.

/s/ Anastasiya Karant
Anastasiya Karant