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DISTRICT COURT, COSTILLA COUNTY, COLORADO
304 Main Street
P.O. Box 301
San Luis, CO 81152

Plaintiffs: EUGENE LOBATO, et al.

v.

Defendants: ZACHARY TAYLOR, as executor of the estate of Jack Taylor, Jr., deceased, et al.

▼ COURT USE ONLY ▼

Case No. 81CV100005
Courtroom: A

ATTORNEYS FOR PLAINTIFFS
Sarah B. Wallace, #31859
Chad Jimenez, #45136
Andrew Valencia, #54691
Alexia Chapman, #55365
Ballard Spahr LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202-5596
Telephone: 303.292.2400
Facsimile: 303.296.3956
Email: wallaces@ballardspahr.com
jimenezc@ballardspahr.com
valenciaa@ballardspahr.com
chapmana@ballardspahr.com

BRIEF IN SUPPORT OF ACCESS RIGHTS HOLDERS' REGULATIONS AND RESPONSE TO CVR'S PROPOSED REGULATIONS

The Plaintiffs ("Access Rights Holders"[1] or "Landowners") submit the following Brief in Support of Access Rights Holders' Regulations and Response to CVR's Proposed Regulations.

This Court conducted a two-day evidentiary hearing at which the Access Rights Holders recounted numerous instances of intimidation and harassment from the Defendant, Cielo Vista

[1] Undersigned counsel recognizes that she has referred to the plaintiffs in this action as Landowners but the Plaintiffs are better described as Access Rights Holders who as a matter of law is a broader group than the person who owns the land.

Ranch I, LLC ("CVR") and its agents, that discouraged the Access Rights Holders from using their adjudicated easement rights and unreasonably interfered with their use and enjoyment of the disputed property ("La Sierra" or "the Ranch"). After hours of testimony and numerous videos[2] depicting tense interactions between Access Rights Holders and CVR employees, this Court: (1) made a number of findings of fact; (2) determined it needed to safeguard the rights of the Access Rights Holders; and (3) ordered the parties to confer and stipulate to a list of regulations to govern future interactions between the Access Rights Holders and CVR. Pursuant to that Order, the Access Rights Holders worked diligently to create a list of priorities based on the community's needs. In addition, undersigned counsel negotiated in good faith with CVR. The Access Rights Holders worked to integrate both Colorado law and the law of the case to create its list of Proposed Regulations. CVR, on the other hand, appears to have interpreted the Court's order as an open invitation to propose unreasonable restrictions on the Access Rights Holders' easement rights that do not comport with the law or facts of this case.

I. Background

A. Cultural Background

All familiar with the present case are aware of the fact that the easement rights granted to the Access Rights Holders predate the Mexican-American War. *See Lobato v. Taylor*, 71 P.3d 938, 938 (Colo. 2002) ("*Lobato I*") ("The history of this property rights controversy began before

[2] CVR picked these videos because they depicted the interactions in the most favorable light. [TR 9/28/21, p 162:2-7] ("Important to keep in mind, Your Honor, is that we disclosed all of the video that we have. . . . Lots and lots and lots of hours of video. We went through and selected ones that we wanted to show you that we think support our claim."). Because the Access Rights Holders received over 700 videos only two weeks before the hearing, taking days to download the unlabeled videos, the Access Rights Holders only viewed the videos that CVR handpicked.

Colorado's statehood, at a time when southern Colorado was a part of Mexico; at a time when all of the parties' lands were part of the one million acre Sangre de Cristo grant, an 1844 Mexican land grant."). It would be difficult to overstate the influence of Mexican law, farming practices, and culture on the nature of the present dispute. Thus, similar to the Colorado Supreme Court's decision to look at evidence of traditional Mexican settlement practices, Mexican custom related to land use, and Mexican law when determining whether the Plaintiffs had any access rights to La Sierra, *see generally Lobato I*, 71 P.3d at 938,[3] this Court can—and should—be guided by the influence of Mexican culture on the Access Rights Holders' use of La Sierra while analyzing the Proposed Regulations.

As a former part of Mexico, the San Luis Valley is heavily influenced by the Mexican culture.[4] This culture is central to the Access Rights Holders' community, and using La Sierra for grazing, firewood, and timber is an integral part of that culture. *See, e.g.*, Carol Raish & Alice McSweeny, *Livestock Ranching and Traditional Culture in Northern New Mexico*, 41 NATURAL RESOURCES J. 724 (2001) ("Our research demonstrates the continuing social, cultural, and economic importance of livestock ownership . . . . Recent research . . . also shows the long-

[3] *See also* Ryan Golten, *Lobato v. Taylor: How the Villages of the Rio Culebra, the Colorado Supreme Court, and the Restatement of Servitudes Bailed out the Treaty of Guadalupe Hidalgo*, 45 NAT. RESOURCES J. 457, 463 (2005) ("The court analyzed these property rights as easements, and more generally as servitudes, under the *Restatement (Third) of Property: Servitudes*, considering evidence of Mexican law and culture to inform these common law rights."). This and other articles referenced in this Brief are attached as **Exhibit B.**

[4] *Sangre de Cristo Land Grant*, COLORADO ENCYCLOPEDIA (last accessed 1/28/22) https://coloradoencyclopedia.org/article/sangre-de-cristo-land-grant ("As of 2019 the population stood at 3,887, with more than 60 percent of citizens claiming Hispano heritage. Castilian Spanish is commonly spoken there, and its inhabitants preserve a Spanish-inflected culture with unique food, music, folklore, and folk art, including weaving and the creation of santos and bultos (carved and painted religious images).").

standing and continuing role of ranching in maintaining traditional culture and identity in the area."). Mexican-American ranchers believe their work is an extension of their heritage, and see their culture, their family, and their work as closely interconnected. Carol Raish & Alice McSweeny, *Social, Cultural, and Economic Aspects of Livestock Ranching on the Santa Fe and Carson National Forests*, USDA FOREST SERVICES, 21 (2012) (describing qualitative research conducted on Latin American ranchers in New Mexico and finding that the vast majority of ranchers use their land to teach their children about traditional values and heritage, that the ranchers believe "[t]he work that is done on our land is a family affair" and "a continuing tradition that we pass on"). In short, and because of the extreme interconnection of the Access Rights Holders, their families, and La Sierra, the Access Rights Holders will only be able to truly use and enjoy the easement—as holders of the dominant estate—if the regulations this Court adopts are informed by the culture of the community. That culture, as described in the aforementioned articles, is one that embraces families and the greater community working collectively to work the land, cherish the land, and use the natural resources.

B. Factual and Procedural History

All parties involved in this action are well versed in the robust procedural and factual history of this case.[5] The Access Rights Holders, with the assistance of pro bono counsel, have spent decades in litigation defending their right to access and use La Sierra for reasonable grazing, firewood, and timber, which the Colorado Supreme Court confirmed in *Lobato I*, 71 P.3d 938. In light of the decades during which various Ranch Owners deprived the Access Rights Holders of their right to access and use La Sierra, and the repeated attempts of the various

[5] TR 9/28/2021, p 179:14-21.

Ranch Owners to abrogate that right, the Supreme Court enacted a broad mandate to ensure that the Access Rights Holders have speedy and accessible access to justice. *Lobato v. Taylor*, 70 P.3d 1152, 1159 n.7 (Colo. 2003) ("*Lobato II*") ("We recognize that this standard may be over-inclusive, but considering the grave depravation of rights suffered by the landowners over the past 40 years, we are unwilling to create a standard which may again unlawfully deny some landowners their guaranteed access rights."). Accordingly, the Supreme Court directed this Court to "enter all necessary and appropriate orders to safeguard [the] rights" of the Access Rights Holders. *Lobato II*, 70 P.3d at 1156.

Despite such unequivocal language from the Supreme Court, CVR has done everything in its power to discourage the Access Rights Holders from exercising their deeded, adjudicated right to use La Sierra. CVR used methods of harassment and intimidation to limit the Access Rights Holders' use. CVR excessively surveilled and questioned Access Rights Holders on La Sierra that made the Access Rights Holders feel like criminals—not like owners of the dominant estate. This behavior forced the Access Rights Holders to engage in the legal process and again litigate their right to use the very land their ancestors had settled. For that reason, and pursuant to the Supreme Court's mandate in *Lobato II*, the Access Rights Holders brought a Motion to Safeguard their rights to access and use La Sierra (the "Motion"). In doing so, the Access Rights Holders requested that this Court put an end to CVR's campaign of harassment and intimidation and assure that the era of unreasonable restriction be finally put to an end.

After submitting the Motion, Access Rights Holders and CVR appeared before this Court in an evidentiary hearing at which the Access Rights Holders testified about the mistreatment they experienced at the hands of CVR. This took great courage of the witnesses who were

willing to face CVR in Court, and members of the community filled the courtroom in support.

Among other things, the Access Rights Holders testified about:

1. The importance of La Sierra to the community [TR 9/27/21, p 12:24-13:18], which includes

- that accessing La Sierra is a family tradition and an important way of life, [*id.* at 12:24-13:18; 134:14-22];

- that they teach their children how to be good stewards of the land [*id.* at 247:4-7]; and

- that La Sierra is an important resource in an impoverished community [*id.* at 133:24-134:5];

2. The harassment they experience at the hands of CVR by

- being constantly surveilled by video camera, drone, and body camera [*id.* at 143:4-9; 144:16-145:6; 207:8-11];

- being stopped [*id.* at 9/27/21, p 88:3-89:1], interrogated [*id.* at 85:1-3;], and followed [*id.* at 143:23-144:12; 64:19-65:3] while accessing La Sierra to exercise their easement rights;

- being told to leave when their actions do not comport with CVR's idea of proper use [*id.* at 88:3-89:1; 198:4-7];

3. The unilateral rules imposed by CVR, including

- Time and date limitations on use and access [*id.* at 144:22-146:16];

- Prohibition of use of certain types of machinery necessary to exercise the right to firewood and timber [*id.* at 118:15-23]; and

- Prohibition of the time and manner by which a Landowner can use La Sierra for grazing [*id.* at 112: 12-23].

- Prohibition of scouting [*id.* at 88:14-89:8; 90:13-16; 1-2:24-103:3].

- Prohibition on camping [*id.* at 112:12-23].

- Prohibition on grazing sheep [*id.* at 113:15-24].

In sum, the Access Rights Holders illuminated for the Court the way that CVR has unreasonably interfered with their right to access and use La Sierra, and asked this Court to

safeguard their rights to use the easement rights that they have fought for over the course of decades.

C. The Court's Findings of Fact and Order

After two days of testimony from twelve witnesses and a selection of the hundreds of hours of video evidence that CVR produced, the Court made a number of factual findings.

First, the Court found that "there is an inherent and continuing conflict of interest," [TR 9/28/21, p 180:3-5], and that there is a "power imbalance" which is "a very important consideration in this case" [TR 9/28/21, p 180:23-25] that serves to abrogate the Access Rights Holders' rights, [*id.* at 184:3-5]. Second, the Court found that the conflict "breeds a certain kind of paternalism" [TR 9/28/21, p 182:2-3] with undertones "that are highly unacceptable" [*id*. at 182:12-14], and that the landowners are "often treated as second-class citizens" [*id*. at 182:20-183:1] and in a way that is "demeaning to the people that are being contacted" [*id.* at 183:12-23], in the land to which they have the dominant estate. This is evidenced by the patronizing contacts between CVR employees and Access Rights Holders that are "amazingly similar" to police encounters with citizens. [*Id*. at 183:14-23]. Third, the Court found that, although the Access Rights Holders hold the dominant estate, they are never consulted with regard to the supposed regulations. In short, CVR does not treat them as equals. [*Id.* at 184:20-21]. Fourth, the Court recognized the Access Rights Holders economic interest "in reaping the benefit of that land to the extent that they can take firewood and timber and graze cattle or sheep or perhaps other livestock." [TR 9/28/21, p 180:8-11]. Importantly, the Court distinguished this economic interest from commercial use rejecting the notion that the Access Rights Holders can only use La Sierra

for personal use but instead recognizing that they can use La Sierra to support their families.[6] Ultimately, the Court concluded "there does need to be a way to safeguard the landowners' rights," [*id.* at 186:1-3], and that "the landowners' rights are the landowners' rights, and if there are one, two, or ten landowners that find that their rights were violated, there needs to be a way to address that that provides equal access" [*id.* at 186:22-187:1].

Pursuant to these findings, the Court ordered the parties to confer and stipulate to a list of guidelines relating to the Access Rights Holders' use of La Sierra, and specifically "the time and location restrictions, the amount of livestock, camping with regard to shepherds, scouting, and so forth, **all those issues we heard**." *Id.* at 188:10-14 (emphasis added). In response, undersigned counsel spent a half day in San Luis at a community meeting attended by over 100 Access Rights Holders and formed a Regulations Committee of over 30 Access Rights Holders that met numerous times to create an initial proposal. The Access Rights Holders then sent CVR a list of proposed regulations and, with the assistance of a small subcommittee of Community leaders, spent the last six weeks negotiating in good faith with CVR

The Access Rights Holders' proposed regulations logically flow from the Court's findings of fact and comport with the law of the case and applicable legal standards. CVR's regulations represent yet another attempt to limit the rights associated with the Access Rights Holders' dominant estate—rights that have been thoroughly adjudicated and rights about which CVR was aware when purchasing La Sierra.

II. Applicable Law

[6] "I come from a rural community. People sell things at sale barns, and they get a little cash, and they use it to pay their mortgage. And you know, to me, a commercial enterprise is more than that, and I so find." [TR 9/28/21, p 184:9-13].

Despite the complex and unique nature of this case, basic tenets of Colorado property law and the robust procedural history that comprises the law of the case govern this dispute. In creating their Proposed Regulations, the Access Rights Holders look to these general tenets, as well as the prior orders of this Court and others, and harmonized those principles with the needs of their community and the right of CVR to use and enjoy La Sierra subject to the Access Rights Holders' rights.

A. Colorado Law

As an appurtenant easement, the Access Rights Holders adjudicated rights run with the land and individuals who own or lease a parcel of property with adjudicated rights are entitled to exercise those access rights. Further, both modern case law and the language of the Beaubien document, which first established the Access Rights Holders' easement in 1863[7], supports that **occupants** of the properties—in addition to parcel owners—have access rights under the easement. The Restatement (Third) of Property provides that "appurtenant means that the benefit can be used only in conjunction with ownership or *occupancy* of a particular parcel of land." Restatement (Third) of Prop.: Servitudes § 1.5, cmt. a (emphasis added). While Colorado

[7] The Beaubien document—executed by Carlos Beaubien in 1863—memorialized the land rights to La Sierra that incentivized the frontier families to settle the San Luis Valley. It stated "**all the inhabitants** will have enjoyment of benefits of pastures, water, firewood and timber, always taking care that one does not injure another." *Lobato I*, 71 P.3d at 943 (emphasis added)**.** The Supreme Court in *Lobato I* held that the Beaubien document granted the Access Rights Holders permanent access rights to La Sierra that run with the land. *Lobato I*, 71 P.3d at 948-50.

courts have not addressed this question directly, numerous other states have adopted the Restatement approach.[8]

It is well established under Colorado law that the owner of a burdened estate cannot "unreasonably interfere with the superior right-of-way of the person possessing the easement." *Osborn & Caywood Ditch Co. v. Green*, 673 P.2d 380, 383 (Colo. App. 1983). Such interference can take the form of harassment, *see Eichorn v. Kelley*, 111 P.3d 544, 546 (Colo. App. 2004); *City of Fort Collins v. Gilmartin*, Case no. 2016CV31096, 2017 Colo. Dist. LEXIS 1277 (Colo. Dist. Ct. Oct. 6, 2017), as well as by usurping the rights of the dominant estate holder by placing unreasonable restrictions on use. *See Lazy Dog Ranch v. Telluray Ranch Cop.*, 923 P.2d 313, 316 (Colo. App. 1996). Where both the owners of the benefitted estate and the burdened estate have a right to use land, the interests of both parties must be, to the extent possible, respected and balanced. *Lazy Dog Ranch*, 923 P.2d at 216. "However, the servient owner cannot unreasonably interfere with the superior right of the person possessing the easement." *Id.* To determine whether the owner of a servient estate has unreasonably interfered with the rights of the dominant estate holder, Colorado courts look to the *Lazy Dog* factors and analyze: (1) the purpose of the easement, (2) the intention of the parties in granting the easement, (3) the nature and situation of the property, and (4) the manner in which the easement has been used.

[8] *See e.g. Rusciolelli v. Smith*, 171 A.2d 802, 807 (Pa. Super. 1961) ("any lawful occupant of the dominant estate may use an easement"); *Weeks v. Wolf Creek Indus.*, 941 So. 2d 263, 272 (Ala. 2006) (easement appurtenant "inures to the benefits of [an owner's] tenants, servants, agents, or employees…"); *Delgue v. Curutchet*, 677 P.2d 208, 214 (Wyo. 1984) ("the rules of law are clear that an appurtenant easement is available to any possessor of the dominant estate").

Established principles of property law also hold that Courts cannot abrogate or terminate adjudicated easement rights. Colorado Courts have summarily denied attempts to terminate a dominant estate's easement rights on grounds that the easement holder has overburdened or misused the easement. *See, e.g.*, *Isenberg v. Woitchek*, 356 P.2d 904, 905 (Colo. 1960) ("injunctive proceedings may not be invoked to bring about a forfeiture of a property right"). In *Isenberg*, the Colorado Supreme Court voiced its disfavor of forfeiture of property rights and went so far as to say that, "[t]here is not, as we [understand], any contention that such misuse has amounted to extinguishment of the way, *and if there were such contention it could not be upheld.*" *Id.* at 394; *see also* 4 Powell on Real Property § 34.20 (2021) (explaining that there is no need for the theory of easement termination for misuse because a servient estate can protect its interests through other remedies, such as "by self-help, an action in trespass, or an appeal to equity for an injunction.").

The Landowners—as well as their families, lessees, and other occupants of the benefitted land—are holders of the dominant estate and have adjudicated easement rights to La Sierra that cannot be abrogated (1) by means of intimidation and harassment; (2) by means of restrictive regulations that do not comport with the original purpose of the easement, the intention of the parties in granting the easement, the nature of the property, or the manner in which the easement has been used over the past century and a half; or even if (3) the Access Rights Holders (or a portion thereof) were to misuse their property rights.

B. The Law of the Case

The law of the case doctrine protects parties from re-litigating settled issues on the grounds that courts generally "refuse to reopen what has been decided." *People ex rel. Gallagher v. Dist. Court*, 666 P.2d 550, 553 (Colo. 1983) (internal quotation marks and citation omitted).

Four decades of opinions from the district court, the Court of Appeals, and the Colorado Supreme Court provide guidance with respect to the scope and nature of the permitted regulations. The Colorado Supreme Court in *Lobato I* clearly articulated the Access Rights Holders right to reasonable use of La Sierra for grazing, firewood, and timber. *Lobato I*, 71 P.3d at 946. Throughout the course of this decades-long litigation, a central focus of the courts has been restoring the rights unjustly taken from the Access Rights Holders. *See Lobato II*, 70 P.3d at 1159 n.7.

Ranch Owners throughout the decades has sought to limit the Access Rights Holders' ability to exercise their adjudicated access rights. But, the court, time and time again, has ruled the Ranch Owners must present evidence of actual or imminent harm from the Access Rights Holders use of the property before even considering increased restrictions. *Cielo Vista Ranch I, LLC v. Alire*, 433 P.3d 696, 617-18 (Colo. App. 2018) (summarizing and affirming the trial court's decision to deny relief to the Ranch Owner because there "was no evidence of an adverse effect from landowners' grazing practices"); Order Regarding December 5, 2007 Status Conference (2008) ("[A] party's use may be restricted or limited only by a finding supported by evidence that the use is unreasonable, and such a determination does not fall within the purview of this class action, and instead must be initiated by a specific claim against any individual alleged to have engaged in unreasonable use."). When considering one of the Ranch Owner's many motions to clarify and define scope of the Access Rights Holders adjudicated easement

rights: "The Court is an agency of reaction not an agency of proaction, and thus cannot rule on evidence that is conjecture, the basis of which has not yet occurred." [Tr. Of April 12, 2005 Hearing, 50:24-51:5].

Additionally, the Court has noted that any purported misuse of La Sierra should not be resolved by restricting the Access Rights Holders, but rather should be addressed in a private, individual trespass action.[9] Indeed, the Court has reiterated time and again that that "it has consistently ruled that a party's use may be restricted or limited **only** by a finding supported by evidence that the use is unreasonable, and such a determination . . . **must** be initiated by a specific claim against any individual alleged to have engaged in unreasonable use." Order Regarding December 5, 2007 Status Conference, (2008) (emphasis added).

Despite the litany of decisions from this and other courts reiterating this point, CVR takes this Court's ruling on the Landowner's Motion as an invitation to propose broad regulations restricting the Access Rights Holders grazing, timber, and firewood access rights. As the Court will see in the Access Rights Holders' Proposed Regulations, and in their Responses to CVR's Proposed Regulations, the Access Rights Holders have proposed regulations consistent with the prior opinions in this case and the evidence presented at the hearing, while CVR continues to overreach in an attempt to impose restrictions repeatedly rejected in prior judicial decisions.

III. Argument

[9] That a private, individual trespass action is the appropriate forum for instances of misuse was reiterated by this Court when it found that CVR seems to have the ability to file a lawsuit, a little bit easier ability" [TR 9/27/21, p. 181:6-8], and that "[t]here's always going to be some outliers. . . . when you have a group of 5,000 people, there are always going to be some people that are going to misbehave" [TR 9/28/21, p.181:18-20].

When this Court instructed counsel for the parties to confer and stipulate to a list of guidelines that would govern the Access Rights Holders right to access and use La Sierra, it did so with the intention that the guidelines would provide ongoing relief from CVR's harassing and paternalistic actions. [See TR 9/28/21, p.185:25-186:2] ("But based upon my initial determination, I find that there does need to be a way to safeguard the landowners' rights"), and [TR 9/28/211, p.188:10-14] ("And those restrictions, what I'm concerned with is with regard to the . . . time and locations restrictions, the amount of livestock, camping with regard to shepherds, scouting, and so forth, all those issues that we heard.").

A. The Access Rights Holders' Proposed Regulations

The Access Rights Holders' Proposed Regulations accurately reflect the law, the court's findings and the evidence presented. This evidence addressed issues with respect to the collection of firewood and timber, the Access Rights Holders ability to access the Ranch, the grazing of livestock, and CVR employees' interactions with the Access Rights Holders. Most importantly, the Access Rights Holders' Proposed Regulations help to preserve the culture and community that Beaubien promised the original settlers when they moved to what is now Colorado from Mexico.

B. CVR's Proposed Regulations

Standing in stark contrast to the Access Rights Holders' proposals, and despite the Court's admonition, CVR's Regulations—and its unwarranted opposition to those of the Access Rights Holders—is nothing but a continuation of CVR's years-long campaign of domineering and paternalistic behavior. By way of its proposed regulations, CVR seeks to enjoin and limit the Access Rights Holders' free exercise of their adjudicated rights. The parties were directed to

craft specific guidelines addressing the numerous issues raised by the Access Rights Holders in their briefs and at the hearing. Apparently, CVR understood this as a direction to further restrict the Access rights Holders' ability to exercise their hard-fought rights in peace.

First, CVRs' Proposed Regulations incorrectly define Access Rights Holders under prevailing law failing to recognize that occupants of the land for which there is an appurtenant easement are entitled to enjoy the easement. Second, the Proposed Regulations incorrectly define the scope of the Landowner's rights. As but one example, CVR's Proposed Regulation #4 repeatedly utilizes an improper standard for use of La Sierra: "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, fishing and recreating on the Ranch." The Access Rights Holders right to graze livestock is not limited to personal use, but reasonable use *and not commercial* use. *Lobato I*, 71 P.3d 938, 956 ("Accordingly, we hold that the landowners have implied rights in Taylor's land for the access detailed in the Beaubien Document—pasture, firewood, and timber. These easements should be limited to reasonable use"). These semantic differences, while seemingly innocuous, serve to further limit the Access Rights Holders' access rights by re-defining the scope of the easement right delineated by the Colorado Supreme Court. CVR does not have the power to define the Access Rights Holders' easement; the courts do.

In addition, CVR's Regulations include, among others, restrictions on the time and manner Access Rights Holders can tend to livestock, unreasonable and unsupported limitations on the number of permitted livestock, prohibitions on the Landowners' right to scout for firewood and timber, and limitations on the Access Rights Holders' right to harvest firewood and

timber. These restrictions are inconsistent with the Access Rights Holders' adjudicated rights and their status as holders of the dominant estate.

Venturing even further outside the evidence presented at the hearing, CVR proposes regulations that are contrary to Colorado law to strip Landowners of their access rights for failure to abide by its proposed regulations. Further, if CVR builds a shed, Access Rights Holders lose access to 72 acres surrounding the shed. If it builds a house, Access Rights Holders lose access to 648 acres surrounding the house.[10] CVR asks this Court to unreasonably restrict the number of cattle an Access Rights Holder may graze on La Sierra depriving the Access Rights Holders the ability to pay their mortgage, feed their family, or finance their child's education. All of these concerns have already been addressed by the Court. *See* [TR 9/28/21, p 180:3-11].

CVR's Regulations and its opposition to the Access Rights Holders' Regulations simply do not comport with the evidence this Court heard—both at the hearing on the Motion and in the decades-long history of this dispute. Further, CVR's Regulations show a complete lack of understanding of the cultural implications of this case. CVR is trying to impose on the Access Rights Holder how it thinks they should exercise their rights in a manner that it thinks will provide them with what they need, and in a way it thinks will be least harmful to the natural

[10] This is not a mere hypothetical, but a real and present situation that the Access Rights Holders currently face. According to CVR's Proposed Regulation No. 12, the Ranch Owner intends to construct a home in an area that the Access Rights Holders currently use for grazing and as a means of access to higher elevation areas. CVR's Proposed Regulation No. 12 also restricts Access Rights' Holders access within a large swath of the vicinity of the home: "Access Rights Holders cannot exercise any access rights within 3,000 ft. of Ranch Owner's home in this location." [Proposed Reg. 12]. Such a regulation would deprive Access Rights Holders of 650 acres of land—land which would otherwise be available for grazing, firewood and timber. This proposed regulation is far beyond the scope of the Court's Order and imposes yet another unreasonable restriction on the Access Rights Holders' adjudicated easement rights.

resources. That is not CVR's call to make. CVR's Regulations are just one more example of its paternalistic view that it knows what is best for the Access Rights Holders. Accordingly, this Court should accept the Stipulated Regulations, accept the Access Rights Holders' Proposed Regulations, and deny CVR's Proposed Regulations.

Pursuant to the above, the Access Rights Holders attach, as **Exhibit A**, a document that contains the following: (1) a comparison of the Access Rights Holders proposed regulations where both the Access Rights Holders and CVR have competing regulations on the same subject matter; (2) a listing of the Access Rights Holders proposed regulations where there is no competing regulation and why they are supported by the evidence, the law of the case and governing Colorado law; and (3) a response to CVR's proposed regulations where there is not competing regulation and it would be improper for this Court to enter said regulations.

Dated: January 28, 2022

Respectfully submitted,

By:*/s/Sarah B. Wallace*

Sarah B. Wallace, #31859
Chad Jimenez, #45136
Andrew Valencia, #54691
Alexia Chapman, #55365
Ballard Spahr LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202-5596
Telephone: 303.292.2400
Facsimile: 303.296.3956
Email: wallaces@ballardspahr.com
jimenezc@ballardspahr.com
valenciaa@ballardspahr.com
chapmana@ballardspahr.com
Attorneys for Plaintiffs Eugene Lobato, et al.

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2022, a true and correct copy of the foregoing **BRIEF IN SUPPORT OF ACCESS RIGHTS HOLDERS' REGULATIONS AND RESPONSE TO CVR'S PROPOSED REGULATIONS** was electronically filed via Colorado Courts E-Filing and served on all parties of record.

/s/ Sherri Clark