

1 based upon a Biological Opinion, and so it was, we knew  
2 we were going to close them to grazing.

3 It was just a matter of time. So there  
4 was no, no reason to go through a, a up-front  
5 relinquishment waits at the beginning, even though  
6 there were, there were private agreements between the  
7 Parties that we were aware of that identified  
8 relinquishment was occurring.

9 Q. Okay.

10 A. Just different.

11 MS. BUDD-FALLEN: Okay. I have no further  
12 questions.

13 THE COURT: All right, thank you very  
14 much.

15 Recross, Mr. Karkut?

16 MR. KARKUT: I have nothing further, Your  
17 Honor.

18 THE COURT: Mr. Battle?

19 MR. BATTLE: No questions, Your Honor.

20 THE COURT: Is it the understanding of  
21 both sides that Mr. Stager may now be excused  
22 permanently?

23 MR. BATTLE: Sure.

24 THE COURT: All right. Mr. Stager, thank  
25 you very much for your testimony.

1 You're permanently excused. I believe  
2 you're agreed to hear that now would be a good time to  
3 recess until tomorrow morning?

4 MR. JENSEN: May I have one second?

5 THE COURT: Yes, sure.

6 MR. JENSEN: I think we're done for the  
7 day, Your Honor, but I do have -- It depends on what  
8 happens next.

9 THE COURT: I'm sorry?

10 MR. JENSEN: It depends on what happens  
11 next.

12 THE COURT: I don't understand. We are  
13 either going to stay a while longer or we're not.

14 MR. JENSEN: In terms of judicial  
15 economy, in terms of judicial economy, I have a couple  
16 of witnesses who are going to have testimony regarding  
17 something different, in light of your other rulings.  
18 I'd like to talk about that to figure out how I'm going  
19 to set up my case tomorrow, or whether we can proceed  
20 tonight.

21 I have a couple of witnesses who have  
22 talked about conversations they've had with individuals  
23 in the Washington Office about what was happening, and  
24 the direction that was being given to the monument in  
25 terms of both relinquishments and qualifications, and

1 Now this matter progressed from one to the other.

2 THE COURT: Well, --

3 MR. JENSEN: And in light of earlier  
4 rulings --

5 THE COURT: I don't want to anticipate  
6 objections. That's not my role.

7 It mean, we -- You can go ahead and  
8 proffer their testimony and then we'll proceed in a  
9 normal fashion. I'm perfectly happy to continue  
10 tonight.

11 Are we -- Is it okay if he stay a while  
12 longer?

13 MR. HARBESHAW: I have a key.

14 THE COURT: Oh. Well, why don't we?

15 Why don't we? So you would anticipate,  
16 what, calling two more tonight?

17 And that's fine.

18 MR. JENSEN: At least one. At least one.  
19 Might go for a little while, whatever  
20 you want.

21 THE COURT: Why don't we take a short  
22 restroom break and then start with that witness, okay?

23 MR. JENSEN: Sure.

24 THE COURT: All right.

25 MR. JENSEN: Thank you.

1 THE COURT: All right. Well, let's --  
2 That cleaned out the room, as well the dinner hall's  
3 ringing, I think.

4 (Whereupon, at 5:07 p.m. MT, the Court  
5 took a brief recess and returned at 5:16 p.m. MT, after  
6 which the following occurred:)

7 THE COURT: All right. Let's go back on  
8 the, the record, please.

9 Mr. Jensen, ready to call your next  
10 witness?

11 MR. JENSEN: Appellants call Richard  
12 Nicholas.

13 RICHARD W. NICHOLAS, called as a  
14 witness by the Appellants, having been  
15 first duly sworn, was examined and  
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JENSEN:

19 Q. Good evening.

20 A. Good evening.

21 Q. Sir, what is your, your current occupation  
22 right now?

23 A. I'm self-employed. I'm in, in the  
24 ranching business, and I also have a, another business  
25 as well.

1 Q. How long have you been a rancher?  
 2 A. About 12 to 13 years.  
 3 Q. Do you own your land Permits?  
 4 A. I do.  
 5 Q. And how many? What kind?  
 6 A. They are on Forest Service, and I run  
 7 Permit to run 163 head of cattle.  
 8 Q. Do you have any private land, state, or  
 9 leased, or owned?  
 10 A. Yes.  
 11 Q. How much of that?  
 12 A. (Whereupon, no response was had.)  
 13 Q. Give or take.  
 14 A. Probably somewhere around 700.  
 15 Q. You're not from down here, are you?  
 16 A. I'm not.  
 17 Q. Where are you from?  
 18 A. Fremont, Utah, which is just north of  
 19 Ogden.  
 20 Q. What was your previous occupation before  
 21 you became self-employed?  
 22 A. I worked -- HMM. It's been a while.  
 23 I worked at Thiokol Corporation.  
 24 Q. You used to work for the Utah Cattlemen's.  
 25 Is that correct?

1 in this matter?  
 2 A. For the most part, probably to collect  
 3 information and evidence to substantiate a case that  
 4 this was not necessary.  
 5 Q. How did Utah Cattlemen's Association, in  
 6 your position, become involved in this matter?  
 7 A. They actually became involved in it  
 8 through me. I became aware of the situation here.  
 9 The first thing that came to light for me  
 10 was a letter, which you have as an item of exhibit here  
 11 from Lynn Scarlett to the Can-, Grand Canyon Trust.  
 12 That was my first occasioned experience of getting  
 13 information about it.  
 14 It was quickly followed by some other  
 15 information. And then I relayed this to the officers  
 16 of the Utah Cattlemen's Association, and they asked me  
 17 to proceed to become involved in it.  
 18 Q. Just for point of clarification, can you  
 19 flip to Number 9 in that other book just to clarify  
 20 Is that the letter you're referring to from Lynn  
 21 Scarlett to, --  
 22 A. Yes, sir.  
 23 Q. -- to the Grand Canyon Trust?  
 24 A. Yes, sir.  
 25 Q. And you said other information led you to

1 A. That's correct.  
 2 Q. When was that?  
 3 A. That was in, started in early '02, and  
 4 went for just over two years.  
 5 Q. And what, what position did you hold on  
 6 Utah Cattlemen's?  
 7 A. I was the Public Lands Chairman.  
 8 Q. And what kind of duties did that involve?  
 9 A. My duties involved participation in any  
 10 public-lands issues that cattlemen faced in the state.  
 11 We represented all cattlemen, cattle interests in the  
 12 state.  
 13 My job was become involved in the issues,  
 14 try to resolve them, whatever. Keep the Association  
 15 abreast of what was transpiring.  
 16 Q. What part of your job duties related to  
 17 this particular matter?  
 18 A. It was the desire of the Utah Cattlemen's  
 19 Association that I become involved in this to try to  
 20 help find a resolution to it, but their main impetus  
 21 was to try to preserve the AG-, ADMs for grazing,  
 22 because the Utah Cattlemen's Association has an  
 23 official Resolution on record that they oppose the loss  
 24 of any more ADMs within the State of Utah.  
 25 Q. And what did you envision your role to be

1 become involved. Do you recall what that information  
 2 was?  
 3 A. Yes. I shortly thereafter came across  
 4 some letters from Congressman Chris Cannon, Congressman  
 5 from Utah, that wrote a letter to Secretary Gail  
 6 Norton, which is an item of exhibit, and then a letter  
 7 from Secretary Norton writing a letter to Congressman  
 8 Cannon in response to his letter, and then another  
 9 letter from Nina Rose Hatfield, which is at the  
 10 national-level BLM in Washington, writing a letter to  
 11 Sally Wisely, Utah State Director of BLM.  
 12 Q. Okay. Really quickly can you turn to 6?  
 13 THE COURT: I'm sorry, 6?  
 14 MR. JENSEN: Six.  
 15 THE COURT: Thank you.  
 16 MR. JENSEN: I apologize.  
 17 BY MR. JENSEN (Resuming):  
 18 Q. Could you please identify that document?  
 19 A. That is the document --  
 20 Q. Which document?  
 21 A. -- that is, that Congressman Chris Cannon  
 22 wrote to Gail Norton.  
 23 Q. And 7, please.  
 24 A. That is the letter that Secretary Norton  
 25 wrote to Mr. Cannon responding to his letter.

657

1 Q. Now, these three letters that we've  
 2 discussed, what, what about the three letters that have  
 3 led the Utah Cattlemen to become involved in this  
 4 matter?

5 A. Well, the -- In, in short, it was that  
 6 they all have the same information and the same common  
 7 theme; that they were all talking about exactly in  
 8 detail the same issue.

9 Q. Which is?

10 A. The issue was, as described in the  
 11 letters, that if the Grand Canyon Trust could get the  
 12 rancher to relinquish his grazing rights, they  
 13 promised, the Interior Department was promising the  
 14 Grand Canyon Trust that they would quickly move to  
 15 amend the Management Plan and cancel the subject  
 16 grazing.

17 MR. BATTLE: Your Honor, I object and  
 18 move to strike that testimony as a mischaracterization  
 19 of the Record.

20 THE COURT: Well, Mr. Battle, I, you're  
 21 going to have an opportunity to go into this on  
 22 Cross-Examination. I'm going to overrule the  
 23 objection.

24 It's the Witness' construction of, of the  
 25 issue as he defines it. You'll be able to go into it

659

1 the Proposed Plan Amendments?

2 A. They did.

3 Q. Okay. DURING your tenure with the Utah  
 4 Cattlemen's Association, did you document your  
 5 telephone conversations in a particular manner?

6 A. I did.

7 Q. And how is that?

8 A. I kept a journal. I, I will not tell you  
 9 that I, I documented every single conversation, but I,  
 10 I documented numerous ones.

11 I spoke with people in Washington, and  
 12 when the phone conversation is over, I had a journal  
 13 that I quickly wrote down the substance of discussion,  
 14 and what those individuals had said to me.

15 Q. Is it fair to assume that every  
 16 conversation that's written in your journal was written  
 17 soon after the conversation occurred?

18 A. That is correct.

19 Q. Did you attend a Range Management meeting  
 20 in Saint George in January of 2002?

21 A. I did.

22 Q. And did Sally Wisely also attend?

23 A. She did.

24 Q. And who is she?

25 A. She is the State BLM director of Utah.

658

1 accuracy on Cross.

2 Go ahead, Mr. Jensen.

3 BY MR. JENSEN (Resuming):

4 Q. In your opinion, was the timing of these  
 5 letters significant?

6 A. Upon my initial receipt of them, no, I  
 7 didn't make that connection. But it was not long after  
 8 that, yes, I, I saw that there was value in the timing  
 9 of them.

10 Q. And what is that?

11 A. Well, the, my opinion on that is the Grand  
 12 Canyon Trust had, had talked to the Interior  
 13 Department. It's obvious from the letters they  
 14 communicated to him.

15 And there was something set in motion  
 16 there, and there had to be some certain things done in  
 17 order for this plan to be carried out.

18 Q. Were these letters written before or after  
 19 the Proposed Plan Amendments?

20 A. They were written -- I don't know if they  
 21 were written before the, the, the EAS were written, but  
 22 they were written four, approximately four months  
 23 before the Environmental Assessments were ever released  
 24 to the public for public comment.

25 Q. Did the Utah Cattlemen's file a Protest to

660

1 Q. Did you two have a conversation?

2 A. We had a phone conversation prior to the  
 3 meeting wherein I had expressed concerns about the  
 4 Environmental Assessments that were then pending, and  
 5 I, I asked her some questions about them and told her  
 6 why I was troubled about them.

7 She said, "I'll be at the Range  
 8 Conference when you get there. We'll talk about it."

9 Q. So what happened at the Range Conference?

10 A. At the Range Conference, just, she was one  
 11 of the speakers there. Just before she went in to  
 12 speak, she called me out of the room privately and we  
 13 talked about it, and I recorded that conversation in my  
 14 journal.

15 Q. Do you have your journal with you?

16 A. I do. I, I have pages, Your Honor, out of  
 17 the journal.

18 I can read from them, or I can read from  
 19 the journal itself. They're all the same.

20 They're just copies, but does that  
 21 matter?

22 THE COURT: Well, that will be up to Mr.  
 23 Jensen.

24 THE WITNESS: Okay.

25 BY MR. JENSEN (Resuming):

1 Q. Why don't you just, and read out of your  
2 journal?

3 MR. BATTLE: First, Your Honor, may I  
4 make an objection?

5 THE COURT: Certainly. Go ahead.

6 MR. BATTLE: I understand that hearsay is  
7 often okay, but I'd submit that if there was any  
8 hearsay that was intended to be excluded by the Hearsay  
9 Rule, this would be it. But I'd like to make my  
10 objection more on the grounds of relevance.

11 This fine gentleman is not a party to  
12 this proceeding. He's not affiliated with any party to  
13 this proceeding.

14 He's not an Intervenor. He's a private  
15 citizen.

16 I would submit that a communication  
17 between Ms. Wisely or Ms. Norcop or Ms. Scarlett and  
18 anyone else and this private citizen is not relevant to  
19 this proceeding.

20 THE COURT: All right.

21 Mr. Jensen, as Mr. Battle has correctly  
22 stated for the Record, I am authorized to receive  
23 relevant hearsay, but his objection is, as he has  
24 further stated, goes to the issue of relevance. Where  
25 are we going here?

1 Why is this relevant?

2 MR. JENSEN: Mr. Nicholas' testimony is  
3 going to reveal the direction that both Canyonlands  
4 Grazing Corporation and the BLM took with regard to  
5 this matter, and how it went from relinquishing their  
6 Permits to Permittess, to giving them a Permit. It  
7 also will reveal the collaboration between the BLM and  
8 the Canyonlands Grazing Corporation, both in regards to  
9 the procedural matters and their qualifications.

10 It's going to basically tie one to the  
11 other, and show, refute testimony from some of the  
12 prior BLM witnesses in regards to direction, where they  
13 were getting directions in this matter, and how they  
14 were proceeding.

15 MR. KARKUT: Your Honor, may I say  
16 something?

17 THE COURT: Certainly.

18 MR. KARKUT: I would like to object to  
19 this testimony that we're going to on the same grounds  
20 that we discussed at length earlier today, in that this  
21 testimony is, it sounds like it's going to go to a  
22 certain part maybe as far back as the EAs, which are  
23 part of the pre-Decisional process that you ruled  
24 earlier were appropriately excluded because they were  
25 not relevant to the main issue as to --

1 THE COURT: My ruling earlier dealt with  
2 the pre-Decisional debate implicating or involving  
3 subordinate staff, --

4 MR. KARKUT: Um-hum.

5 THE COURT: -- especially in relation to  
6 Mr. Runseker's action as an authorized officer that are  
7 on Appeal here.

8 MR. KARKUT: Um-hum.

9 THE COURT: My comments were very  
10 carefully restricted to pre-Decisional debate  
11 implicating subordinate staff members, including in that  
12 context Mr. Stager and other subordinate staff.

13 MR. KARKUT: Thank you for reminding me  
14 of that, Your Honor. I would, though, keep that this,  
15 this is not relevant, not for the same reason, since  
16 you've helped me clarify that, but for the reason that  
17 this is just, again, a fellow who is not a party to the  
18 case who is going to come in and testify as to what  
19 Sally Wiseman told him.

20 That's really not fair to Sally Wisely.

21 THE COURT: Well, I think we have a  
22 different issue here, and I, I have to obviously be  
23 very careful not to become a proponent for either side.  
24 So, so what I'm about to say is a bracketing of where I  
25 think Mr. Jensen is going on this, based upon his

1 questions and the witness' responses.

2 And it's quite distinguish, quite  
3 distinguishable from the, from the issues of  
4 pre-Decisional debate, which, in the federal case law,  
5 implicates always subordinate officials or staff  
6 members of a particular decision-maker. Now, I, as I  
7 understand where he's going here, he's going to the  
8 issue of pre-Decisional outside influence.

9 Am I right or wrong?

10 MR. JENSEN: You're on the right track,  
11 Your Honor.

12 THE COURT: Okay. The objection's  
13 overruled.

14 Please proceed.

15 MR. JENSEN: Well, I would like to  
16 qualify, it's not all pre-Decisional. Some of it is  
17 post- the EAs.

18 It all takes -- it's all in that  
19 timeframe, but some of his later testimony, his later  
20 conversations occur after the EA.

21 Conversations did take place.

22 THE COURT: What, what's the relevance of  
23 that?

24 MR. JENSEN: The relevance of that is to  
25 show their, their previous intent to hold line and give

665

1 the Grand Canyon Trust a Permit, not to risk their  
 2 financial investment in this matter. It goes -- It  
 3 relates directly back to why they took the actions that  
 4 they did.

5 It relates back to the pre-Decisional,  
 6 "We want to do this, and here's why."

7 THE COURT: Well, let's not dance around  
 8 this. If you're going to put on evidence that can show  
 9 that Mr. Hunsaker was improperly influenced by outside  
 10 entities prior to the jurisdictional Decision on  
 11 Appeal, I think that's relevant and I'll let you go  
 12 there.

13 MR. JENSEN: I don't understand "outside  
 14 entities." I can show influence from the same agency  
 15 further up the ladder.

16 THE COURT: Well, that's what I'm talking  
 17 about.

18 MR. JENSEN: Okay. Well, then I can do  
 19 that.

20 THE COURT: The authorized officer in  
 21 this case is Mr. Hunsaker.

22 MR. JENSEN: That's correct.

23 THE COURT: You're about trying to elicit  
 24 some evidence with respect to the State Director.

25 MR. JENSEN: That's correct.

667

1 Wisely spoke privately with me. Told me she had spoken  
 2 to Gregg Christensen in Kaneb Office.

3 Told him to work on the EA and make it  
 4 better and more objective. She said that she thought  
 5 this EA was very weak and did not accomplish what an EA  
 6 should.

7 Also she said some of the information in  
 8 the EA was not even taken from the Allotment in  
 9 question. This was the Clark Bench Allotment.

10 I asked her if she noticed the  
 11 antigrazing bias throughout the EA. She replied, "I  
 12 did not like what I read."

13 She also said again in her address in the  
 14 meeting that she believed strongly in multiple use,  
 15 that she was going to manage the land for that purpose,  
 16 and that grazing was one of the pillars of multiple  
 17 use.

18 Q. Soon after that Range Management meeting,  
 19 did you have a conversation with Dave Hunsaker?  
 20 A. I did.  
 21 Q. And what was the context of that  
 22 conversation?  
 23 A. That was on February the fourth of '02.  
 24 David -- This was on the telephone.  
 25 Q. Okay.

666

1 THE COURT: Correct? And perhaps some  
 2 Washington officials?  
 3 MR. JENSEN: That's correct.  
 4 THE COURT: That's what I was referring  
 5 to when I say "outside entities."  
 6 MR. JENSEN: Okay.  
 7 THE COURT: All right, the objection's  
 8 overruled. Please proceed.  
 9 BY MR. JENSEN (Resuming):  
 10 Q. I believe I asked you what your  
 11 conversation with Sally Wisely entailed at the Range  
 12 meeting in Saint George, and you responded that you had  
 13 written that conversation in your journal; is that  
 14 correct?  
 15 A. Yeah. And, and as a matter of note, sir,  
 16 I was in an official position when all of these things  
 17 were recorded.  
 18 I was not some Joe Blow off the street.  
 19 Q. You were a member?  
 20 A. I had an official position when I recorded  
 21 these. I had an integral interest in the livestock  
 22 industry in the State of Utah when I took these.  
 23 This is dated January the, the  
 24 seventeenth of 2002. Range meeting, Saint George.  
 25 As I was going into the meeting, Sally

668

1 A. A David Hunsaker. Confronted him with  
 2 questions and problems I had with the Clark Bench EA.  
 3 He told me that the BLM was not  
 4 reallocating any AUMS to conservation use, and  
 5 therefore they, they are not in violation of Public  
 6 Lands v. Battle. I questioned him about Brant Robinson  
 7 and the Grand Canyon Trust Agreement.  
 8 He told me it was a private deal and did  
 9 not mean anything to the BLM. He said Brant was still  
 10 the Permittee, and that he could not sell the Permit to  
 11 the Trust because he does not own the Permit; the  
 12 Government does.  
 13 I then asked him what, then, had the  
 14 Trust bought for \$103,000 that they spent? He said  
 15 they had purchased the AUMS.  
 16 I wondered how that could be when the  
 17 AUMS were attached to the Permit.  
 18 Q. From these two conversations and your  
 19 personal opinion, where was the matter when -- What  
 20 direction was this going?  
 21 A. Well, it was, it was obvious to me from  
 22 these conversations that there was a direction that  
 23 they wanted to come up with rationale or justification  
 24 in the Environmental Assessments to justify their  
 25 intended closing of the Allotments.

669

1 Q. Who is Kathleen Clark?

2 A. Kathleen Clark is the National Director of  
3 the Bureau of Land Management.

4 Q. Did you have a conversation with her in  
5 April of 2002?

6 A. I did.

7 Q. And before I ask you about that  
8 conversation, I have a general question. And when we  
9 spoke on the phone about this, I asked you that I  
10 wanted to know how it was that you could have these  
11 conversations with these high-ranking officials.  
12 Can you explain to me how you came to  
13 that?

14 A. Well, I'll, I'll tell you now what I told  
15 you then. There was no secret or special way that I  
16 did it.

17 When I would call, I would introduce  
18 myself as a Public Lands Chairman for the Utah  
19 Cattlemen's Association. I asked for an audience with  
20 Secretary, or Kathleen Clark.

21 Sometimes I didn't get her. I called  
22 back, and she was very gracious to return my phone  
23 calls.

24 Q. Okay. What was the tenor of your  
25 conversation in April of 2002?

671

1 the Utah Cattlemen's Association and Kane and Garfield  
2 Counties, to go to whatever length to resolve the  
3 problem. At the end of the discussion she asked me  
4 what I wanted to be done about the whole issue.

5 Q. And how did you respond?

6 A. I responded to her that there was a very  
7 simple fix to this problem. That if the EAs were  
8 rendered invalid because they did not have sound  
9 science in them, they were anti-grazingly biased, that  
10 they, if they were rendered invalid, that the the  
11 process to eliminate the grazing would stop  
12 immediately, because that's where they were getting  
13 their justification to do it.

14 Q. Did she have an answer?

15 A. She did not.

16 Q. Okay. Who is Tom Fulton?

17 A. Tom Fulton was the Deputy Director of  
18 Lands and Minerals under Rebecca Watson in Washington,  
19 D.C., for the Bureau of Land Management.

20 Q. And who's Rebecca Watson?

21 A. Rebecca Watson is the Director of Lands  
22 and Minerals for the BLM.

23 Q. Okay. Did you have a conversation with  
24 him in May of 2002?

25 A. I did. He was at the time -- maybe I

670

1 A. I had a conversation with her in April of  
2 2002, April the tenth. Now, this is a return phone  
3 call from Kathleen Clark.

4 She called me at my home because I had  
5 tried to call her at her office and hadn't been able to  
6 get her. Kathleen Clark called me this morning.

7 She was very accommodating. I reviewed  
8 our case in southern Utah briefly.

9 She, of course, already knows quite a bit  
10 about it. I brought her up to date as to the status of  
11 it, and tried to convey to her the seriousness of the  
12 entire matter.

13 She seemed to understand that, and is  
14 concerned, but she, of course, is not the one who  
15 caused the problem. The Interior Department is.

16 She said that the Department of  
17 Interior -- Now this is her speaking. She said that  
18 the Department of the Interior was carrying out their  
19 previous commitments it had made when it allowed the  
20 BLM's actions with the EAs to continue on.

21 She also said that she didn't agree with  
22 the situation. She was trying to be loyal to the  
23 administration that appointed her.

24 She also said that she encouraged us who  
25 were dealing with the problem, and by that she meant

672

1 should qualify that.

2 He is no longer in that position. May  
3 the thirtieth of '02, telephone conversee (sic).

4 Now, if I'm allowed, I'd preface this. I  
5 had had a, previous, personally attended a meeting  
6 where Mr. Fulton and Rebecca Watson spoke in  
7 Washington, D.C., and we had talked about this grazing  
8 retirement issue in that meeting.

9 This phone call then makes more sense  
10 when you understand that, because we had had  
11 conversation about this prior to that time. Telephone  
12 conversation with Tom Fulton in D.C. today.

13 I told him we were interested to know the  
14 status of things. He told me that the subject, that  
15 subject being the issue of eliminating grazing, was  
16 being talked about at the Assistant Secretary and  
17 Deputy Director level.

18 He said they were trying to find a  
19 solution that would not harm the Administration or have  
20 the environmentalists come down on them too hard. He  
21 said everything had to be done in a right way or it  
22 would cause problems.

23 I basically told him I didn't care, that  
24 we were fighting for survival, and that we would do  
25 what we had to to survive. I told him that we were

1 trying too hard to fix the, fix it, and that the  
 2 solution was right in front of them.  
 3 They needed, what two things they needed  
 4 to do. One, call David Hunsaker and tell him to stop.  
 5 I meant by that the environmental  
 6 process. And two, to have them declared invalid,  
 7 because they are.  
 8 I told him we couldn't wait much longer,  
 9 and that the group had decided to break the story to  
 10 Washington Times. That made him very nervous.  
 11 Q. And again, what was the date on that  
 12 conversation?  
 13 A. That was May the thirtieth of 2002.  
 14 Q. Now, interestingly, you had another  
 15 conversation --  
 16 THE COURT: Let me just clarify  
 17 something. Mister -- In my earlier notes, sir, that  
 18 you said this conversation was April thirtieth.  
 19 Was it?  
 20 THE WITNESS: Did I say April?  
 21 THE COURT: I believe you did.  
 22 THE WITNESS: This conversation, it was  
 23 May thirtieth. I'm sorry if I said April.  
 24 THE COURT: May thirtieth. That's the  
 25 conversation with Mr. Fulton; is that correct?

1 I told her the same thing I told Tom. He  
 2 said -- She said that two people in Washington were too  
 3 attached to the deal with the Trust, and couldn't let  
 4 go, Lynn Scarlett being one.  
 5 She said Lynn Scarlett had no business  
 6 writing her letter. She said Secretary Norton was  
 7 wanting to be rescued, and that she, Kathleen, was  
 8 going to do it.  
 9 She said there was reluctance by some to  
 10 renegotiate because the Trust would lose money. She  
 11 also said that she was against grazing elimination  
 12 anytime.  
 13 When I told her about the media idea we  
 14 had, she asked if I would tell everyone to pull back a  
 15 little, keep it cool, and give her some time to fix it.  
 16 She thought she could.  
 17 I told her I would, but that I wouldn't  
 18 wait too long. She said she had something coming out  
 19 in about two weeks, June the twelfth.  
 20 She said she couldn't tell me anything  
 21 because it just couldn't get out. I promised I'd give  
 22 her some time, and she said if she couldn't get it done  
 23 and things bogged down, I would be the first one called  
 24 and she would turn me loose and we could go after them,  
 25 sue them, news story, or whatever.

1 THE WITNESS: That is correct.  
 2 THE COURT: All right, thank you.  
 3 Go ahead, Mr. Jensen.  
 4 BY MR. JENSEN (Resuming):  
 5 Q. Interestingly, you had an immediate  
 6 conversation, not more than 30 minutes later; is that  
 7 correct?  
 8 A. That is correct.  
 9 Q. And with whom was that?  
 10 A. Kathleen Clark.  
 11 Q. Okay. And what was that conversation  
 12 about?  
 13 MR. BATTLE: This is also on May  
 14 thirtieth?  
 15 MR. JENSEN: Yes.  
 16 THE WITNESS: This is May thirtieth. Mr.  
 17 Fulton, immediately upon -- Let me preface this by  
 18 saying that immediately upon our first telephone  
 19 conversation, he went and talked with Kathleen Clark  
 20 about it, and because of that she called me right back  
 21 30 minutes later.  
 22 He had been -- Let me -- He says 30  
 23 minutes after Tom Fulton talked to me, Kathleen Clark  
 24 called. He had been in to see her, and the  
 25 conversation worried her.

1 I believe she is really trying hard, and  
 2 she is on our side, but I don't think she'll get it  
 3 done because I really don't think she's in a position  
 4 to do it.  
 5 BY MR. JENSEN (Resuming):  
 6 Q. And you followed that up with another  
 7 conversation with her a couple of days later; is that  
 8 correct?  
 9 A. I did, June the third.  
 10 Q. And what was that conversation about?  
 11 A. This was a Monday. Kathleen Clark called  
 12 me at my home.  
 13 Called first thing, and she said we need  
 14 to file our protest so we could have standing. I told  
 15 her we were doing that.  
 16 She said that she had spoken to Sally  
 17 Wisaly and David Hunsaker about the problem, and why  
 18 the last two EAs were out there when we were already  
 19 having so much, excuse me, when we were having so much  
 20 problem already. They told her they were keeping their  
 21 promises to the Trust.  
 22 MR. BATTLE: Your Honor?  
 23 THE COURT: Sir?  
 24 MR. BATTLE: I'd like to move to strike  
 25 that last statement on the grounds that it's double

1 hearsay.

2 THE COURT: Yes, I'd --

3 MR. BATTLE: "He said, she said." I  
4 think that goes beyond.

5 THE COURT: I, I agree. Sustained.  
6 It --

7 BY MR. JENSEN (Resuming):

8 Q. At this point in time did you start, after  
9 your con-, after all these conversations, start to form  
10 a personal opinion regarding this matter and the BLM's  
11 involvement?

12 A. I did.

13 Q. And what was that?

14 A. The opinion was that, that there was a  
15 plan put in motion here to accomplish the purposes of  
16 the Trust. Because they had spent so much money on it,  
17 if the plan was not carried out, they would lose their  
18 investment.

19 The Interior Department, and this had  
20 been expressed to me at other times other than these  
21 phone conversations, that they were concerned about the  
22 problem, because they had made a promise to them and  
23 they were afraid to go back on it for fear of the  
24 repercussions they might have, and that they might lose  
25 their money.

1 am that I know that you and I are wearing blue shirts,  
2 if you will give me some time, I know this, they, this  
3 is irrelevant, but if you will give me a little more  
4 time I'll connect the dots to show you that the issue  
5 we're having about these people having grazing  
6 preferences for qualified Permit is a direct result.  
7 not only a direct result, but joined at the hip about  
8 the issue that I am speak-, presently speaking about.

9 I have given two full years of my life to  
10 this, collecting this information, and I hope that I am  
11 not denied an opportunity to at least present the  
12 evidence I feel I have.

13 THE COURT: That wasn't the, the gravamen  
14 of this objection.

15 THE WITNESS: I know, sir. I know, sir.

16 THE COURT: The gravamen of his objection  
17 is that in a public conference, the Record of the  
18 public conference itself would be the best evidence, --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- not a particular  
21 attendee's recollection.

22 THE WITNESS: I understand that.

23 THE COURT: But I'm overruling the  
24 objection. Go ahead and answer.

25 Why don't you repeat your question?

1 To give further evidence to that, in  
2 February of 2002, excuse me, '02, the National  
3 Cattlemen's Association had their annual convention in  
4 Nashville, Tennessee, where Kathleen Clark and Gail  
5 Norton were speakers. Kathleen Clark spoke to the  
6 Public Lands Council Assembly, and in her opening  
7 remarks she talked about the situation here.

8 MR. BATTLE: Your Honor, may I, may I  
9 make an objection here? I think we may not have the  
10 best evidence.

11 THE WITNESS: Well, I'm not through. And  
12 I --

13 MR. BATTLE: If these are, are public  
14 remarks, there may be a Transcript of that. And having  
15 this Witness' interpretation of that will not be the  
16 best evidence.

17 THE COURT: Well, you're correct. I'm  
18 going to overrule the objection, but this is getting a  
19 little far afield.

20 Public conference is a far cry from your  
21 personal telephone conversations and meetings, and your  
22 journal, which is, which we've gotten into evidence.

23 THE WITNESS: Yes, sir. If -- I know  
24 this is a little unorthodox, but if you would indulge  
25 me, sir, I, I want to say to you that as certain as I

1 THE WITNESS: I, I can carry on. She  
2 introduced in her opening remarks comments about the  
3 situation in southern Utah here with regards to grazing  
4 retirement and relinquishments, and she was giving this  
5 on behalf of the Interior Department.

6 Then she turned the meeting over to  
7 questions. I was the first one to take the microphone  
8 and ask a question.

9 I asked -- This is the question that I  
10 asked her. I said: "Kathleen, you told County  
11 Commissioners in Kane County by virtue of a phone call  
12 that the Bureau of Land Management had authority to  
13 rule on our Protest,

14 "Now, these are the Protests that the  
15 Utah Cattlemen's Association and Kane and Garfield  
16 Counties had filed. You told us that you had the  
17 authority to rule either in our favor or against us."

18 I said, "In light of our Protest and all  
19 the information we gave in there that these  
20 Environmental Assessments are flawed, why did you rule  
21 against our Protest?"

22 And these are the words she said, and I  
23 quote: "Because the Interior Department was afraid  
24 that the Grand Canyon Trust would lose its money."  
25 That is a quote in front of a public conference, in



1 front of the Public Lands Council gathering.  
 2 Yes, sir.  
 3 BY MR. JENSEN (Resuming):  
 4 Q. And after that, and, you had a brief  
 5 meeting with Secretary Gail Norton; is that correct?  
 6 A. Well, we're not quite through with  
 7 Kathleen yet. She finished her remarks.  
 8 I felt that maybe she was on the spot a  
 9 little bit, so I went over to talk to her as she walked  
 10 out of the meeting. She put her arms around my neck,  
 11 pulled my head down to hers, and whispered in my ear.  
 12 Now, I want to tell you, before I tell  
 13 you what I'm about to tell you, that as I live and  
 14 breathe and know that I'm sitting here, what I'm about  
 15 to tell you, I'd say it before The All Mighty Himself.  
 16 It is the truth.  
 17 she whispered in my ear, and she says,  
 18 "Richard, I have done all I can do to help you, and all  
 19 I got was rolled for it."  
 20 I said to her, "You know what I have to  
 21 do."  
 22 She said, "Go get them."  
 23 Q. And right after, you had a brief encounter  
 24 with Gail Norton; is that correct?  
 25 A. I did.

1 Q. And what was that?  
 2 A. Jeff Eisenberg (phonetic), who was the  
 3 Executive Director of Public Lands Council, had been  
 4 working closely with me on this issue, and he told me,  
 5 "If you need to go talk to Secretary Norton about the  
 6 problem," he says, "she will," when she finished, --  
 7 She spoke to the General Assembly. "When she gets  
 8 done," he says, "you'll be able to find her in her  
 9 room, and you just ask her a couple of questions."  
 10 So I did. I went into a meeting.  
 11 She was having her picture taken with the  
 12 winners of the Environmental Stewardship Awards for  
 13 National Cattlemen's Association.  
 14 We were standing there, and a guy walked  
 15 up who I didn't know who it was at the time, but I  
 16 guess it was her press secretary. Stuck out his hand  
 17 and says, "Who are you?"  
 18 I says, "I'm with the Utah Cattlemen's  
 19 Association."  
 20 He pulled me toward him. He said, "We're  
 21 so pleased to have you here. Would you sit in this  
 22 chair?"  
 23 I did. There were three or four chairs.  
 24 Sitting there all by myself, I didn't  
 25 know what I was doing. I sat there.

1 Some other people gathered around.  
 2 Pretty soon a TV camera that also was there.  
 3 There was several reporters. And it was  
 4 not until that moment that I realized I was setting in  
 5 a live press conference with her.  
 6 I was the second one to ask questions.  
 7 When I asked her the first question, and I don't  
 8 remember the details of the question, she was kind of  
 9 vague on the answer.  
 10 And then I said to her --  
 11 THE COURT: What was the date on this,  
 12 again?  
 13 THE WITNESS: Is February of 2003.  
 14 THE COURT: Okay, thank you.  
 15 THE WITNESS: She had just spoken to the  
 16 General Assembly, and I had made some notes of her  
 17 remarks wherein -- Would it be permissible for me to  
 18 read a couple of these things? Because this is the  
 19 reason why I went to speak to her.  
 20 BY MR. JENSEN (Resuming):  
 21 Q. Sure.  
 22 MR. BATTLE: Could we have some  
 23 clarification what we are reading from?  
 24 THE WITNESS: Yes. This is an excerpt  
 25 from her speech quoted by her in this magazine right

1 after the convention. This --  
 2 THE COURT: Now, now, let me just ask:  
 3 Is this a report of the press conference that you  
 4 personally attended that you just described?  
 5 THE WITNESS: This is from her speech,  
 6 here.  
 7 THE COURT: At that same conclave?  
 8 THE WITNESS: That's, that is correct,  
 9 sir.  
 10 THE COURT: All right. Okay, go ahead.  
 11 And what's the name of this publication  
 12 again?  
 13 THE WITNESS: Beef Business Bulletin.  
 14 THE COURT: Okay.  
 15 THE WITNESS: This is basically reporting  
 16 on activities that went on at the National Cattlemen's  
 17 Convention. Norton acknowledged that too often  
 18 Government works against ranchers instead of with them.  
 19 She recalled her first case as an  
 20 attorney defending a rancher, an experience that taught  
 21 her the Government is not always a friend, she, she  
 22 said. And she learned what it was to be on the  
 23 receiving end of Regulations.  
 24 "Our Administration is changing that  
 25 perception," she said, "and developing policies and

685

1 partnerships that make cooperation a reality. Part of  
2 the reason for the Government's willingness to work  
3 with ranchers comes from the top, President Bush.

4 "He knows that people who live on the  
5 land love their land, and know more about how to manage  
6 the land than anyone living in Washington, D.C."

7 She also said ranchers had become partners with the  
8 Government in managing public lands, and for that  
9 reason the Administration supports public-lands  
10 grazing.

11 "It is good for the land, good for the  
12 economy, and good for wildlife," she said.  
13 "Public-lands grazing is good for America."

14 I was, as you can imagine, so outraged  
15 when I heard those comments based on the letters I had  
16 read and the other conversations I've had with  
17 Interior. That was the impetus for me to go speak to  
18 her.

19 So while I'm in this press conference  
20 with her, I asked the question: "Secretary Norton," --  
21 I introduced myself, and I said, "Secretary Norton, in  
22 light of what you just said in the meeting today, I'd  
23 like to ask you a question.

24 "I have a letter from you of August. I  
25 believe, of 2001, written to Congressman Chris Cannon

686

1 in Utah, giving your support to the permanent  
2 elimination of grazing in southern Utah." I said,  
3 "Based on what you just said in the meeting, my  
4 constituency in Utah would like to know why you're  
5 doing that."

6 And she looked at me and she said, "I  
7 cannot answer that question." and the press conference  
8 came to a close, and I was immediately escorted out of  
9 the room.

10 BY MR. JENSEN (Resuming):

11 Q. My final question is: Have you had  
12 occasion to talk to Tom Fulton about his job?

13 A. I have. I do not have a date on this.  
14 Your Honor, but I did speak to Tom Fulton approximately  
15 a year ago.

16 I wanted to ask -- what I wanted to ask  
17 him was if he would be willing to come and testify in  
18 this Appeal Hearing, should it come about. It took me  
19 a while to track him down, because he was no longer  
20 with the BLM in, in Lands and Minerals.

21 And I tracked him down. He was working  
22 on the Lewis and Clark Expedition Centennial  
23 Celebration.

24 I said to him: "Tom, what are you doing  
25 there?"

687

1 he said, "well, Richard, you know how it  
2 goes." He said, "I, I just pushed too hard and they  
3 came and said, 'You're pushing too hard. You're going  
4 to cause problems. The enviros are going to come down  
5 on us.'"

6 He said it was like -- His analogy was it  
7 was like pushing snow with a snowplow. He said after  
8 you push so much, you can't push any more.

9 And so what they did was they took him  
10 out of that job and moved him over to work on the Lewis  
11 and Clark Expedition, because Tom Fulton was really on  
12 our side. He was trying hard to fix this, and so they  
13 moved him out of there because it was becoming a  
14 problem.

15 That was his words to me.

16 MR. JENSEN: Nothing further, Your Honor.

17 THE COURT: Thank you.

18 MR. KARKUT:

19 CROSS-EXAMINATION

20 BY MR. KARKUT:

21 Q. Well, Mr. Nicholas, in light of all of  
22 your testimony, what I'd like to hear from you is:  
23 Where is this specific problem that you, you are  
24 speaking of? Are -- Is this, is the ultimate statement  
25 that you wish to make that after all of these

688

1 conversations and all of these sympathetic audiences,  
2 the Department of Interior somehow directed a Decision  
3 to be made at the Monument?

4 Is, is that what you're trying to say?

5 A. That's not what I'd ultimately like to  
6 say. No, I'm hoping I can get the opportunity to say  
7 what I'd really like to say.

8 Q. Were you here yesterday?

9 A. I was.

10 Q. Did you hear Gregg Christensen's  
11 testimony?

12 A. I did.

13 Q. Do you remember Gregg Christensen saying  
14 that he determined the qualifications of the  
15 Canyonlands Grazing Corporation based on the  
16 Regulations?

17 A. I did.

18 Q. And that, that he was not told to make any  
19 decision; that he was not pressured in any way to make  
20 that decision?

21 A. I heard him comment on that, yes.

22 Q. Well, in light of that testimony, how can  
23 you be moving towards this, this theme that there was  
24 some sort of juggernaut from high directing this  
25 process? I mean, are you disbelieving his entire

689

1 testimony under oath?

2 A. No, I'm going by the letters that the

3 Interior Department officials wrote.

4 Q. Well, that's, that's not -- So you, in

5 spite of his testimony yesterday, you believe that he

6 was, he is forced to MAKE the decision that he did?

7 A. Absolutely. These letters say what they

8 say.

9 Q. Well, I've heard your summary of the

10 letters. I've, I've seen these letters, the Chris

11 Cannon letter, the Lynn Scarlett letter, the Gail

12 Worton letter.

13 I don't think those letters discuss the

14 permanent elimination of grazing in southern Utah as

15 you've characterized them, though. Is that, is that

16 what you're really saying was afoot with those letters,

17 that there is a Department goal permanently eliminating

18 grazing in southern Utah?

19 A. Could I, could I elaborate on that for my

20 answer?

21 Q. Well, sure. I'm asking you the question.

22 A. Let me see if I can connect the dots for

23 you. It's been stated in these Hearings that, by BLM

24 personnel here, that these grazing eliminations

25 actually took place back in the 1990s.

691

1 A. No. No, it -- I'm just trying to connect

2 the dots with the players, and I'll get you to where we

3 are today if you'll let me.

4 Q. Okay. And what other grazing eliminations

5 have taken place since then down here on the Monument

6 that you're concerned about?

7 A. Well, I don't know about the specific

8 names about them all.

9 Q. You do believe, you do believe, though,

10 that there have been Decisions eliminating grazing on

11 lands within the Monument since 1999; is that your

12 belief?

13 A. Since 1999?

14 Q. Correct.

15 A. I think there's been attempts to.

16 Q. And have those attempts succeeded?

17 A. Don't know yet.

18 Q. Well, there has been testimony in this

19 hearing, a great deal of testimony, which, you know,

20 during this hearing, where you have been in attendance,

21 that the issue that the Allotments that we're talking

22 about here are the Clark Bench Allotment, the Last

23 Chance, and the Big Bows Bench.

24 Have you heard testimony that those, the

25 Clark Bench and Last Chance, were, in fact, being

690

1 Q. Which grazing eliminations?

2 A. Well, there was some over on the Escalante

3 River.

4 Q. There, there -- I'll just help you with

5 the details: that there was a Plan Amendment that was

6 approved in March of 1999. -- I think that's what

7 you're referring to. -- whereby certain grazing

8 Allotments along the Escalante River were closed to

9 grazing.

10 And that was not protested by anybody.

11 A. That's correct.

12 Q. Okay.

13 A. And I'm talk --

14 Q. Is that what you're referring to?

15 A. But I'm talking about the results, the

16 grazing as was closed.

17 Q. Okay, what else are you referring to?

18 A. Okay, let me, let me just carry on here.

19 That's where it began, and that was in a previous

20 Administration.

21 Those grazing retirements were done with

22 the Grand Canyon Trust having an integral part to play

23 in that.

24 Q. Now, were you trying to challenge that

25 Land Use Planning Decision now?

692

1 grazed?

2 A. I have.

3 Q. How can they be being grazed if they have

4 been closed to grazing?

5 A. I didn't say they were closed.

6 Q. Okay. Well, I, I asked you about the

7 attempts, and you said you weren't sure.

8 A. No, I said they were attempted to be

9 closed. I didn't say they were.

10 Q. Oh, okay. So they weren't closed to

11 grazing.

12 Neither was the Big Bows Bench, but I

13 think because of the difficulties of grazing it hasn't

14 been grazed.

15 A. I, I can really connect the dots for you

16 if you'll let me just -- It's going to take me a

17 minute, but I can do it for you.

18 Q. Well, I'd like to hear, because I haven't

19 seen any connection so far.

20 A. Okay. I believe because I haven't made

21 it.

22 Q. I thought you've been trying to do it.

23 A. Well, I have, but every time I go to

24 start, you ask me another question, so it's going to

25 take me a minute.

1 Q. Your attorney will, also. I think that's  
2 what he's been trying to do, is help you connect the  
3 dots, too.

4 A. That's what attorneys do, is ask  
5 questions. Okay, here we go.

6 It started there. Now, it was obvious to  
7 me from the beginning when I came onto this situation  
8 that there was some participation by high-level people  
9 in the Interior Department.

10 I mean, Gail Norton would not participate  
11 in this thing for no reason at all.

12 If you go back and look at how this  
13 started on the Clark Beach, East Chance, and all the  
14 others, there was never any interest at that time as  
15 far as I'm aware that the Grand Canyon Trust wanted to  
16 hold a Grazing Permit to own it. They were paying  
17 ranchers to eliminate, or, excuse me, to relinquish  
18 their grazing rights, because --

19 Q. Now, what is the basis for that  
20 information?

21 A. Yep.

22 Q. No, no. I asked you, what is the basis  
23 for your testimony?

24 A. Their web site. In their web site it  
25 says, and this has been a question that has troubled me

1 from the outset. In their web site they say they  
2 guarantee to the public that once this rancher  
3 relinquishes his grazing rights, they guarantee that  
4 the BLM will amend its Management Plan and cancel the  
5 subject Grazing Permits.

6 And I've always wondered how it is that  
7 an environmental group can guarantee to the public that  
8 a Federal agency will take those type of actions unless  
9 the Federal agency has made a commitment to them that  
10 they will. That's a dangerous statement.

11 Q. Okay, Mr. Nicholas, let, actually let me  
12 let your attorney connect the dots, and let me ask you  
13 a couple of more succinct questions.

14 A. Okay.

15 Q. What is the foul here? What is the harm?  
16 What is the bad action that you're  
17 complaining about right here?

18 A. Because there was an attempt here to  
19 eliminate grazing from the Grand Staircase Monument in  
20 favor of an environmental group that had no interest in  
21 grazing. And I, I feel that it was done underhandedly  
22 and they did not follow due process, for example.

23 Q. Okay, let, let me stop you there for a  
24 second. There was an underhanded attempt to eliminate  
25 grazing, in your words?

1 A. Um-hum.

2 Q. Did that succeed?

3 A. Well, I don't think it's all done yet.

4 Q. So, in other words, you're concerned about  
5 a process that involves more than the Allotments that  
6 are at issue in this, this Hearing today. The Allots-,  
7 the Allotments at issue in this Hearing today, sir, are  
8 the Clark Beach Allotment, --

9 A. Um-hum.

10 Q. -- which, as you have heard, is being  
11 grazed right now and has not been closed to grazing;  
12 the East Chance Allotment, which has been grazed and  
13 has not been closed to grazing; and the Big Bowna Beach  
14 that has not been closed to grazing.

15 So, are we actually just hearing  
16 generalized grief, grievances from you about what you  
17 think is bad philosophy, bad policy that is being  
18 implemented somehow? And, and if you are -- I'm not  
19 trying to contest your sincerely held beliefs, sir.

20 A. Uh-huh.

21 Q. I've, I respect everybody's right to  
22 believe as he wishes. But I'm trying to understand the  
23 relevancy of that to this specific Hearing here, and  
24 the narrow issues on appeal here.

25 A. Okay, let me --

1 Q. And I'm -- It sounds to me like we're,  
2 we're speaking policy and philosophy on the one hand,  
3 versus legal issues on the other.

4 A. Let me, let me shorten it up for  
5 everybody's sake, then. Originally the Grand Canyon  
6 Trust, if you read their web site and all the other  
7 things that went on, wanted to close the grazing on  
8 these Allotments.

9 When Kane and Garfield County, and when  
10 the Utah Cattlemen's Association got involved in this,  
11 it threw a wrench in it to go. We protested those  
12 EAS.

13 After so much of that, it became apparent  
14 to the Interior Department and to the Trust that this  
15 was going to become really problematic. So in order to  
16 preserve their investment, if, if the -- Let me put it  
17 this way:

18 If the Allotments had been closed, or, or  
19 if they had not been closed, excuse me, if those  
20 Allotments had not been closed, those Permits would  
21 have been made available to another rancher, because  
22 back at the time I'm talking about, that, that was what  
23 the Grand Canyon Trust was doing. They would have lost  
24 their investment.

25 So when we threw a wrench in the cog by

1 protesting the Environmental Assessments and other  
 2 actions, what they did was they had to regroup and say,  
 3 in order to preserve this investment, the next best  
 4 thing was to get their hands on the Permit, to own the  
 5 Permit, because if they owned the Permit, then they had  
 6 some way to, to, to become qualified, if possible, and  
 7 maybe get a few cows, do this. Because if they didn't  
 8 get those hands on those Permits, and those Allotments  
 9 were not closed, they've lost their money.

10 Q. So it sounds --  
 11 A. But now that they've --  
 12 Q. Excuse me. May I ask you a question?  
 13 Sounds like you guys have been  
 14 investigating this fully. Then sounds like there was a  
 15 process underway that you had a great deal of concern  
 16 about, and you worked very hard.  
 17 You were very concerned that there was  
 18 going to be some grazing eliminated on the Monument,  
 19 and at the end of the day, grazing hadn't been  
 20 eliminated on those Allotment. It's -- So I think  
 21 you've probably done well for your, your constituents.  
 22 A. I don't feel too bad right at the moment.  
 23 Q. So I think you've actually succeeded in  
 24 accomplishing something that's very important to you,  
 25 and I think that actually further undermines your

1 testimony that there's something wholly and foul going  
 2 on here with respect to what's going on in the  
 3 Allotment.

4 Now, I'm -- I --  
 5 MR. JENSEN: Is there a question, other  
 6 than you just -- It --  
 7 THE COURT: Well, Mr. Nicholas has some  
 8 good statements, too.  
 9 MR. JENSEN: Well, I wanted to at least  
 10 swear him in, Your Honor.  
 11 MR. KARKUT: Mark, I testify to tell the  
 12 truth. Really, I asked Bob about the Witness box as a  
 13 soap box. Sometimes we forget about this podium.  
 14 BY MR. KARKUT (Resuming):  
 15 Q. But I guess the question is, don't you  
 16 feel that you have succeeded, then?  
 17 A. Not completely.  
 18 Q. And so is the battle still going on with  
 19 other Allotments?  
 20 A. I think it will.  
 21 Q. Uh-huh. Those Allotments are not part of  
 22 this Hearing, though, are they?  
 23 A. Well, what, what's --  
 24 Q. Yes or no?  
 25 A. No.

1 MR. KARKUT: Okay. I have no further  
 2 questions.  
 3 THE COURT: Mr. Battle?  
 4 MR. BATTLE: No questions.  
 5 THE COURT: Redirect, Mr. Jensen?  
 6 REDIRECT EXAMINATION  
 7 BY MR. JENSEN:  
 8 Q. As you understand the situation, Richard,  
 9 did the EAs purport to close those Allotments to  
 10 grazing?  
 11 A. Yes, they did.  
 12 Q. Have they been revoked?  
 13 A. No.  
 14 MR. JENSEN: Thank you.

15 RECROSS EXAMINATION  
 16 BY MR. KARKUT:  
 17 Q. Mr. Nicholas, do you understand the EAs to  
 18 be decision documents?  
 19 A. I think they're part of the process.  
 20 Q. So what does that mean? Are EAs --  
 21 A. Well, that means if the EAs can't come up  
 22 with the justification to take the proposed action,  
 23 the, the proposed action won't be taken.  
 24 Q. Okay, I just offer the information that  
 25 EAs are prepared during the Land Use Planning Process,

1 and then the Final EA that's released is made available  
 2 for protest, which is what I think your organization  
 3 protested. And then your organization protest was  
 4 denied.  
 5 State Director issued a Decision, so the  
 6 EA has been kind of subsumed in that process. But I  
 7 think the EAs were proposing to close those Allotments  
 8 to grazing, were they not?  
 9 And the ultimate decision was not to  
 10 close those Allotments to grazing. So, again, --  
 11 A. Well, I don't think the ultimate decision  
 12 has been made.  
 13 Q. Well, actually, Mr. Nicholas, the decision  
 14 has been made, and that's part of what we've been  
 15 talking about in these Hearings.  
 16 A. Aren't we naming an EIS?  
 17 Q. Oh, well, but that's a different issue,  
 18 sir. You're indicating concerns about EAs.  
 19 Those EAs led to the State Director's  
 20 Decision in January of '83, and it's those Decisions  
 21 that kept the Allotments open. What's happening in the  
 22 EIS is totally outside this Hearing.  
 23 So, I'm sorry. That was another speech,  
 24 I guess.  
 25 But in that respect I'd say to you,

1 really, congratulations, you know. Your group's done  
 2 well for -- But I guess, as you can tell, sounds like  
 3 the battle's going on.  
 4 A. Well, I just -- I, I worry about the fact  
 5 that somebody wants to use these Permits that has  
 6 demonstrated, I think, very descriptive, that they're  
 7 not really wanting to go into the cattle business, but  
 8 they're doing it in order to qualify for the Permit.  
 9 The interest is really not there.  
 10 I, I don't know why you would spend  
 11 \$103,000 to get somebody to give up their grazing  
 12 rights to have the Allotment closed, why would you do  
 13 that if you wanted to be in the cattle business?  
 14 MR. KARKUT: Well, Mr. Nicholas, maybe  
 15 we'll find out the answer on some of those questions  
 16 tomorrow, but they're certainly, certainly not ones I  
 17 can answer. But thank you for your testimony.  
 18 THE WITNESS: You bet.  
 19 MR. KARKUT: I have no further questions.  
 20 THE COURT: Mr. Battle?  
 21 Mr. Jensen?  
 22 MR. JENSEN: Just a little follow-up to  
 23 that.  
 24 THE COURT: Go ahead, sir.  
 25 RE-REDIRECT EXAMINATION

1 BY MR. JENSEN:  
 2 Q. Were Allotments closed in '99, within the  
 3 Allotment, to your understanding?  
 4 A. Yes, sir.  
 5 Q. Was it, generally speaking, the same  
 6 process that was used here?  
 7 A. My understanding, it was very much the  
 8 same process.  
 9 Q. And was the '99 set of closures  
 10 challenged?  
 11 A. No.  
 12 Q. So, do you think it would continue if it  
 13 was not challenged here, in your opinion?  
 14 A. Absolutely.  
 15 MR. JENSEN: Thank you.  
 16 MR. KARKUT: No further questions. I  
 17 just had to say, "No further questions."  
 18 THE COURT: Mr. Nicholas, thank you very  
 19 much.  
 20 THE WITNESS: Thank you very much, sir.  
 21 THE COURT: You're excused.  
 22 (Whereupon, at 5:09 p.m. MT, the above  
 23 witness was excused.)  
 24 THE COURT: Mr. Jensen, I leave it up to  
 25 you if you want to proffer another witness.

1 MR. JENSEN: May I have a moment?  
 2 THE COURT: Certainly.  
 3 (Whereupon, at 5:10 p.m. MT, Mr. Jensen  
 4 and Mr. Karkut conferred, off the Record, after which  
 5 the following occurred:)  
 6 MR. JENSEN: Yes, we'll do one more.  
 7 THE COURT: All right. Very good.  
 8 MR. JENSEN: We're going to call Brent  
 9 Robinson.  
 10 THE COURT: Mr. Robinson, good evening,  
 11 sir.  
 12 BRENT GLAZIE ROBINSON, called as  
 13 a witness by the Appellants, having  
 14 been first duly sworn, was examined  
 15 and testified as follows:  
 16 DIRECT EXAMINATION  
 17 BY MR. JENSEN:  
 18 Q. Good evening.  
 19 A. Hello.  
 20 Q. I promise not to take up too much of your  
 21 time. I'd just like to start off the Record by noting  
 22 that you're not here at your own free will, are you?  
 23 A. No, sir.  
 24 Q. Who -- did I subpoena you?  
 25 A. Yes, sir.

1 Q. And you're appearing because of that  
 2 Subpoena?  
 3 A. That's correct.  
 4 Q. Can you briefly explain to me and the  
 5 Court why you required a Subpoena?  
 6 A. It's in regard to a, kind of a (sic)  
 7 disclosure document that I had with Grand Canyon Trust  
 8 that the, basically says that I couldn't actively go  
 9 against anything that might derail the Agreement that I  
 10 had with the Grand Canyon Trust as far as really being  
 11 proactive in, in trying to eliminate the, the grazing  
 12 there on West Clark Bench.  
 13 Q. Okay, let's start there.  
 14 A. Okay.  
 15 Q. You previously owned the grazing  
 16 preference for, for the Clark Bench Allotment; is that  
 17 correct?  
 18 A. Yes.  
 19 Q. How long did you own it?  
 20 A. Ten years.  
 21 Q. What, in what timeframes are we looking at?  
 22 A. Well, I'm kind of guessing. I'm going to  
 23 say 1990, and I know for a fact, you know, until 2000,  
 24 June of 2000.  
 25 But roughly ten years.