May 18, 2004

**PREPARED BY**: Jerry Rodriguez, Refuge Manager, Browns Park National Wildlife Refuge

**SUBJECT**: Issues/Conflicts at Browns Park NWR

**PURPOSE OF BRIEFING DOCUMENT**: Provide historic view on issues and conflicts pertaining to Moffat County, Colorado State Land Board and Vermillion Livestock Ranch.

**Moffat County Land Use Board and Department of Natural Resources:** In the 1990's, Moffat County (County) created the Land Use Board (LUB) and later the Department of Natural Resources. As a result; the Northwest Colorado Working Landscape Pilot Project (Pilot Project) emerged which has evolved into the Northwest Colorado Stewardship Partnership (NWCS). The Pilot Project is an effort by the County to increase their role in management of Federal lands within the County. The County stated to the BLM, "...this means Moffat County wishes to make the decisions on how public lands will be used in Moffat County and that the Federal agency's role is to implement these decisions and manage the land." The County used the Pilot Project to claim roads in the Browns Park NWR (Refuge) under the provisions of RS-2477. County attempted to direct and manage the proposed Refuge Public Use Management Plan and attempt to locate the historic Fort Davy Crockett (*explained below*).

**Revised Statute 2477:** Civil War era law is found in Section 8 of the Mining Act of 1866 which states: *"The right-of-way for construction of highways over public land, not reserved for public uses, is hereby granted."* County's interpretation of RS-2477 is liberal and has adopted the policy that any road on Federal land "created" prior to 1976 (repealed by FLPMA) meets provisions of the statute and are protected by right-of-way (ROW). County also claims Congress gave States the authority in 1866 and all subsequent laws (*i.e.* Refuge Administration and Improvement Acts) are secondary and therefore do not apply. In 2003, the County passed a resolution adopting and recognizing ROW's established on Federal lands under RS-2477 and the jurisdiction to manage these ROW's. County has identified over fifty (50) miles of roads and dikes on Refuge and hundreds more on Dinosaur National Monument and Wilderness Study Areas. County is using RS-2477 to gain access to leased State Land Board (SLB) and fee title lands within the Refuge with reserved rights to explore for oil, gas, and minerals. Vermillion Livestock (Vermillion) has used RS-2477 as authorization to graze and move livestock across the Refuge while transferring between BLM allotments.

**Livestock - Grazing and Trespass**: In 1994, the Refuge determined livestock grazing as an incompatible use with regard to Refuge mission and purpose. However, cattle belonging to Vermillion continued to graze Refuge lands south of Green River, including leased SLB lands. Due to inadequate fencing and RS-2477, livestock accessed 5,284 acres (39%) of Refuge without permits or fees while the BLM allotment was essentially left ungrazed. Cattle were trailed on Refuge lands and roads without authorization.

Directed by Refuge Improvement Act, Vermillion and County were informed that livestock use is incompatible. Due to Colorado's "fence-out" law, Vermillion is quick to remind the Refuge to repair and construct fence to keep cattle out. Due to a history of moving and grazing cattle on the Refuge, Vermillion was notified that historic verbal "*agreements*" with the Refuge of the late 1980's are not valid. Vermillion also was notified that all livestock movements are restricted to County roads and BLM lands and use of Refuge is not authorized. This unauthorized grazing and use lead to the construction of the south boundary fence. Vermillion leases all lands in the headwaters of Beaver Creek and has developed nearly all springs which feed this drainage – FWS and Colorado Division of Wildlife own all the water rights in this drainage *(explained below).*

**South Boundary Fence – Water Gaps**: Refuge boundary shared with BLM was surveyed in 2002. In 2003, Refuge met with County, SLB, BLM, and Vermillion (twice) to discuss design and construction of fence. Vermillion's requests were: ***1)*** do not fence on boundary, but straight to improve livestock movement within BLM allotment, ***2)*** alter fence corners at three locations to provide access within allotment, ***3)*** increase number of water gaps to five, and ***4)*** use of refuge to stage cattle prior to departing allotment. In August 2003, Refuge informed the group that the fence contract would be out for bid in the coming weeks. In November, the fence was constructed on boundary, three water gaps provide access to the 4,550 acre BLM allotment, corners were altered at three locations and staging of livestock not authorized. Initial water gaps were created in 1979 and no official agreements were/or have been drafted. FWS is under no obligation to provide access to water for BLM permittee. During this process the SLB became involved and offered access to water if SLB and Vermillion determined access on refuge was not adequate.

**State Land Board Lands**: Since 1976, Refuge has leased 1,306 acres (2 parcels) from SLB for wildlife management purposes - annual payment of $3,000. In August 2000, FWS and SLB signed a purchase agreement to sell these lands to FWS for $252,935 using Migratory Bird Conservation Commission funding. The County in a January 2001 letter petitioned SLB not to sell lands to FWS because it would "*complicate and jeopardize the custom and culture of northwest Moffat County.*" T. Wright Dickinson (Vermillion) was a County Commissioner when this letter was submitted. In August 2001, SLB by letter notified FWS, stating *"we are not willing to proceed to closing until there is local consensus in support of this land transaction."* During the transaction, one lease expired and FWS was instructed not to make payment due to the pending land sale, the second lease expires January 2006. In March 2003, FWS communicated to SLB that FWS still wants to purchase these lands and, if SLB is unwilling to sell, FWS wants to renew the expired lease and remain the exclusive lessee. Days later, SLB notified FWS the purchase agreement was rescinded and was seeking to renegotiate the expired lease with input from the County, BLM, and Vermillion. As a result, SLB granted Vermillion a temporary grazing/water access permit on the expired lease and initiated a "study" to determine appropriateness of grazing *(explained below).*

**State Land Board Temporary Grazing Permit**: In March 2004, SLB and Vermillion met to evaluate the new fence and water gaps. Refuge was granted very short notice

about the meeting – Refuge unable to attend. SLB determined Davis draw water gap was inadequate for livestock and therefore granted Vermillion a 90 day permit for grazing and water (Green River) access. SLB stated FWS failed to meet conditions of lease and no payments received as justification for temporary permit. SLB authorized Vermillion to "open" the fence FWS constructed for access to water. When Vermillion was authorized to enter the BLM allotment, cattle were placed on the SLB land. SLB lands are not fenced from the Refuge and cattle quickly dispersed onto Refuge and Dinosaur NM lands for 30 days. Again BLM allotment was un-grazed. When cattle were moved to the western half of the BLM allotment, cattle were placed ½ mile short of the water gap and the trespass cattle spent the night on the Refuge (Warren marsh).

**State Land Board Grazing Study**: In August 2003, Vermillion proposed a "pilot project" to determine the appropriateness of livestock grazing on SLB lands. In March 2004, Refuge received a *Request For Proposal* (RFP) of the proposed "grazing project" with no advance notice and given two days to comment. The RFP requested livestock and watering management plans, assessment of livestock watering resources, and vegetation inventory. The Refuge in a letter to SLB stated the RFP did not meet FWS standards with regard to wildlife management and did not support the proposal. Browns Park valley has long history (100+ years) of significant livestock grazing and encouraged SLB to consider a study with no livestock grazing. This proposal was quickly dismissed. The Refuge encouraged the SLB to amend the RFP to monitor migratory birds and small mammal populations. SLB authorized $25,000 on a five year project. The FWS withdrew lands from the study; however the SLB strongly encouraged FWS to participate. SLB formed a committee to select the contractor for the study - Vermillion was granted one of six seats. SLB lands currently are fenced in with Refuge lands, SLB has not suggested how or when these lands will be surveyed and fenced to keep cattle off the Refuge. SLB intends to graze both parcels next year, despite FWS having a valid and current lease on one parcel.

**Public Use Management Plan**: In 2003, Refuge proposed a Public Use Management Plan as a step-down plan to the Comprehensive Conservation Plan (CCP) approved in 1999. The purpose of the Public Use Plan was to address and ensure all public uses are compatible. Probable incompatible uses include camping, camp fires, picnicking, horseback riding, ATV's, and floating/river boat use. Also, Dinosaur NM has concerns that boat traffic from the Refuge has a negative impact on the Monument's facilities down-river. The County became aware of the proposed Public Use Plan and asked Uintah County, Utah to become involved with Refuge issues in Colorado. Uintah County is supportive and perhaps a partner of Moffat County with regards to RS-2477. In an effort to direct a Federal agency's management through the Pilot Project, the County requested cooperating agency status and access to management decisions prior to public comments and review. At the direction of the Assistant Regional Director, the planning effort was postponed as a result of higher biological priority projects.

**Historic Fort Davy Crockett**: A trading post known to have existed in the Browns Park valley between 1837 and 1840 was known as Fort Davy Crockett (Fort). Two other posts operated in the Browns Park valley in 1832 and 1834. In 1976, NPS archaeologist

examined a site believed to be the Fort and this site is on the National Register of Historic Places recorded as site 5MF605. A retired land surveyor believes site 5MF605 is not the Fort but another location on the Refuge. The County expressed great interest in obtaining $2,000 from FWS to secure a grant to examine this other site. The Refuge declined to provide funding and informed the County of limited discretionary funding. In addition FWS believes 5MF605 is the Fort. The County contacted DOI staff in an effort to encourage Refuge to provide funding. No funding was provided. The County secured a grant from the State to examine the second location and in May 2004 conducted a preliminary survey through Ft Lewis College. It is unlikely this particular site has significant cultural resources. However, County has referenced Refuge lands with oil, gas, and mineral rights owned by private and County interests including the Museum of Northwest Colorado (Museum) in this general area. Museum, recently has engaged in agreement(s) with an oil and gas company to lease mineral interests in the Browns Park valley.

**Oil, Gas, and Minerals**: Inspection of Moffat County Commissioner meeting minutes – oil, gas, and mineral rights are actively being pursued and leased in the County through the Museum. The Museum owns mineral rights/interests within the Refuge. According to the County Land Use Board and Commissioner meeting minutes, discussions and approval of leases is occurring. The County is actively pursuing gravel sites in the Browns Park area, including the Refuge. Top ten taxpayers in the County are energy related industry.

**Beaver Creek and Water Rights**: The FWS and Colorado Division of Wildlife (CDOW) own all (100%) of the water rights within Beaver Creek drainage. The headwaters of this drainage are within Vermillion Ranch's private and BLM and SLB grazing allotments on Cold Springs Mountain. Dozens of springs feed Beaver Creek as it meanders down toward the Refuge. Recent findings indicate that many, if not all springs and have been developed for livestock watering ponds. Some springs have two livestock ponds, the second impoundment stores water which over-flows the first impoundment. As a result, very little water from these springs is feeding Beaver Creek denying the Refuge and CDOW its water rights. Beaver Creek is used to irrigate grassland meadows and feed the 110 acre wetland on the Refuge as well as sustain a trout fishery and critical riparian habitat.