



United States Department of the Interior

OFFICE OF THE SOLICITOR

Honorable Peter D. Keisler
Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave, N.W., Room 3601
Washington, DC 20530

MAY 17 2006

Re: "Acknowledgement of the Actions Taken or To Be Taken By the Parties In Resolution of Plaintiffs' Claims" *Western Land Exchange, et al. v. P. Lynn Scarlett, et al.*, Civ. No. 05-CV-76 (D. Wy.)

Dear Mr. Keisler:

I have reviewed the settlement acknowledgement referenced above. I am satisfied that it resolves this litigation in an acceptable manner. I am including with this correspondence a Memorandum dated April 28, 2006, from the Bureau of Land Management, the agency within the Department of the Interior affected by the litigation, accepting the terms and conditions of the settlement acknowledgement.

Please make sure that appropriate documentation of plaintiff's dismissal of its lawsuit is forwarded to my office.

If you have any additional questions regarding this matter, please contact Veronica Larvie, Division of Land and Water, at (202) 208-4038. I appreciate your efforts in resolving this litigation.

Sincerely,



David L. Bernhardt
Deputy Solicitor

Enclosure

cc: Mr. Felix Baxter, Director, Federal Programs, Civil Division
Kathleen Clarke, Director, Bureau of Land Management



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828



In Reply Refer To:
8300 (930)

APR 28 2006

Memorandum

To: Veronica Larvie, Division of Land and Water, Branch of Public Lands
Office of the Solicitor, 1849 C Street NW, MS 6412, Washington, D.C.
20240-1050

From: State Director, Wyoming

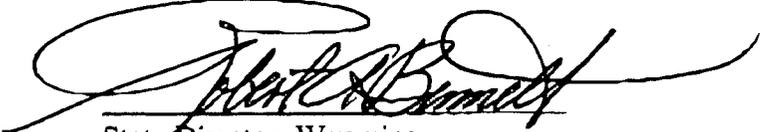
Subject: Settlement of the Lawsuit: Western Land Exchange, et al. v. P. Lynn
Scarlett, et al., Civ. No. 05-CV-76 (D. Wyo.)

We have reviewed the settlement acknowledgement you forwarded to us earlier this week. We are in agreement with the terms and conditions of the settlement and anticipate no problems carrying out the specific items that are our responsibility.

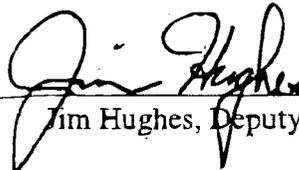
We see no reason to delay signing the Settlement Agreement.

We have, in fact, already begun to work with the Church of Jesus Christ of Latter-day Saints to implement the settlement agreement. We are projecting at this time that we will complete all the action items this summer season.

If you have any questions, please do not hesitate to contact us.


State Director, Wyoming

I concur:


Jim Hughes, Deputy Director for Programs and Policy

ACKNOWLEDGMENT OF THE ACTIONS TAKEN OR TO BE TAKEN
BY THE PARTIES IN RESOLUTION OF PLAINTIFFS' CLAIMS IN
WESTERN LAND EXCHANGE, et al. v. P. LYNN SCARLETT, et. al.,
Civ. No. 05-CV-76 (D. Wy.)

The parties to the above-referenced civil action, desiring to resolve this lawsuit informally, set forth and describe herein the actions to be taken, or that have already been taken, by the respective defendants, consisting of P. Lynn Scarlett in her official capacity as Secretary of the Interior, Kathleen Clarke in her official capacity as Director of the Bureau of Land Management ("BLM"), and the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints ("CPB"), in exchange for which plaintiffs will dismiss their lawsuit without prejudice pursuant to a stipulation of dismissal to be filed in Court in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure. Defendants, by undertaking the actions described herein or by having already voluntarily undertaken such actions, do not thereby admit to any liability in relation to plaintiffs' claims and do not concede that the Court has jurisdiction over this civil action. It is furthermore agreed by and between the parties that each party shall bear its own fees and costs relating to this litigation.

Pursuant to these understandings, the actions to be taken or that

have already been taken by the respective defendants are as follows:

INTRODUCTION

Martin's Cove and Devil's Gate are historically significant lands owned by the United States Government and managed by the BLM. The Trails leading to these historic sites are privately owned by CPB. CPB has leased the Martin's Cove property from the BLM to preserve its unique historic, educational and natural scenic character. Under the lease agreement, CPB is required to provide public access through its property to the public lands. Signs indicate the boundary lines between CPB and federal, public lands.

ACCESS TO MARTIN'S COVE

1. Public parking and public access to Martin's Cove and Devil's Gate have been established at a clearly marked location, separate from the Mormon Handcart Visitors' Center.

2. Martin's Cove and Devil's Gate will be open to public use without discrimination for historical, educational, and scenic purposes.

SIGNAGE

CPB has altered at its own expense signs existing on its private property, the Mormon Handcart Visitors' Center and Sun Ranch (the

"Ranch"), located at 47600 W. Hwy. 220, Alcova, Wyoming 82620. In specific part:

1. The three brown signs and a green sign at the entrance to the Ranch from State Highway 220 have been removed and replaced by a large brown informational sign that gives the distances to the public access parking lot and the Mormon Handcart Visitors' Center and Sun Ranch. This sign was manufactured in a color that is different from the shade of brown that is used by the BLM and other federal agencies so as to avoid confusion over whether the sign is a government sign. (*See Attachment 1 [photograph of sign].*)

2. The green sign located at the approach to the public access parking has been replaced by an enlarged and simplified brown sign that is distinguishable from the signs used by the BLM and other federal agencies.

The text of this sign now states as follows:

"The Mormon Handcart Visitors' Center is owned and operated by The Church of Jesus Christ of Latter-day Saints. Visitors Welcome.

To reach Martin's Cove or Devil's Gate without going to the Visitors' Center, follow signs marked 'public access.'"

(See Attachment 2 [photograph of sign].)

3. The public access parking signs at either end of the public access parking lot have been enlarged and constructed so as to be distinguishable from the signs used by the BLM and other federal agencies.

(See Attachments 3, 4, 5 [photographs of signs].)

4. Trail-access signs to Martin's Cove and Devil's Gate have been placed along the trail to assist visitors. (See Attachments 6, 7, 8, 9.)

5. A sign has been placed along the trail to inform visitors when they are entering BLM property. It advises visitors to remain on the trail for their safety. (See Attachment 10.)

INTERPRETIVE DISPLAYS

1. The BLM will alter the interpretive panel that references Martin's Cove and is located at the Devil's Gate turnout from Highway 220 by removing from this panel any reference to the Mormon Handcart Visitors' Center. The location of this interpretive panel is marked "Devil's Gate Interp Site BLM" on the attached color graphic. (See Attachment 11.)

2. The BLM will add an interpretive kiosk at the beginning of the

public access trail near the public access parking lot, as indicated on the attached graphic. (See Attachment 11.) Although the BLM otherwise retains sole discretion over the design and content of this interpretive kiosk, the BLM will do the following:

- a. The kiosk will introduce visitors to Martin's Cove and Devil's Gate and explain their significance. The kiosk will be designed and developed by the BLM along the lines of those that exist at the National Historical Trails Interpretive Center in Casper, Wyoming, or at other Federal Historical Sites, such as the signs describing Devil's Gate at the turnout off of Wyoming State Highway 220, just short of Martin's Cove.
- b. The BLM's logo will appear on the interpretive panel to be included as part of the kiosk;
- c. The interpretive kiosk will include the following statement:

"Welcome to Martin's Cove. The public access trail crosses land owned by The Church of Jesus Christ of Latter-day Saints, leading to the public land leased from the BLM. Church volunteers are stationed along the trail on the leased public land to ensure the safety of visitors and to protect this historical site. These volunteers are not employees of any government agency, and any views they express are not those of the United States government or any of its agencies."
- d. The BLM will provide copies of a brochure at this interpretive kiosk describing the historical significance of the area, including Martin's Cove and Devil's Gate. The content of this brochure will be taken from historical sources. CPB will maintain a

supply of brochures at the kiosk.

- e. The brochure will include contact information for the BLM. This contact information will be general in nature and will not invite or discourage complaints from the public. The BLM will respond to any complaints received about Martin's Cove pursuant to its customary practices.

3. The BLM will place an additional interpretive panel at the entrance to the leased public land at Martin's Cove. (*See Attachment 11* [location marked "Public Land Begins Here"].) The BLM will be solely responsible for the panel's content which will be derived from historical sources and will explain the historical significance of Martin's Cove.

4. The BLM will remove the interpretive panel – or eliminate the introductory language on the panel – on the leased land entitled "Survival in the Cove." (*See Attachment 11* [location marked "Remove/Alter Interpretive Panel"].) The BLM will have sole discretion about whether to replace this interpretive panel or not. If the BLM chooses to install an alternative interpretive panel, the BLM will be solely responsible for its design and content. CPB will pay reasonable expenses associated with the removal and possible replacement of this interpretive panel.

5. The BLM will provide a new interpretive panel at the start of the

trail on CPB property that leads to Devil's Gate. (See Attachment 11.) The BLM shall have sole discretion over the design and content of this panel, except that the panel will be derived from historical sources and will explain the historical significance of Devil's Gate.

OPERATIONAL PROCEDURES

1. The BLM's Wyoming State Director will send a letter to CPB to acknowledge that the BLM and CPB have consulted regarding the Visitation Guidelines to be issued by CPB regarding Martin's Cove. (See Attachment 12 [copy of letter].) This letter will also confirm that the Visitation Guidelines cannot be modified or amended without prior consultation between CPB and the BLM. The Visitation Guidelines, which are attached hereto as Attachment 13, address operating hours, visitor conduct, and expression. The BLM will post these Visitation Guidelines, and any modifications or amendments to the Visitation Guidelines, on its web page. See www.wy.blm.gov. CPB will be responsible for posting the Visitation guidelines at the interpretive kiosk at the public access parking lot, the location of which is indicated on the attached graphic (see Attachment 11), and at such other locations on its property as CPB might at its discretion

decide.

2. The BLM's Wyoming Office will send a second letter to CPB (*see* Attachment 14 [copy of letter]) to clarify the role that Church volunteers fulfill when stationed on the federal land at Martin's Cove.

LOGOS

The BLM acknowledges that CPB will not appear on any signs or interpretive panels positioned on the leased public land in Martin's Cove. The Church's logo shall not appear on any BLM sign or BLM interpretive panel on the public access across Church-owned property. If CPB decides to place a sign or interpretive panel on the public access, such sign or interpretive panel shall prominently display the Church's logo. The BLM's logo will not appear on any signs on CPB property except for the interpretive panel at the "public access point," which will be designated as a BLM interpretive panel, and on the sign that currently exists on the trail to Martin's Cove.

DISMISSAL WITHOUT PREJUDICE

Upon execution of this document by all parties, plaintiffs, by and through their counsel, will dismiss their lawsuit without prejudice pursuant to a stipulation of dismissal to be filed in Court pursuant to Rule 41 (a)(1) of the Federal Rules of Civil Procedure.

NO LEGAL RIGHTS CREATED

Notwithstanding anything in this document, the parties and their counsel acknowledge and agree that this document is not a settlement agreement or contract and that it creates no legal or equitable rights whatsoever, whether in the parties, their counsel, or third parties, and does not in any way constitute an admission. Nothing in this document shall alter or abridge the rights of the parties under the terms of the Martin's Cove Lease dated October 26, 2004. In the event plaintiffs or their counsel conclude that the actions described in this document have not taken place, are no longer occurring, or are otherwise unsatisfactory, their sole legal remedy shall be to re-file their civil rights action against some or all of the defendants. Nevertheless, the parties and their counsel acknowledge the usefulness of good-faith dialogue and compromise in these matters and

express the hope that informal means can be used to resolve any concerns that may arise in the future.

Executed effective this ____ day of _____, 2006.

ON BEHALF OF PLAINTIFFS

Mark J. Lopez
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

ON BEHALF OF THE GOVERNMENT DEFENDANTS

John R. Tyler
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Room 7344
Washington, D.C. 20560

ON BEHALF OF INTERVENOR CPB

Michael J. Sullivan
Rothgerber Johnson & Lyons, LLP
123 West 1st Street, Suite 200
Casper, WY 82601

Attachment 1



Attachment 2



Attachment 3



Attachment 4



Attachment 5



Attachment 6



Attachment 7



Attachment 8



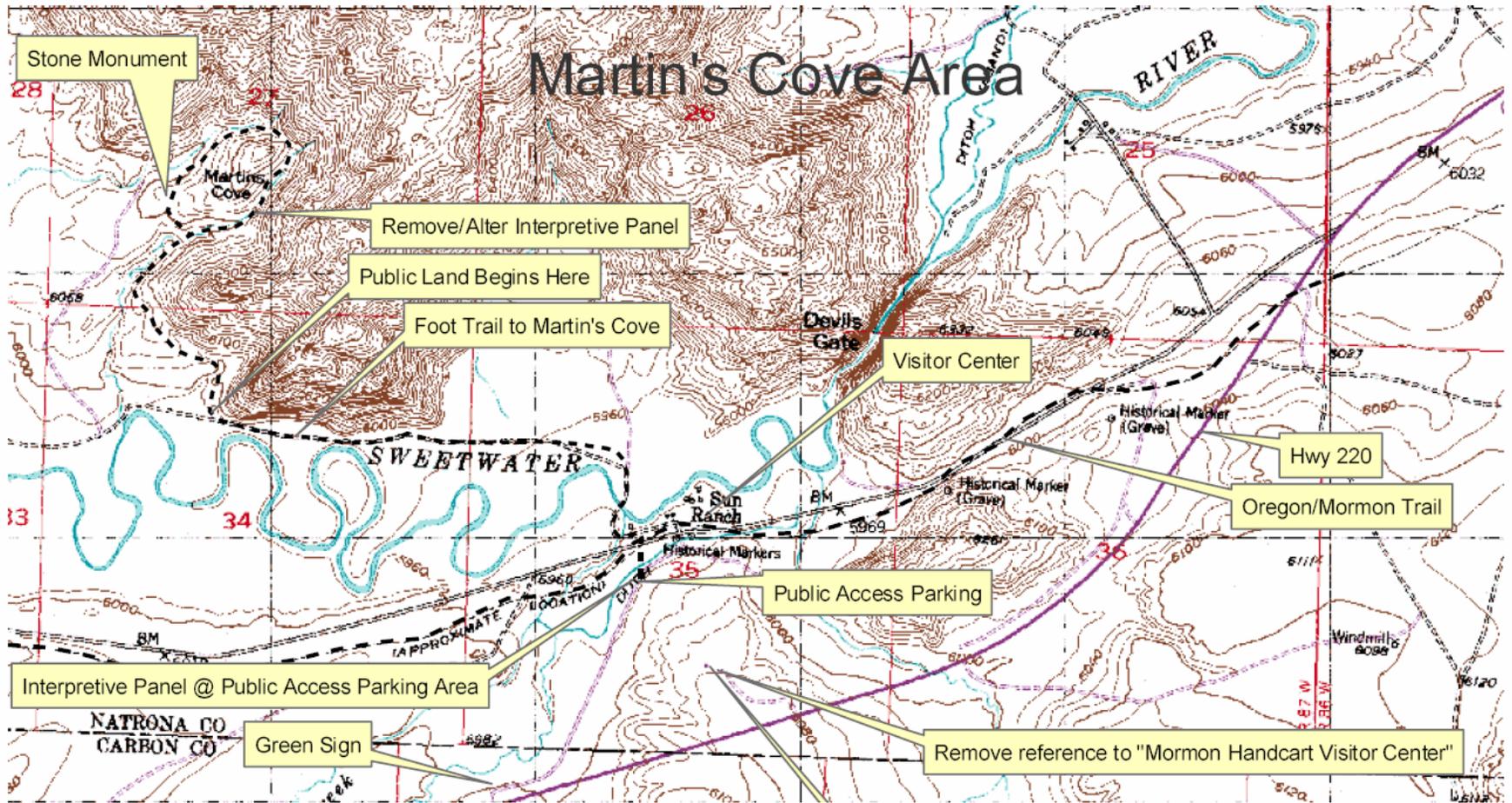
Attachment 9



Attachment 10



Attachment 11 - Map of Martin's Cove Area



Attachment 12

[Letter from BLM's Wyoming State Director to CPB acknowledging that BLM and CPB have consulted regarding Visitation Guidelines]



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1838

Cheyenne, Wyoming 82003-1838



In Reply Refer To:

8300 (930)

APR 28 2006

Bishop Keith B. McMullin
Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
50 East North Temple COB 18
Salt Lake City, UT 84150

Dear Bishop McMullin:

After consultation, the Bureau of Land Management (BLM) and the Corporation of the Presiding Bishop of the Church of Latter-day Saints (CPB) agree that the attached Visitation Guidelines are to be implemented for Martin's Cove and Devil's Gate. It is further understood that these Visitation Guidelines are not to be modified without prior consultation with the BLM.

We would also like to inform you that a copy of the attached Visitation Guidelines will be posted on BLM's website. We further understand that the CPB will post these Visitation Guidelines, and any future modifications thereto, at an appropriate place on CPB property near, or at, the public access trail to Martin's Cove and Devil's Gate.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Bennett".

Robert A. Bennett
State Director

Attachment

Attachment 13

Visitation Guidelines

Welcome to the Mormon Handcart Historic Sites, Martin's Cove and Devil's Gate. The Visitors' Center, Tom Sun Ranch, and trails leading to the public lands at Martin's Cove and Devil's Gate are private property owned by the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints. The Church has leased the Martin's Cove property from the United States Bureau of Land Management (BLM) to preserve its unique historic, educational, and natural scenic character. Public access is provided on specified Church-owned trails leading to Martin's Cove and Devil's Gate. Signs indicate the boundary line between Church and federal public lands.

To make your visit safe and enjoyable, in addition to all existing applicable federal regulations, the following guidelines have been established.

General Visitation Guidelines. Martin's Cove will be open to public use without discrimination for historical, educational, and scenic purposes.

No fees will be charged to visit Martin's Cove.

Martin's Cove will be open for public use from dawn to dark (twenty minutes after sunset). Martin's Cove and the public access to Martin's Cove may be closed only for emergencies involving public safety; protection of the environment and historical values of the area; or weather.

All public use should be confined to designated trails and areas.

Visitors to the leased public lands at Martin's Cove have the same rights regarding expression as visitors to any other Department of Interior site that is open to the public.

The following activities are prohibited at Martin's Cove:

- Camping and associated campfires.
- Using illegal drugs or alcohol.
- Smoking.
- Littering.
- Hunting.
- Horseback riding.
- Discharging firearms.
- Displaying commercial advertising.
- Disturbing archeological or historical artifacts or remains.
- Removing soil, rocks, and gravel.
- Using off road vehicles.
- Relic hunting and the use or possession of a metal detector.
- Removal of natural products (such as wood products, plants or wildflowers).

Miscellaneous. Rattlesnakes are indigenous to the area. For your safety and to preserve the fragile environment, please stay on designated trails and areas.

Be prepared for inclement weather. Take proper clothing, sunscreen, water, and snacks. Those with serious health conditions should not use the trails. Children should be accompanied at all times by a responsible adult. Picnics are permitted in appropriate areas provided all food and trash are removed. Please avoid any conduct or activity that might endanger others.

First Aid is available at the Visitors' Center. Restrooms are located at locations along the trail.

Attachment 14

[Letter from BLM's Wyoming Office to CPB clarifying role that Church volunteers to fulfill when stationed in Martin's Cove]



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828



In Reply Refer To:

8300 (930)

April 28, 2006

Bishop Keith B. McMullin
Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
50 East North Temple COB 18
Salt Lake City, UT 84150

Dear Bishop McMullin:

This letter clarifies the role that Church volunteers fulfill when working on leased public lands at Martin's Cove. Specifically, Church volunteers must take the following actions when working on the leased lands in Martin's Cove:

1. Church volunteers will limit their activities to (1) ensuring that visitors remain on designated areas and trails; (2) monitoring the area to protect against vandalism or damage to the land; and (3) providing visitor assistance.
2. All Church volunteers must wear badges that identify them as Church volunteers.
3. Church volunteers will not promote religion, except that Church volunteers may respond to questions from visitors, but they should wait for visitors to approach them or ask questions rather than volunteering information on their own initiative.

We appreciate the Church's willingness to provide volunteers to help protect and manage Martin's Cove.

Sincerely,

Robert A. Bennett
State Director