



STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>


Complaint attachments (4)

1 message

Lillian Norman <lilnorm38@gmail.com>
To: amy.eschberger@state.co.us

Thu, Mar 28, 2019 at 6:54 PM

4 attachments

 **scan269.pdf**
232K

 **ADDITIONAL INFORMATION REGARDING THE HISTORY OF BNF.docx**
18K

 **DRMS COMPLAINT INFORMATION.docx**
19K

 **BNF LILLIAN 1.pdf**
1088K

DRMS COMPLAINT INFORMATION

DATE: 03/26/2019

NAME: Lillian Norman,
Treasurer, Board of Directors
Bent's New Fort Foundation

ADDRESS: P.O. Box 843
Lamar, CO 81052

E-MAIL: lilnorm38@gmail.com

PHONE: 719-336-4079 (If no answer, please leave message of call cell)

ALTERNATE PHONE: 719-688-5291 (Cannot leave message, but will recognize number and return call)
(No texting capability)

CONNECTION TO INCIDENT: Land Owner; Observed incident; Other: Board of Directors,
Bent's New Fort Foundation

LOCATION OF CONCERN:

A tract of land lying in Indian Claim #22 same being a portion of Sec. 35 and 36, T.22S, R.48W., 6th P.M., being more particularly described as follows: (See attached Land Survey Plat for complete Description of Tract.)

Directions to Site: The site is located in eastern Bent County and is south of Hwy 50. (The site is much closer to Lamar than it is to Las Animas, and can be easily accessed by traveling either west from Lamar (westbound lane), or east from Las Animas (eastbound lane). Regardless of whether you are traveling in the westbound lane or the eastbound lane, you must watch carefully for the small brown historic marker sign that says "Bent's New Fort" on your right, and then immediately following you will see the RD 35 sign on the south side of the highway. A relatively short distance after turning south on RD 35, you will come to a "T" where RD35 intersects with RD JJ. Turn east (left) on RD JJ, which will end very soon. At that point turn south (right) on RD 35.25 and follow it as it angles southwest along a fence line. (If there is no sign on RD 35.25, don't worry – just consult a copy of the attached survey and you will get your bearings.) As the road angles, you will see the "Bent's New Fort" sign on your right. To find the property where the mining took place, watch for the "Keep Out" sign(s) that the mining company put up. – You will, however, still be on Bent's New Fort property, but just keep on the road that follows the fence line until you come to the point where Road 35.25 intersects (and ends) with Bent's New Fort property line (see survey). The point of encroachment and bank erosion can easily be seen by following the old fence line southwest.

INCIDENT COUNTY: Bent County

Ongoing Issue?: YES, the residual effects of encroachment, erosion, and lack of reclamation definitely reduces the effectiveness of Bent's New Fort Foundation in providing continued and comprehensive stewardship to the land. It also makes it impossible to build a much needed, well anchored safety and security fence along the Fort's property line.

NATURE OF COMPLAINT:

Illegal Mining (?)

Mine Plan Compliance (?)

Off-Site Damage

Reclamation Compliance

Erosion

Other: Encroachment Preventing Needed Safety and Security Fence

DESCRIPTION OF THE ISSUES:

This complaint and request for a Division of Reclamation, Mining and Safety Investigation is being made on behalf of the Board of Directors of Bent's New Fort Foundation, which was formed in 2016, and the Semmens Family, including current property owners of the historic site, Brad Semmens and his cousin Gary McCall. Semmens Family members have conscientiously provided responsible stewardship of the land for 114 years.

It is the desire of the Board of Directors that this responsible stewardship continue and that our concern for the land and the environment become a visible tribute to the Native Americans for whom we have great respect. It is our hope and belief that the progress made thus far, to make Bent's New Fort accessible to all who want to visit and learn, will continue. We believe that an investigation by the DRMS may clarify the issue at hand that is hampering our progress - and lead to a solution that will allow us to proceed in a safe and respectful manner.

This complaint is based on the following:

1. The south property line of the Bent's New Fort (BNF) property has been encroached upon during the process of construction mining that was taking place during, but not limited to, the years of 2008-2009, a time frame during which the encroachment was discovered and witnessed by the Semmens Family. (This is substantiated by a photograph that was submitted to the National Park Service for the American Battlefield Protection Program grant in 2009. A copy of the photograph will be attached to this complaint.)
2. Erosion that has taken place, and is continuing to take place, appears to have been caused by the mining equipment being operated under the surface of the property line, where an old fence was, and still is, visible.
3. There is no visible evidence now, and Semmens Family members maintain that there was never any evidence, of reclamation having been undertaken by the company doing the mining.
4. The Board of Directors and the Semmens Family see no way that a badly needed fence can be built for the safety of visitors and security of the property – especially on land that has been eroded at the top of a very steep drop-off. (A fence that might be supported by concrete pillars extending over the drop-off could be cost prohibitive.)

Has the party conducting the operation been contacted? Yes, the irrigation company doing the mining was contacted in 2008 (estimated) by Semmens Family members and present owners Brad Semmens and Gary McCall. (This year was approximately eight years before the non-profit foundation status was acquired in 2016, and nine years before the community Board of Directors was appointed. Semmens and McCall are not able to remember the exact date they attended a board meeting of Amity Irrigation Company, but they estimated the year based upon the date the survey was completed – and the survey

substantiated their claims that encroachment was likely to happen, based on their assessment of the way the digging was being aggressively pursued. However, they do remember that they were not treated respectfully by either the Amity board or their attorney and believe that their efforts to reach some agreement, or slow down the process, failed. They remember the meeting as one where they sensed that private adjoining land owners were no match for companies that were accustomed to dominating a given situation. (Tri-State Generation was named on the copy of the attached photograph. That may have been because Tri-State reportedly owns 49% of Amity – but that has not been verified.) The Board of Directors has only been aware of the situation for less than two years, but is of one mind that the appropriate way to proceed is with an investigation.

Name of Operator: Amity Mutual Irrigation Company. (When researched on-line, no mining permit was located.)

Have Other Agencies Been Contacted About This Issue? NO.

ADDITIONAL INFORMATION:

Three attachments to this complaint:

1. Copy of photograph submitted to National Park Service American Battlefield Protection Project grant in 2009.
2. Copy of survey of Bent's New Fort property commissioned in 2008.
3. INFORMATION SHEET REGARDING THE HISTORY OF BENT'S NEW FORT

No contact preference; may contact by phone, e-mail – or US mail.

ADDITIONAL INFORMATION REGARDING THE HISTORY OF BENT'S NEW FORT

The Board of Directors of Bent's New Fort Foundation (BNF Board), along with the site's current property owners, has for the past year seriously considered its responsibilities to further investigate the archeology and history of Bent's New Fort (BNF), and to continue preparations for the full-scale opening of the site to the public. In the process the BNF Board has developed a keen awareness that the demands of stewardship can be very heavy. Heavy and difficult, yes, but 1) absolutely critical for the historical preservation of Bent's New Fort; 2) critically important for the protection of our environment; and 3) essential for the expanding knowledge and appreciation of those who follow.

The more recent history of Bent's New Fort includes the past 114 years of stewardship by the Semmens Family, who dedicated themselves to protecting the site until it could be developed and recognized for the historical importance it holds. The Fort's property, in eastern Bent County, was purchased in 1905 by John Squire Semmens, the great grandfather of current owners Brad Semmens and Gary McCall. The grandson of John Squire Semmens, Gideon Semmens, now 92 years old, and his wife Mary Lou, are, to this day, active supporters in the development of Bent's New Fort. Their presence, participation, and the recall of facts that Mr. and Mrs. Semmens offer, gives Board members enthusiasm and energy to carry on with their work.

The narrative that follows is selected and/or paraphrased to capture pertinent historical documentation that was transmitted to the National Park Service in 2009 for the purpose of obtaining Battlefield Protection Program grant funding. This documentation briefly explains how Bent's New Fort is integral not only to the stories and connections of William Bent (founder of both Old Fort and New Fort), but also and Creek Massacre National Historic Site as well.

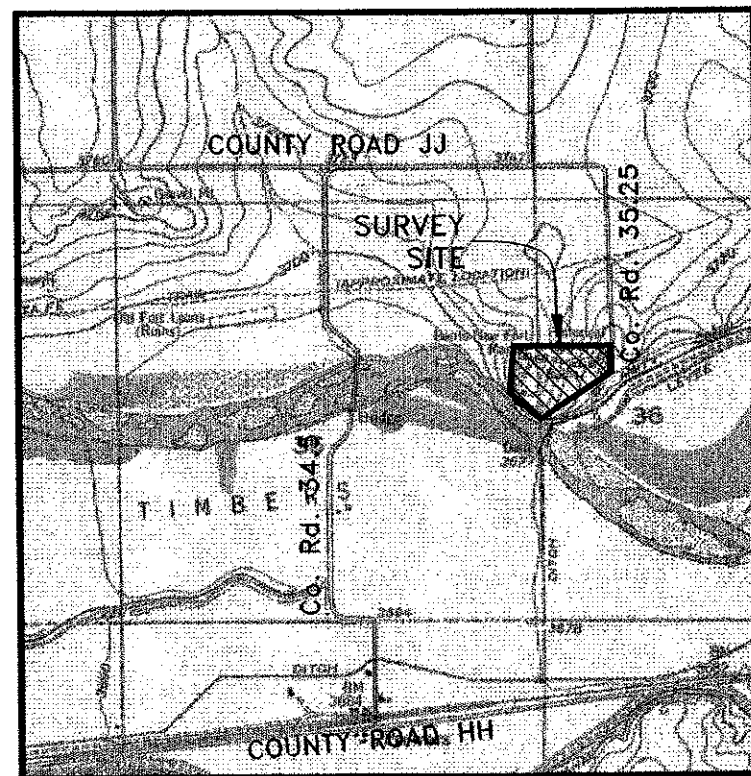
The battlefield significance of Bent's New Fort is important to consider:

- William Bent built Bent's New Fort on the Arkansas River in 1853. It became the Upper Arkansas Indian Agency, and was the site of the Fort Wise Treaty. Under the good faith of the Treaty, Indian Commissioner Greenwood gave Chief Black Kettle a U.S. flag (then 33 stars) that was flying on the day of the Sand Creek Massacre, November 29, 1864.
- The Cheyenne & Arapahoe Tribes received annual annuities at Bents New Fort, and the US Army used the Fort as a re-supply post until the construction of Fort Wise in 1860, which was located approximately 1/2 mi. from Bent's New Fort. The Army then leased Bent's New Fort to be used as a commissary for Fort Wise. In 1862, Fort Wise became Fort Lyon, (retaining its close proximity to BNF).
- Fort Lyon, August 1864: Maj. Wyncoop received a letter from Chief Black Kettle concerning a trade for captives. This letter led to the Camp Weld Council in Denver on September 28, 1864.
- Following their attendance at the Camp Weld Council, the Cheyenne & Arapahoe Peace Chiefs began their return to the Fort Lyon/Bent's New Fort area.
- Col. Chivington's Indian expedition later reached Fort Lyon, and marshaled at Bent's New Fort. There, on the evening of November 28, 1864, Chivington gave his troops their final orders to march 40 miles north overnight to Sand Creek.
- The earthworks around Bent's New Fort (still in existence today) were built in response to the aftermath of the Sand Creek Massacre.
- In 1865, a U.S. Army investigative commission and the Doolittle Commission, which included U.S. Vice President Lafayette Foster, held Sand Creek hearings at Bent's New Fort.

**PART OF INDIAN CLAIM #22
BENT COUNTY, COLORADO.**

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THE SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

NOTICE: THIS SURVEY MADE WITHOUT BENEFIT OF AN UPDATED ABSTRACT OR TITLE POLICY AND MAY BE SUBJECT TO OTHER EASEMENTS, CONDITIONS, RIGHTS ETC. WHICH MAY HAVE DEVELOPED SINCE THE DATA REFERENCED IN THE SURVEYOR'S STATEMENT.



VICINITY MAP
N.T.S.

LAND SURVEY PLAT

1"=100'

SURVEYOR'S STATEMENT **SEPTEMBER 29, 2008**

I, LANCE W. BRUNDAGE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE TO BRAD SEMMENS ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF AND TO THE NORMAL STANDARDS OF CARE OF PROFESSIONAL LAND SURVEYORS PRACTICING IN COLORADO; THAT ON SEPTEMBER 22 & 23, 2008, AS RESULT OF A SURVEY MADE ON THE GROUND AND MONUMENTED BY ME; THAT THIS LAND SURVEY PLAT WAS PREPARED BY ME AND REPRESENTS THE SURVEY MADE; THAT THE SURVEY WAS BASED UPON INFORMATION AND INSTRUCTIONS SUPPLIED BY CLIENT WITH CLIENT DESIRING NO FURTHER RESEARCH INTO EASEMENTS OR RIGHTS-OF-WAY BY THE UNDERSIGNED.

LANCE W. BRUNDAGE
REGISTERED PROFESSIONAL
LAND SURVEYOR
COLORADO 30087



APPROVED
BENT COUNTY COMMISSIONERS

Bill Long
CHAIRPERSON

BRUNDAGE LAND SURVEYING, INC.
P.O. BOX 441
SWINK, COLORADO 81077-0441
PHONE: 719-383-4627
FAX: 719-383-4628

Arizona
Colorado
Kansas
Nebraska
N. Dakota
S. Dakota

DATE:
SEPTEMBER 29, 2008
PROJECT NO.
11308SMN

DRAWING NO.
11308.DWG
SHEET NO.
1 OF 1

**LAND SURVEY
PLAT**

PROJECT LOCATION:

PART OF SEC. 35 & 36, T.22S., R.48W.,
6th P.M., BENT COUNTY, COLORADO

CLIENT:

BRAD SEMMENS
WILEY COLORADO

DESCRIPTION OF TRACT

A tract of land lying in Indian Claim #22 same being a portion of Sec. 35 and 36, T.22S., R.48W., of the 6th P.M., being more particularly described as follows:
Beginning at the Quarter Corner common to said Sec. 35 and 36 as monumented by a 3/4" rebar and 2-1/2" aluminum cap marked BRUNDAGE, PLS 30087; thence S.0°45'13"E., along the East line of said Sec. 35, a distance of 19.30 feet to the point of intersection with said section line and the Southerly boundary line of Indian Claim #22 and the TRUE POINT OF BEGINNING; thence N.52°25'58"W., along the Southerly boundary line of Indian Claim #22, a distance of 278.17 feet; thence N.48°17'31"W., along the Southerly boundary line of Indian Claim #22, a distance of 269.23 feet; thence N.7°52'59"E., 393.85 feet; thence N.89°50'41"E., 45.72 feet; thence S.0°10'04"E., 425.00 feet; thence N.89°49'56"E., 450.00 feet; thence N.0°10'04"W., 425.00 feet; thence N.89°09'32"E., 764.11 feet to a point on the East line of Indian Claim #22; thence S.1°11'53"E., along the East line of Indian Claim #22, a distance of 227.66 feet to the Northeast corner of a certain tract of land as found in Book 47, Page 489 of the Bent County Records; thence S.55°57'10"W., 1013.95 feet to the point of intersection with the Southerly boundary line of Indian Claim #22 (said point being the point of beginning of tract in Book 47, Page 489); thence N.52°25'58"W., 71.81 feet to the True Point of Beginning. In the County of Bent, State of Colorado.
The Tract contains 11.63 Acres.

THE LOCATION OF NEW BENT'S FORT BOUNDARY IS BEST FACILITATED BY THE EVIDENCE OF OLD FENCE CORNERS IN THE LOCATION OF THE NW AND SE CORNERS OF SAID SITE AND FENCE REMNANTS ALONG THE NORTH SIDE THEREOF.

REMNANTS OF OLD FENCE CORNER IN THIS AREA AS EVIDENCED BY ANCHOR WIRE STILL IN PLACE

SET 5/8" X 24" REBAR AND 1-1/2" ALUM. CAP, BRUNDAGE, PLS 30087 (TYPICAL)

SET 1-1/2" ALUM. CAP IN SOLID ROCK

NEW BENT'S FORT PER ABSTRACT OF TITLE PREPARED BY BENT COUNTY ABSTRACT CERTIFICATE NO. 9402

4.39 ACRES

APPROXIMATE FORT FOUNDATION

11.63 ACRES

REMNANTS OF OLD FENCE CORNER IN THIS AREA AS EVIDENCED BY ANCHOR WIRE STILL IN PLACE

EXISTING FENCE

OVERHEAD ELECTRIC LINE

AMITY
BOOK 47, PAGE 489

QUARTER CORNER COMMON TO SEC. 35 AND 36; SET 3/4" X 30" REBAR AND 2-1/2" ALUM. CAP, BRUNDAGE, PLS 30087; THIS POSITION ESTABLISHED BY BLM METHOD OF SINGLE PROPORTION. NO EVIDENCE OF ORIGINAL STONE MONUMENT OR EVIDENCE BASED UPON VARIOUS DEED CALLS IN THE AREA TO THIS POSITION COULD BE FOUND ON THE GROUND.

LOT 17, THE BROYLES RANCH AT PROWERS

ROCK BLUFF ON NORTH SIDE OF ARKANSAS RIVER

EXISTING BOLT WITH CROSS STAMPED IN TOP LOCATED IN ROCK BLUFF

ARKANSAS RIVER

AMITY
BOOK 39, PAGE 125

BEARINGS BASED UPON TRUE MERIDIAN AS DETERMINED BY G.P.S. OBSERVATIONS ON LINE BETWEEN SECTION CORNER MONUMENTS AS SHOWN.

SE COR. OF SEC. 35

NE COR. OF INDIAN CLAIM #22; EXISTING 5/8" REBAR AND 1-1/2" ALUM. CAP, LS 12103 (TYPICAL)

COUNTY ROAD 35.25

EXISTING FENCE

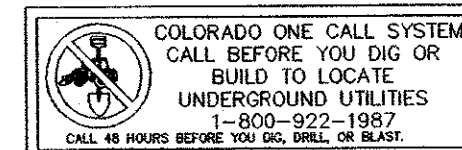
EXISTING 1" ROD S.55°57'10"W., 0.75' FROM TRUE LOCATION

INDIAN CLAIM #23
INDIAN CLAIM #22

COUNTY ROAD 35.25



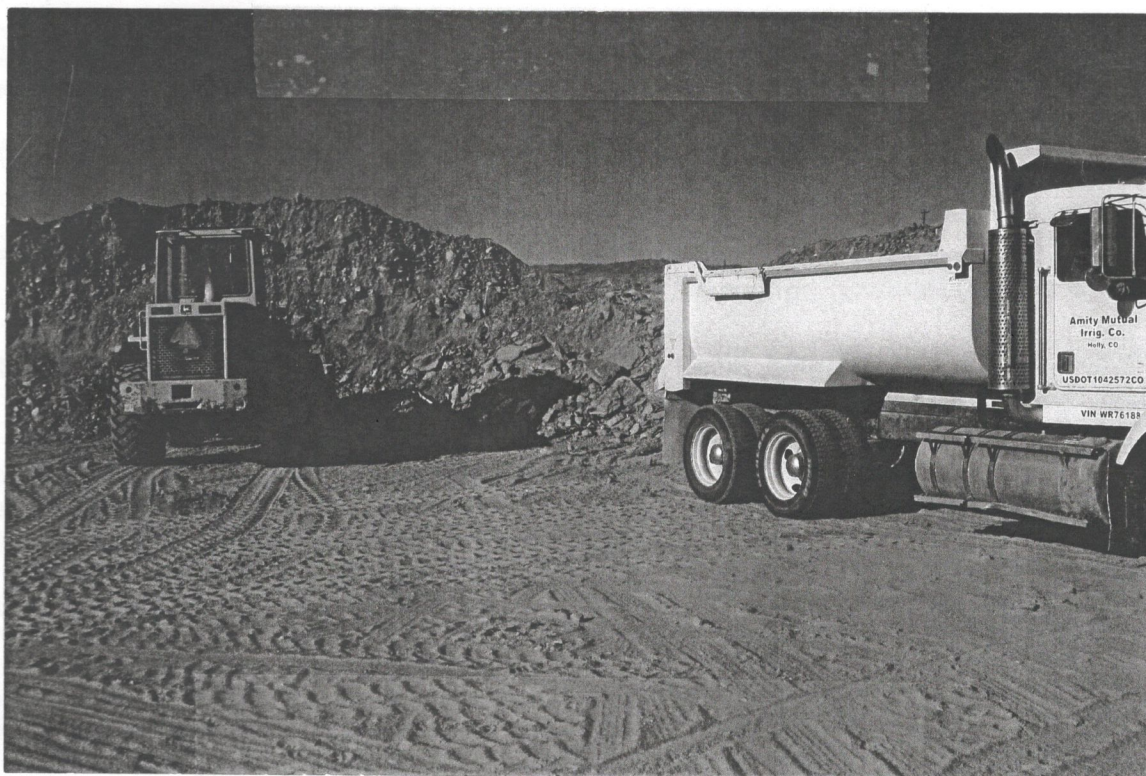
SCALE IN FEET
0 50 100



REVISED:



**FOUNDATIONS OF FORT WALLS LOOKING SOUTHEAST (NOTE:
CIRCLED AREA SHOWS TOP OF DIRT MOUND PICTURED BELOW)**



**ELECTRIC POWER GENERATION COMPANY'S EXCAVATIONS
ENCROACHING ON SOUTHEAST BOUNDARY OF BENT'S NEW FORT**