

Testimony
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United States House of Representatives
Committee on Natural Resources
October 29, 2013

Honorable Committee Chair Representative Hastings, Subcommittee Chair Bishop and all the Members of this Committee. I want to thank the Committee for this opportunity to present testimony on a very serious matter that will take Congressional and Presidential action to remedy. The management of the National Forests and Grasslands falls on shoulders of the staff of the United States Forest Service, who have the very important charge of keeping our public lands productive. The ecosystem services produced by those lands meet the needs of life in a concentric circle, or connectivity, the closer you are to the land, the more dependent you are on the land. Human needs or services are generally grouped into three categories economic, social and cultural. We all understand that the ability of the ecosystem to deliver services depends on the well-being of the whole, including all dependent species, humans included. There is no time in human existence when we have not managed the landscape to serve our needs; some critters do that also to a lesser extent. It has evolved into a very complex management task worldwide with important decisions to be made. Regardless of what stressors you believe or agree with, there is no doubt that to have those services in the future, we have to protect them now. And there lies the dilemma; power dictates management, and the constructs that emerge in the discourse affiliate closely with power emerge as specific actions on the ground. Power differentials in the United States are supposed to be tempered by Justice, a responsibility borne by all branches of our government.

I was asked to come here today to tell a story of how unjust acts in managing Forest lands push people closest to the landscape off of it and create scenarios that are replete with what the esteemed Economist and Nobel Laureate, Dr. Ronald Coase termed “negative externalities.” “Mr. Coase’s revolutionary insight was that you and I have a shared interest in minimizing the total harm suffered.” “The Problem of Social Cost,” Ronald Coase, a Pragmatic Voice for Government’s Role; Robert H. Frank. Victimized folks or creating unmanaged casualties is not an efficient option. That process is inefficient. The Government has a responsibility to mitigate the “negative externalities” to a federal action. On the ethical or moral plane, I turn to Pope John XXIII’s Encyclical for Pacem in Terris, Establishing Universal Peace in Truth, Justice, Charity and Liberty; “when one reflects that it is quite impossible for political leaders to lay aside their natural dignity while acting in their country’s name and in its interests they are still bound by the natural law, which is the rule that governs all moral conduct, and they have no authority to depart from its slightest precepts.”

My livestock graze on lands in the Santa Fe National Forest, Coyote Ranger District which was titled originally as a Spanish Land Grant to Juan Bautista Valdez in 1807. I do not like the term “Permittee” when referring to indigenous Northern New Mexico Forest users. We were denied U.S. title by the Court of Private Land Claims. My family has been in the Jemez Mountains for thousands of years; I am descended

from southwest tribal ancestors as are most Northern New Mexico Villager commonly called Hispanic but most scholars refer to the group as indio-hispano. On the colonial side we have been grazing cattle since 1590; we are the first herders on US soil. We brought 3000 year old grazing culture to the new world. I run twenty pair and a bull, on an allotment that includes 15 relatives; some of them are near full blood Native American. Together we run 750 pair and 20 bulls. These historical and social elements also apply to the folks that are the focus of this tragic narrative. I agreed to bring their message to you because they couldn't be here. It is however my story as well, I was intimately involved with these folks as Rio Arriba County Manager. The message is that the "government" has a duty to hold its managers accountable, just like I was as County Manager. All the constitutional protections should be available to those on public lands including the courts as appropriate. There are many good managers in the Forest Service ranks, we have such managers "this year" on the district I'm in; they carried us through to rainfall this year, and they could have done what was done in this story. I have supplied for the record a research document by Dr. David Correa that provides a more painful look at the history of the Vallecitos lands that are at the basis of this story.

Jarita Mesa and Alamosa Grazing Association Ranchers

The Jarita Mesa and Alamosa Grazing Associations' members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District of the Carson National Forest. The two allotments also are part of the Vallecitos Federal Sustained Yield Unit ("Unit"), an area of the Carson National Forest designated by an act of Congress for special treatment because of its mix of intermingled private and federal lands and its particularized use, dating back to before the Guadalupe-Hidalgo Treaty between Mexico and the United States. The ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Associations have been grazing livestock on these lands for generations, and, in fact, most of these families were grazing stock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating in the 1940s, the Forest Service instituted "management" practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock and were dependent on the availability of their former common lands (common lands designated by the King of Spain or Mexico prior to the creation of the National Forest) for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa Allotments have repeatedly exercised their First Amendment rights to petition their Congressional delegation and other elected officials for the purpose of protesting what they believe have been unlawful actions by Forest Service officials that have served to destabilize and degrade the private property rights and cultural/social

fabric of the communities where these ranchers reside. The lawful conduct of the ranchers has been met by punitive acts by Forest Service officials, particularly Forest Service District Ranger Diana Trujillo, including the reduction of their grazing permits. These ranchers believe that they can prove that many of the decisions by the Forest Service District Ranger were motivated by a desire to punish them for engaging in speech critical of Forest Service practices and by racial animus and a bias against traditional Hispanic culture and its traditional agro-pastoral way of life¹. Based upon such animus, the Forest Service has made it nearly impossible for these ranchers to sustain their grazing permits which results not only in a loss of their private property but in the slow destruction of their cultural fabric.

For example, the Forest Service understands that wild horses are eliminating forage and damaging the soil, and that any significant increase in the size of the wild horse herds in this area could significantly impact the local Hispanic communities in an adverse manner because it eliminates forage needed for the permitted cattle. Despite this knowledge and the existence of the Forest Service Region 3 Policy, the District Ranger decided to increase the wild horse herd beyond the numbers authorized in its 1982 Management Plan from the 12-14 head to between 20 and 70 head. However, the Forest Service 2002 Decision Notice expressly provided for measures to be taken to reduce the herd if it ever exceeded that number, recognizing that allowing the wild horse herd to increase to even 120 head “may cause some permittees to be forced out of the livestock business by competition for forage from the wild horses.” However, in disregard for the needs of these local ranchers who live within the Vallecitos Federal Sustained Yield Unit, the Forest Service has now allowed the wild horse herd to increase far beyond the number permitted by the Forest Service’s 2002 decision. In fact, Forest Ranger Trujillo has chosen to allow the wild horse herd to grow to over 150 head, rather than attempt to alleviate this problem so as to be responsive to the needs of the Hispanic people in the area.

To deal with these problems, the ranchers sought the assistance of then-U.S. Senator Pete Dominici in May 2006. Senator Dominici took up the issue with one of Ranger Trujillo’s supervisor. Upset with ranchers for their having exercised their right to petition the government for redress of grievances, on July 5, 2006, Ranger Trujillo issued a decision ordering all cattle removed from the Jarita Mesa Allotment by July 31, 2006. Her decision was purportedly based on a reported June 22, 2006 inspection of range conditions that found the ocular estimate of forage stubble height was less than 1-2 inches at each of the key areas visited by Forest Service. On July 20, 2006, ranchers

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This bias has subtly existed against this land use and the relationship of these ranchers to the land for many years. For example, in 1935, Roger Morris, a Forest Service grazing assistant, issued a report concerning grazing issues entitled “A Dependency Study of Northern New Mexico,” wherein it was stated that “[Hispanos] are sedentary in character living in the present and with no thought for the future. They accept conditions as they are and make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extinction by starvation and disease before they would migrate.”

Sebedeo Chacon, Gabriel Aldaz, and others appealed Ranger Trujillo's decision based upon the significant rains since June 22, 2006 which greatly improved conditions on the range. In light of these changed circumstances, the ranchers implored the Forest Service to recognize that there was no justification for forcing them to go through the significant economic harm that would accrue as a result of having to remove all their cattle prior to the end of the permitted grazing season in October, 2006. Ranger Trujillo refused but, after Congressional inquiry, was forced to reverse her position.

Ranger Trujillo then tried to force an end to the grazing season in September 2006, instead of on October 31, 2006, based on an allegation that the permittees had failed to meet certain conditions she had imposed. At the end of the grazing season, rancher Chacon was having difficulty locating a small number of cattle that had strayed in the forest. This is a common problem and is due, in part, to the number of hunters and wood haulers who come onto the allotments and leave gates open and the fact that these allotments cover thousands of acres in the mountains. According to Ranger Trujillo, on October 5, Mr. Chacon had 17 cows that needed to be located and removed. On October 6, 2006, only four days after her arbitrarily imposed removal "deadline," Ranger Trujillo issued a decision suspending 20% of Mr. Chacon's authorized grazing for two years, a decision which had a profound economic impact on Mr. Chacon and his family, costing him tens of thousands of dollars. Mr. Chacon believes that he was singled out for disparately harsh punishment by Ranger Trujillo because she perceived him, correctly, as a leader of the permittees in the area due to the letters he had written to government officials protesting Ranger Trujillo's conduct.

On June 1, 2009, Mr. Chacon and Thomas Griego responded to Ranger Trujillo with a letter signed by 26 permittees which criticized her poor management style and her mismanagement of the two allotments. The letter was also sent to the New Mexico Congressional Delegation, Governor Richardson, and Ranger Trujillo's immediate supervisor, Kendall Clark. In the letter, the ranchers' stated that they were insulted by Ranger Trujillo's past letters and accused her of attempting to intimidate them. The ranchers pointed to Ranger Trujillo's unsuccessful effort to force them to remove their cattle from the allotments during July 2006. The ranchers also alleged that Ranger Trujillo and her staff had continually failed to install needed cattle guards or to fix plugged ones, and that Ranger Trujillo then used the fact that cattle would drift from one allotment to another, as a basis to threaten and/or sanction the permittees.

According to the ranchers, in retaliation for these letters, in 2010, District Ranger Trujillo made a decision to reduce the ranchers' use of their allotments by 18%—a decision that ignored the scientific analysis in a Forest Service environmental assessment ("EA") that such a reduction was not necessary. Despite the fact that it was a well-established practice and policy of the District Rangers in the different ranger districts within the Carson and Santa Fe National Forests (as well as in other Forests) to adopt the Proposed Action in the EA (the proposed action would have maintained the *status quo* with regard to permitted use), Ranger Trujillo disregarded the analysis contained in the EA and, making good on her predetermined decision to punish the ranchers by selecting an alternative calling for a substantial reduction in grazing. The decision of the Forest Service's Interdisciplinary Team contained in the EA did not

support the action of Ranger Trujillo. However, Ranger Trujillo was angry with and determined to retaliate against Plaintiffs for having the temerity to point out her errors and criticize her mismanagement of the two allotments and the entire Sustained Yield Unit.²

Although the ranchers had availed themselves of all known administrative and other remedies, on January 20, 2012, they filed a case in the Federal District Court for the District of New Mexico alleging, among other things, that they were being singled out through harassment and intimidation by Ranger Trujillo under color of law in retaliation for the ranchers' exercise of their First Amendment right of free speech and the right to petition the government for a redress of grievance. The Federal District Court, in a 115 page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive against them. However, citing to **Wilkie v. Robbins**, 551 U.S. 537, 550, the court held that the ranchers could not sustain a **Bivens** cause of action against Ranger Trujillo personally for damages sustained due to her acts of intimidation and harassment allegedly undertaken in retaliation for the ranchers exercise of rights guaranteed to them by the First and Fifth Amendment guaranteed rights. See Jarita Mesa Livestock Grazing Association, et al. v. United States Forest Service, et al., Civ. No. 12-69-JB (Memorandum Opinion and Order, Docket 49, filed January 24, 2013). In essence, this meant that the district ranger remains free to engage in further acts of retaliation and the ranchers have no way of deterring her unconstitutional conduct.

In order to create the appearance that her decision was based on science rather than an arbitrary determination to punish Plaintiffs for having engaged in conduct protected by the First Amendment, Ranger Trujillo falsely stated that the Forest Service had determined the current level of permitted livestock to be "unsustainable." In fact, the EA had not concluded that the current level of livestock grazing was unsustainable but had proposed that grazing continue at current numbers under Alternative 2. Furthermore, despite the fact that the 2002 Decision Notice on the wild horse herd required the Ranger to attempt to reduce the wild horse herd by taking certain measures set forth in that decision, Ranger Trujillo failed even to consider any alternative that would achieve the required reduction in the wild horse herd prior to reducing the number of Plaintiffs' livestock permits. Instead, Ranger Trujillo claimed the herd contained only 67 horses when 2010 Forest Service documents showed the herd was over estimated the herd was over 100 and, as a 2011 Forest Service survey showed, was close to 150. Ranger Trujillo had to know that the herd had grown well beyond 67, figure from a 2008 estimate, because almost no horses had been removed in the two and a half years since the study. In sum, although the EA proposed action was Alternative 2 (status quo) Ranger Trujillo selected Alternative 3.