

**Briefing Information**  
**Diamond Bar Allotment – Gila National Forest**  
**April 25, 2003**

**Background:**

On June 19, 1995, the Forest Supervisor of the Gila National Forest issued a Record of Decision (ROD) for the Diamond Bar Allotment authorizing grazing use of the Allotment by 300-800 head of cattle and 20 head of horses. This decision reduced the permit from the previous level of 1,188 head of cattle and 10 horses, and provided for a number of new water developments and fences within the Gila and Aldo Leopold Wilderness. On February 7, 1996, the Chief issued a discretionary review decision of the Deputy Regional Forester's November 6, 1995, appeal decision that affirmed the Forest Supervisor's June 19, 1995, ROD. The Deputy Regional Forester's November 6, 1995, appeal decision was in regard to the appeal filed by Diamond Bar Cattle Company (DBCC) under the 36 CFR 251 appeal regulations.

In his discretionary review decision, the Chief directed the Regional Forester to return the June 19, 1995, ROD to the Forest Supervisor for reevaluation. The Chief also directed the issuance of a new ROD by the Forest Supervisor within 180 days consistent with the views expressed in his discretionary review decision.

On January 14, 1996, the existing grazing permit to the DBCC expired. The Forest Supervisor offered a new grazing permit to the DBCC pursuant to Section 504 of the Rescissions Act of 1995 (P.L. 104-19), however, the DBCC refused acceptance of the new 10-year term grazing permit. In the alternative to the permit offered by the Forest Supervisor, the DBCC suggested the Forest Supervisor authorize grazing through an alternative permit written by the DBCC; the Forest Supervisor declined issuance of such a permit.

On April 4, 1996, a civil action was filed by DBCC against the United States declaring the DBCC the lawful owner of water and grazing rights on National Forest System Lands within the Diamond Bar Allotment. On April 3, 1997, the United States District Court ruled in favor of the United States dismissing the DBCC complaint, and ordering the DBCC to remove all livestock from National Forest System Lands and pay unauthorized grazing fees for grazing during the period of the pending litigation. Prior to the District Court ruling, on August 30, 1996, a new ROD was issued by the Forest Supervisor, consistent with the Chief's discretionary review decision of February 7, 1996. This ROD provided for a period of extended rest (no grazing) for the Diamond Bar Allotment due to extreme over grazing during the period that the DBCC's lawsuit was being processed through Federal District Court. The ROD also called for the possible grazing of 300 cattle and 20 horses at an undetermined future point in time after recovery of heavily impacted resources (i.e. forage, watershed, riparian, fisheries, wildlife, and wilderness related resources).

On April 28, 1997, the DBCC filed an appeal of the New Mexico District Court's decision to the United States Court of Appeals for the Tenth Circuit. On February 23, 1999, the United States Court of Appeals for the Tenth Circuit issued Diamond Bar Cattle Co. v. United States which

upheld the Forest Service's authority to require the removal of DBCC's cattle from the Gila National Forest based on its refusal to obtain a grazing permit. The Court affirmed that the Laney's have no private rights to graze federal lands and that the Forest Service must authorize grazing of National Forest system lands.

**Current Situation:**

On April 23, 2003, Forest Service personnel observed 40 cows, one bull and 28 calves along Diamond Creek on National Forest System Lands within the Diamond Bar Allotment. 37 cows, and 1 bull were branded with the Diamond Bar brand, and 3 cows were branded with the SS brand. The calves were not branded. According to the Forest's review of the brand records, and verification of ownership with the local N.M. Livestock brand inspector, these cattle belong to Kit Laney and Sherry Farr Laney.

Grazing in this area is particularly sensitive since portions of Diamond Creek are habitat for the federally listed Gila Trout. In recent years, the Gila National Forest has expended considerable resources in the restoration of Gila Trout habitat with the expectation of down listing the species if certain criteria established by the U.S. Fish and Wildlife Service (FWS) can be met. The presence of livestock in this area has the potential of threatening this effort. The Forest will continue to make reconnaissance surveys of the allotment to determine if additional livestock have been placed in other areas.

**Forest Actions:**

Regional law enforcement personnel are in the process of hand delivering a letter to the Laney's from the District Ranger notifying them that the presence of livestock under their ownership on the Gila National Forest is a violation 36 CFR 261.7(a)(b) [prohibitions against placing unauthorized livestock on National Forest System Lands, and not removing unauthorized livestock when requested by a forest officer]. The letter will also direct the Laney's to remove their livestock from the Gila National Forest within a specified period of time and indicate that failure to do so will result in further action being taken.

Gila National Forest personnel have also notified the FWS of the situation with respect to requirements and potential violations of Section 9 of the Endangered Species Act. Regional law enforcement personnel are coordinating with the Office of General Counsel and United States Attorney's Office on possible criminal actions if the Laney's elect to not comply with instructions to remove their livestock.

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