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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DIAMOND BAR CATTLE COMPANY, et al.,

Plaintiffs,

vs. Civil No. 96-437 WJ/LFG

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER DENYING PLAINTIFF'S REQUEST FOR EXTENSION OF TIME

THIS MATTER comes before the Court pursuant to Plaintiff's Notice of Intent to Comply with Court's Order, Acceptance of the Same, and Request for Extension of Time to Remove Cattle Pursuant to Court Order [Docket No. 104]. Having reviewed Plaintiff's request, I find it is without merit and will be denied. In light of the fact that I find the request to be without merit, there is no need for additional briefing on the request.

Following a hearing on December 18, 2003, this Court found Kit and Sherry Laney (the Laneys) in violation and contempt of this Court's Memorandum Opinion and Order of December 4, 1996 [Docket No. 26] and of this Court's Judgment of April 3, 1997 [Docket No. 44], affirmed at 168 F.3d 1209 (10th Cir. 1999).[1] See Findings of Fact and Conclusions of Law filed December 18, 2003 [Docket No. 99]; Order and Supplemental Injunction filed December 22, 2003 [Docket No. 102]. By Order and Supplemental Injunction filed December 22, 2003

[1]The Court previously found the Laney Cattle Company and Diamond Bar Cattle Company in contempt by default. See Memorandum Opinion and Order Finding the Partnership Plaintiffs in Default filed October 2, 2003 [Docket No. 87].

[Docket No. 102], this Court ordered the Laneys to remove all livestock in which they have an ownership interest from lands of the United States Forest Service within thirty (30) days of the date of the Order and Supplemental Injunction. The Court specifically noted that the Government was entitled to immediately remove all unauthorized livestock, and that the Court's granting of thirty (30) days was at the request of the Government. See Docket No. 102, p.3 n.2.

The Laneys have now filed the instant request stating that it is impossible for them to comply with the Court's order to remove livestock due to financial difficulties incurred as a result of the Government's actions in this case. The Laneys declare they will calculate these damages and will bill the Government. They further assert that they own a right to use the range from which they have been ordered to remove livestock. The Laneys then state that they intend to fully comply with the order "as soon as is possible from both a physical, practical standpoint as well as financial."

The Court made special provisions that, "in the event acts of God, extreme weather or other extraordinary circumstances beyond the control of the Laneys cause delays in removal by the deadline specified, the Laneys will not be held to have failed to comply with the required removal of livestock so long as they diligently remove all livestock after any such extraordinary delays." See Docket No. 102 ¶ 2. The Laneys' request for extension of time does not delineate any extraordinary circumstances beyond their control to justify a delay in the execution of this Court's Order and Supplemental Injunction.

The Order and Supplemental Injunction made provisions for the possibility that the Laneys would fail to remove the livestock within thirty (30) days. In accordance with the Order, the Government, upon expiration of thirty (30) days, "is authorized to immediately remove or have

removed any trespassing livestock . . .." Docket No. 102 ¶ 3 (first).[2] Nothing in the Laneys' request gives a reason that the Government should not be permitted to proceed with the removal of trespassing livestock. **This is particularly true in light of the fact that the Government has always had the right to remove the trespassing cattle from Government lands, and the thirty (30) days in which the Laneys were given an opportunity to remove the cattle was an accommodation offered by the Government and not required under any statute or regulation.**

The Laneys do not request a specific extension of time to comply with this Court's Order but instead merely state they will comply when it is possible. The Court has never been faced with such an open-ended request for an extension of time, and concludes that such a request is deficient on its face and worthy of little, if any, consideration.

The Court briefly notes that the Laneys continue to assert an ownership interest in the use of Forest Service lands. This is quite remarkable given the repeated Orders of this Court and the Tenth Circuit Court of Appeals to the contrary. The Laneys are free to believe whatever they wish, but this Court will not address or take further notice of such assertions. Finally, the Court notes the Laneys' intent to bill the Government for damages. The Laneys do not clarify the source of their alleged right to recover any damages from the Government, but they have certainly not obtained such a right through any proceedings in this Court.

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[2]The Court erroneously designated two of the paragraphs in the Order and Supplemental Injunction with the numeral three (3). This language is found in the first paragraph 3.

IT IS THEREFORE ORDERED that Plaintiff's Notice of Intent to Comply with Court's Order, Acceptance of the Same, and Request for Extension of Time to Remove Cattle Pursuant to Court Order [Docket No. 104] is hereby DENIED.

UNITED STATES DISTRICT JUDGE