

**FILED**  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DIAMOND BAR CATTLE COMPANY,  
LANEY CATTLE COMPANY, KIT LANEY,  
AND SHERRY LANEY,

Plaintiffs,

vs.

CIVIL NO. 96-437 WI/LCS

UNITED STATES OF AMERICA;  
ANN VENEMAN, Secretary of  
the United States Department of  
Agriculture; and U.S.D.A.  
Forest Service,

Defendants.

ORDER AND SUPPLEMENTAL INJUNCTION<sup>1</sup>

THIS MATTER came before the Court for hearing on the Court's Order to Show Cause [Docket No. 96] on December 18, 2003, and the parties having appeared and presented arguments, and the Court being otherwise fully advised.

THE COURT FINDS THAT Diamond Bar Cattle Co., Laney Cattle Co., Kit Laney and Sherry Laney were and are 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 (10<sup>th</sup> Cir. 1999). The Court has determined that immediate injunctive relief is appropriate, and that issues of damages resulting from such

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<sup>1</sup> The original injunction was entered in this case in the Court's Judgment of April 3, 1997 [Docket No. 44]. In issuing this Supplemental Injunction, the Court has considered the proposed form of injunction submitted by the United States Attorney's Office. No other party submitted a proposed form of injunction.

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contumacious conduct shall be determined at a later date and reflected in a subsequent Order. The United States shall file a memorandum within 30 days proposing assessment and calculation of damages. The Plaintiffs and intervenors shall have 15 days from the date of service of that memorandum to file a response.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Laney's, and their predecessors, partners, partnerships, successors, assigns, privies, representatives and affiliates (collectively referred to hereinafter as "the Laney's") are ENJOINED, in the absence of a valid permit from the United States Forest Service, from placing livestock on lands of the United States Forest Service ( including but not limited to the Gila National Forest, the Apache National Forest, the Laney allotment and the Diamond Bar allotment), and the Laney's are further ENJOINED from allowing others to place livestock on lands of the United States Forest Service without a valid permit ;
2. The Laney's are ORDERED, in coordination with and under the direction of, the United States Forest Service, to physically remove all livestock in which they have an ownership interest lands of the United States Forest Service, including but not limited to the Gila National Forest, the Apache National Forest, the Laney allotment and the Diamond Bar allotment, within thirty (30) days of the date of this Order and Injunction, provided only that in the event acts of God, extreme weather conditions or other extraordinary circumstances beyond the control of the Laney's cause delays in removal by the deadline specified, the Laney's 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;<sup>2</sup>

3. If the Laney's do not remove their livestock in accordance with the foregoing paragraph, the United States Forest Service is authorized to immediately remove or have removed any such trespassing livestock, impound and haul such livestock to a livestock auction facility and publish a notice of sale. The Laney's (and others) in that event shall be allowed to redeem the livestock at any time before the date and time set for sale by submitting proof of ownership and paying for all expenses of the United States incurred in gathering, hauling, impounding and feeding such livestock. If the livestock are not claimed and redeemed, the United States shall sell the livestock, with proceeds to go to the United States Forest Service to cover the costs of gathering, impounding, hauling, and feeding such livestock; if those costs exceed the sales price of the livestock, the Laney's shall pay the Forest Service for the difference within thirty (30) days after sale of the livestock. If the sales price of the livestock exceeds the costs of gathering, impounding, hauling, and feeding such livestock, such monies shall be applied to offset unauthorized grazing fees owed for the time the livestock were illegally on forest lands; if there are any monies left thereafter, those shall go to compensate the Forest Service for the costs of resource monitoring and restoration.

3. The Laney's are ORDERED to comply in all respects with this Court's Memorandum Opinion and Order of December 4, 1996 [Docket No. 26] and this Court's

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<sup>2</sup> Although the Government is entitled to immediate removal of all unauthorized livestock on lands of the United States Forest Service, the Court's granting of thirty (30) days is derived from the Government's suggestion in its proposed form of injunction.

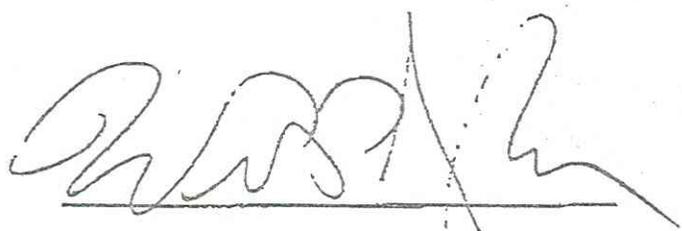
Judgment of April 3, 1997 [Docket No. 44], affirmed at 168 F.3d 1209 (10<sup>th</sup> Cir. 1999), as well as all other and further orders of this Court regarding this matter.

4. In the event of any future unauthorized placement of livestock on Forest Service lands by the Laney's:

- a. The United States shall provide the Laney's 5 days' written notice of such trespass and to immediately remove those livestock. The written notice shall be addressed to the Laney's at Kit Laney and Sherry Laney at HC-30, Box 470, Winston, NM 87943;
- b. If removal is not completed as directed in any such notice, the United States may remove, or cause to be removed, all trespassing livestock, which shall then be immediately impounded and sold at public auction. All proceeds from any such sale shall go to the United States;
- c. The Laney's shall be jointly and severally liable for any costs which exceed the value of sold livestock, as well as for any other damages, caused by their trespassing livestock;
- d. The Laney's shall also be jointly and severally liable for grazing fees for any such trespass, to be calculated on the basis of the then-prevailing private non-irrigated grazing fee rate for livestock in New Mexico established by the National Agricultural Statistics Service;
- e. In addition to the foregoing, in the event of future violations of this Court's Opinion and Order of December 4, 1996 [Docket No. 26], of this Court's Judgment of April 3, 1997 [Docket No. 44], affirmed at 168 F.3d 1209 (10<sup>th</sup>

Cir. 1999), this Order and Injunction, and any other or further Orders of this Court in this matter, the Laneys shall be jointly and severally liable for sanctions, which may include a per diem fine, costs and damages resulting from such violations, including but not limited to resource monitoring and restoration costs, in addition to such other and further relief as this Court may grant, including but not limited to coercive imprisonment and other remedies for contempt.

IT IS SO ORDERED.



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UNITED STATES DISTRICT JUDGE