

## **PRESS RELEASE**

TO THE EDITOR

### **Judge Berates Forest Service For Violating Privacy**

Federal District Judge Edwin L. Mechem liberally and strongly criticized the U.S. Forest Service ("USFS") in a 67-page summary judgment decision issued on January 15, 2001, for providing private financial information of livestock producers utilizing federal land to a so-called environmental group, according to New Mexico Cattle Growers' Association ("NMCGA") President Jimmy R. Bason, Hillsboro, New Mexico.

The case that generated the ruling was filed in June, 1999 by the Santa Fe-based Forest Guardians against the USFS. The group had sought to obtain private financial information about livestock producers via the Freedom of Information Act ("FOIA"). Although the federal land management agency had provided a wide variety of information about the grazing permittees — livestock producers --- in six of the eleven regions of the USFS on forms called escrow waivers, the Forest Guardians wanted more and sued to get it, explained Karen Budd-Falen, counsel for the NMCGA.

As a matter of law, the Judge found that the USFS cannot release personal identifying information about the permittee escrow waiver holder, including the name and address.

The USFS "refuses to acknowledge any responsibility pursuant to the FOIA or U.S. Department of Agriculture regulations or to evidence any standardized procedures precipitated by a FOIA request," Judge Mechem wrote. He called USFS actions in this case inherently contradictory and said the agency "intentionally ignored" pertinent facts and circumstances.

The court also said the USFS failed to present the coherent position expected of a federal

agency statutorily charged with decision-making responsibilities. Furthermore, the Judge ruled that the public interest is not served by the release of permittee names and addresses, "They (the Forest Guardians) claimed that it was in the public interest to know all about my private finances and thousands of other folks just like me," Bason said. "Instead of protecting us, the USFS aided and abetted a group intent on cultural genocide. In newspapers like the *Albuquerque Journal*, it was clearly stated that the private information would be used to destabilize the livestock industry and remove cattle from the West. When you remove cattle, you are also eliminating tens of thousands of families and destroying rural economies."

Bason noted that information provided by the USFS as a result of the FOIA request varied from the name and location of the permittee to the number of livestock owned, collateral pledged for loans as well as its legal description and location, loan amounts, interest rates, lending institutions and payoff dates. NMCGA joined with the New Mexico Public Lands Council ("NMPLC") and the National Public Lands Council ("PLC") to protect the privacy of USFS permittees by intervening in the case in the fall of 1999. It was that intervention that demonstrated to the court the violations of privacy that had already occurred and prevented even further violations from occurring as a result of this lawsuit.

Because of these violations of the Privacy Act, permittees from across the Western United States have filed a class action suit against the USFS that is pending in a Washington, D.C. Federal District Court. If successful, each permittee whose personal identity was given to the Forest Guardians could recover up to \$1000 from the Forest Service.

Of further concern to livestock producers is a similar request under FOIA that the Forest Guardians have filed against the Bureau of Land Management ("BLM"). The initial FOIA was denied by the BLM and the group has appealed. Further action is pending.

In addition to the land users who intervened, lending institutions including the Production Credit Association of New Mexico ("PCA") intervened on behalf of banks who provide loans to agricultural producers utilizing federal lands. Judge Mechem found that he did not have enough information on which to base a decision, so further litigation will be necessary regarding those claims.

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