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Elizabeth A Humphrey  
District Ranger  
US Forest Service  
PO Box 288  
Cloudcroft, New Mexico 88317

March 3, 2017

RE: New Mexico Jumping Mouse Habitat Improvement Projects on the  
Sacramento Grazing Allotment

Dear Ms. Humphrey,

In reply to your letter of February 28, 2017, I would like to make the following comments:

I would like to know how the designation for not only proposed permanent fencing, but existing fencing was determined. According to the maps which you enclosed with your letter, it appears as if long corridors of unoccupied (by mice) and therefore unutilized land has been or will be fenced off for the New Mexico Jumping Mouse. For example, the map titled Proposed Permanent Fencing for the upper Rio Penasco, shows areas currently fenced, proposed permanent fence areas, and exclosures which are not occupied. In fact, according to this map, no area on the map is designated as occupied by NMJM. Likewise, the other map titled Proposed Permanent Fencing Wills Canyon has three areas along the stream bank which are designated for permanent fencing even though they are not occupied by NMJM. There appears to be no scientific data to warrant this extreme action in these specific areas.

I realize you have a responsibility to "protect" endangered species and their environment, but it is an extreme overreach to designate vast areas of land for elimination of all or most other multiple uses when there is absolutely no proof that endangered species even exist or ever existed in these areas. You are limiting or eliminating recreational and grazing uses (which are the main use of these areas) for a non-existent mouse without regard to the imposition of the recreationalist or the water and grazing rights of the ranchers or the economic and aesthetic effect it will have. Do you not have at least an equal

responsibility to these forest users? We can easily measure the number and quantity both historically and currently of this use.

With regards to the grazing, water, and right-of-way rights of the allotment owners, these fences are definitely a violation of their property rights. These pre 1907 water rights predate the creation of the US Forest Service and the State of New Mexico.

This project directly violates New Mexico State Supreme Court decision in which the State Engineer, Steve Reynolds, upheld the previously recognized state water rights from a power grab from the USFS. This decision was upheld by the US Supreme Court which established that federal bureaucrats were required to recognize the authority of state issued water rights over their attempt to engineer the use of water without regard to previously established and legal holdings of private individuals. (Please refer to *Miembras vs Salapek* and *New Mexico vs United States* 1978).

Judge Vern Payne who wrote the *Mimbres* decision while a justice of the NM Supreme Court has reviewed this issue and has represented the interest of water right owners and downstream water users of this allotment. He issued a plea to the State Engineer to uphold the rights of New Mexico water right holders. Judge Payne's decision was upheld by the U.S. Supreme Court and is the binding law of the land and should be recognized. The federal government's attempts to circumvent this decision are illegal and a complete disregard of the law.

I was interested in your summary of the importance of maintaining a riparian area. While I don't disagree with many of the reasons for maintaining vegetation to protect water sources, I do question the veracity of fencing off areas and spreading out water to prevent water loss. One of the areas affected by this proposal, Mauldin Springs, is a case in point. This area has been fenced off and the healthy stream flow at the top of the fenced area is completely nonexistent at the bottom of the fenced area. This is not only an illegal diversion of the water rights of the allotment owner, but also of all the downstream users and water right owners. When I asked your hydrologist about water loss, he said, "It comes out downstream and is not lost." I disagree.

When I spoke with Supervisor, Travis Mosley, in 2014 about the permanent fencing project which was taking place on the Agua Chiquita, I asked him how long the stream had been fenced off and for what reason. He replied 17 years and for water retention and erosion. When I asked how successful it had been, he said, "Not very." I asked, "Why would you spend money to permanently

fence off a "not very" successful project and make no effort or monetary allotment to pursue successful practices such as terracing, thinning, gabions etc.?" He replied, "Now we have the mouse to deal with."

I now ask you the same question. If water retention, improvement, clarification, reduction of transpiration, and mouse protection are the goals of this project, why are you discriminating on only one use--cattle to correct the problem? Your entire Description of Proposed Actions focused on cattle exclusions with a slight mention of limited elk exclusions. Why aren't you addressing thinning, elk reduction, and impact by mouse predators, such as wild hogs, catastrophic wildfires caused by dense undergrowth, birds (such as hawks, turkeys and even spotted owls), bobcats, foxes, coyotes etc.? Couldn't these monies be better spent for a more comprehensive and effective solution?

I also felt that your representation of cooperating with the allotment owner were not very forthright. It implied that the allotment owner was in complete agreement with changes and was being constantly consulted. I spoke with the allotment holder, Spike Goss, and asked if his preferences were being considered. His response was negative.

I would hope you would reconsider and revise this project before proceeding.

Respectfully,

A large black rectangular redaction box covering the signature area.

Sylvia Bell