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First name: Michele

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Organization:

Title:

Comments: I am hereby submitting the following information for the administrative record?:

The Early Days:

A Sourcebook of Southwestern Region History - Book 2

USFS Logo

WILD HORSES

A complete transcript of the Justice Court proceeding, in the Dolph Slosser case can be found in the Forest History Collection at the Sharlot Hall Museum, Prescott, Arizona. The record is too voluminous to be included here; unfortunately, for it is most interesting. Actually, the Closing Order procedure was on trial, rather than Ranger Slosser. The District Law Officer wisely decided to test the validity of the Closing Order in the Federal Court for the future protection of Forest Officers. Because the case set a wild horse precedent for Service-wide guidance, some of the relevant correspondence is given as follows:

G-Trespass

Wild Horses No. 20-G-3 Albuquerque, New Mexico

April 22, 1931

Memorandum for Forest Officers:

The decision rendered by Judge Jacobs in the Federal Court at Phoenix on April 9 in the case of the United States vs. C. D. McCauley, County Attorney, and L. D. Divelbess, Sheriff, of Navajo County, Arizona, have been given wide publicity in the newspapers of the Southwest and no doubt all of you have read of the case in the papers. However, the decision in this case is of so much importance to the Forest Service in carrying out its policy of ridding the range of wild horses that I am attaching hereto for your information, mimeographed copies of the decree and injunction which are self-explanatory and it is hoped that all of you will familiarize yourselves with the circumstances of the case, as shown in these papers.

This case was taken to the Federal Court as a result of criminal proceedings against Ranger D. E. Slosser instituted in the State Court by County Attorney McCauley and Sheriff Divelbess for the purpose of preventing Forest officers from carrying out closing order procedure on the Sitgreaves National Forest.

From the information in the decree and injunction, it is evident that in carrying out closing order procedure, the courts will insist that ample notice of the plans for disposing of the wild horses, including the period fixed by the Forest Supervisor for disposing of them, be given to the interested stockmen; also, that before shooting horses, Forest officers use reasonable diligence in determining whether the horses are wild or gentle. It is realized that where wild and gentle horses are mixed on the same range it is rather difficult to distinguish the gentle horses from the wild ones, consequently a gentle horse may be killed accidentally, in which case the Service would be criticized, but if reasonable diligence is used to determine whether the horse is wild or gentle and notice of the time set for shooting the wild horses is given to the local stockmen, it is felt that the closing order procedure will be supported by the Federal courts and by public sentiment.

/s/ Quincy Randles, Acting Regional Forester.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)

)

Complainant,)

V.)In Equity-#156-Prescott

)

C. D. McCAULEY as County Attorney)

of Navajo County, State of Arizona,)PERPETUAL INJUNCTION

and L. D. Divelbess, as Sheriff of)

Navajo County, State of Arizona.)

)

Defendants,)

THE PRESIDENT OF THE UNITED STATES OF AMERICA to C. D. McCauley, as County Attorney of the Navajo County, Arizona, and L. D. Divelbess, as Sheriff of Navajo County, Arizona, their deputies, assistants and employees, successors and all persons acting for them or in their behalf.-GREETING:

WHEREAS, in the above entitled cause the United States of America, Complainant, has obtained an allowance by the above entitled Court of a perpetual injunction against you and each of you.

NOW, THEREFORE, you and each of you are hereby perpetually restrained and enjoined from interfering with Complainant and its Forest Officers in disposing of wild horses of unknown ownership in the enforcement of the Closing Order made and promulgated by the Secretary of Agriculture under the Act of February 1, 1905 (33 Stat., 628), amendatory of the Act of June 4, 1897 (30 Stat., 11), which said Closing Order is as follows, to-wit:

DEPARTMENT OF AGRICULTURE

"Whereas, a number of wild horses of unknown ownership are grazing on the Sitgreaves National Forest; and

"Whereas, these horses are consuming forage necessary to domestic livestock, are overgrazing the ranges, and causing an extra expense to established permittees:

Now, therefore, by virtue of the authority vested in the Secretary of Agriculture by the Act of Congress of February 1, 1905 (33 Stat., 628), amendatory of the Act of June 4, 1897) (30 Stat., 11), I, R.W. Dunlap, Acting Secretary of Agriculture, do make and publish the following order for the occupancy, use, protection and administration of the Sitgreaves National Forest:

"1. The Morgan sheep allotment and the Buck Springs allotment of the Sitgreaves National Forest are hereby closed to the grazing of horses for the period December 1, 1929 to November 30, 1930; and the Pinedale Cattle and Horse range, the Linden Horse and Cattle allotment, the Showlow Cattle and Horse allotment, and the Lars Petersen and James Petersen allotments of the Sitgreaves National Forest are closed to the grazing of horses for the period April 1, 1930 to March 31, 1931, except those used in connection with operations on the National Forest or by the traveling public.

"2. Unless the horses grazing on the Morgan sheep allotment and the Buck Springs allotment are removed on or before November 30, 1929, and those grazing on the Pinedale Cattle and Horse Range, the Linden Horse and Cattle allotment, the Showlow Cattle and Horse allotment, and the Lars Petersen and James Petersen allotments by March 31, 1930, Forest Officers are hereby authorized to dispose of them in the most humane manner.

"in Witness Whereof, I have hereunto set my hand this 7th day of November, 1929.

R. W. Dunlap, Acting Secretary of Agriculture."

and which said Closing Order was by the Secretary of Agriculture duly extended in effect to and including June 30, 1931, and from arresting Complainant's said officers, from prosecuting them, or otherwise interfering with them in the discharge of their official duties under said Closing Order.

That within the contemplation of said Closing Order a wild horse is an undomesticated animal or a domesticated animal living in a wild state.

That a horse of unknown ownership under said Closing Order is an animal, the ownership of which is unknown to the Forest Officer executing the said Closing Order, and the ownership of which by the exercise of reasonable diligence the Forest Officer is unable to ascertain.

The Complainant, through its officers, is authorized to dispose of, by shooting if necessary, any wild horse of unknown ownership, as herein defined, whether branded or not, found in trespass on the National Forest running at large on the forest after said range has been closed by the Secretary of Agriculture to the grazing of wild horses of unknown ownership as herein defined and reasonable notice has been given thereof.

Hereof fail not, under penalty of the law thence ensuing. WITNESS, the Honorable F. C. Jacobs, Judge of the District Court of the United States for the District of Arizona and the seal of said Court hereunto affixed at Phoenix this 9th day of April, A.D. 1931.

J. Lee Baker. Clerk

By H. F. Schlittler, Deputy Clerk,

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)

)

Complainant,)No. E-156-Prescott

)

V.)

)FINDINGS OF FACT:

C.D. McCauley as County Attorney)CONCLUSIONS OF LAW;
of Navajo County, State of Arizona,)DECREE GRANTING PERPETUAL
and L.D.Divelbess, as Sheriff of)INJUNCTION.
Navajo County, State of Arizona.)

)

)

)

Defendants.)

This cause coming on before the Court this 7th day of April, 1931, and the same being submitted for final hearing, the United States being represented by George E. Wood, Assistant United States Attorney, and E. S. French, District Law Officer of the Department of Agriculture, and the defendants being represented by Arthur T. LaPrade, Assistant Attorney General of the State of Arizona, and C. D. McCauley, County Attorney of Navajo County, Arizona, and it appearing by stipulation of counsel made in open Court on behalf of the defendants that the Closing Order of the Secretary of Agriculture made on the 7th day of November, 1929, and which is in words and figures, as follows:

"DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

"Whereas, a number of wild horses of unknown ownership are grazing on the Sitgreaves National Forest; and

"Whereas, these horses are consuming forage necessary to domestic livestock, are overgrazing the ranges, and causing an extra expense to established permittees;

"Now, therefore, by virtue of the authority vested in the Secretary of Agriculture by the Act of Congress of February 1, 1905 (33 Stat., 628), amendatory of the Act of June 4, 1897 (30 Stat., 11), I, R.W. Dunlap, Acting Secretary of Agriculture, do make and publish the following order for the occupancy, use, protection and administration of the Sitgreaves National Forest:

"1. The Morgan sheep allotment and the Buck Spring allotment of the Sitgreaves National Forest are hereby closed to the grazing of horses for the period December 1, 1929 to November 30, 1930; and the Pinedale Cattle and Horse range, the Linden Horse and Cattle allotment, the Showlow Cattle and Horse allotment, and the Lars Petersen and James Petersen allotments of the Sitgreaves National Forest are closed to the grazing of horses for the period April 1, 1930 to March 31, 1931, except those used in connection with operations on the National Forest or by the Traveling public.

"2. Unless the horses grazing on the Morgan sheep allotment and the Buck Springs allotment are removed on or before November 30, 1929, and those grazing on the Pinedale Cattle and Horse Range, the Linden Horse and Cattle allotment, the Showlow Cattle and Horse allotment, and the Lars Petersen and James Petersen allotments by March 31, 1930, Forest Officers are hereby authorized to dispose of them in the most humane manner.

"in Witness Whereof, I have hereunto set my hand this 7th day of November, 1929.

R.W. Dunlap, Acting Secretary of Agriculture."

was in fact regularly made, issued and published according to law, and that the same by supplemental order of the Secretary of Agriculture has been duly extended in effect to and including June 30, 1931, and further that said closing order is a legal and valid order in so far as it applies to wild horses of unknown ownership and further, that C.D. McCauley is the duly elected, qualified and acting County Attorney of Navajo County, State of Arizona, and that as such official and in his capacity as such officer he would, if not restrained by order of this Court, attempt to and would prosecute any Forest Officer who wilfully, unlawfully, and maliciously killed, wounded or maimed any branded horse of known ownership on the Sitgreaves National Forest in Navajo County, whether running at large or not, and that L.D. Divelbess is the duly elected, acting and qualified Sheriff of Navajo County, Arizona, and unless restrained would arrest said Forest Officers.

FINDINGS OF FACT

Predicated upon the foregoing stipulated facts the Court makes and finds the following findings of fact:

1. That the Closing Order of the Secretary of Agriculture made on the 7th day of November, 1929, as hereinbefore set forth was in fact regularly made, issued and published according to law, and that the same by supplemental order by the Secretary of Agriculture has been duly extended in effect to and including June 30, 1931.

2. That said Closing Order is a legal and valid order in so far as it applies to wild horses of unknown ownership.

3. That C.D. McCauley is the duly elected, qualified and acting County Attorney of Navajo County, State of Arizona, and that as such official and in his capacity as such officer he would, if not restrained by order of this Court, attempt to and would prosecute any Forest officer who wilfully, unlawfully and maliciously killed, wounded or maimed any branded horse of known ownership on the Sitgreaves National Forest, Navajo County, whether running at large or not, and that L.D. Divelbess is the duly elected, acting and qualified Sheriff of Navajo County, Arizona and unless restrained would arrest said Forest officers.

CONCLUSIONS OF LAW.

From the foregoing findings of fact the Court makes the following conclusions of law:

1. That the complainant is entitled to a perpetual injunction enjoining and restraining the defendants, and each of them, their and each of their deputies, assistants, agents, employees, successors and all persons acting for them or in their behalf, from interfering with complainant and its officers in disposing of wild horses as herein defined, of unknown ownership as herein defined, found upon the Sitgreaves National Forest in Navajo County, Arizona, and from arresting complainant's said Officers, from prosecuting them, or otherwise interfering with them in the discharge of their official duties under the Closing Order made and promulgated by the Secretary of Agriculture, as extended, for the disposal of wild horses of unknown ownership in trespass on said National Forest.

2. That within the contemplation of said Closing Order a wild horse is an undomesticated animal or a domesticated animal living in a wild state,

3. That a horse of unknown ownership under said Closing Order is an animal, the ownership of which is unknown to the Forest Officer executing the said Closing Order, and the ownership of which by the exercise of reasonable diligence the Forest Officer is unable to ascertain.

4. That Complainant, through its officers, is authorized to dispose of by shooting if necessary, any wild horse of unknown ownership, as herein defined, whether branded or not, found in trespass on the National Forest running at large on the forest after said range has been closed by the Secretary of Agriculture to the grazing of wild horses of unknown ownership as herein defined and reasonable notice has been given thereof.

DECREE GRANTING PERPETUAL INJUNCTION

WHEREFORE, IT IS ORDERED. ADJUDGED AND DECREED that a Writ of Perpetual Injunction be, and the same is hereby granted, and the Clerk is hereby directed to issue the same restraining and enjoining the defendants, C.D. McCauley, as County Attorney of Navajo County, Arizona, and L.D. Divelbess as Sheriff of Navajo County, Arizona, their deputies, assistants, and employees, successors and all persons acting for them, or in their behalf, from interfering with complainant, and its officers in disposing of wild horses, as herein defined, of unknown ownership, as herein defined, found upon the Sitgreaves National Forest, in Navajo County, Arizona, and from arresting complainant's said officers, from prosecuting them, or otherwise interfering with them in the discharge of their official duties under the Closing Order made and promulgated by the Secretary of Agriculture, as extended, for the disposal of wild horses of unknown ownership in trespass on said National Forest.

That within the contemplation of said Closing Order a wild horse is an undomesticated animal or a domesticated animal living in a wild state.

That a horse of unknown ownership under said Closing Order is an animal, the ownership of which is unknown to the Forest Officer executing the said Closing Order, and the ownership of which by the exercise of reasonable diligence the Forest Officer is unable to ascertain.

The Complainant, through its officers, is authorized to dispose of, by shooting if necessary, any wild horse of unknown ownership, as herein defined, whether branded or not, found in trespass on the National Forest running at large on the forest after said range has been closed by the Secretary of Agriculture to the grazing of wild horses of unknown ownership as herein defined and reasonable notice has been given thereof.

It is ordered that the parties bear their own costs.

Let a copy of this Decree and of said Writ of Perpetual Injunction be served upon the said, C.D. McCauley and L.D. Divelbess.

Dated at Phoenix, in said District, this 9th day of April, A.D. 1931.

F. C. JACOBS

F. C. Jacobs, Judge, United
States District Court, In and
for the District of Arizona.

Approved as to form:

C. D. McCauley

FILED

April 9. 1931

J. LEE BAKER, Clerk
United States District Court
for the District of Arizona.

By: H. F. Schlittler, Deputy Clerk