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**File Code:** 1570  
**Date:** June 10, 2019

Mr. Lance Thiessen  
Canyon del Buey, LLC

**(b) (6)**

CERTIFIED MAIL 7018-0680-0000-3165-8186  
RETURN RECEIPT REQUESTED

RE: Appeal #19-03-06-001-A214

Dear Mr. Thiessen:

This is my decision responding to the appeal of the District Ranger's decision to cancel Term Grazing Permit No. 61493, which was issued to Canyon del Buey, LLC on November 21, 2017, authorizing the grazing of 344 cow-calf pairs on the Canyon del Buey Allotment for a year-round season of use.

### **Background**

On November 29, 2018, Quemado District Ranger Emily Irwin issued a decision to cancel in full the term grazing permit held by the Canyon del Buey, LLC [Appeal Record (AR)# 001]. District Ranger Irwin cited two violations as the basis for the cancellation. The two violations were as follows:

1. On May 24, 2018, Craig Thiessen (a member of the Canyon del Buey, LLC) pleaded guilty to knowingly taking a threatened species in violation of the Endangered Species Act (ESA) and its implementing regulations.
2. Misrepresentations were made by Lance Thiessen regarding the managerial role of Craig Thiessen in the application for Term Grazing Permit No. 61493.

On January 7, 2019, during the partial Federal government shutdown, an appeal was submitted to the Gila National Forest Appeals email inbox by the Canyon del Buey, LLC, hereafter referred to as "Appellant" [AR# 003]. Appellant requested mediation, an oral presentation, and a stay. All requests were granted [AR# 006; 007; 011]. The appeal timeframe, beginning with mediation, was adjusted to account for the Federal government shutdown in late December 2018 through late January 2019 [AR# 007].

As Responsible Official, District Ranger Irwin engaged in mediation with Appellant in accordance with the regulations at 36 C.F.R. Part 222 through the New Mexico State University's Agricultural Mediation Program. Mediation was unsuccessful [AR# 008].



On April 17, 2019, District Ranger Irwin submitted a responsive statement to the appeal pursuant to 36 C.F.R. § 214.12(a) [AR# 009; 009a-009d]. Appellant filed a reply to the responsive statement on April 24, 2019, pursuant to § 214.12(b) [AR# 010].

On May 9, 2019, as Appeal Deciding Officer, I listened to an oral presentation by Appellant pursuant to 36 C.F.R. § 214.16 [AR# 011]. I sent a letter closing the appeal record the following day, May 10, 2019, as required by § 214.17 [AR# 015].

### **My Findings**

I have reviewed the information provided in the appeal record as well as information presented at the oral presentation. As I noted in my May 10, 2019 letter closing the appeal record, some information that Appellant presented during and after the oral presentation is not included in the record because it was not properly raised earlier in the appeal as required by 36 C.F.R. § 214.16(c). I am not considering that information in my appeal decision [AR# 015].

The appeal, responsive statement, and other documentation in the appeal record provide context around each of the violations. My decision is based on the entirety of the record. I will not repeat all the relevant information here. Instead, I will focus on a few key issues that I felt were important for me to consider.

Court documents filed in the United States District Court for the District of New Mexico (Case No. 2:18-po-02123-CG), on May 24, 2018, indicate that Craig Thiessen, a member of the Canyon del Buey LLC, voluntarily pleaded guilty to knowingly taking a threatened species in violation of federal law [AR# 009b]. The taking occurred on or around February 1, 2015. He admitted to trapping a Mexican gray wolf in a leghold trap and hitting the wolf with a shovel on the Canyon del Buey Allotment. The court accepted his guilty plea and convicted him for violating the Endangered Species Act (ESA) and its implementing regulations. He was sentenced to one year of unsupervised probation and was ordered to pay \$2,300 in restitution [AR# 009b]. Based on the court filings, I agree with District Ranger Irwin's initial determination that this conviction is a violation of Part 1, Section 3 of Appellant's term grazing permit. Pursuant to the terms of the permit and Forest Service regulations at 36 C.F.R. § 222.4(a), the responsible official is directed to cancel or suspend the permit.

At the oral presentation, the Appellant presented the following arguments for me to consider in deciding whether cancellation is appropriate here: (1) Craig Thiessen could not tell the animal in the leg trap was a Mexican gray wolf; and (2) Craig Thiessen did not break the law because he feared for his safety when he hit the wolf with the shovel. I address each of these arguments in turn. As to whether Mr. Thiessen should have known the animal in the trap was a wolf, he stated at the oral presentation that "it could have been a coyote, neighbor's dog, or a wolf," and cited several reasons for his confusion, including the following:

- The U.S. Fish and Wildlife Service (USFWS) told him there were no collared wolves in the area;
- The collar the animal was wearing was a leather collar that did not look like a normal wolf collar; and

- Craig had radio telemetry equipment that did not pick up the collar and indicate it was a wolf.

First, none of these statements are consistent with the sworn statements he made to the court in his guilty plea. In his guilty plea, he stated, "I knew that the animal I caught in the leg hold trap was a Mexican gray wolf because it bore a tracking collar affixed to all Mexican gray wolves in the area" [AR# 009b]. Second, even if Mr. Thiessen's current statements were true, I do not find them to be a credible excuse given the circumstances. USFWS may have told him at some point there were no collared wolves in the area. However, wolves are mobile creatures that can cover large areas. Recognizing the potential for wolf movement and the fact that wolves were previously known to be present on the Canyon del Buey Allotment, it is reasonably foreseeable that wolves can and will unexpectedly move into the area. As for the collar, I do not believe there would be confusion over a domestic dog collar versus a collar used to track wolves. As such, I find it unlikely that the type of collar led to confusion. And, regardless of what type of animal was trapped, whether a wolf or domestic dog, the appropriate release process does not include hitting the animal with a shovel. Finally, Craig Thiessen stated the radio telemetry equipment did not indicate the animal trapped was a wolf. However, later in the presentation, Craig as well as Lance Thiessen stated the radio telemetry equipment they received from USFWS had never worked properly. Assuming they were correct about the working order of the radio telemetry equipment, it would not have been reasonable to rely on equipment that they say never worked properly anyway.

At the oral presentation, Appellant repeatedly argued that Craig Thiessen did not break the law because the law allows for the taking of a protected animal if you fear for your safety. Yet, Craig Thiessen admitted to violating federal law when he plead guilty to and was convicted of the taking of a threatened species in violation of the ESA and its implementing regulations. If he felt that he was not guilty of the crime charged because he feared for his life, the time and place for offering that defense was before the District Court during the criminal proceedings.

I may have been willing to take into consideration Appellant's argument that Mr. Thiessen feared for his life as a mitigating factor in deciding whether his actions should be considered egregious enough to warrant cancellation of the permit. However, I do not believe the assertion that Mr. Thiessen feared for his safety to be credible. The animal was caught in a leghold trap, which prevented the animal from approaching Mr. Thiessen. To prevent any harm to himself, Mr. Thiessen simply had to avoid the animal and contact New Mexico Game and Fish for assistance in releasing the animal. Instead, Mr. Thiessen approached the animal, getting close enough to hit it with a shovel. I asked Mr. Thiessen at the oral presentation about his actions that day to try to understand what happened. When asked why he did not simply call New Mexico Game and Fish for assistance in accordance with the state's trapping guidelines and regulations, Mr. Thiessen stated he was not aware of all the rules and regulations for trapping.

Appellant also argued that the District Ranger violated Section 558 of the Administrative Procedures Act (APA) because no notice of non-compliance and opportunity to cure was ever issued prior to the letter of cancellation that was sent on November 29, 2018. The Appellant cites

5 U.S.C. §§ 558(b) and (c) as well as the Forest Service Handbook, FSH 2209.13, Ch. 10. The written appeal states:

*Here, the District Ranger did not follow the APA's statutorily -mandated procedures, nor did it follow those of its own agency Handbook. No notice of non-compliance was ever issued to the Appellant for the subject matter of the November 29, 2018 Decision (or for any other incident, for that matter). In the absence of any written notice, the Appellant was caught unaware by the District Ranger's decision to cancel its permit and had no opportunity to address the concerns that were raised in the decision document. This was all the more surprising given that this was a first time offense, and no informal attempts at contact by the USFS were made prior to the issuance of the November 29, 2018 Decision. Consequently, this invalidates the decision to cancel the Appellant's grazing permit. [AR# 003]*

It is correct that the District Ranger did not send a notice of noncompliance (NONC) before sending the cancellation letter of November 29, 2018. However, it was not required by statute or the Forest Service Handbook. Section 558(c) of the APA provides the following:

*Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefore, the licensee has been given-*

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and,*
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.*

As District Ranger Irwin explained in her responsive statement, the willfulness exception applies where “the violator (1) intentionally does an act which is prohibited or (2) acts with careless disregard of statutory requirements.” *Stone v. USFS*, 2006 WL 22444401, 1 (9th Cir. 2006). The court in that case determined the Forest Service is not required to provide notice and an opportunity to comply when cancelling a permit based on a willful act.

During the oral presentation, Craig Thiessen argued he did not feel the act was willful because it was the first time it happened. He compared the act to throwing a baseball through a window after being told not to. That is not the correct legal standard. A willful act is intentional, knowingly taken regardless of whether it is the first time. Mr. Thiessen was also well aware that killing wolves was illegal. He was provided notice when he obtained his state trapping license and when he signed his term grazing permit. He also had multiple interactions with entities involved in the wolf reintroduction prior to this incident, such that he would have known about the legal status of these wolves.

As to the second violation cited in District Ranger Irwin's cancellation letter, I do not feel it is necessary here to address in detail the misrepresentations made by Appellant during the

permitting process. Lance Thiessen and Craig Thiessen stated there was never any misrepresentations made by anyone associated with Canyon del Buey, LLC. A review of the appeal responsive statement provides a detailed explanation of why the District Ranger considered actions of both Lance Thiessen as well as Craig Thiessen to involve misrepresentations [AR# 009; 009a-009d]. My interpretation of the information provided is that the movement of the permit from Craig Thiessen's name to the LLC was intended to avoid permit actions for the killing of the wolf. The misrepresentation is an important issue, and in any other situation, would warrant serious review and administrative action on its own. Here, that violation is overshadowed by the more serious violation of law.

In its written appeal and again at the oral presentation, Appellant argued that cancellation of the permit was too severe a penalty. Craig Thiessen argued he has been a good permittee in the past. Appellant also objected to the cancellation because they felt they are being used as an example. Craig Thiessen had not been cited for any violations in the past. However, violating the law by killing a protected wolf is serious and warrants significant action even when it is a first-time offense. The violation of a federal law—particularly where that violation directly relates to grazing and takes place on the grazing allotment—is as serious as any violation of a grazing permit. Grazing on federal land is a privilege that carries with it the affirmative obligation to protect the land and the natural resources where the grazing occurs. The action taken against Appellant's permit is in alignment to the egregiousness of the violation.

Appellant argued that a 10 percent reduction for no more than 1 year should be the maximum penalty. I do not agree that a 10 percent reduction for 1 year is the maximum penalty that should be imposed. It is not commensurate with the offense and does not provide a significant deterrent for illegal activity.

Appellant argued that cancelling the grazing permit is disproportionate to the sentencing requested by the U.S. Attorney's Office and imposed by the court as part of Craig Thiessen's conviction. According to Appellant, the fact that the government "only" imposed a sentence of one-year probation and a small fine should be taken as evidence that this was not a serious offense and does not warrant such significant action by the Forest Service. The ESA addresses this very situation. Section 11(b)(2) of the ESA, 16 U.S.C. § 1540(b)(2), states the following:

*The head of any Federal agency which has issued a lease, license, permit, or other agreement . . . authorizing the use of federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. . . . The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.*

The statute indicates Congress intended that the criminal sentencing by the court for violations of the ESA would not be the only consequence for grazing permit holders that violate the ESA. Regardless of how or why the parties and the court reached the result they did in Craig

Thiessen's criminal court case, it is now within the Forest Service's discretion to determine what action should be taken with regard to the grazing permit.

**Decision**

I am affirming District Ranger Irwin's decision to cancel the permit in full. My decision is based on my review of the entire appeal record and the oral presentation. I find no reason to disagree with District Ranger Irwin's findings or conclusions as detailed in her cancellation letter and responsive statement. I am upholding the decision to cancel based primarily on Mr. Thiessen's conviction for violating the Endangered Species Act and its implementing regulations. I find the misrepresentations that were made are also sufficient aggravating grounds for cancelling the permit. This decision is based on the reasons District Ranger Irwin provided as well as my own evaluation as summarized above.

I am directing District Ranger Irwin and her staff to work with the Appellant to develop a suitable plan to remove all livestock from the Canyon del Buey Allotment within 60 days of this decision. This timeline will be stayed pending the outcome of a discretionary review if the Regional Forester chooses to conduct such a review pursuant to 36 C.F.R. § 214.19. The parties will be notified within 30 days if a discretionary review will be completed.

Sincerely,



ADAM MENDONCA  
Forest Supervisor

cc: Craig Thiessen, Brandon Jensen, Emily Irwin, Dawn Dickman, Roxanne Turley

**\*\*\*Certificate of Service by Mail\*\*\***

Pursuant to 36 C.F.R. § 214.14(g)(1), I certify that this letter has been sent to all parties to this action via U.S. Postal Service, certified mail



Adam Mendonca, Forest Supervisor, Gila National Forest