



Forest Service
U.S. Department of Agriculture

U.S. Forest Service
Santa Fe National Forest
11 Forest Lane
Santa Fe, NM 87508

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RE: February 5, 2024 Notice of Intent to Sue for Cattle on Valles Caldera National Preserve

Dear Erin, Megan, and Tom:

Thank you for your letter dated February 5, 2024, regarding this matter. The U.S. Forest Service (Forest Service) shares your concern regarding potential impacts caused by drift of livestock from allotments on the Santa Fe National Forest onto the Valles Caldera National Preserve (VCNP). It appears that the source of this drift may be a lack of maintenance of the VCNP boundary fence and fence cutting by unknown individuals. The Forest Service is actively supporting the National Park Service (NPS) in its fence maintenance efforts and coordinating with NPS in its education, enforcement, and removal actions related to livestock entering the VCNP and illegal fence cutting.

The USFS authorizes livestock grazing on allotments on National Forest System lands in compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). When completing a NEPA analysis to authorize livestock grazing, the proposed action includes grazing of an identified class of livestock and needed improvements to facilitate that grazing on a specific allotment or allotments on a National Forest. The analysis discloses environmental impacts of a proposed action, and the proposed action is the basis for consultation under the ESA.

Unauthorized or otherwise illegal activities are not part of the Forest Service's proposed action. Cattle drifting onto the VCNP through illegal fence cuts or due to NPS fence maintenance decisions are neither authorized nor approved by the Forest Service. Whether adjacent landowners choose to maintain their fences or act to enforce State and Federal trespass



laws is within the owners' discretion. State estray laws are usually the mechanism to resolve conflicts between a permittee (the owner of the livestock) and the owner of the lands on which the livestock may be trespassing. In the case of the VCNP, Federal law enforcement actions are also available to the NPS under Federal authorities applicable to NPS (see, e.g., 36 CFR 2.60).

The NOI references the NPS May 2023 VCNP Trespass Livestock Removal and Exclusion Biological Assessment (BA) and the corresponding U.S. Fish and Wildlife Service December 2023 Biological Opinion (BO) for NPS's actions related to boundary fence maintenance and trespass livestock. As noted in the May 2023 BA and the December 2023 BO, this includes NPS's federal actions both on its own jurisdiction and actions it may seek to take on Forest Service managed lands related to maintaining the VCNP boundary fence and addressing cattle drift and trespass livestock.

As noted in the map on page 9 of your NOI, the boundary fence around the VCNP is not owned by the Forest Service nor part of the permittees' maintenance obligations. Rather the boundary fence was part of the real property which is now the VCNP. Routine maintenance for this fence is not included in the Forest Service actions authorizing grazing on the Santa Fe National Forest or its ESA consultations. Nor does the Forest Service have authority or responsibility for trespass enforcement on the VCNP. Instead, the NPS has the authority to take actions on the VCNP in response to trespass livestock. Questions regarding ESA compliance related to the NPS's federal actions around fence maintenance and trespass enforcement should be addressed to the NPS as the action agency under the May 2023 BA and December 2023 BO.

NPS's May 2023 BA explains the root causes of cattle entering the VCNP as inadequate fence maintenance of naturally occurring damage and criminal damage to the fence by unknown third parties. As stated in the May 2023 BA: "In 2014, the U.S. Congress passed legislation designating Valles Caldera National Preserve as a unit of the National Park System, and in 2015, it transferred management of the land from the Trust to the NPS." BA page 28. The May 2023 BA also indicates that routine maintenance of the boundary fence has not occurred since that time: "Many of these boundary fences have not been maintained for more than 10 years." BA page 9. "Cattle may enter the park from SFNF lands through breaks in the boundary fence between the SFNF and the park, which have resulted from damage due to past wildfires, falling trees, and deliberate fence-cutting by unknown individuals." BA page 6. The May 2023 BA also states that "on-going tree falls, elk damage and deliberate fence cutting by persons unknown continue to create new gaps in the fence." BA page 6. However, the Forest Service expects that resumption of fence maintenance and law enforcement actions around fence cutting and trespass



cattle as proposed and described in the 2023 BA and 2023 BO will significantly reduce any impacts of concern.

The Forest Service and the NPS continue to work toward a collaborative approach to address long-term maintenance of the VCNP boundary fence and livestock drift. As a result, the agencies have developed a long-term plan to address livestock drift on the VCNP.

Under the current plan, NPS law enforcement and the VCNP Superintendent report drift cattle to the Forest Supervisor, District Rangers, and Forest Service law enforcement. Reports generally include a description of the location, photos, number of cattle observed, cattle brand, ear tag numbers, and ear tag color combination. Once a report is received by the Forest Service, Range program staff or the District Ranger assist in contacting the permittees who own the trespass cattle. NPS law enforcement provides a timeline for permittees to gather cattle. If the cattle are not removed during the provided timeline, the NPS, at its discretion, may impose collection fees for repeat trespass issues, impound cattle, or take other actions.

In addition to the process above, the Forest Service has voluntarily assisted the NPS by taking extra steps to assist with this issue. Last year the Forest Service prioritized significant resources to evaluate fence lines, cut hazard trees, and repair fence on the northern and western boundary of the VCNP using Forest Service crews. Evaluation and repair work generally occurs prior to the June 1 cattle turn out date. The Forest Service regularly repairs the northern boundary fence when cuts or breaks are discovered during routine visits by Forest Service personnel during the grazing season. During meetings with permittees, Range staff and District Rangers remind permittees that grazing is only authorized on National Forest System lands in accordance with their permit and that the NPS has authority to impose fees and potentially impound and remove cattle that drift onto the VCNP.

The Forest Service continues to work with the NPS in finding cooperative solutions to ensure maintenance of the VCNP boundary fence. The Forest Service is seeking to develop a formal interagency agreement with the NPS that identifies a clear path forward to improve the condition of the boundary fence and to identify methods and mechanisms for the NPS to conduct long-term maintenance of the boundary fence. The Forest Service anticipates assisting the NPS by providing funding towards maintenance of the boundary fence. The intent is to help the NPS bring the fence to standard, while maintaining a wildlife friendly design, as soon as possible to minimize drift of livestock across boundaries. This would also secure the northern boundary and ensure that the current New Mexico Department of Game and Fish's Game Management Unit is clearly defined for recreational visitors. The Forest Service will also continue to work with the NPS to address cattle drift onto the VCNP by



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implementing actions identified in the jointly developed drift plan, including working with the NPS to identify and notify grazing permittees whose livestock have entered the VCNP and, where possible, assist with communicating responsibilities about controlling livestock.

We would like to invite you to conduct a site visit of the VCNP boundary fence with us and to discuss potential partnership with the Forest Service in achieving the goals underlying your NOI. I believe we can leverage our resources to help address the fence maintenance issues and address impacts from drifting cattle. Please let me know if you are available to join us on a site visit and engage in a collaborative partnership.

Sincerely,

Shaun M. Sanchez
Forest Supervisor