RESOLUTION 38-2019
OPPOSING THE UN-CONSTITUTIONAL TAKING OF FOREST GRAZING RIGHTS

WHEREAS, the Catron County Board of Commissioners met in a regularly scheduled meeting at the Catron County Courthouse, 100 Main Street, Reserve, New Mexico 87830 on April 12, 2018, at 9:00 a.m. as required by law; and,

WHEREAS, "cattle and sheep which are grazed in the national forests bear an important relation to the supply of beef and mutton in this country, and represent an important industry and basis for established homes and every effort will be made by forest officers to promote the fullest possible use of grazing resources." (USDA Forest Service 1936); and,

WHEREAS, a court interpreting the US Forrest book stated that "preference is the dominant element of the [forest service] grazing privileges, and in the absence of contingencies, which may never happen, the grazing permit, as the facts show as true in this case, and renewals thereof follow the preference as a matter of course." The court continued: "That the grazing of livestock on the national forests is to be regarded as a substantial, well-established, and indefinitely continuing part of the national forests program, is not, according to our reading of the grazing regulations and the Forest Service Manual, open to question. In fact, along with the declared purpose of perpetuating the organic resources on both the national forests and related lands, another of the "leading objects" of the said program is the "stabilization of that part of the livestock industry, which makes use of the national forests;" and along with and in promotion of such stabilization is the declared purpose of protecting the "established ranch owner and home builder against unfair competition in the use of the range."; and,

WHEREAS, to qualify for a term grazing permit, an applicant must own base property to be permitted. Base Property is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit. https://www.fs.fed.us/rangeland-management/documents/grazing/BL.MGrazingAdministrationRequirementsProcesses201708.pdf; and,

WHEREAS, the grazing system has been interpreted to be and is a property right, See Idaho Law Review Vol. 30 P. 522; and,
WHEREAS, the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb. . ."; and,

WHEREAS, In Blockburger v. United States, 284 U.S. 299 (1932), the Supreme Court held that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not".

WHEREAS, in United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984), the Supreme Court held that the prohibition on double jeopardy extends to civil sanctions which are applied in a manner that is punitive in nature.

WHEREAS, 36 CFR 222.4 (a)(6) authorizes the Forest Service to "[c]ancel or suspend the permit if the permit holder is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit; and,

WHEREAS, the taking of a grazing property right per section 36 CFR 222.4 (a)(6) does not further a practical purpose but is instead intended to punish an individual for something that he or she has already been punished for; and,

WHEREAS, 36 CFR 222.4 (a)(6) clearly violations the US Constitution as it constitutes additional punishment for the same offense and is a sanction that is punitive in nature; and,

WHEREAS, the taking of a grazing property right by an administrative agency harms the entire County as it destroys the fabric of our economy and the family business that rely on it; and,

NOW, THEREFORE, BE IT RESOLVED, by the Catron County Commission that it opposes the unconstitutional taking provision of 36 CFR 222.4 (a)(6).

BE IT FURTHER RESOLVED that this Board calls upon its Congressional delegation to repeal the provision and demands that Forest Service personnel uphold their oath to support and defend the Constitution of the United States by refusing to implement this draconian, unconstitutional and un-American regulation.

APPROVED, ADOPTED AND RESOLVED this 10th day of January, 2019
BOARD OF COUNTY COMMISSIONERS OF CATRON COUNTY

Anita Hand
Commissioner, District I

Cliff Snyder
Commissioner, District II

Van J. "Bucky" Allred
Commissioner, District III

Attest:

Keith Riddle, Clerk

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