

**Written Testimony of  
Garrett O. VeneKlasen**

**Before the**

**Natural Resources Subcommittee on Public Lands and Environmental  
Regulation  
United States House of Representatives**

**September 24, 2014**

Chairman Rob Bishop, Ranking member Raul M. Grijalva, Members of the Committee: Thank you for giving me the opportunity to present my perspective on "Threats, Intimidation and Bullying by Federal Land Managing Agencies," especially as it pertains to cattle exclosures on federal lands in New Mexico.

My name is Garrett VeneKlasen. I am a native New Mexican and have spent my entire life hunting and fishing throughout the Southwest. Before taking my current position as the Executive Director of the New Mexico Wildlife Federation, I was the Southwest Director for Trout Unlimited, working on coldwater restoration and public land protection projects throughout New Mexico, Arizona and Colorado.

Hunting and fishing combined contribute \$93 billion to the nation's Gross Domestic Product. Like all western states, hunting and fishing in New Mexico is a thriving and rapidly growing yet sustainable industry that enhances and greatly diversifies rural economies west wide.

Eighty nine per cent of NM sportsmen and women utilize public lands to hunt and fish. New Mexico sportsmen alone spend \$579 million, support \$258 million in salaries and wages, contribute \$58 million to state and local taxes and support 7,695 jobs annually (Outdoor Industry Association, Boulder, Colo.)

It is also important to note that in New Mexico, hunting and fishing are more than just "sport." They are the oldest of our core cultural land use values with a 10,000-year tradition.

This vibrant industry and our cultural values and lifestyle are dependent

upon two things: expansive, viable habitat for our fish and wildlife and large, undeveloped tracts of public lands in which our rapidly-growing community can recreate.

The tiny spring and its riparian area in Lincoln National Forest known as Agua Chiquita have gotten a lot of attention lately. A small group of ranchers claims the U.S. Forest Service is trampling their rights. They make it sound like they're the victims, but there's far more to the story.

The Agua Chiquita offers crucial riparian habitat used by elk, turkey and other wildlife for water, food and breeding. The riparian area has been fenced – with gaps for cattle – for more than 20 years to mitigate livestock damage. Such cattle enclosures have been used by virtually all state and federal land management agencies to protect critical habitat for more than 50 years.

The original barbed-wire fence around the Agua Chiquita was cut so often that the Forest Service replaced it with a welded pipe-rail fence, 4 feet high and roughly a mile long on both sides of the stream. It encloses less than two dozen acres of riparian habitat within the 28,000-acre grazing allotment. Cattle have access to the stream through two “water lanes” built into the fence.

But it wasn't the Forest Service that paid for the fence. Hunters and anglers did, using \$104,000 from New Mexico's Habitat Stamp Program and another \$11,000 from New Mexico members of the National Wild Turkey Federation. It was sportsmen in southeast New Mexico that manifested the Agua Chiquita project and made it a top priority because riparian habitat is a precious thing in our arid state.

Some of those who were offended by the Agua Chiquita project said water rights were being ignored or taken away. But the U.S. Forest Service told our organization that when they checked with the New Mexico agency that monitors water rights, the Office of the State Engineer, the database showed that the only recorded water rights in that portion of Lincoln National Forest belonged to the U.S. Forest Service.

There were also complaints that the cattle in that grazing allotment were being denied water. But in fact, there are two places along the Agua Chiquita

project where cattle can reach the stream. The Forest Service has excellent photographs if you would like to see them for yourselves.

But this issue of habitat protection goes far beyond Lincoln National Forest, however. It extends wherever important wildlife habitat is threatened, in New Mexico and other western states.

Stream exclosure projects offer tremendous benefits for game and non-game species alike, both aquatic and terrestrial. Outdoorsmen like me are primarily interested in trout, elk, turkey and other game. But what's good for tiny creatures like the meadow jumping mouse is also great for the trout, waterfowl, upland birds and big game for which New Mexico is known worldwide.

The discussion in New Mexico and now, in this hearing, has focused on fencing projects around critical wildlife habitat. But perhaps the discussion should broaden and acknowledge the impact of outdated livestock grazing practices on our western landscapes and watersheds. Hundreds of years of overgrazing has literally transformed entire western landscapes and greatly compromised the function of our watersheds. This is a fact and it's high time both state and federal policy makers and land management agencies recognize and address this issue head on.

Grazing practices have affected fish and wildlife, but the general public has also felt the impact in many western states. Degraded watersheds - especially upland watersheds - do not properly hold and dependably deliver our precious and limited water reserves. In the end, the biggest losers are municipalities and downstream agricultural interests who can and should be receiving more water if the upstream systems functioned as they should. The economic impacts to these water dependent economies - especially in times of extreme drought as we're seeing in much of the West - should be carefully considered by this committee.

The good news is that our watersheds are restorable, and that sustainable grazing can and should continue alongside proactive habitat restoration. But as a nation we need to start thinking of better ways to protect and restore degraded watersheds and riparian habitat while at the same time allowing our grazing community to thrive. Sportsmen have already shown they are ready to chip in and do our share.

It is ironic that the title of this hearing is "Threats, Intimidation and Bullying BY Federal Land Managing Agencies." I would ask this committee to also consider "Threats, Intimidation and Bullying OF Federal Land Managing Agencies," by certain members of the public lands grazing community as well as by select county policy makers. More than once I have witnessed county commissioners publicly verbally abuse and ridicule land managers in their meetings.

I believe the tension under discussion today boils down to one thing: communication. I suspect that if federal land managers were treated with more respect, the public lands grazing community, county officials and the land managers could start working out their issues on a local, mutually-respectful level.

The Otero County Commission's actions and behavior certainly has not represented the best interest of their sportsmen constituents, but instead follows a flawed ideological agenda of rejecting America's public lands legacy. It is also contrary to the best of human traits - collaboration and cooperation.

Public lands are democracy in action. They are worth fighting for. They are an American birthright that belongs equally to all citizens both born and unborn. Proximity bestows neither privilege nor special entitlements, only a heightened responsibility of localized stewardship.

But as misguided incidents like the Agua Chiquita in New Mexico, the Cliven Bundy standoff in Nevada and the ATV trespass fiasco in Utah's Recapture Canyon show, there is a move afoot to ignore these fundamental public property rights. To some, it may not matter. To public lands sportsmen and women, it does.

The Agua Chiquita incident reflects the feeling by some that federal agencies such as the Forest Service and the BLM have somehow "overstepped" their authority. They haven't. They are abiding by the law laid down through 200-plus years of democratic action. Sportsmen have had to learn to share our public lands and to take responsibility for protecting them. We urge others who use and profit from our federal public lands to do the same.



## Sportsmen save habitat protection project



It appears the habitat protection project funded by sportsmen and built around sensitive riparian habitat in Lincoln National Forest is having the intended effect. In this photo taken several months after work finished, the left side is the area open to cattle while the right side is protected for wildlife. (Photo courtesy U.S. Forest Service)

### *Efforts to derail work funded by hunters and anglers falls short*

By Joel Gay  
New Mexico Wildlife Federation

Sportsman-funded habitat projects rarely make the news, but one in Lincoln National Forest drew a surprising amount of attention this spring, including strong opposition from ranchers and others who want to remove the stream protection project for the sake of livestock.

Efforts to derail the work on Agua Chiquita, a spring-fed stream in the Sacramento Mountains south of Cloudcroft, actually started a year earlier. But New Mexico members of the National Wild Turkey Federation made it their top priority to complete the work this spring, which prompted a fresh round of complaints, threats and legal action.

“Some people have claimed this habitat protection project was ‘overreach’ by the U.S. Forest Service, but nothing could be further from the truth,” said New Mexico Wildlife Federation Executive Director Garrett VeneKlasen. “This was sportsmen doing what they have always done, which is working together to protect public land and habitat so that their children and grandchildren have opportunity to hunt and fish in the future.”

“Hunters and anglers have had to learn to share our public lands and to take responsibility for protecting

See “Agua Chiquita,” Page 12

### **Tierras preciadas:**

*Public lands are a treasure for sportsmen and women. In this Outdoor Reporter we focus on how and why hunters and anglers work so hard to protect them.*

- *Hunters key to protecting traditional areas near Las Cruces, Page 3*
- *Wilderness Act turns 50, Page 5*
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## **Gila Wilderness**

# **A legacy for sportsmen**

By M.H. “Dutch” Salmon  
Special to New Mexico Wildlife Federation

When Aldo Leopold, founder of the organization that would become the New Mexico Wildlife Federation, arrived in the Southwest as a fledgling U.S. Forest Service ranger in 1909, he discovered six blocks of roadless country in the region’s national forests that contained half a million acres or more.

“By the 1920s,” Leopold would write later, “roads had invaded five of them and there was only one left: the headwaters of the Gila River.”

Leopold, who by his own admission had “hunting fever,” was the perfect scribe for the subject at hand – wilderness – with just the right mix of skilled narration, authenticity (he fished, he hunted, he camped out), poetry, polemic and foresight. In 1921 he wrote something in the Journal of Forestry that most Americans would never read but that professional foresters and game managers did.

By dint of his literacy, elegance and passion, Leopold would convince his peers that this far-away place in New Mexico would best serve the nation by being left “open to lawful hunting and fishing, big enough to absorb a two week’s pack trip, and kept devoid of roads, artificial trails, cottages, and other works of man.”

Furthermore, he continued, “a good big sample of it should be preserved. ... It is the last typical wilderness

in the southwestern mountains. Highest and best use demands its preservation.”

Ninety years ago this summer, District Forester Frank Pooler responded to Leopold’s assessment of “highest and best use” by designating 755,000 acres of the headwaters of the Gila River as off limits to roads, vehicles and other works of man, yet available to hunters and anglers.

It was the nation’s first protected wilderness area.

### **Gila has it all**

The Gila now makes up just a fraction of our nation’s wilderness system, which has grown to more than 100 million acres. And to this day you may stand, as I have, amidst these far-flung and peculiar mountains and ask: How can this be? How is it that in the whirl of population growth and burgeoning industry and technology, the nation has here, voluntarily, turned its back on the 21st century and returned to the 19th?

Well, it all happened right here in the Gila – the Mimbreno artists; the Apaches’ legacy as equine buccaneers; mountain men, hound men and predator hunters; and the conservation legacy of Leopold, the most avid and articulate of sportsmen, who killed quite a few animals and saved entire landscapes. All were inspired

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## **State of the Game**

# **Turkey tracks getting thicker all over NM**

By Jim Bates  
Special to New Mexico Wildlife Federation

“I think that’s number 25,” I said to my turkey hunting buddy Dick as we got back into my pickup and headed on down the forest road.

“Wow, this is incredible. I’ve never heard so many gobblers in my life!” Dick responded.

What was even more incredible was the fact that we were “putting gobblers to bed” along a main thoroughfare running through Lincoln National Forest.

Gobbling turkeys were everywhere on this eve of the start of the spring turkey season. What was particularly encouraging, though, was that this was not some isolated hotspot or wildly unusual incident. It was only a single example that wild turkeys are doing well in many locations in our state.

New Mexico has always had a fairly stable turkey population. Even in the grim years following the end of market hunting which decimated wild turkey numbers

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# ... Agua Chiquita work finished, despite hurdles

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them,” VeneKlasen continued. “We urge others who use our federal public lands to do the same.”

## Protecting water a top priority for sportsmen

The Agua Chiquita project has been on sportsmen’s radar since at least the 1990s, according to Dale Hall, the head of the Habitat Stamp Program for the Department of Game and Fish until he retired last May. For many years, hunters and anglers volunteered their time and provided funding to install and maintain a barbed wire fence meant to keep cattle out of the fragile riparian area, he said.

In an arid state, Hall added, “Those are premium habitats, and we should be protecting them.”

But because livestock and wildlife kept breaching the barbed wire, the Forest Service proposed to replace the barbed wire with a pipe-rail fence. The project was to be funded by the Habitat Stamp Program. It was discussed and approved by the program’s southeastern Citizens Advisory Committee more than a year ago.

Work began in the spring of 2013, using thousands of feet of pipe donated by Yates Petroleum Corp. of Artesia and \$104,000 in Habitat Stamp funds. But as word of the project spread, an Otero County Sheriff’s deputy visited the site and threatened to arrest the contractor and Forest Service personnel for allegedly violating fire restrictions in place at the time.

The Forest Service had already taken fire precautions, said USFS wildlife biologist Jack Williams. The agency’s fire management office had issued the contractor a waiver and fire personnel were on site. “All the necessary precautions were in place,” Williams said.

Work resumed, but in May 2013 the Department of Game and Fish pulled out of the Agua Chiquita project completely. Hall said he was ordered to stop work by then-director Jim Lane.

“He called me in and wanted an explanation of what I was doing down there,” Hall told NMWF. Hall said he was in the process of developing a presentation on the project when Lane pulled the plug. “I never got chance to explain it,” Hall said, “because he made a political decision, not a biological decision” to kill the habitat protection work.

At that point, Game and Fish was walking away from a project that was nearly complete, according to Williams and Hall. Both the Forest Service and the Habitat Stamp program coordinator wanted to finish it after fire restrictions were lifted, but even after Lane resigned last fall – well after fire season was over – Game and Fish would not complete the job, Hall and Williams said.

Once again, sportsmen stepped up. In March of this year, New Mexico members of the National Wild Turkey Federation made the Agua Chiquita their top priority. Scott Lerich, the federation’s biologist in New Mexico, said he met with the Forest Service, Hall and the fence contractor and determined that a little over \$11,000 was needed to finish the job. The Turkey Federation picked up the tab and work began again in early April, Lerich said.

This time, however, the Forest Service returned to the worksite with a fire engine and law enforcement officials. “We wanted to make sure the contractor was going to be able to complete the job,” Williams said, recalling the interaction with the Otero County Sheriff’s office last year. “We wanted to make sure there wasn’t going to be any further interruption in the work.”

Indeed, the job finished up on April 24. It consists of 4-foot-high pipe-rail fencing along both sides of the Agua Chiquita, enclosing about a mile of stream and



Sportsmen wanted to beef up the fence protecting sensitive habitat along the Agua Chiquita to keep cattle out, for obvious reasons. This photo was taken several weeks after the pipe fence was completed in April. (Photo courtesy U.S. Forest Service)

some 24 acres of riparian habitat. Cattle still have access to the stream through two “water lanes” built into the fence.

## Work sets off firestorm

By the time the contractor was putting away his tools, opponents of the project had taken their complaints public. The Otero County Commission sided with local ranchers and issued a cease-and-desist order on the project. When the Forest Service received the letter, the work had already been completed.

Commissioners then asked the agency to unlock gates in the fence and allow cattle full access to the stream. When the Forest Service stood its ground, the commission ordered the county sheriff to cut the locks. According to news reports, the sheriff sought permission from a federal judge but was denied.

Coming on the heels of the standoff between the BLM and Nevada rancher Cliven Bundy, the Agua Chiquita project generated national attention. The news media reported charges of “federal overreach” and allegations that the government was ignoring the Constitution or taking private property without compensation.

Judyann Holcomb Medeiros, whose Holcomb Family Ranch was most affected by the fence-out project, was quoted by several newspapers and said, essentially, that the Forest Service was harming her business. “Fencing our cattle off of the water denies us our usage rights,” she told the Alamogordo Daily News. “During the drought, our cattle have to walk extended lengths to reach water. The fences also causes the cattle to use the heavily used county road, and we have had cattle hit and killed or severely crippled or damaged by the impacts.”

She did not mention the fact that her ranch will receive 15 elk tags – unit-wide – from the Department of Game and Fish this fall.

Blair Dunn, an Otero County attorney, said the Forest Service “doesn’t have the right to appropriate water for wildlife,” the Daily News reported. “So to pen something off for wildlife to go drink and to appropriate that water for wildlife when they don’t have the necessary legal permits or rights to do so amounts to an illegal diversion of water.”

Several ranchers said the Agua Chiquita project was aimed at driving them off their land, and one Otero County com-

missioner described the Forest Service’s actions as “tyranny.” More than 100 people gathered in Alamogordo in late May to protest the Agua Chiquita project, including John Bell, president of the Otero County Cattlemen’s Association, who said, “We’ve got to stand up and fight back and that is what this is about.”

## Supporters have facts on their side

To those who followed the project closely, however, the Otero County protests missed the mark. “A grazing permit is not a right, but a permit that allows the permittee to occupy the forest but which can be revoked for any number of reasons,” Sacramento District Ranger James Duran said. “Nobody lost their grazing permit over the Agua Chiquita flap,” he said.

Nor did anyone lose their water rights or access to water. In fact, Duran said, “We have no documentation from the Office of the State Engineer, who we rely on for these determinations, that water rights exist or are being violated” in that portion of the Lincoln National Forest. “A lot of folks have made claims,” he said, but his office searched the water rights database maintained by the state and found no evidence. “The only licensed water right is issued to the Forest Service in the database,” he said. Even if a water right did exist, he said, “We have not limited livestock access to the use of the water. Since the herd was turned out into the area on May 18 cattle have had water all along.”

And as to claims about the Forest Service violating local, state or federal law, Duran said no law enforcement agency has brought forth charges. “We have no intentions of breaking the law,” he said.

The Forest Service is, however, mandated by law to manage its forests for multiple use. That includes protecting water quality and wildlife large and small as well as providing for livestock grazing. “I don’t want folks to believe the Forest Service wants to put ranching out of business,” Duran said.

Lerich, the Turkey Federation biologist, said the Agua Chiquita project was needed to protect a fragile stream and riparian area, and nothing more.

“I don’t have anything against cattle,” he said. But cattle and elk have starkly different impacts on a water source. “Elk

will have an impact, but they’ll leave. Cattle, if given a choice, will never leave – they’ll stay there, and before long it’s a pile of dust.”

Protecting riparian habitat like the Agua Chiquita “fits into the mission of the turkey federation,” he said. “It’s what we do. But if we want to protect 10 or 15 acres out of the 28,000 in that grazing allotment, I think that’s benefiting everybody, including the rancher. Our goal here is to provide clean water and more of it.”

Public lands like Lincoln National Forest are among the many reasons the United States is exceptional in the world, said NMWF Director VeneKlasen. Thanks to visionary sportsmen of the early 20th century like Theodore Roosevelt and Aldo Leopold, everyone – regardless of race, social status or bank account – has a place to hunt, fish and relax.

“Public lands are our birthright,” he said. “They are worth fighting for.”

But as incidents like the Agua Chiquita protests and Cliven Bundy standoff in Nevada show, there is a growing movement to treat public lands as if they were private or to transfer federal public lands to the states, and then very likely into private ownership. (See associated story on this page.)

“This is a huge threat to the sportsmen of New Mexico and throughout the West,” VeneKlasen said. “We can camp, hike and scout for big game freely on BLM and Forest Service land, but not on state land and certainly not on private land.”

If the state seized our national forests and BLM landscapes, New Mexico taxpayers would be on the hook to fund everything from fighting forest fires to maintaining thousands of miles of roads, he continued. “It wouldn’t take long before the financial demands of such management would force the state to sell, trade or lease ‘our’ lands. And sportsmen would lose, I guarantee.”

Although some have argued that federal agencies such as the Forest Service and the BLM have somehow “overstepped” their authority, “Sportsmen know they haven’t,” VeneKlasen said. “These agencies are abiding by the law laid down through 200-plus years of democratic action. Sportsmen have had to learn to share our public lands and to take responsibility for protecting them. Others who also use our federal public lands should do the same.”